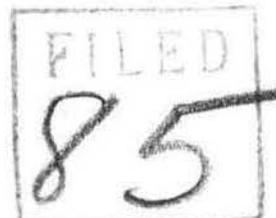


OFFICERS:  
CONSTITUTION LAW:  
CENSUS:

Compensation of County Officers whose salaries are fixed in relation to population by statute in effect at date of their election must be increased or decreased in accordance with such statutory classification. Greater compensation is not an increase within the meaning of Article 7, Section 13 of the Constitution. 1960 census effective as of Jan 1, 61, for purpose of ascertaining county officers' compensation. As to incumbent officers paid on annual basis whose term commences on a date other than Jan 1, any change in compensation effective with next year of incumbency commencing after January 1, 1961.

January 26, 1961



Mrs. G. B. Stewart  
Prosecuting Attorney  
Douglas County  
Ava, Missouri

Dear Mrs. Stewart:

By your letter of January 10, 1961, you request an official opinion answering the following question:

"All of the county officials have been trying to ascertain when the change in salary is effective. Due to the last census it appears they will have to take a cut. Since taking office last week I have been too busy in court to try to find out what salary I am to receive -- I know its insufficient to hire a good secretary--but I was elected before I thought to inquire the salary. It seems to be almost nonexistent.

We shall appreciate an opinion as to when the change is effective."

As we construe the question upon which the opinion is requested, it is essentially as follows: Where a law in force at the time of the election of an official has fixed his salary on the basis of population, should the amount of compensation payable be changed as such population changes from time to time, and if so what is the effective date of such change in compensation?

In the case of State ex rel Moss v. Hamilton, 303 Mo. 302, 260 SW 466, the Supreme Court ruled that where a statute in force at the time of the election of an official fixed the method of computing the compensation of such official according to population, such statute necessarily fixed the compensation for the whole term in accordance with the population as ascertained from time to time, so that in the event of a change of population there is neither an increase nor decrease in salary even though the amount paid to the official is

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different in amount by reason of the change in population. In either event, the amount payable was fixed by a formula in effect at the time of his election. The constitutional prohibition against an increase in compensation applies only to a law effective as such after the term of the officer has commenced. The Supreme Court ruled this question in the following language (underscoring ours):

"\* \* \*This act of 1915 was in effect when relator was elected. Under it, relator's salary was fixed for his whole term, but was not in named dollars and cents for the whole term. The effect of this act of 1915 was to say to relator, 'Your salary shall be determined upon the presidential vote of 1916 until there is another presidential election, at which time your county may be in a lower or higher class, according to the population indicated by the presidential vote.' The salary, in amount, was fixed by law as to relator's office in any event. If his county was not subjected to a change of class, his salary was not changed. If his county (by a decreased population) dropped to a lower class, his salary was fixed, and was fixed before his election, although the change of class might give him a different amount. So too, if his county increased in population and thereby passed to a higher class, the existing law (that in force at the time of his election) fixed for him a salary. True it was higher, but it was definitely fixed at the date of his election. If the act of 1915 had said that the circuit clerk of Crawford county, elected in 1916, shall receive \$1,600 per year for the first two years, and \$1,950 per year for the last two years of the term there would be no question. Section 8 of article 14 of the Constitution could not be invoked, because the salary would not be either increased or decreased during the term. To my mind the act of 1915 as it now stands is no nearer a violation of section 8 of article 14 of the Constitution, than the supposed law. \* \* \*"

So, too, in State ex rel Harvey v. Linville 318 Mo. 698, 300 S.W. 1066, the Court stated the rule as follows:

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

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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."

It is the opinion of this office, therefore, that the compensation payable to the official should be based on the population as it appears from time to time during his term of office in accordance with the formula prescribed by the statute in effect at the time of such official's election and that any change resulting from the application of this formula, whether it result in an increase or a decrease in the amount of salary payable is neither an increase of compensation within the meaning of Section 13, Article 7 of the Missouri Constitution of 1945, nor a decrease.

Section 1.100 V.A.M.S., Pocket Part, Laws 1959, provides as follows:

"1. 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 is allowed to pay for deputies and assistants is 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 1960 decennial census of the United States is July 1, 1961, and the effective date of each succeeding decennial census of the United States is July first of each tenth year after 1961; except that for the purposes of ascertaining the salary of any county officer for any year or for the amount of fees he may retain or the amount he is allowed to pay for deputies and assistants the effective date of the 1960 decennial census of the United States is January 1, 1961, and the effective date of each succeeding decennial census is January first of each tenth year after 1961. \* \* \*"

Prior to the Laws of 1959, Section 1.100 provided, in identical language, that for the purpose of ascertaining the salary of any county officer for any year or for the amount of fees he may retain the effective date of each decennial census shall be on January 1 of each tenth year after 1951, so that, insofar as concerns the effective date of the census for the purpose of ascertaining the salary, the statute is unchanged. It follows that under said Section

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1.100, the 1960 census became effective on January 1, 1961, and that the population as shown by such census is required to be used in determining the compensation thereafter payable to such county officer.

In this connection attention is called to the holding in State ex rel Harvey v. Linville, 318 Mo. 698, 300 S.W. 1066, that the word "annual" as applied to salaries means not the calendar years, but the years of the incumbent's term. The Court ruled this point as follows:

" \* \* \* '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. \* \* \*"

The Linville Case was followed in Sims v. Clinton County, 320 Mo. 594, 8 S.W. 2d 69, 70.

Under these authorities an "annual" salary means the salary for each year of the incumbency. Hence, as to those officials whose term commences on January 1 of ~~any~~ year, the change in compensation is effective as of January 1 of this year. However, as to those officials whose terms commence on a date other than January 1st, the change in compensation is effective on the next anniversary date of the term. For example, if an official's term begins on April 1st, then the change in his "annual" salary would be effective as of April 1 rather than January 1, 1961.

#### CONCLUSION

It is the opinion of this office: (1) that a change in population resulting from the 1960 census requires a change in the compensation payable to County officers whose salary is fixed in relation to such population by a statute in force as of the date of any such officer's election, and this is true whether the result be an increase or a decrease in the amount payable to such officers; and (2) that the 1960 census became effective for the purpose of ascertaining the salary of such county officers as of January 1, 1961, but that as to any officer whose salary is fixed on an annual basis and whose term began on a date other than January 1, any such change in compensation is not effective until the

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commencement of the next year of such officer's incumbency which begins subsequent to January 1, 1961.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Yours very truly,

Thomas F. Eagleton  
Attorney General

JF:ms