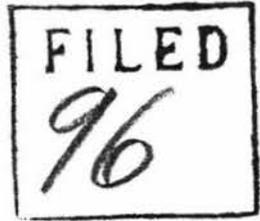


COUNTY SUPERINTENDENT
OF PUBLIC SCHOOLS:
SALARY:

If the 1950 census shows a change in population of the county, then the salary of the county superintendent of public schools of such county will be changed in accordance with said census as of July 2, 1951.

August 31, 1950

9-7-50



Mr. Hubert Wheeler
Commissioner of Education
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion of this department, which letter reads in part as follows:

"Many inquiries are being made by County Superintendents of Schools about the effective date of the 1950 decennial census and as it applies to any changes in the salary of the County Superintendents of Schools.

"Section 10609, R. S. 1939, provides that the County Superintendents of Schools shall hold their office for a term of four years beginning on the first Monday in July. According to this law the next election of County Superintendents of Schools shall be the first Tuesday in April, 1951 for the term beginning the first Monday in July of next year. Other county officers who are elected at the general election in November take their office in January instead of July as in the case of the County Superintendent.

* * * * *

"1. Will all county officers have their salaries adjusted beginning January 1, 1951 in counties where the population bracket is changed by the 1950 decennial census or will there be an exception to this rule for County Superintendents of Schools whose fiscal year for salary purposes begin in July? If there is an exception, will County Superintendents' salaries change by July 1, 1951 instead of January 1, 1951?"

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Section 10609, R. S. Mo. 1939, as reenacted, Laws of Missouri, 1943, page 890, provides as follows:

"The qualified voters of each and every county in this state shall elect a county superintendent of public schools at the annual district school meeting held on the first Tuesday in April, 1943, and every four years thereafter. Said county school superintendent shall be a citizen of the county and at least twenty-four years old. He shall have taught or supervised schools as his chief work during at least two of the eight years next preceding his election, or shall have spent the two years next preceding his election as a regular student in a recognized college or university. At the time of his election he shall hold a certificate authorizing him to teach in the public schools of Missouri, and shall have completed at least one hundred twenty semester hours of college work, including at least fifteen hours in the field of education, not less than five of which shall have been in school supervision and administration; or he shall be serving as county superintendent of public schools. Each and every county school superintendent elected on the first Tuesday in April, 1943, and thereafter, shall hold said office for a term of four years from and after the first Monday in July following his election, or until a successor has been chosen and has qualified; and a vacancy caused by death, resignation, refusal to serve, or removal from the county, shall be filled by the governor by appointment for the unexpired term, subject to the same qualification requirements as if the appointee had been elected. The county school superintendent shall turn over all books, papers, certificates, stub-books, and records in his possession to his successor. All acts and parts of acts conflicting with this section are hereby repealed."

This section shows that the office of county superintendent of public schools is an office in this state created by the Legislature.

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The following statutes show that the county superintendent of public schools shall receive an annual salary.

Section 10619, Mo. R.S.A., reenacted, Laws of Missouri, 1945, page 1722, Section 1, provides in part:

"In all counties of class one now or hereafter containing a population of 400,000 to 600,000 inhabitants as shown by the latest decennial Federal census, the county superintendent of schools shall receive an annual salary of \$4,205.00; and in all counties of class one now or hereafter containing a population of less than 400,000 the county superintendent of schools shall receive an annual salary of \$6,000.00. * * * "

Section 10618.7, Mo. R.S.A., Laws of Missouri, 1945, page 1712, Section 1, provides:

"In counties of the second class, the county superintendent of public schools shall receive an annual salary of \$2250.00, to be paid monthly from the county revenue fund in the form of a warrant drawn upon the county treasury. The state of Missouri shall appropriate annually, out of the general revenue fund of the state of Missouri, \$400.00 to each and every county of the second class."

Section 10618.1, Mo. R.S.A., Laws of Missouri, 1945, page 1709, Section 1, provides:

"In counties of the third class in this state, having less than 7,000 population, the county superintendent of schools shall receive \$1050.00 per annum; in those having a population of 7,000 and less than 10,000, he shall receive \$1200.00 per annum; in those having a population of 10,000 and less than 12,000, he shall receive \$1350.00 per annum; in those having

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a population of 12,000 and less than 15,000, he shall receive \$1600.00 per annum; in those having a population of 15,000 and less than 25,000, he shall receive \$1800.00 per annum; in those having a population of 25,000 and less than 36,000, he shall receive \$2000.00 per annum; and in those having a population of 36,000 or more, he shall receive \$2100.00 per annum. The State of Missouri shall appropriate annually, out of the general revenue fund of State of Missouri, \$400.00 to each and every county of the third class. The county superintendent of schools shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasury."

Section 10618.4, Mo. R.S.A., Laws of Missouri, 1945, page 1711, Section 1, provides:

"In counties of the fourth class in this state, having less than 7,000 population, the county superintendent of schools shall receive \$1050.00 per annum; in those having a population of 7,000 and less than 10,000, he shall receive \$1200.00 per annum; in those having a population of 10,000 and less than 12,000, he shall receive \$1350.00 per annum; in those having a population of 12,000 and less than 15,000, he shall receive \$1600.00 per annum; in those having a population of 15,000 or more, he shall receive \$1800.00 per annum. The State of Missouri shall appropriate annually, out of the general revenue fund of the State of Missouri, \$400.00 to each and every county of the fourth class. The county superintendent of schools shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasury."

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Section 1.10 (654, 13430) of Senate Revision Bill No. 1001, of the 65th General Assembly, reads as follows:

"The population of any political subdivision of the state for the purpose of representation or other matters including the ascertainment of the salary of any county officer for any year or for the amount of fees he may retain or the amount he shall be allowed to pay for deputies and assistants shall be determined on the basis of the last previous decennial census of the United States. For the purposes of this section the effective date of the 1950 decennial census of the United States shall be January 1, 1951, and the effective date of each succeeding decennial census of the United States shall be on January 1, of each tenth year after 1951."

This section became effective April 14, 1950.

The question arises as to whether or not the county superintendent of public schools is a county officer within the meaning of this section. The Supreme Court of Missouri in the case of *Hollowell v. Schuyler County*, 18 S.W. (2d) 498, 322 Mo. 1230, 1.c. 499, 500, held:

"It is further claimed by the appellant that the superintendent of schools is not a county officer within the purview of article 14 of the Constitution, and therefore the constitutionality of the emergency clause is immaterial. We are unable to understand how that could affect the situation, since the sections upon which appellant depends, 11352 and 11354, apply to superintendents of schools. The superintendent of schools is a county officer, though not specially mentioned in the Constitution. Article 9, Sec. 14, of the Constitution provides that the 'General Assembly shall provide for the election or appointment of such other county, township and municipal officers as public convenience may require.'

"By section 11343, R. S. 1919, the Legislature created the office of superintendent of schools in each and every county in the state and in succeeding sections prescribed the duties of

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such office. Therefore, it is a county office created by the Legislature under the authority of the Constitution."

Section 10620, R. S. Mo. 1939, provides as follows:

"For the purpose of ascertaining the population of any county in this state in order to determine the salaries of County Superintendents of public schools, the last previous decennial census of the United States shall be conclusive."

Prior to the enactment of Senate Revision Bill No. 1001, cited above, there was no statutory provision, either federal or state, which designated the time when the result of a federal decennial census became official.

In the case of *Garrett v. Anderson*, 144 S.W. (2d) 971, a Texas case, which was rendered November 27, 1940, the court held the preliminary report of the census for Bexar County, Texas, by the supervisor of the census for the 20th District of Texas, was an official announcement on behalf of the federal government and that the county officials of that county were authorized to take official notice of that report as a declaration of the last preceding federal census.

The Federal District Census Supervisors in Missouri have made their preliminary reports and announcements of the population of the respective counties in their districts prior to July 7, 1950. If Senate Revision Bill No. 1001 had not been enacted by the 65th General Assembly, then the salaries of the various county superintendents of public schools in Missouri, in counties in which the population has decreased or increased, placing the county in a different population bracket, would have changed accordingly as of July 7, 1950.

It is true that the Missouri Constitution of 1945, Article VII, Section 13, prohibits an increase in the compensation of state, county and municipal officers during their term of office. However, the Supreme Court of Missouri, in the case of *State ex rel. Harvey v. Linville*, 300 S.W. 1066, has held, l.c. 1067:

"The increase of salary which a statute permits after an election showing an increase of population is not in violation of the

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Constitution, in that the salary is increased during the term for which the officer was elected, because the law in force at the time of his election fixes his salary, to be ascertained at periods as changed by the increase in population. State ex rel. v. Hamilton, 303 Mo. 302, 260 S.W. 466."

The Supreme Court of Missouri in the case of State ex rel. Jacobsmeyer v. Thatcher, et al., 92 S.W. (2d) 640, l.c. 643, said:

"Thus it is seen that the act assailed was passed by the Legislature some sixteen months before the relator was elected to office, and he, like every one else was charged with knowledge of the law on the date it became effective. His election to office constituted no contract between him and the county. Through his election and induction into office he acquired, and now has, no vested right to salary - or to the office itself if the Legislature had chosen to abolish it. The office of clerk of the circuit court is not one created or provided in the Constitution; it is one authorized by that document to be created by the General Assembly, and, once created, to be abolished or not at the will of that body. State ex rel. McKittrick v. Bair, 333 Mo. 1, 63 S.W. (2d) 64; State ex rel. Crowe v. Evans, 166 Mo. 347, 66 S.W. 355."

The Supreme Court in the case of Sims v. Clinton County, 8 S.W. (2d) 69, said, l.c. 70:

" * * * The case presents precisely the same questions as were considered and determined by Division No. 2 of this court in State ex rel. Harvey v. Linville, 300 S.W. 1066. In that case the relator was elected and qualified as superintendent of public schools of Benton county on April 1, 1919. It was there held that the Act approved March 28, 1919 (Laws 1919, p. 694), shown as sections 11352 and 11354, R. S. 1919, did not go into immediate effect under the emergency clause attached to said act, under the provisions of section 36, art. 4, of the Constitution,

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for the reason that it was an act subject to the referendum, and not within the exceptions mentioned in the referendum section, section 57 of article 4. As a result of that holding it was further held that the salary of the relator in that case was to be determined by the law in force at the time of his election. The law in force at the time was section 10938, R. S. 1909; and, further applicable also, and in force, was section 10719, R. S. 1909, which is section 11016, R. S. 1919. These two sections, respectively prescribed, the one, the amount of salary of the superintendent dependent upon the population of his county, and the other, the method of ascertaining such population. Certain conclusions appropriate in the determining of the instant case, and stated in the opinion in State v. Linville, supra, loc. cit. 1067, are as follows:

* * * * *

"Section 10938, R. S. 1909, provides for ascertaining the "annual" salary. Section 11352, R. S. 1919, says that the superintendent shall receive so much money, dependent upon the population of the county, without saying whether it was per annum. From the context it must be presumed that annual salary was meant. "Annual salary," as used in said section 10938, means salary for each year of the incumbency. It cannot be split up into periods by elections which occur during the year, and must be calculated on a year as a whole. We conclude further that "annual," as applied to salaries, means not the calendar years, but the years of the incumbent's term, which in the case of relator begins on the 1st day of April each year.'

"Accepting then sections 10938 and 10719, R. S. 1909, as governing in determining the salary of the deceased, it clearly appears that she received more than was due her for the period of her incumbency. Under the provisions of those sections, and for the purpose of determining the salary for the first two years, the population of the county was to be fixed by the total vote cast at the

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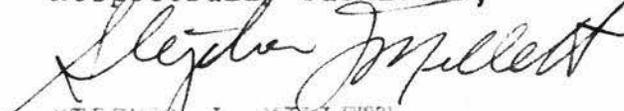
general election of 1918, which resulted in an ascertained population of more than 12,000 and less than 15,000, and in an annual salary of \$800, or for the first two years a total authorized salary of \$1,600. By the same sections and under the total vote of 6,519 at the presidential election of 1920, there was an ascertained population of more than 30,000 and less than 50,000, authorizing a salary of \$1,400 per annum. Under the ruling in State v. Linville, supra, adopted by us, this increase to \$1,400 went into effect on April 1, 1921. * * *

By virtue of the decisions of the Supreme Court of Missouri in the State v. Linville case, supra, and in the Sims v. Clinton County case, supra, we conclude that the change in salaries of county superintendents of public schools will go into effect at the beginning of the office year next after January 1, 1951, which will be July 2, 1951. This also is the beginning of a new term for this office, so no increase or decrease in salary will occur during their present term of office. The Supreme Court of Missouri has said in effect that the annual salary of such officials must be calculated each year as a whole, beginning with the date of commencement of their term, which began on the first Monday in July, 1947 -- that is, July 7, 1947.

CONCLUSION

It is the opinion of this department that the 1950 federal decennial census becomes effective January 1, 1951, in this state, and for the purpose of effecting a change in the salaries of County Superintendents of public schools, in all those counties where such salaries are based upon population, said salaries will be increased or decreased on July 2, 1951, according to the salary bracket created in such counties by said 1950 census.

Respectfully submitted,


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Assistant Attorney General.

APPROVED:



J. E. TAYLOR,
Attorney General.
SJM:vlm