



February 28, 1969

Answer by letter-Wieler

OPINION LETTER NO. 135

Honorable Harry Wiggins, Supervisor
State Department of Liquor Control
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Wiggins:

This is in response to your request for an opinion from this office concerning the question whether a local option election for sale of liquor by the drink can be held in a city whose 1960 census showed a population of less than 500 but whose population, as certified on June 9, 1965, as the result of a special census ordered by the Governor, was 536.

In order to hold a local option election for sale of liquor by the drink, Section 311.090 (1), RSMo 1959, requires that a city have a population of at least 500. It further provides that:

". . .The population of said cities to be determined by the last census of the United States completed before the holding of said election; . . ." (Emphasis added)

The United States census is taken every ten years as provided by the United States Constitution, Article I, Section 2, clause 3. Further, 13 U.S.C.A., Section 141 provides for the census to be taken in the year 1960 and every ten years thereafter.

It is our opinion that the special census ordered by the Governor and certified to the State of Missouri on June 9, 1965, does not come within the meaning of Section 311.090 (1), RSMo 1959, which specifically calls for a United States census. We are aware of Section 71.170, RSMo 1959, which provides that the population shown by a special census ". . .shall be the legal census and population of such city or town, for all purposes

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whatsoever, under the constitution and laws of the state."; but it is our view that this is a general statute and, therefore, not controlling when in conflict with the provisions of Section 311.090, a special statute.

Therefore, in determining whether a city is qualified to hold a special election under Section 311.090, RSMo 1959, it is our opinion that only the decennial United States census figures can be used.

Yours very truly,

JOHN C. DANFORTH
Attorney General