

LEGISLATURE) Number of Representatives ^{in Legislature from respective} determined on basis ^{Counties}
) of final census figures. 1

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Honorable Walter H. Toberman
Secretary of State
Jefferson City, Missouri

Attention: J. Paul Markway

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Article III, Section 2 of the Missouri Constitution says, '... On the taking of each decennial census of the United States, the Secretary of State shall forthwith certify to the county court ... the number of representatives to be elected in the respective counties.'

"We have written the Bureau of the Census for the official figures. We have, at this date, only received the preliminary counts with a letter stating that we would receive an advance report of the final figures.

"It has been called to our attention that according to a recent opinion written for Marion County, the preliminary figures should be considered official in the absence of the final report.

"We respectfully request your opinion as to whether we should use these preliminary figures or wait for the final report in satisfying the above constitutional duty."

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Section 1.10 of Senate Bill No. 1001 of the Sixty-fifth General Assembly provides 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."

The opinion for Marion County, to which you refer in your request, is addressed to Honorable Roger Hibbard, Prosecuting Attorney, and is dated November 30, 1950. In that opinion we concluded that in order to determine whether or not a county is entitled to a separate magistrate under the provisions of Section 18 of Article V, Constitution of Missouri, 1945, providing for the separate office of magistrate in counties of more than 30,000 inhabitants, the preliminary census figures might be relied upon. Determination of the question was required by reason of the fact that the person purportedly elected in the November, 1950, election would have taken office on January 1, 1951, if the office existed. In order to determine the status of the office as of that date it was necessary to ascertain whether or not there were available any census figures which might be relied upon, and we concluded that the preliminary figures were sufficient.

In the situation to which you refer the determination of the number of representatives to be elected from each of the counties of the state will become of importance for the election to be held in November, 1952. There is no necessity

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for any determination as of January 1, 1951, such as was involved in the Marion County opinion. We do not feel that the Constitution or the legislative enactment, above quoted, should be construed to require the Secretary of State to ascertain the number of representatives prior to the publication of final census figures.

CONCLUSION

Therefore, it is the opinion of this Department that determination of the number of representatives in the General Assembly to be elected in the respective counties, in accordance with Article III, Section 2, Constitution of Missouri, 1945, should be based upon the final decennial census figures.

Respectfully submitted,

APPROVED:

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Assistant Attorney General



J. E. TAYLOR
Attorney General

RRW/feh