

REPRESENTATIVES: The apportionment of representatives is according to the last decennial census of the United States and representatives cannot be apportioned according to any census taken by any county, nor can the representation of a county be increased prior to the next United States census by an act of the Legislature or otherwise.

APPORTIONMENT:

CONSTITUTION:



August 1, 1955

Honorable Stephen R. Pratt  
Prosecuting Attorney  
Clay County  
Liberty, Missouri

Dear Mr. Pratt:

Your request for an opinion reads as follows:

"I have been recently requested to obtain an opinion from you on the following question:

"Under Article three, Paragraph nine, Constitution, State of Missouri, it is provided that Clay County shall have one representative in the general assembly. This provision was made prior to the time that Clay County became a second class county and the same section provides that the other three second class counties of this state have three representatives. Article three Paragraph two of the Constitution provides for the apportionment of representatives according to the population in a ratio with the whole number of inhabitants of the state divided by two hundred. Due to the great increase in the population of this county within the last five years, the question is how many representatives are we entitled to at this time, and whether the number can be increased prior to the next regular United States census, or if the number of representatives may be increased before such time by an act of the legislature.

"We would further appreciate knowing if there is any possible way the county could take a census of the county, and thereby on a basis of the census be entitled to additional representation."

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The apportionment of representatives in the General Assembly of Missouri is controlled by Article III, Sections 2, 9 and 10 of the Constitution of Missouri, 1945. Section 2 reads as follows:

"The house of representatives shall consist of members elected at each general election and apportioned in the following manner. The ratio of representation shall be the whole number of the inhabitants of the state divided by the number two hundred. Each county having one ratio, or less, shall elect one representative; each county having two and a half times the ratio shall elect two representatives; each county having four times the ratio shall elect three representatives; each county having six times the ratio shall elect four representatives, and so on above that number giving an additional member for every two and a half additional ratios. On the taking of each decennial census of the United States, the secretary of state shall forthwith certify to the county courts, and to the body authorized to establish election precincts in the City of St. Louis, the number of representatives to be elected in the respective counties."

Section 9 reads as follows:

"Until apportionment of the representatives can be made in accordance with this article, the house of representatives shall consist of one hundred fifty-four members apportioned among the several counties as follows: The County of Buchanan shall have three; the County of Greene shall have three; the County of Jackson shall have eleven; the County of Jasper shall have three; the City of St. Louis shall have eighteen, the County of St. Louis shall have seven, and each of the other counties shall have one."

Section 10 reads as follows:

"The last decennial census of the United States shall be used in apportioning representatives and determining the population of senatorial

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and representative districts. Such districts may be altered from time to time as public convenience may require."

The Legislature has also provided, in Sections 22.040 and 22.050, for the apportionment of representatives to each county in accordance with the above constitutional provisions. It will be noted that in Article III, Section 2, above, the Secretary of State is to certify to the county courts and to the body authorized to establish election precincts in the city of St. Louis the number of representatives to be elected in the respective counties after the taking of each decennial census of the United States, and in Article III, Section 10, cited above, it is explicitly stated that the last decennial census of the United States shall be used in apportioning representatives. The provisions of Article III, Section 9, were to be used only until the apportionment as provided in Article III, Section 2, was carried out. After the taking of the 1950 census, the Secretary of State did so certify to the county courts and to the Board of Election Commissioners of the City of St. Louis the number of representatives to be elected in the respective counties according to the 1950 census. In accordance with these three sections of Article III, there will be no new apportionment until after the taking of the 1960 United States census. Thus, since these three sections of Article III of the Constitution of Missouri, 1945, provide for the only means of apportionment of representatives in the counties of the state and the city of St. Louis, it is the opinion of this office that Clay County is only entitled to such representation as was apportioned it after the 1950 census and that the number of representatives in Clay County cannot be increased prior to the next United States decennial census by an act of the Legislature or on a basis of a census taken by the county.

#### CONCLUSION

It is the opinion of this office that the apportionment of representatives to the counties of the state and to the city of St. Louis can be made only in accordance with Article III, Sections 2, 9 and 10, Constitution of Missouri, 1945, and thus only after each decennial United States census, and not otherwise.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Harold L. Volkmer.

Yours very truly,

JOHN M. DALTON  
Attorney General

HLV:ml