

1832

BASIS FOR PER CAPITA SALARY OF JUDGE OF A COUNTY COURT ON AND AFTER APRIL 1, 1960.

SYLLABUS:

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.

Columbus, Ohio, November 15, 1960

Hon. Ralph A. Hill, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under date of August 18, 1960 in Opinion No. 1644, Syllabus paragraph 2, you rendered an opinion concerning the per-capita salary of a probate or common pleas judge and the effect thereon of the recent federal census.

“Section 1907.081, as effective January 1, 1958, establishing the salary for the county court judges, contains the same language referred to in your discussion, ‘last Federal Decennial Census’ as the basis of your conclusion in that Opinion.

“Your opinion is respectfully requested if the basis for your opinion in Syllabus paragraph 2 and the conclusion reached therein is extended to and applicable to the determination of the salary of the county court judges on and after April 1, 1960 in the interpretation of Section 1907.081 R.C.”

Section 1907.081, Revised Code, relating to the compensation of judges of county courts, provides:

“Judges of the county court shall receive as compensation one thousand five hundred dollars per annum plus an additional amount equal to three cents per capita of the population of the county court district as determined by the last federal decennial census. Such additional amount shall not exceed the sum of two thousand five hundred dollars per annum.

“* * *”

Under Section 20 of Article II, Ohio Constitution, the salary of a county court judge may not be diminished or increased during his term of office. This constitutional restriction does not, however, apply to an increase in compensation during an existing term provided such increase results from the operation of a standard or basis of compensation whereby compensation may vary in amount during term provided such standard or basis of computation is established by a law enacted prior to the beginning of such term; and 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. (*The State, ex rel. Mack, Judge v. Guckenberger, Auditor*, 139 Ohio St., 273.) With this rule as the determining factor I issued my Opinion No. 1644 on August 18, 1960, the second paragraph of the syllabus reading:

“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.”

As you note in your request, the language of Section 1907.081, *supra*, as to the “last federal decennial census” is similar to that of Section 141.05, Revised Code, considered in Opinion No. 1644, *supra*, and reading:

“In addition to the salary allowed by Section 141.04 of the Revised Code, each judge of the court of common pleas and each judge of the probate court shall receive an annual compensation equal to twelve cents per capita for the first thirty-five thousand of the population of the county in which he resided when elected or appointed, ascertained by the *latest federal census* of the United States, and six cents per capita for the population of such county in excess of thirty-five thousand. * * *” (Emphasis added)

Referring to said language, I stated in said Opinion No. 1644 :

“It will be noted that Section 141.05, *supra*, bases the *per capita* salary of judges on the “latest federal census of the United States” and not on the federal census next preceding election as is the case with the county officials discussed above. Since the latest federal census is the 1960 federal census, taken on April 1, 1960, the *per capita* salaries of probate and common pleas judges now serving should be based on the population of their respective counties as shown by the federal census of April 1, 1960.”

The law here in question, Section 1907.081, *supra*, became effective on January 1, 1958 (127 Ohio Laws, 978). The present terms of county court judges commenced in 1959, the regular election having been held in November, 1958, in accordance with Section 1907.051, Revised Code. Thus, the standard or basis of computation (the *per capita* amount based on the population of the district as shown by the last federal decennial census) was established by a law enacted prior to the beginning of such terms and a change in salary based on such standard or basis of computation is not barred by Section 20 of Article II, Ohio Constitution. This would apply to the salaries of judges elected in 1958 as well as to the salaries of those judges appointed to fill vacancies in existing terms.

In Opinion No. 1644, *supra*, I discussed the question of the effective date of the federal census and stated :

“In view of the above it appears that the population of any given area is determined as of April 1, 1960, regardless of when the actual announcement of such population is made (Also see *The State, ex rel. Mack, Judge v. Guckenberger, Auditor*, 139 Ohio St., 273), * * *.”

Applying this reasoning to the question at hand, it appears that the conclusion reached in Opinion No. 1644, *supra*, as to the *per capita* salaries of probate and common pleas judges may be extended to cover the salaries of judges of county courts.

Accordingly, it is my opinion and you are advised that 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.

Respectfully,
MARK MCELROY
Attorney General