

MAGISTRATES:  
PROBATE JUDGES:  
COMPENSATION:

The effective date of the 1970 decennial census with respect to the determination of magistrate judges and probate judges salaries is July 1, 1971. The effective date for the determination of maximum allowance for probate and magistrate clerks, deputy clerks and employees is July 1, 1971.

OPINION NO. 397

October 13, 1971

Mr. John C. Vaughn  
Comptroller & Budget Director  
Post Office Box 809  
Jefferson City, Missouri 65101



Dear Mr. Vaughn:

This opinion is in response to your question in which you ask:

"Upon what date does the 1970 decennial census become effective in regard to the salaries of Magistrate Judges, Probate Judges and Ex Officio Magistrates and their clerks."

As you are aware, the Supreme Court of Missouri, en Banc, on June 14, 1971, handed down its decision in State ex rel. Stark v. Jeter, 467 S.W.2d 882, relative to this subject.

That case was a mandamus proceeding by a probate judge-ex officio magistrate to command the county court judges to cause county warrants to be issued for his compensation as a probate judge. In that case the probate judge-ex officio magistrate was elected to begin his term of office as of January 1, 1971 in a county having a population of more than 30,000 inhabitants but not more than 65,000 inhabitants under the 1970 decennial census. Relator claimed that in addition to the compensation provided for magistrates under Section 482.150, subsection 1(6), RSMo 1969, he was entitled to the salary, to be paid by the county, for probate judges under Section 481.200, subsection 1(3), RSMo 1969.

In denying the writ the court considered the provisions of subsection 1 of Section 1.100, RSMo 1969, which state:

Mr. John C. Vaughn

"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 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."

The court held at l.c. 883 with respect to the above provisions that:

"This Court has held that probate judges are not 'county officers.' State ex rel. Buchanan County v. Imel, 242 Mo. 293, 146 S.W. 783; State ex rel. St. Louis County v. Kirkpatrick, Mo.Sup., 426 S.W.2d 72. This case, of course, involves a probate judge. Therefore, those portions of V.A.M.S. §1.100 which purport to affect 'the salary of any county officer' have no application to this case. This means that the statutory reference to January 1, 1971 is of no significance in this case. The statutory references to July 1, 1971, are of much significance."

The court concluded that as of January 1, 1971, relator became the judge of the probate court and also judge of the magistrate court but that on July 1, 1971 he would no longer be judge of the magistrate court. Therefore relator was entitled to compensation for his services rendered as probate judge and magistrate judge for the period January 1, 1971 through June 30, 1971 under the provisions of Section 482.150, subsection 1(4) at the rate of \$12,400.00 per annum and was entitled to compensation for services rendered as probate

Mr. John C. Vaughn

judge on July 1, 1971 and thereafter at the annual salary of \$13,000.00 payable by the county under subsection 1(3) of Section 481.200. The holding of the court appears to indicate by reference to Section 483.475, RSMo 1969, that probate clerks and assistants of the probate judge who took office January 1, 1971, would, on and after July 1, 1971, be subject to the compensation provisions of Section 483.475. The court also held that the person appointed magistrate on July 1 and thereafter would be entitled to an annual salary of \$11,800.00 under Section 482.150, subsection 1(6).

Therefore with respect to the effective date of the decennial census as it pertains to salaries of probate judges the court clearly held that the significant date is July 1, 1971.

With respect to the effective date in regard to the salaries of magistrate judges we believe that the opinion of the court is applicable to magistrate as well as probate judges and that magistrate judges are not "county officers" within the meaning of the provisions of Section 1.100, and therefore, the significant date with respect to such magistrates is July 1, 1971. State ex rel. St. Louis County v. Kirkpatrick, 426 S.W.2d 72 (Mo. 1968).

In regard to your question concerning clerks of the magistrate and probate courts, magistrate clerks come within the provisions of Section 483.490, RSMo 1969. When the judge of the probate court is also the judge of magistrate court he may designate one or more of his clerks, deputy clerks or employees to serve in the probate court. Section 483.490, subsection 2. The magistrate clerks salaries are paid by the state (except for clerks of additional magistrates created by order of the circuit court under Section 482.010, RSMo 1969) within the limits of Section 483.490. As we noted above, probate clerks in counties of more than 30,000 inhabitants are appointed by the probate judge and paid by the counties within the limits of Section 483.475.

It is our view that clerks, deputy clerks and other employees of the probate and magistrate courts are not "county officers" within the meaning of Section 1.100, (see State ex rel. Webb v. Pigg, 249 S.W.2d 435 (Mo. 1952)) and that Sections 483.475 and 483.490 do not ascertain the particular salary of such clerks, deputy clerks or other employees but merely prescribe the total amounts allowable for the payment of all such persons salaries. Thus we conclude that July 1, 1971 is the significant date with respect to the maximum amounts allowable for the payment of magistrate and probate clerks, deputy clerks and other employees.

We note that Section 1.100, RSMo 1969 was repealed by House Bill No. 154 of the 76th General Assembly, approved June 8, 1971, which is in full force and effect by reason of an emergency clause upon its

Mr. John C. Vaughn

passage and approval. While it is difficult to view the bill as an emergency act in this context we will not attempt to pass upon the validity of the emergency clause. However, we set out below the pertinent portion of the bill for your information:

"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 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. Once a city not located in a county has come under the operation of such a law a subsequent loss of population shall not remove the city from the operation of that law. No person whose compensation is set by a statutory formula, which is based in part on a population factor, shall have his compensation reduced due solely to an increase in the population factor."  
(Emphasis added)

We have considered the possible application of the above underscored provision with respect to clerks of the magistrate court.

Mr. John C. Vaughn

Section 483.485 provides that the various magistrates fix the compensation of clerks, deputy clerks and employees within the amounts fixed in Section 483.490. As the salaries of the magistrate court personnel are set within the statutory limits by the magistrates, it is our view that such compensation is not set by a statutory formula within the meaning of the amendment to Section 1.100 prohibiting a reduction in compensation solely due to an increase in the population factor.

What we have said with respect to the effective date for the payment of magistrate judges and probate judges salaries also applies of course to a probate judge-ex officio magistrate since as we have indicated under Section 482.150 and in accordance with State ex rel. Stark v. Jeter, the probate judge-ex officio magistrate (in counties of 30,000 inhabitants or less) receives a salary provided for the magistrate in such a county which includes his compensation as probate judge of the county.

In your correspondence you have also referred to our Opinion No. 80 to Mr. Schwada, dated January 26, 1961, in which we held that the effective date of the 1960 census with respect to magistrates salaries was January 1, 1961. In our view that conclusion conflicts with the holding of the Supreme Court in State ex rel. Stark v. Jeter and with this opinion, and therefore, such opinion is withdrawn.

We reaffirm our holding in Opinion No. 196, dated March 23, 1971, to the Honorable Vic Downing (copy enclosed) that a decrease in population of a county to under 30,000 inhabitants does not cause a vacancy in the offices of probate or magistrate judges and that the incumbent probate judge becomes ex officio magistrate on July 1, 1971. Under such a circumstance however, such a probate judge as of July 1, 1971, receives compensation paid by the state as provided under the schedule for the salaries of magistrates, Section 482.150. The magistrate is likewise compensated according to the classification applicable to his county as of July 1, 1971. While it is unlikely that such a change would result in any reduction in salary to either the magistrate judge or the probate judge-ex officio magistrate, we note that the pertinent provision of amended Section 1.100 prohibits only a reduction in such compensation due solely to an increase in the population factor. In circumstances where the county population decreases such a prohibition would not apply.

We also note with respect to the ascertainment of officers salaries based on population figures that Section 24 of Article V of the Missouri Constitution which prohibits a decrease in a judges salary during his term of office does not prevent a decrease during such judges term because of a change in population where the statutory classification existed prior to the beginning of such term.

Mr. John C. Vaughn

State ex rel. Moss v. Hamilton, 260 S.W. 466 (Mo. 1924); State ex rel. Harvey v. Linville, 300 S.W. 1066 (Mo. 1927).

CONCLUSION

It is the opinion of this office that the effective date of the 1970 decennial census with respect to the determination of magistrate judges and probate judges salaries is July 1, 1971.

The effective date for the determination of maximum allowance for probate and magistrate clerks, deputy clerks and employees is July 1, 1971.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 196  
3-23-71, Downing