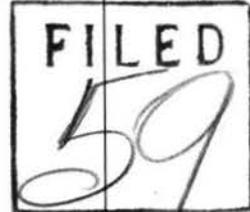


OFFICERS: Census increase may cause increase in salary
of public official without violating Section
8, Article XIV, Missouri Constitution.

July 11, 1940

Honorable F. Hiram McLaughlin
Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
dated July 2, 1940, as follows:

"It is apparent that the 1940 census will change the salaries of several Greene County officials. Most of these officials are now paid salaries under the provisions of page 442, Laws of 1937, applying to counties with population from seventy-five thousand to ninety thousand.

The preliminary census figures already announced show a greater population than ninety thousand. There are just two points connected with this matter that have caused me to ask your office for an opinion. First, I would like to know your view as to when the 1940 census becomes official. My understanding is that the final figures have not yet been announced, but will be announced from Washington sometime in the future, and I believe that is the date that the new census becomes operative.

Second, Article 14, Section 8 of the Constitution of Missouri provides that the compensation of no county officer shall be increased during his term of office. I should like your view as to whether this section means that officers

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cannot receive increased compensation where the census shows that the county has passed from one salary bracket to another during the term, or whether it means that the legislature is prohibited from passing an act increasing the salary. The case of *Folk vs City of St. Louis*, 250 Missouri, 116, takes the view that the object of this section is to prevent officers using their official influence to obtain an increase of compensation. I am inclined to the view that this constitutional provision has no application where a county passes out of one population group into another group, without any action on the part of the official involved.

Some Greene County officers will lose some compensation, and others will gain by reason of the new census figures. It is my feeling that the new salary basis will go into effect automatically as soon as the new figures are announced, provided the population is greater than ninety thousand.

I would appreciate your opinion in these two matters."

Your first question concerning the effective date of the 1940 decennial census was answered by this office in an opinion to Miss Evelyn Barclay, Circuit Clerk of Adair County, under date of June 13, 1940. A copy of that opinion is enclosed herewith.

Your second question concerning the conflict of an increase in salary because of a change in the population with Section 8, Article XIV of the Missouri Constitution has arisen on several occasions in this state. Section 8, Article XIV of the Constitution of Missouri 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 State ex rel. Moss v. Hamilton, 303 Mo. 302, which was a suit arising because of an increase in the population of Crawford County, Missouri, during the term of a circuit clerk, we find the following in the opinion of the court, l. c. 314:

"Were our circuit clerks elected in Presidential years, there would not be before us the peculiar and rather difficult question we have in the instant case. This Act of 1915 was in effect when relator was elected. Under it relator's salary was fixed for his whole term, but 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 fixed at the date

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of his election. If the Act of 1915 had said that the Circuit Clerk of Crawford County elected in 1916 shall receive \$1600 per year for the first two years, and \$1950 per year for the last two years of the term, there would be no question. Sec. 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. The lawmakers knew the Presidential elections years, and with this knowledge classified the counties as to salaries, and provided that such salaries should be determined by the last previous Presidential vote. 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. In our judgment Section 8 of Article 14 of the Constitution does not preclude a recovery by relator. This because his salary was fixed by law before his election, and no law since enacted has changed it, except as we may hereafter note. * * * "

Again, in State ex rel. Harvey v. Linville, 318 Mo. 698, a similar question arose in regard to the salary of the county superintendent of public schools in Benton County, Missouri. The court held that an increase in salary because of a change in population did not violate the above section of the Constitution in the following language, l. c. 701:

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"I. The increase of salary which a statute permits after an election showing an increase of population is not in violation of the Constitution 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, 260 S. W. 466.) The salary of an officer, dependent upon the population as ascertained from time to time, would be determined by the law in force at the time of his election, and a law which went into effect later would not affect the matter. Therefore, if the Act of 1919 was not in effect when relator was elected, it would not apply to his salary at any period of his term."

In view of these decisions, it is the conclusion of this department that an increase in the salary of a county official because of an increase in the population, if disclosed by the 1940 decennial census, does not conflict with Section 8, Article XIV of the Missouri Constitution where the legislation fixing the change in salary was in effect at the time such official took office.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

RLH:VC