

of six per centum upon the appraised value of the parcel of land to be leased and demised, I find the same to have been properly executed by the conservation commissioner and by said lessee named in said prospective leases.

I likewise find that said leases as to their terms and provisions, and as to the conditions and reservations therein contained, are in conformity with section 471 and other sections of the General Code relating to leases of this kind.

Said leases are accordingly hereby approved by me as to their legality and form; and my approval is endorsed upon said leases and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3449.

JUDGE OF COURT OF APPEALS—ADDITIONAL ANNUAL COMPENSATION—PRO RATED AMONG COUNTIES IN APPELLATE DISTRICT ACCORDING TO POPULATION OF SUCH COUNTIES AS DETERMINED BY FEDERAL CENSUS IN EXISTENCE WHEN PRO RATING IS MADE.

SYLLABUS:

The additional annual compensation allowed to judges of courts of appeals by force of Section 2253-2, General Code, should be pro rated among the counties of the appellate district for which the judge was elected or appointed according to the population of such counties as determined by the Federal census next preceding the time when the pro rating is made.

COLUMBUS, OHIO, July 22, 1931.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Auditor of this county is required to pro rate and charge against Lucas County that part of the additional allowance allowed to the Judges of the Court of Appeals, payable from the Treasury of Lucas County under Section 2253. One member of the Court of Appeals was elected in November, 1928, and the question now arises as to whether or not the proportion of the additional allowance under the above section should be made under the census report of 1920 or under the latest federal census report of 1930.

This does not involve the question as to whether or not the salary of this particular judge is increased under the last act of the legislature fixing salaries of judges of the court of appeals, but only the question as to how his additional allowance shall be apportioned among the several counties comprising this district.”

Section 2253-2, General Code, reference to which is made in your inquiry, provides that each judge of the Court of Appeals shall receive a certain annual com-

compensation from the treasuries of the several counties in his district, in addition to the salary paid him from the state treasury as provided for by Section 2251, General Code. This additional compensation which he is to receive from the counties of his district is not uniform throughout the state. It is dependent on the population of the largest county in the district, and is to be paid ratably in the district. The statute provides with reference thereto:

“Such additional annual compensation shall be computed and prorated according to the population of such counties in such appellate districts as determined by the latest census of the United States, and shall be paid monthly from the treasury of such county upon the warrant of the county auditor.”

The substantial legal question involved in your inquiry turns upon the proper construction of the phrase “as determined by the latest census of the United States,” as contained in that portion of the statute quoted above.

This statute was enacted in 1927. It became effective in August, 1927. The latest or last census of the United States at that time was the census of 1920. The question therefore arises whether the legislature intended by this enactment to fix a definite basis for the pro rating of this additional compensation which was to stand for all time, until changed by subsequent legislation, or whether the intention was that the word “latest” should be construed prospectively, that is, whether it should be construed as meaning the last census before the time of the actual pro rating.

It, of course, was within the power of the legislature to fix any equitable method of pro rating this additional compensation. The rule might have been made as of the census of 1900 or 1910, or any other method which the legislature might have seen fit to fix. The question is whether, when it fixed the rule at the “latest” census of the United States, it meant the census of 1920, that being the “latest” census at the time of the enactment of the statute.

In the same act of the legislature, Section 2252, General Code, relating to additional compensation of judges of common pleas courts, was enacted. In that statute, as then enacted, it was provided, with reference to the salaries of common pleas judges that in addition to the salary allowed by Section 2251, General Code, for each judge of the court of common pleas he should receive an amount based upon the population of the county “as ascertained by the latest federal census of the United States.”

It will be observed that in this said statute, Section 2252, General Code, practically the same wording is used in fixing the basis for the determination of salaries of common pleas judges in accordance with population, as is used in Section 2253-2, General Code, in fixing the basis for the determination of the additional compensation of judges of courts of appeals, and the pro rating of the same among the several counties of the appellate district.

I had occasion to construe this phrase as contained in said Section 2252, General Code, in opinion No. 2074, rendered under date of July 9, 1930. In said opinion it was held:

“It is my opinion that the words ‘as ascertained by the latest federal census of the United States’ refer to the latest complete federal census existing at the moment before a judge becomes an incumbent of the office.”

It is quite clear that the same construction should be placed upon the clause "as determined by the latest census of the United States", as used in Section 2253-2, General Code, as would be placed upon the clause "as ascertained by the latest federal census of the United States" as used in Section 2252, General Code, as the two statutes were enacted by the same legislature and were a part of the same act of the legislature.

I am therefore of the opinion, in specific answer to your question, that the pro rating of the salaries of judges of the courts of appeals, as provided for by Section 2253-2, General Code, should be in accordance with the federal census next preceding the time when the pro rating is made.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3450.

APPROVAL, LEASE TO OFFICE SPACE IN PURE OIL BUILDING, COLUMBUS, OHIO, FOR USE OF THE STATE OF OHIO.

COLUMBUS, OHIO, July 22, 1931.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication, enclosing for my approval a certain lease, in quadruplicate, whereby the Gasco Realty Company, as lessor, leases and demises unto you, as Superintendent of Public Works and as Director of said Department, for the State of Ohio, the first, second, third and fourth floors, and 5,000 square feet in the front of the basement in the building known as the Pure Oil Building situated at 246 North High Street, Columbus, Ohio. Said lease is for the period from July 1, 1931, until such time as the new state office building now being erected on Front Street is ready for occupancy, at a monthly rental of four thousand dollars (\$4,000.00).

Upon examination, I find the lease to be in proper form. A copy of a resolution of the board of directors shows that the vice-president and secretary of the Gasco Realty Company are authorized to enter into this lease on behalf of the company.

The encumbrance estimate shows that there is a sufficient balance in a proper appropriation account to pay the rental for a period of three months, which is believed to be sufficient compliance with section 2288-2, General Code.

Finding said lease in proper form, I hereby approve it as to form, and am returning it herewith to you, together with all other data submitted.

Respectfully,
GILBERT BETTMAN,
Attorney General.