

September 9, 2021

The Honorable David W. Phillips
Union County Prosecuting Attorney
249 West Fifth Street
Marysville, Ohio 43040

SYLLABUS: 2021-021

For purposes of calculating county officials' salaries under R.C. Chapter 325, the results of the federal decennial census are effective as of the date on which the State receives the completed tabulations of population from the United States Secretary of Commerce. For the most recent federal decennial census, that date was August 12, 2021.



DAVE YOST

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OPINION NO. 2021-021

The Honorable David W. Phillips
Union County Prosecuting Attorney
249 West Fifth Street
Marysville, Ohio 43040

Dear Prosecutor Phillips:

Ohio determines county officials' salaries based in part on the results of the federal decennial census. You requested an opinion regarding the following question: For purposes of determining salaries of county officials, are the results of the census effective on the day the State receives them from the federal government, or at some point earlier? I conclude that the effective date is the date on which the State actually receives the census data. For the most recent census, this date was August 12, 2021.

I

The salaries of many county elected officials are determined based on the population of the county. *See* R.C. Chapter 325. A county's population is the population "shown by the most recent regular federal census." R.C. 1.59(D). And the "federal census" is the decennial census—the counting of the American population that occurs once every decade. 2003 Op. Att'y Gen. No. 2003-014, syllabus, paragraph 1; 1982 Op. Att'y Gen. No. 82-047, syllabus, paragraph 1.

The federal government determines the population of the United States for the census on April 1st of the census year, known as the "decennial census date." 13

U.S.C. 141(a). The Secretary of Commerce is required to give the census results to the states “within one year after the decennial census date.” 13 U.S.C. 141(c).

Past Attorneys General have considered the following question: By making county officials’ salaries turn on the population “shown by the most recent regular federal census,” does R.C. 1.59(D) require that salaries be adjusted starting on the “decennial census date” or on the date the State actually receives the census data. My predecessors concluded that the latter answer is the right one: under R.C. 1.59(D), salary changes are effective as of the date on which the data is actually received. 2003 Op. Att’y Gen. No. 2003-014, syllabus paragraph 2; 1982 Op. Att’y Gen. No. 82-047, syllabus paragraph 2.

I agree with that interpretation. Again, R.C. 1.59 defines the relevant population as the population “*shown by* the most recent regular federal census.” R.C. 1.59(D) (emphasis added). The population is not “shown by” the census until the census results are released to the States. In addition to this textual point, consider a practical one. The State does not actually have the census data on the “decennial census date”—the Census Bureau is not required to provide the data until a year *after* that date. It would make little sense for the General Assembly to require that county officials’ salaries be adjusted on the “decennial census date” because, on that date, the State does not have the data on the basis of which salaries are determined.

II

For the 2020 census, the decennial census date was April 1, 2020. The date the Secretary of Commerce was required by statute to deliver the official census data to the Governor was March 31, 2021. However, ostensibly due to delays caused by the COVID-19 pandemic, the Secretary of Commerce delayed the release of the results of the census, and did not provide them to the State until August 12, 2021. *See* Press

Release, United States Census Bureau, *2020 Census Statistics Highlight Local Population Changes and Nation's Racial and Ethnic Diversity*, (August 12, 2021), <https://perma.cc/K4UE-BMJH>.

You ask whether the effective date for calculating county officials' salaries is: (1) the date the census results were actually provided to the State (August 12, 2021), or (2) the date the census results were originally required by federal statute to be provided to the State (March 31, 2021).

I conclude that the effective date is the date on which the State actually receives the census data. County officials are "classified, for salary purposes, according to the population of the county." R.C. 325.03 (salary of county auditor); *see also* R.C. Chapter 325. R.C. 1.59 states that population is determined by the "most recent regular federal census." As affirmed by multiple Attorney General opinions, and as explained above, these statutes refer to the date the State actually knows the population results, not the date on which the census begins. 2003 Op. Att'y Gen. No. 2003-014, syllabus paragraph 2; 1982 Op. Att'y Gen. No. 82-047, syllabus paragraph 2. The statutes are not tied to deadlines imposed by federal statute on the Secretary of Commerce. So the fact that the Census Bureau missed this year's mandatory deadline does not change the fact that, under R.C. 1.59(D), salary adjustments are effective only on the date the State receives the census data.

Accordingly, it is my opinion, and you are hereby advised that:

For purposes of calculating county officials' salaries under R.C. Chapter 325, the results of the federal decennial census are effective as of the date on which the State receives the completed tabulations of population from the United States Secretary of Commerce. For the

The Honorable David W. Phillips

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most recent federal decennial census, that date was August 12, 2021.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST
Ohio Attorney General