

OPINION NO. 451 ANSWERED BY LETTER

December 8, 1961



Honorable John M. Rice
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Mr. Rice:

This is in further reply to your letter of November 30, 1961, relating to the amount which the State may pay for employees of the Magistrate Court of Newton County.

The opinion of this office dated February 14, 1961, written by Mr. Jerry B. Buxton, ruled that there was no present vacancy in the office of Magistrate of Newton County. The language contained on page 7 of the opinion which you quote, "We feel that in this situation the probate judge, ex officio magistrate, is elected for the term provided by law, four years, and the change in status of the county would not affect the office during that term", must be read in the light of the question ruled. The obvious meaning of this language is simply that the change in population does not operate to create an automatic vacancy in the office. The opinion did not consider any question relating to the compensation payable to the clerical employees of the Court nor for that matter the compensation payable to the judge.

The liability of the state for clerical hire is created by statute, and the comptroller has no authority to make any payments for such purpose without statutory authorization. In all other counties of the state, the Comptroller determines the amount payable for clerical hire in magistrate courts on the basis of the 1960 census. There is no authority for the Comptroller to pay the Clerk of the Magistrate Court of Newton County on the basis of the 1950 census which has been superseded by the 1960 census.

Paragraph 6, Section 483.490, RSMo 1959, both before and after the amendment thereof effective October 13, 1961, is expressly limited to counties having a population not in excess of 30,000. On the other hand, paragraph 7 of said Section expressly applies to counties having a population in excess of 30,000 but not more than 40,000 inhabitants. No doubt the Legislature did not contemplate the existing situation, but the law as written must govern. We find no provision in the statute which would authorize payment for clerical hire in Newton County on any basis other than as set forth in paragraph 7 of Section 483.490, taking into account, of course, the increase effective October 13, 1961. Neither this office nor the Comptroller can ignore the fact that the population of Newton County has changed, and that said population is now in excess of 30,000. Under the circumstances, the amount which the state is authorized to pay for clerical hire in the Magistrate Court of Newton County is limited by the provisions of Paragraph 7, Section 483.490. We have so advised the Comptroller.

Yours truly,

THOMAS F. EAGLETON
Attorney General