

OFFICERS: Salary of sheriff in fourth class county  
FEES AND SALARIES: elected in 1948 is reduced by change in  
SHERIFFS: population as shown by 1950 decennial census.

JOHN M. DALTON  
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1-29-53

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John C. John  
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Honorable Chas. B. Butler  
Prosecuting Attorney  
Ripley County  
Doniphan, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"The decennial census of 1940 showed the population of Ripley County to be 12606; the census of 1950 showed the population of Ripley County to 11404. Under Section 57.400, Statute 1949, the sheriff of fourth class counties was entitled to a salary of \$1900.00 a year when the population in counties having a population of 11500.00 and less than 13000.0. In counties having a population of 10000.00 and less than 11500.00 the salary of the sheriff is now \$1800.00 a year. A sheriff elected in the year 1948 in a fourth class county, having a population 10000 and not more than 11500 would get only \$1800.00 a year.

"I would like to have your opinion on the question if a sheriff elected in 1948, who was entitled to a salary of \$1900.00 a year, would be entitled to the same salary after the census for 1950 showed a population that only entitled the sheriff to a salary of \$1800.00 a year. In other words does a change in the population reducing the salary of an officer entitle him to continue the draw the salary the statute gave him when elected to office."

Honorable Chas. B. Butler

Section 57.400, RSMo 1949, provides for the compensation for sheriffs in counties of the fourth class, and, in part, reads:

"The sheriff in counties of the fourth class shall receive annually for his official services in connection with the investigation, arrest prosecution, custody, care, feeding, commitment and transportation of persons accused of or convicted of a criminal offense, the following sums: \* \* \* in counties having a population of ten thousand and less than eleven thousand five hundred, the sum of one thousand eight hundred dollars; in counties having a population of eleven thousand five hundred and less than thirteen thousand, the sum of one thousand nine hundred dollars; \* \* \*"

The above statute was enacted by the Sixty-third General Assembly, Laws of Missouri, 1945, page 1548. It was approved April 10, 1946, and became effective sometime prior to 1948 when the sheriff to which you refer in your opinion request was elected.

Under the above statute the compensation for sheriffs in counties of the fourth class is set up on a population basis, and inasmuch as it was in effect at the time the sheriff to which you refer was elected, said statute would fix the sheriff's salary or compensation for his whole term. However, if the population of the county would change, it could have the effect of changing the amount of salary or compensation that the sheriff could legally receive.

The case we have found to be the closest in point on this question is that of State ex rel. Moss v. Hamilton, 303 Mo. 302, 260 S.W. 466. In that case a proceeding in mandamus was instituted by the Clerk of the Circuit Court of Crawford County against the judges of the county court to compel them to issue a warrant for salary to which he claimed he was entitled for the last two years of his term of office. The statute applying to circuit clerks classified them according to the population of their respective counties with regard to the fixing of salaries. It provided that, for the purposes of the act, the population of any county was to be determined by multiplying by five the total number of votes cast in such county at the last

Honorable Chas. B. Butler

persidential election. The law further provided that in counties having a population of fifteen thousand and less than twenty thousand the annual salary would be \$1,600, and in counties having a population of twenty thousand and less than twenty-five thousand the salary would be \$1,950 per year. The circuit clerk had been elected for a four-year term in November, 1918. The presidential vote in Crawford County for the year 1916 was such as would give the population of the county for salary purposes as between fifteen and twenty thousand. Consequently, for the first two years of the clerk's term of office he received an annual salary of \$1,600. In 1920 the presidential vote increased so as to make the population of the county for salary purposes between twenty and twenty-five thousand, which would put the county in a population bracket that would require paying the clerk \$1,950 per year. For the last two years of his office the clerk had been paid \$1,600 per year, and this lawsuit was brought to compel the payment of the difference between \$1,600 and \$1,950 for the last two years in his term. The principal contention was that, due to the increase in population in the middle of his term, he was entitled to the higher salary. In ruling on the question the court, at S.W. l.c. 469, 470, said:

" \* \* \* 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 a 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

Honorable Chas. B. Butler

fixed at the date of his election. \* \* \* \*  
The salary of each class was fixed, and as  
said no subsequent law has changed the fixed  
salaries. The mere fact that a county passed  
from one class to the other does not deprive  
the holder of the office of the salary fixed  
by law, and fixed too, at a time long prior  
to relator's election. \* \* \*" (Emphasis ours.)

While in the above case the court was considering whether or not a county officer could receive an increase in salary for the last two years of his term as a result of a change in population, it also declared what would be the result with respect to a change in salary if there was a decrease in population.

In the situation you have presented the statute fixing the salary of sheriffs in counties of the fourth class was in effect prior to and at the time the sheriff was elected, and under the authority of the above case would be applicable for determining the salary of the sheriff for his entire term of office based on a population classification of the county. However, if the population of the county changed so as to put the county in a different population classification, it would operate to change the amount the sheriff could legally receive as determined by Section 57.400, supra.

According to the facts which you have presented, the census of 1950 showed a reduction in population of your county so as to put the county in a lower population classification and under the salary statute would reduce the sheriff's salary from \$1,900 to \$1,800 per year.

Under the authority of the above case we believe that the change in population would require a reduction of the salary of the sheriff for the years 1951 and 1952.

To further sustain this position, your attention is directed to Section 1.100, RSMo 1949, which provides as follows:

"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 shall be allowed to pay for deputies and assistants shall be determined on the

Honorable Chas. B. Butler

basis of the last previous decennial census of the United States. For the purposes of this section the effective date of the 1950 decennial census of the United States shall be January 1, 1951, and the effective date of each succeeding decennial census of the United States shall be on January first of each tenth year after 1951."

(Emphasis ours.)

The above statute declares the effective date of the 1950 decennial census to be January 1, 1951, and said statute is applicable in ascertaining the salary of any county officer for any year.

#### CONCLUSION

In the premises, it is the opinion of this department that the salary of a sheriff in a county of the fourth class who was elected in November of 1948 is reduced for the years 1951 and 1952, as a result of a reduction in population as shown by the 1950 decennial census which placed the county in a lower population bracket.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Frank Thompson.

Yours very truly,

JOHN M. DALTON  
Attorney General

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