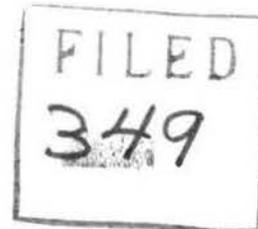


May 27, 1970

OPINION LETTER NO. 349

Honorable Richard Southern
State Senator
201 West Summer Avenue
Monroe City, Missouri 63456



Dear Senator Southern:

This is in response to your opinion request which is stated as follows:

"I am requesting an official opinion of your office as to the application of the 1970 census results to cities, counties, political subdivisions, and officials of these bodies, wherein there is a statutory population requirement or limitation defining what such body or official can or cannot do and setting amounts of public funds paid, made available or distributable to such bodies and officials

Since many persons in our state are concerned that the powers of some cities or political subdivisions will no longer be available to them if their population falls below a specified statutory figure, it is important to know: If a city which under 1960 census qualified because their population was over the minimum required to exercise certain powers, does such a political subdivision lose these presently held powers if it falls below that statutory figure under the 1970 census? If the body does lose these powers when is the effective date? When the figures are officially certified by some

Honorable Richard Southern

agency or some other date? What is the effective date? This is of extreme importance considering the possible action a body may need or want to take to attempt through their own citizens or some legislative body to change the specific statutory limits.

When would salaries to officials, gas tax distribution to cities and counties and any other payments be altered due to population changes under the 1970 census? Are there other matters beside salaries and gas tax payments which would be affected by changes in population from 1960 to 1970?

Could a political subdivision by special census or annexation at a date after 1970, and before the 1980 census certify a larger population than the 1970 figures, and if they did so, would these later figures be accepted to qualify these bodies or officials to increased salary, payments or powers?"

You have requested an early decision with respect to these questions; and for that reason, we will not attempt to analyze the myriad statutes involved.

First, we wish to call your attention to Section 1.100, RSMo 1959, which provides in full as follows:

"1. 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 is allowed to pay for deputies and assistants is determined on the basis of the last previous decennial census of the United States. For the purposes of this section the effective date of the 1960 decennial census of the United States is July 1, 1961, and the effective date of each succeeding decennial census of the United States is July first of each tenth year after 1961; except that for the purposes of ascertaining the salary of any county officer for any year or for the

Honorable Richard Southern

amount of fees he may retain or the amount he is allowed to pay for deputies and assistants the effective date of the 1960 decennial census of the United States is January 1, 1961, and the effective date of each succeeding decennial census is January first of each tenth year after 1961.

"2. Any law which is limited in its operation to counties, cities or other political subdivisions, having a specified population or a specified assessed valuation, shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the law passed."

In our view, the above section fixes the effective date with respect to laws limited in operation to counties, cities, and other political subdivisions having a specified population. Therefore, the effective date for the purpose of representation or other matters as therein provided would be July 1, 1971, and the effective date for the purposes of ascertaining the salary of any county officer for any year or for the amount of fees he may retain or the amount he is allowed to pay for deputies and assistants is January 1, 1971.

It is, therefore, our view that where a city or political subdivision derives power solely by reason of the fact that it falls within the population range provided by the particular statute such city or political subdivision no longer retains the grant of power when its population falls outside the prescribed range. Where the population is determined solely by the 1970 census, the effective date in such a case would be July 1, 1971.

We have already stated that the effective date with respect to the population and the census figures as applied to the salaries of county officers is January 1, 1971.

With respect to gas tax distribution, we enclose Opinion No. 407, dated December 10, 1964, to Robert E. Yocom, in which it was held that gasoline tax distribution is based on the federal census figures.

With respect to your question of whether there are other matters besides salaries and gas tax payments, which would be affected by the changes in population, we cannot, as we stated, undertake a complete review of all such statutes.

Honorable Richard Southern

However, an example is the St. Louis City earnings tax, Sections 92.110, RSMo et seq., as amended, which authorizes the levy of an earnings tax by constitutional charter cities of over 700,000 population.

With respect to your last question concerning whether a political subdivision by special census or annexation after 1970 and before the 1980 census could attain a larger population as indicated by the 1970 figures, it is our view that such an increase could possibly be shown by annexation. That is, in our Opinion No. 407, 12-10-64, Yocom, copy enclosed, we noted that an area which incorporated after the federal census had been taken could possibly obtain a United States Bureau of Census certification with respect to population in its geographical area. On the basis of such a census determination, the population of the political subdivision would be increased in case of annexation. The increase in the population thus obtained would enable the political subdivision and its officials to, by reason of such increased census figures, take advantage of or come within certain statutes applicable to the population range reached by the annexation.

We are also enclosing Opinion 425, dated October 9, 1969, to McNary, which held that a special census conducted under provisions of Sections 71.160 through 71.180, RSMo 1969 is applicable in determining distribution of cigarette tax money in municipalities in a first class charter county.

We caution you, however, that this opinion was challenged in an action in the Circuit Court in Cole County, Cause No. 24,483, styled City of Bridgeton v. Gilstrap, and that said court on February 25, 1970, handed down a decision now being appealed to the Supreme Court of Missouri which held that such incorporated areas in St. Louis County could not use the special census, but must use the federal decennial census.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures:

Op. No. 425,
10-9-69, McNary

Op. No. 407,
12-10-64, Yocom