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COUNTY OFFICERS ; COMPENSATION—BASIS FOR DETERMINATION IS CENSUS OF 1950—CHAPT. 325., RC.

SYLLABUS:

Under the provisions of Chapter 325., Revised Code, the sole basis for determining the compensation of county officers elected at the general election of 1956 is the population of the county as determined by the census of 1950.

Columbus, Ohio, December 17, 1957

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“Attaching herewith a copy of a letter requesting an opinion of my office. Inasmuch as the interpretation of the question in-

volved will affect this office I believe the opinion should come from you.

"I might further explain that there was a Federal Census taken in 1954 of what was then Kettering Village, formerly Van Buren Township, which increased the population of 22,200 (1950 Federal Census) to 38,118, which of course brings the population of the county over 400,001.

"The Auditor and our presiding judge as well as the State Examiner at the beginning of this year felt that this census was sufficient to warrant the Auditor in computing the salaries of the different offices in this classification.

"The Auditor would like to have an opinion as aforementioned."

In the Auditor's letter which is attached to your letter, it is stated that the population of Montgomery County, according to the 1950 Federal Census, was 398,441. Chapter 325., Revised Code, fixes the salaries of the various county officers, providing as to each a sliding scale based on the *population of the county, as shown by the last preceding Federal Census*. For example, Section 325.03, dealing with the salary of the county auditor, reads as follows:

"Each county auditor shall be classified according to the *population of the county* as shown by the *federal census next preceding his election*. All such county auditors shall receive annual compensation in accordance with the following schedule:

CLASSIFICATION AND COMPENSATION  
SCHEDULE

Class	Population Range	Annual Compensation
* * *		
26	175,001 to 200,000	\$ 9,500
27	200,001 and over	\$ 9,600
(Emphasis added.)		

Section 325.11, dealing with the salary of the Prosecuting Attorney, reads as follows:

"Each prosecuting attorney shall be classified according to the *population of the county* as shown by the *federal census next*

*preceding his election.* All such prosecuting attorneys shall receive compensation in accordance with the following schedule:

CLASSIFICATION AND COMPENSATION  
SCHEDULE

Class	Population Range	Annual Compensation
* * *		
29	300,001 to 400,000	\$ 9,800
30	400,001 and over	\$10,500"
(Emphasis added.)		

As to the other county officers, like provisions are made in each case using the classification of "400,001 and over" as the maximum.

From this analysis it appears that the only officer in the county who would not profit by an increase to 400,001 in the population of Montgomery County would be the county auditor, as the maximum to the auditor's salary is fixed with regard to a maximum population of 200,001. I call your particular attention to the fact that the population factor governing these classifications is based upon the population of the *county*, as shown by the Federal Census, next preceding the election of the several officers, and does not depend in any degree upon the population of any political subdivisions of the county.

I am unable to understand the conclusion which you state in the second paragraph of your letter where you refer to the fact that a special census taken in the Village of Kettering in 1954 showed that the population of that village had undergone an increase from 22,200 to 38,118 since the 1950 Federal Census, which you say, "of course brings the population of the county over 400,001". If it could be shown that this increase was brought about either by a phenomenal birth rate in the village of Kettering during the four years in question or by a migration to that village from *outside* of Montgomery County, there might be some plausibility to your assertion.

It seems equally possible that this increase in population of the village of Kettering may have come about by migration from other parts of the county, and while it would be highly improbable as a matter of fact, it is possible, in the eyes of the law, that the population of Montgomery County may have actually suffered a decline since the Federal Census of 1950.

Plainly, from the provisions of the statutes, the only population figure that can be resorted to as a basis for allowing an increase in the salaries of the county officers must be found in the reports of the Federal Census and must be based upon the population *not of any subdivision* of the county, but *of the county itself*. The legislature has seen fit to use this positive evidence as the exclusive test and has left no opportunity for surmise, even though based on a high degree of probability.

Accordingly, you are advised that under the provisions of Chapter 325., Revised Code, the sole basis for determining the compensation of county officers elected at the general election of 1956 is the population of the county as determined by the census of 1950.

Respectfully,  
WILLIAM SAXBE  
Attorney General