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CLERK OF COURTS—COUNTY—ELECTED IN NOVEMBER, 1950, TO FILL UNEXPIRED TERM—CLERK ELECTED IN 1948, RESIGNED IN 1949—SUCCESSOR ENTITLED TO RECEIVE COMPENSATION, SECTIONS 2993, 2993-1 G.C. AS IN FORCE AT TIME OF ELECTION, BASED ON FEDERAL CENSUS 1950.

SYLLABUS:

A county clerk of courts elected in November 1950, to fill out the unexpired term of a clerk who had been elected in 1948, but resigned in 1949, is entitled during his term to receive the compensation provided by Sections 2993 and 2993-1 of the General Code, as the same were in force at the time of his election, based on the federal census of 1950.

Columbus, Ohio, February 8, 1952

Hon. Leo J. Scanlon, Prosecuting Attorney
Crawford County, Bucyrus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I desire your opinion on the following question:

"In the year 1949, the Clerk of Courts of Crawford County resigned, and his successor was duly legally appointed to serve until the next general election which occurred on November 7, 1950. At the general election, November 7, 1950, the appointee was defeated, and a new clerk of courts was elected to fill the unexpired term until January, 1953.

"The federal census as of April 1, 1950 showed an increase in population in Crawford County of a little over 3,000 people, which made the total population of Crawford County, Ohio, more than 38,000. Our question is, namely, this:

"Is the Clerk who was elected November 7, 1950 to serve the unexpired term to January, 1953, entitled to additional compensation by reason of the increase in population as shown by the federal census which, I understand, was official as of April 1, 1950, previous to his election?"

On November 7, 1950, when the clerk referred to in your letter, was elected, Section 2993 of the General Code, provided in part as follows:

"Each county clerk of courts shall receive one hundred and twenty-seven dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election; * * *."

This was followed by a series of paragraphs providing a sliding scale for additional units of 15,000 population. At the same time Section 2993-1, General Code, which became effective September 20, 1947, was in force, providing for additional compensation to county clerks of courts during the period beginning on the first Monday in January, 1949, and ending on the Sunday immediately preceding the first Monday in January, 1953, in an amount equal to 30% of their annual compensation as fixed by Section 2993, General Code, with certain minimum and maximum limitations. These sections remained in force until September

8, 1951, the effective date of an act which amended Section 2993 and repealed Section 2993-1. Accordingly, it is very clear that both the clerk who resigned during his term and the clerk who has been elected to fill out the unexpired term entered the office under the salary schedule fixed by the statutes aforesaid. That schedule, however, was subject to change by reason of a change in the population of the county, as determined by a federal census had prior to the election of a clerk. Manifestly, the clerk elected in 1948, and who resigned in 1949, was governed as to his salary by the 1940 census.

But the clerk who was elected in November 1950, to fill out his unexpired term, took his office after the 1950 census which was effective as of April 1, 1950. That it became effective on that date although not officially announced until a later date was the holding of my immediate predecessor in Opinion No. 2611, Opinions of the Attorney General for 1950, page 808, a portion of the syllabus being as follows :

“2. Computation and payment of the salary of a judge of the Court of Common Pleas may be made, based on the 1950 census from and after April 1, 1950, before any official report is made by the Secretary of State.”

It might be contended that the present clerk is only holding the remainder of the term to which his predecessor was elected in 1948, and that he would fall within the inhibition of Section 20 of Article II of the Constitution which reads :

“The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

This contention would be answered by the decision in the case of *State ex rel. Glander v. Ferguson*, 148 Ohio St., 581, where it was held :

“1. The words, ‘during his existing term,’ as used in Section 20 of Article II of the Constitution of Ohio, which inhibit a change of ‘salary of any officer during his existing term,’ apply strictly to the term to which the officer is appointed or elected and not to the period constituting the statutory term of the office.

“2. The inhibition against change of salary of a public officer in Section 20, Article II of the Constitution of Ohio, does not apply to a person appointed to a partially expired

statutory term, where the salary of the office is increased by statute effective during the preceding portion of such term and during the time such person was holding over in the office under his appointment thereto for the preceding statutory term.”

Relying on that holding, I held in Opinion No. 857, issued October 24, 1951:

“1. A county recorder appointed on October 1, 1951, to fill a vacancy in that office, may lawfully receive the salary provided for such office under the provisions of Section 2995, General Code, as amended effective September 8, 1951.”

In effect, the present clerk referred to in your letter began a new term when he qualified following his election in November 1950, and he was therefore entitled to receive the salary prescribed by Section 2993, General Code, based on the 1950 census, and also the additional compensation provided by Section 2993-1, General Code.

However, as already pointed out, said Section 2993 was amended, and Section 2993-1 was repealed by an act known as Amended Substitute House Bill No. 560, which became effective on September 7, 1951. The amendment materially increased the salary scale provided in Section 2993, at the same time repealing the additional compensation provided in Section 2993-1 which, by its terms was to continue until January, 1953.

These changes were the subject of Opinion No. 719 which I rendered on September 7, 1951, the syllabus of which is as follows:

“The enactment by the 99th General Assembly of Amended Substitute House Bill No. 560, relative to the salaries of county officials, had no effect on the compensation of any of the officers therein named who were serving at the effective date of said Act, to wit, September 8, 1951, and said officers will continue throughout their respective terms to receive the compensation fixed by the law in force at the beginning of their respective terms.”

I do not deem it necessary to repeat the reasoning of that opinion. It is clear that the changes made by the act of September 7, 1951, could not in any way affect the salary of the clerk then in office.

In specific answer to your question it is my opinion that a county clerk of courts elected in November, 1950, to fill out the unexpired term of a

clerk who had been elected in 1948 but resigned in 1949, is entitled during his term to receive the compensation provided by Sections 2993 and 2993-1 of the General Code, as the same were in force at the time of his election, based on the federal census of 1950.

Respectfully,

C. WILLIAM O'NEILL
Attorney General