

SALARIES OF COUNTY OFFICERS: Change in salaries occasioned by change in population should be effective as soon as changed report of population is available.

February 21, 1941

2-25



Honorable Guy H. Thompson
Prosecuting Attorney
Bolivar, Missouri

Dear Sir:

This will acknowledge receipt of your letter of February 15, 1941, asking for an opinion as follows:

"Information is desired relative to salaries of certain county officers in counties of less than 50,000 whose salaries are determined by the last decennial census.

"After approval of the 1941 budget by the count court unofficial information is received that there has been a decrease in the county population which would put salaries of county officers in a different bracket. Should the court take judicial notice of this unofficial information and if so when would the change in salaries be effective?"

The law authorizing the taking of the census is found in Title 13 U.S.C.A. Sections 201 to 219 inclusive, Cumulative Pocket Part, 1940.

Section 201 authorizes the taking of the census. Section 202 directs when the reports shall be completed and is as follows:

"The period of three years beginning the 1st day of January in the year 1930 and every tenth year thereafter shall be known as the decennial census period, and the reports upon the inquiries provided for in said section shall be completed within such period: Provided, That the tabulation of total population by States as required for the apportionment of Representatives shall be completed with eight months from

February 21, 1941.

the beginning of the enumeration and reported by the Director of the Census to the Secretary of Commerce and by him to the President of the United States. (June 18, 1929, c. 28, Sec. 2 46 Stat. 21.)"

Section 206 directs when the actual enumeration shall begin and declares the census shall be effective as of April 1, 1940. This section is as follows:

"The census of the population and of agriculture required by section 201 of this title shall be taken as of the 1st day of April, and it shall be the duty of each enumerator to commence the enumeration of his district on the day following unless the Director of the Census in his discretion shall change the date of commencement of the enumeration in said district by reason of climatic or other conditions which would materially interfere with the proper conduct of the work; but in any event it shall be the duty of each enumerator to prepare the returns hereinbefore required to be made and to forward the same to the supervisor of his district within thirty days from the commencement of the enumeration of his district: Provided, that in any city having two thousand five hundred inhabitants or more under the preceding census the enumeration of the population shall be completed within two weeks from the commencement thereof. (June 18, 1929, c. 28, Sec. 6, 46 Stat. 23.)"

Section 213 authorizes the Director of Census to publish preliminary bulletins and final reports. This section is as follows:

"The Director of the Census is hereby authorized to make requisition upon the Public Printer for such printing as may be necessary to carry out the provisions of this chapter, to wit: Blanks, schedules, circulars, pamphlets, envelopes, work sheets, and other items of miscellaneous printing; that he is further authorized to have printed by the Public Printer, in such editions as the director may deem necessary, preliminary and other census bulletins, and final reports of the results of the several

investigations authorized by this chapter or by chapters 1 and 3 of this title and to publish and distribute said bulletins and reports. (June 18, 1929, c. 28, Sec. 13, 46 Stat. 25.)"

Section 218 authorizes the Director of the Census upon the application of a Governor or a State or of a court of record to furnish certified copies of so much of the population returns as may be requested. This section is as follows:

"The Director of the Census is authorized at his discretion, upon the written request of the governor of any State or Territory or of a court of record, to furnish such governor or court of record with certified copies of so much of the population or agricultural returns as may be requested, upon the payment of the actual cost of making such copies and \$1 additional for certification; and that the Director of the Census is further authorized, in his discretion, to furnish to individuals such data from the population schedules as may be desired for genealogical or other proper purposes, upon payment of the actual cost of searching the records and \$1 for supplying a certificate; and that the Director of the Census is authorized to furnish transcripts of tables and other records and to prepare special statistical compilations for State or local officials, private concerns, or individuals upon the payment of the actual cost of such work: Provided, however, that in no case shall information furnished under the authority of this chapter be used to the detriment of the person or persons to whom such information relates. All moneys hereafter received by the Bureau of the Census in payment for labor and materials used in furnishing transcripts of census records or special statistical compilations from such records shall be deposited to the credit of the appropriation for collecting statistics. (June 18, 1929, c. 28, Sec. 13, 46 Stat. 25.)"

By reading the above sections it is apparent that the 1940 census determined what the population was as of April 1, 1940; that the enumeration should commence on the day after the 1st of April, subject to delays occasioned by local conditions and be completed as soon as possible; that the director could furnish preliminary bulletins and certified copies and that the census of population was required to be completed within eight months after its commencement. And it is a matter of common knowledge that preliminary bulletins were sent out within a few weeks after the enumeration was made. It is apparent that the report of the population of Polk County was available prior to the time of the making of the County Budget for the year 1941.

In the case of Carter County v. Huett 303 Mo. 194, in a case involving the payment of salary to a prosecuting attorney, upon a census classification, the Supreme Court said at l. c. 201:

"As to the fact that Carter County as of the first day of January, 1920, had such a population as put it in the class whose prosecuting attorneys were entitled to receive a salary of \$1000 per annum, there is, and can be, no dispute. The substance of plaintiff's contention is that this fact was not and legally could not have been ascertained, within the meaning of the statute, so as to make it applicable to the salary of the prosecuting attorney for the year of 1920. There is nothing here showing an express or specific finding by the county court of the population of the county, but the making of orders for the issuance of warrants for the payment of the increased salary involved an ascertainment of the existence of a population within a given minimum and maximum limit. The defendants judges of the county court, in auditing and paying the salary of the prosecuting attorney, were in the exercise of their statutory authority, and it cannot be said as a matter of law, under the terms of the Census Act, or under the statute, that the population of the county was not ascertained, or that as a matter of law it could not have been ascertained by the decennial census of 1920 for the purpose of determining the salary paid. This is said as applicable to the case against all of the defendants herein."

Hon. Guy H. Thompson. - 5 -

February 21, 1941.

And in the recent case of Kay v. Moniteau County 134 S. W. (2d) 61, also a case involving the salary of a prosecuting attorney, the Supreme Court said at l. c. 83:

"Since the county court paid plaintiff the salary authorized under the census method, it is immaterial to plaintiff as to how the court acquired knowledge of the census. The census method was available and the court was bound under the law to be guided thereby."

In both of these cases there was no official publication of the census until long after the salary had been paid. And the Court upheld the action of paying upon the census figures as soon as they were available, no matter how acquired.

CONCLUSION.

It is the conclusion of this Department that the salaries of the officers of Polk County should have been adjusted to conform to the population classification prior to the making of the County Budget for 1941, as the census figures were available prior to the time it was required to be made out.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General.

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