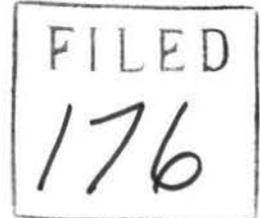


CENSUS: The county court is not authorized to increase the  
POPULATION: salaries of county officers on the basis of common  
COUNTY COURTS: knowledge of an increase of population in the county  
COMPENSATION: since the last decennial census of the United States  
SALARIES: was taken in 1960. The salaries of such officers must  
be ascertained solely on the basis of the 1960 decennial  
census of the United States until January 1, 1971,  
the date that the 1970 census becomes effective.

OPINION NO. 176

February 8, 1968

Honorable Urban C. Bergbauer, Jr.  
Prosecuting Attorney  
Iron County  
Ironton, Missouri 63650



Dear Mr. Bergbauer:

This is in response to your request for an opinion as to whether the County Court of Iron County is authorized to increase the salaries of those county officers whose salaries are based on the population of the county. Although the last decennial census of the United States (1960) shows that the population of Iron County was less than 10,000 inhabitants, you state that it is common knowledge that the population has increased substantially over the last few years and it is estimated at the present time that there is an excess of 11,000 inhabitants in the county. Your specific question is whether the County Court is authorized to increase the salaries of these affected offices based upon common knowledge of an increase of population in the county, or whether the county can call for a census to be taken to determine the population, or whether the County Court must await the next decennial census of the United States to be taken in 1970 before the affected offices may have an increase in salary.

Article VI, Section 7, Constitution of Missouri, 1945, provides that in each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be a county court and prescribes the duties of the court as follows:

"In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law."

Honorable Urban C. Bergbauer, Jr.

County courts are courts of limited jurisdiction and aside from the management of the fiscal affairs of the county, possess no powers except those conferred by statute. In the case of King vs. Maries County, 249 S.W. 418, the court said:

"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute."

There is no authority expressly granted to the county court by statute to change or modify the salaries of these county officers or to call for a census to be taken which might serve as a basis for that purpose.

In Gill vs. Buchanan County, 142 S.W. 2d 665, 1.c. 688, the court stated that:

" \* \* \* However, our conclusion is that a county's liability for a county officer's salary is incurred not just when each monthly installment thereof is payable, but, insofar as the constitutional provision herein invoked is concerned, the whole amount, due and payable during each year, must be considered from the beginning of the year. This must be true because the annual amount of such salary is fixed by the Legislature and no other officer or officers have authority to change it, either before or after it is due and payable. Nodaway County v. Kidder, 344 Mo. 795, 129 S.W. 2d 857; State ex rel. Rothrum v. Darby, Mo. Sup., 137 S.W. 2d 532. \* \* \* "

The salaries of these county officers are fixed in relation to population by statute in effect at the date of their election. For the purpose of ascertaining the salaries of these officers the population is determined pursuant to paragraph 1, Section 1.100, RSMo 1959, 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

Honorable Urban C. Bergbauer, Jr.

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."

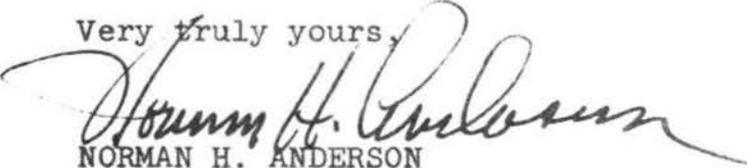
It follows that in accordance with Section 1.100 the 1960 census became effective July 1, 1961, and that the population as shown by such census is required to be used in ascertaining the compensation payable to county officers.

#### CONCLUSION

It is the opinion of this office that the county court is not authorized to increase the salaries of county officers on the basis of common knowledge of an increase of population in the county since the last decennial census of the United States was taken in 1960, and that the salaries of such officers must be ascertained solely on the basis of the 1960 decennial census of the United States until January 1, 1971, the date that the 1970 census becomes effective.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General