

OPINION NO. 69-075

Syllabus:

A city council has the continuing authority and duty to redistrict the city into proper wards according to law when an increase in population occurs, as provided by Section 731.06, Revised Code, warranting the same.

To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: Paul W. Brown, Attorney General, July 2, 1969

Before me is your request for my opinion which reads as follows:

"In September 1968, the City of Girard passed an ordinance redistricting the City into wards and have now requested the Board of Elections to take the necessary steps to complete the redistricting procedure.

"The City officials of Girard realize that they did not comply with Section 731.06 O.R.C., but they feel that their action was valid in view of the recent United States Supreme Court decisions concerning apportionment.

"Would you be kind enough to furnish us with your opinion on this matter as quickly as possible."

It appears that there is case law and one Opinion of the Attorney General directly in point on this question and subject matter.

In Opinion No. 66-108, Opinions of the Attorney General for 1966, my predecessor said:

"* * * it is my opinion that the legislative authority must make the redivision required by Section 731.06, Revised Code, within three months after it receives from the Secretary of State a proclamation of the population of the area annexed according to the last federal census, assuming of course that the annexed area population when added to the pre-annexation population of the city requires an increase in the number of councilmen pursuant to Section 731.01, Revised Code."

Pertinent terminology of Section 731.06, Revised Code, is as follows:

"The legislative authority of a city shall, after each recurring federal census,

and within three months after the issuance of the proclamation by the secretary of state of the population of the city, and when there is annexed thereto any territory containing, according to the last federal census, such number of inhabitants as will entitle the city to an additional member of the legislative authority, subdivide the city into wards, equal in number to the members of the legislative authority therein to be elected from wards. If the legislative authority fails to make such subdivision within the time required, on the application of its president, it shall be made by the director of public service.
* * *"
(Emphasis added.)

This section provides for a mandatory duty to be performed by the legislative body, which duty is subject to mandamus. The director of public service is also subject to mandamus following the application by the president of council. The president of council, however, appears to be under no mandatory duty to perform. It is apparent, therefore, that the council has a continuing mandatory duty to act under Section 731.06, Revised Code, at all times.

The Supreme Court of Ohio has stated that where a clear legal duty is imposed on council by municipal charter to redistrict the municipality for voting purposes, mandamus will lie to compel performance of that duty. The same result would be expected for a statutory form of city government under the requirements of Section 731.06, Revised Code. The case just mentioned is The State, ex rel., Scott, et al. v. Masterson, et al., 173 Ohio St. 402 (1962), and the syllabus reads as follows:

"Where the charter of a city provides that councilmen of the city shall be elected by wards which shall be nearly equal in population and further provides that the city council shall redivide the city after each decennial federal census for that purpose, there is a mandatory duty upon city council to comply with the charter."

From the foregoing, it is my opinion and you are advised that a city council has the continuing authority and duty to redistrict the city into proper wards according to law when an increase in population occurs, as provided by Section 731.06, Revised Code, warranting the same.