

The court held, as disclosed by the fifth paragraph of the syllabus, that:

"The fact that the Director of the Census issued a certificate stating the population of the county as shown by the census bulletin issued by him to be subject to correction, though in fact it was not thereafter corrected, does not make the bulletin incomplete as the promulgation of the census of that county or prevent official notice being taken of the population as therein stated."

It would seem that the above case supports Mr. Denman's view, since he held that the date of the release of the newspaper bulletin by the Census Director in 1910 was the date of publication to be followed by county officials.

The court in the Holcomb case, *supra*, in a well reasoned opinion, ended with the following statement:

"The bulletin does not indicate that it was incomplete or negligently done, but rather indicates it may be subject to correction. It does not carry the idea that it was incomplete, but that it was complete. We think, when the bulletin was given to the public, officials who were required to act with reference thereto, may take official notice that the enumeration had been made and was then in the archives of that office, subject to the inspection of the public in which the population of Lubbock county had been determined. The fact that it may be corrected does not indicate that the census was not complete and then a public document under the law."

In view of the fact that the latest court decision available supports Mr. Denman's view, I am of the opinion that his ruling should be followed.

I have been informed by the present Director of the Census at Washington that he released the 1930 census figures by Ohio counties in a newspaper bulletin on August 22, 1930. Therefore, this is the date which county officials should take cognizance of as the date of publication of the 1930 census.

Opinion No. 2179 of this office, dated July 31, 1930, did not in any manner take up the question that is presented in this opinion. You have called my attention to this opinion in your communication, but I am unable to find anything in that opinion inconsistent with the view which I have expressed herein.

In specific answer to your question, I am of the opinion that the salaries of those county officers whose compensation is based on population and who were elected on November 4, 1930, will be based on the 1930 federal census.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General,*

2857.

CENSUS—COUNTY OFFICIALS WHOSE SALARIES ARE DETERMINED BY  
POPULATION—WHAT CENSUS GOVERNS.

SYLLABUS:

*Determination of what census governs the salaries of various Monroe County officials.*

COLUMBUS, OHIO, January 23, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“The County Auditor has asked me to advise him relative to the effective date of the new salary schedule for County Officials.

The Common Pleas Judge, the County Surveyor and the Clerk of Courts, hold over for another two years on their old term. The County Treasurer holds over on his term until the first Monday in September and the new Auditor does not take office until the second Monday in March.

The newly elected Probate Judge, who assumed the duties of office on the first day of November, was elected to fill the unexpired term of the late Probate Judge who died last May or June and whose office was filled by an appointee of the Governor, who held the office until the present incumbent took over the reins of the office upon receiving his commission the first of December.

The Auditor has received no official statement or publication of the census figures for Monroe County. He wants to know whether or not the new population figures will affect the salary of the Common Pleas Judge, County Surveyor, Clerk of Courts and the present Treasurer. I have advised him that said figures would have no effect upon the salary of those officials.

He also wants to be advised whether or not the newly elected Probate Judge who has recently assumed office, will be affected by the new salary schedule or whether, holding office for the unexpired term of the late Probate Judge, he will be paid under the old salary schedule. I have advised him that, in my opinion, the old salary schedule will control.

It so happens that the present County Auditor himself is an appointed official, having been appointed by the County Commissioners on last August or September for the unexpired term of the then Auditor who resigned. This appointed official will turn over the reins of the Auditor's office in March. It would seem that he would be entitled to be paid under the old salary schedule.

The question then arises: Does the new salary schedule become effective for the incoming sheriff, recorder and prosecuting attorney, to take office on the first Monday in January?

Inasmuch as the County Auditor has no official figures on which to base a new salary schedule, will he determine what the official population of Monroe County is in making the vouchers for the said sheriff, recorder and prosecuting attorney for the month of January, paying same on his determination of the population of Monroe County?

I would appreciate your early advices in this matter as the question will come up about the Probate Judge's salary payment shortly.”

As you indicate in your communication the term of the present Common Pleas Judge of Monroe County will not expire until December 31, 1932, inasmuch as he was elected in November, 1926. See Article IV, Section 12 of the Ohio Constitution and Section 1532, General Code, providing for a term of six years for a Common Pleas Judge.

In my opinion No. 2074 rendered to the Bureau of Inspection and Supervision of Public Offices under date of July 9, 1930, I held as disclosed by the first paragraph of the syllabus:

"1. The annual compensation of common pleas judges, under Section 2252, General Code, who were elected and took office prior to the taking of the 1930 census should be based on the 1920 census."

The above opinion as just set forth supports your contention that the 1930 census will not affect the Common Pleas Judge of your county, and I am enclosing you a copy of said ruling so that it will be unnecessary to again reiterate in detail the reasoning on which the conclusion was based.

As for the county surveyor and clerk of courts, I find that they were elected in November, 1928, pursuant to authority of Sections 2782 and 2867, General Code, and will serve by virtue of these same sections until the first Monday in January, 1933. The term of the present county treasurer as you have stated, will not expire until the first Monday in September, 1931, he having been elected in November, 1928, and assumed the duties of the office on the first Monday in September, 1929. See General Code Section 2632. Now the Sections of the Code controlling the salaries of these last three county officials are Sections 7181, 2993 and 2991, General Code. The first section—7181—provides in part, that:

"the county surveyor \* \* shall receive an annual salary to be computed as follows: \* \* forty dollars per thousand for each full one thousand of the first fifteen thousand of the population of the county as shown by the federal census next preceding his election, \* \* \*

Obviously, the census to govern the surveyor's salary is that in existence at the time of his election to office. Since he was elected in November, 1928, the 1920 census will govern his salary throughout his term.

The second and third of the aforementioned sections, namely 2993 and 2991, General Code, provide in part, as follows:

Sec. 2993. "Each clerk shall receive eighty-five dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election; \* \* \* "

Sec. 2991. "Each treasurer shall receive one hundred dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election; \* \* \* "

It is to be noted in connection with the two sections partly quoted above that Section 2989, General Code, immediately preceding these two sections, provides in part, that:

"Each county officer hereinafter named shall receive out of the general county fund the annual salary hereinafter provided \* \* \* "

It is therefore evident that the salary based on population for the county treasurer and clerk of courts is determined throughout their term on the basis of the census in existence at the time of their election to their offices. Since they were elected in November, 1928, the 1920 census will govern during their term.

Thus, your contentions that the 1930 census will not affect the clerk of courts, surveyor and treasurer are also correct.

I come now to the case of the newly elected probate judge who is filling out the unexpired term of the late Judge Pollen. In this connection it is to be noted that Section 2992, General Code, provides in part, that:

"Each probate judge shall receive one hundred dollars for each full one

thousand of the first fifteen thousand of the population of the county, *as shown by the last federal census next preceding his election.* \* \* \* "

It therefore appears that the latest census in existence at the time of the probate judge's election governs his salary throughout the term of office. It now remains to be determined whether the 1930 census was in existence on November 4, 1930, when the new judge was elected. This brings up the query as to when the 1930 census took effect so far as county officers are concerned. In my opinion No. 2856 addressed to the Bureau of Inspection and Supervision of Public Offices under date of January 23, 1931, I held that the date of the determination of the 1930 census figures, so far as they affect county officers, was August 22, 1930, when the preliminary population figures of Ohio by counties were first released in a press release by the Director of the Census at Washington. It is unnecessary to again detail the reasoning on which this conclusion was based. It is sufficient to enclose you a copy of the opinion for your consideration. Consequently I am of the opinion that the probate judge's salary will be based on the 1930 census figures.

Coming now to the salary schedule for the present auditor, Hon. H. J. Goddard, I am informed that said auditor received his commission from the Secretary of State on or shortly after July 16, 1930. I assume that he subsequently gave bond, as required by Section 2633, General Code, and took the oath of office as required by Article XV, Section 7, Ohio Constitution and Section 2, General Code. Therefore, he must have taken office shortly after July 16, 1930. The question now arises as to whether the county auditor being appointed to fill the unexpired term of the former auditor, S. V. Steward, who resigned, must continue throughout the term to receive the salary based on the population disclosed by the 1920 census which governed the former auditor's term. See General Code, Section 2990, providing that "each auditor shall receive one hundred dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown *by the last federal census preceding his election.*"

In my opinion No. 2074, rendered on July 9, 1930, and heretofore mentioned, I held in the second paragraph of the syllabus:

"Should appointments be made at the present time to fill vacancies in the office of common pleas judges before the official certification and announcement of the 1930 census, such appointees are entitled to the annual compensation based on the 1930 census, provided they are not sworn in until after official certification and announcement of said census."

It was pointed out in said opinion that the salary of a judge appointed to fill an unexpired term would be governed by the census in existence at the moment before he took office instead of the census existing at the time of the taking of office of the judge whose unexpired term he is serving.

I am of the opinion that the reasoning therein is by analogy applicable here. Therefore since he took office before August 22, 1930, when the new census became effective, I am of the view that he should be paid on the basis of the 1920 census figures.

Finally I come to the cases of the sheriff, recorder and prosecuting attorney who were elected on November 4, 1930. With reference to these officers, Sections 2994, 2995 and 3003, General Code, provide in part:

Sec. 2994. "Each sheriff shall receive sixty-five dollars for each full one thousand of the first fifteen thousand of the population of the county, *as shown by the last federal census next preceding his election;* \* \* \* "

Sec. 2995. "Each recorder shall receive sixty dollars for each full one

thousand of the first fifteen thousand of the population of the county, *as shown by the last federal census next preceding his election;* \* \* \* "

Sec. 3003. "Each prosecuting attorney shall receive an annual salary of sixty dollars for each full one thousand of the first fifteen thousand of the population of the county *as shown by the federal census next preceding his election;* \* \* \* "

Obviously, the salaries of these three officials are governed by the census in existence at the time of their election to their offices. Since the 1930 census was effective August 22, 1930, I am of the opinion that their salaries will be based on the 1930 census.

Since receiving your communication, I have been informed by the Secretary of State that he mailed on December 30, 1930, to all county auditors the official county population based upon the 1930 census. Therefore, your county auditor should draw his vouchers for the month of January for the sheriff's, recorder's and prosecuting attorney's salaries on these figures.

It is believed that the foregoing will satisfactorily dispose of all your questions.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2858.

COUNTY INFIRMARY—AUTHORITY TO PURCHASE FOOD AND SUPPLIES VESTED IN SUPERINTENDENT AND MATRON OF SUCH INSTITUTION—SHERIFF HAS SUCH AUTHORITY TO PURCHASE FOR JAIL—COUNTY COMMISSIONERS WITHOUT SUCH AUTHORITY IN EITHER CASE.

**SYLLABUS:**

*The authority to purchase food and supplies for a county infirmary and jail is vested by the provisions of Sections 2526 and 2850 of the General Code in the superintendent and matron of an infirmary and the sheriff, and the county commissioners have no authority to make such purchases through an assistant clerk appointed by them.*

COLUMBUS, OHIO, January 23, 1931.

HON. CARL J. CHRISTENSEN, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you request my opinion upon the following inquiry:

"Can the board of county commissioners relieve the superintendent and matron of the county infirmary and the sheriff of the duties of making purchases of food and supplies for the infirmary and jail, and make such purchases through an assistant clerk to said board?"

Section 2526 of the General Code, in so far as it is pertinent to your inquiry, provides as follows:

"The superintendent and matron of the infirmary shall require all persons