

1904

PER CAPITA SALARY OF MUNICIPAL COURT JUDGE ON AND AFTER APRIL 1, 1960 SHOULD BE BASED ON POPULATION OF TERRITORY OF COURT AS SHOWN BY FEDERAL CENSUS TAKEN AS OF THAT DATE—§1901.11 R.C.

SYLLABUS:

The *per capita* salary of a municipal court judge under Section 1901.11, Revised Code, should on and after April 1, 1960, be based on the population of the territory of the court as shown by the federal census taken as of that date.

Columbus, Ohio, December 15, 1960

Hon. John E. Zimmerman, Prosecuting Attorney  
Defiance County, Defiance, Ohio

Dear Sir:

Your request for my opinion presents a question as to the effect of the April 1, 1960 federal decennial census on the *per capita* salaries of municipal court judges under Section 1901.11, Revised Code.

In my Opinion No. 1644, issued on August 18, 1960, I considered the effect of the 1960 federal census on the *per capita* salaries of probate and common pleas court judges under Section 141.05, Revised Code. That section provides that such salaries are based on the population as shown by the latest federal census of the United States. The second paragraph of the syllabus of Opinion No. 1644, *supra*, reads:

“The *per capita* salary of a probate or common pleas judge under Section 141.05, Revised Code, should on and after April 1, 1960, be based on the population of the county as shown by the federal census taken as of that date.”

In my Opinion No. 1832, issued on November 15, 1960, the question pertained to the *per capita* salaries of judges of county courts under Section 1907.081, Revised Code, and the effect of the 1960 federal census on those salaries. That section provides that such salaries are based on the population as shown by the last federal decennial census. The syllabus of Opinion No. 1832, *supra*, reads:

“The *per capita* salary of a judge of a county court under Section 1907.081, Revised Code, should on and after April 1, 1960, be based on the population of the county as shown by the federal census taken as of that date.”

In Opinion Nos. 1644 and 1832, *supra*, I considered whether in view of the constitutional restrictions against a change in the salary of an officer during his term of office (Section 14 of Article IV and Section 20 of Article II, Ohio Constitution), the salaries of the judges concerned could be affected by the 1960 federal census. The conclusions reached in those opinions were based on the general rule that the constitutional restriction does not apply to an increase in compensation during an existing term provided such increase results from the operation of a standard or basis of compen-

sation whereby compensation may vary in amount during term, provided further that such standard or basis of computation is established by a law enacted prior to the beginning of such term. Also relied on in said opinions was the ruling in *The State, ex rel. Mack, Judge v. Guckenberger, Auditor*, 139 Ohio St., 273, that the basing of compensation on a *per capita* amount according to the population of a given area as determined by a federal census, constitutes such a standard or basis.

Section 1901.11, Revised Code, relating to the compensation of municipal court judges, provides :

“\* \* \* Judges designated as full-time judges by section 1901.08 of the Revised Code and all judges of territories having a population of more than fifty thousand regardless of designation are subject to section 4705.01 of the Revised Code and shall receive as compensation seven thousand five hundred dollars per annum, plus an amount equal to three cents per capita for the first fifty thousand of the population of the territory; two cents per capita for the population of said territory of more than fifty thousand and not more than one hundred thousand and not more than three hundred thousand; and one-half cent per capita for the population of such territory of more than three hundred thousand, but the legislative authority may prescribe additional compensation. \* \* \*

“\* \* \* *Population is determined by the latest decennial federal census.*” (Emphasis added)

The section was amended in 1959 (128 Ohio Laws, 601), in 1957 (127 Ohio Laws, 913) and in 1955 (126 Ohio Laws, 99). During all of this time, however, the language as to *per capita* amounts and the reference to “latest decennial federal census” has remained as amended in 1953 (125 Ohio Laws, 168), except that before October 11, 1955, the maximum *per capita* amount allowed was \$3,000. Judges of municipal courts serve six year terms, thus the provisions of the section as to *per capita* amount (except the \$3,000 maximum referred to above) and latest federal census were in force before any present municipal court judge commenced his existing term. Thus, the standard or basis of computation (the latest federal decennial census) was established by a law enacted prior to the beginning of the existing terms of municipal court judges and a change in salary based on such standard or basis of computation is not precluded by the constitution.

Regarding the effective date of the federal census I am of the opinion that the population of any given area is determined as of April 1, 1960, re-

gardless of when the actual announcement of such population is made (Opinion No. 1644, *supra*; *State, ex rel. Mack, supra*).

In view of the foregoing, therefore, it follows that the reasoning of Opinion Nos. 1644 and 1832, *supra*, as to the *per capita* salaries of judges may be applied to the instant question and that the latest decennial federal census is that taken on April 1, 1960. Accordingly, it is my opinion and you are advised that the *per capita* salary of a municipal court judge under Section 1901.11, Revised Code, should on and after April 1, 1960, be based on the population of the territory of the court as shown by the federal census taken as of that date.

Respectfully,

MARK MCELROY

Attorney General