

COUNTY SUPERINTENDENT OF SCHOOLS SALARY: If the 1940 census shows a decrease in population putting county in lower salary bracket decrease in population would effect the salary of the County Superintendent of Schools effective July 1, '41.

January 20, 1941

Honorable A. L. Gates
Prosecuting Attorney
California, Missouri

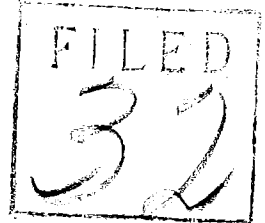
Dear Sir:

This will acknowledge receipt of your letter of January 14, 1941, in which you ask for an opinion as follows:

"As Prosecuting Attorney of Moniteau County I would like very much to have your written official opinion on the following state of facts.

"Our County Superintendent of Schools began his present term of office July 1, 1939, and his term ends June 30, 1943. In 1940 the decennial census was taken. Prior to 1940 decennial census his salary was based on the 1930 decennial census which according to the official record gave Moniteau County more than 12,000 population. According to the official census of 1940 Moniteau County has 11,775 population. Section 9463, page 384, Laws of Mo. 1933 states the salary schedule for the County Superintendent of Schools.

"The question which now arises in preparing the 1941 budget for the County Superintendent is whether or not he shall receive a salary of \$1600 as provided in said Sec 9463 in the bracket of 12,000 and less than 15,000 population or whether his 1941 salary shall be placed in the bracket of 10,000 and less than 12,000 population with a salary of \$1350.



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"The question which this office would like to have determined is whether or not the 1940 census as officially determined will effect and change the salary of the County Superintendent during his term of office. If the 1940 census does effect our County Superintendent's salary when does such an effect take place?"

Givens v. Daviess County, 107 Mo. 603, l. c. 609 is as follows:

"In the absence of constitutional restrictions the compensation or salary of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed, or his duties enlarged without the impairment of any vested right. State ex rel. v. Smith, 87 Mo. 158; City of Hoboken v. Gear, 27 N. J. L. 278; United States v. Fisher, 109 U. S. 143."

Section 8, Article XIV of the Constitution prohibits an increase in compensation of an officer during his term, but this section does not prohibit a decrease in compensation. The section is as follows:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

In the case of State ex rel. Moss v. Hamilton, 260 S. W. 466, 303 Mo. 302, this section was construed by the Supreme Court holding that it applied only to increases by legislative enactment during the term of office, and not to increases which occurred by reason of an already existing law.

In regard to the question of when a change in salary which might be caused by a change in population would take effect, this question was specifically answered

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in the case of State ex rel. Harvey v. Linville 300 S. W. 1066, in this case the Supreme Court at l. c. 1067, said:

"Section 10938, R. S. 1909, provides for ascertaining the 'annual' salary. Section 11352, R. S. 1919, says that the superintendent shall receive so much money, dependent upon the population of the county, without saying whether it was per annum. From the context it must be presumed that annual salary was meant. '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."

Since the above decision was written the law governing the term of the County Superintendent of Schools has been changed so that the term will now begin on July 1st instead of April 1st.

CONCLUSION.

It is the conclusion of this Department, that if the 1940 census shows a change in the population of Moniteau County, which would place the county in a different salary bracket, that such change in population, if a decrease, would have the effect of lowering the salary of the County Superintendent of Schools; that such change would be effective July 1, 1941.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General.

APPROVED:

W. J. BURKE
Assistant Attorney-General.

COVELL R. HEWITT
(Acting) Attorney-General.