

PROSECUTING ATTORNEY: Where a Missouri statute fixes the salary of a county officer on the basis of population of the county and provides no method of determining such population, the population is to be measured by the last decennial census of the United States

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Honorable Robert G. Mayfield  
Prosecuting Attorney  
Laclede County  
Lebanon, Missouri

Dear Sir:

We have your letter of December 5, 1947, in which you request an opinion of this department. Your letter is as follows:

"The Department of Commerce has recently announced new population figures and this is to inquire if that statement of the population is such as to meet the requirements of Section 12939.1, Mo. R.S.A., Laws of Missouri, 1945, Section 1, page 1537.

"Attention is invited to Section 12939 of R.S. of 1939 wherein the last sentence of this Section reads as follows: 'The number of inhabitants of any County, for the purpose of this Section, shall be determined by the last decennial census of the United States.' The new Section enacted in 1945 referred to in the preceding paragraph does not contain the sentence which has just been quoted. It would therefore appear that if a population figure was determined by the Census Bureau between two decennial census', such would be sufficient upon which to base a salary therein referred to.

"I would like an opinion upon this question."

The law relative to salaries of prosecuting attorneys as set forth by Section 11314, R.S. Mo. 1929, after fixing the salaries in accordance with the population of the counties, provided as follows:

"\* \* \* The number of inhabitants of any county shall, for the purpose of this section be ascertained by multiplying the whole number of votes cast at the last preceding presidential election by five, until after the population of such county shall have been ascertained by the next decennial census of the United States."

This was the statute as it existed on the subject under consideration prior to 1933. The above mentioned section, however, was repealed and a new section enacted in lieu thereof in 1933, Laws of Missouri 1933, page 178. This 1933 law provided that the population shall be determined by the last decennial census of the United States, and is the same section cited and quoted in your letter as Section 12939, R.S. Mo., 1939. Thereafter, as indicated by you, Section 12939.1, Mo. R.S.A., was enacted in 1945, Laws of Missouri, 1945, Section 1, page 1537, which did not contain any provision as to how the population should be determined for the purposes of the act.

With the foregoing facts in mind, we now refer to the fact that the aforesaid 1945 act did not specifically repeal the preceding act, which provided that the population should be determined by reference to the last decennial census of the United States, in its entirety, but merely repealed by implication such portions thereof as were inconsistent with the 1945 act. We are, therefore, of the opinion that, since the 1945 act contained no provision as to how the population was to be determined for the purposes of the act, the provision of the previous statute to the effect that the population was to be determined by reference to the last decennial census of the United States remained unimpaired and is still in force.

Furthermore, even if the latter act should be construed as having repealed said provision of the former act, the situation would then be that the statute is silent as to how such population should be arrived at, and we are of the opinion that, under such construction of the statute, the following language of the Supreme Court of Missouri in *Hardin v. Jefferson County*, 147 S.W. (2d) 643, l.c. 644, is applicable:

"The legislature provided no special statutory method to determine the population of a county under Sec. 7892. Absent such a method, the question of population is fixed by the last decennial census, which is the census of 1930. \* \* \*"

Hon. Robert G. Mayfield

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CONCLUSION

We are accordingly of the opinion that the population of counties for the purposes of Section 12939.1, Mo. R.S.A., Laws of Missouri 1945, Section 1, page 1537, must be determined by reference to the last decennial census of the United States.

Respectfully submitted,

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

SMW:LR