# OPINION NO. 2001-001

**Syllabus:**

1. Pursuant to R.C. 1.59(D), the most recent federal decennial census must be used to establish the population of the territory of a municipal court for purposes of determining under R.C. 1901.31(A)(1)(a) whether the office of municipal court clerk must be filled by election or appointment. The results of the most recent federal decennial census are effective as of the date on which the Governor receives the completed tabulations of population from the U.S. Secretary of Commerce pursuant to 13 U.S.C.A. § 141(c) (1990). (1999 Op. Att'y Gen. No. 99-033 and 1982 Op. Att'y Gen. No. 82-047, approved and followed.)

2. If the population of the territory of a municipal court that is subject to R.C. 1901.31(A)(1)(a) equals or exceeds 100,000 at the time of the regular municipal election immediately preceding the expiration of the term of the present clerk of court, then the next clerk of court must be elected to office at that election.

3. If the population of the territory of a municipal court that is subject to R.C. 1901.31(A)(1)(a) is, according to the 1990 federal decennial census, less than 100,000 and the results of the 2000 federal decennial census do not become effective until after the deadline for filing declarations of candidacy for the primary election, then no primary election shall be held for the purpose of nominating candidates for the office of municipal court clerk, even though the results of the 2000 census are expected to become effective before the date of the regular municipal election in November 2001, and are expected to show that the population of the territory equals or exceeds 100,000. If, however, the results of the 2000 census, when they become effective, in fact indicate that the population of the territory equals or exceeds 100,000, then a person may qualify to be a candidate for the office of municipal court clerk at the regular municipal election in November 2001 by timely filing a nominating petition or a declaration of intent to be a write-in candidate.

---

To: **J. Kenneth Blackwell, Secretary of State, Columbus, Ohio**
By: **Betty D. Montgomery, Attorney General, February 13, 2001**

You have asked whether the office of municipal court clerk is to be filled by election at the next regular municipal election on November 6, 2001, in those jurisdictions where the

office is currently an appointive position, but the 2000 federal census is expected to show that the population of the court's territory equals or exceeds 100,000 on the date of that election. If the clerk is to be elected at the next regular municipal election, you ask about the method for nominating candidates for that office, in light of the fact that the results of the census may not be known until after the deadlines have passed for filing declarations of candidacy and declarations of intent to be a write-in candidate at the primary election.

You have explained that the clerk of a municipal court is elected to office if the population of the territory served by the court equals or exceeds 100,000; if the population is less than 100,000, the clerk is appointed to office. R.C. 1901.31. The 2000 census is expected to show in several jurisdictions, where the clerk has been appointed, that the population of the territory served by the municipal court now equals or exceeds 100,000. You have stated that, although the census results will be known by the time the next regular municipal election is held on November 6, 2001, they may not be released until after the deadlines have passed for partisan candidates and write-in candidates to file for the primary election. You wish to know, given these facts, how the clerks of these courts are to be selected.

### R.C. 1901.31

We begin our analysis with an examination of the precise language of R.C. 1901.31. Division (A)(1) reads, in pertinent part, as follows:

> (A) There shall be a clerk of the court who is appointed or elected as follows:

> (1)(a) ...if the population of the territory[1] equals or exceeds one hundred thousand *at the regular municipal election* immediately preceding the expiration of the term of the present clerk, the clerk shall be nominated and elected by the qualified electors of the territory in the manner that is provided for the nomination and election of judges in section 1901.07 of the Revised Code.

> The clerk so elected shall hold office for a term of six years, which term shall commence on the first day of January following the clerk's election and continue until the clerk's successor is elected and qualified. (Emphasis and footnote added.)

*See also* R.C. 1901.31(A)(2)(a) ("in a municipal court for which the population of the territory is less than one hundred thousand ... the clerk shall be appointed by the court, and the clerk shall hold office until the clerk's successor is appointed and qualified").[2]

---

[1] The term "[t]erritory" is defined for purposes of R.C. Chapter 1901 as "the geographical areas within which municipal courts have jurisdiction as provided in sections 1901.01 and 1901.02 of the Revised Code." R.C. 1901.03(A).

[2] R.C. 1901.31(A)(1)(a) fixes as the time for determining the population of the territory of a municipal court the regular municipal election immediately preceding the expiration of the term of the current clerk. However, municipal court clerks who are appointed to office are appointed by the court and serve until their successor is appointed and qualified. R.C. 1901.31(A)(2)(a). They do not in actuality serve a term of office. In this instance, where the current clerk has been appointed by the municipal court judge whose term ends on December 31, 2001, we interpret R.C. 1901.31(A)(1)(a) to mean that the "term" or service of the clerk will likewise end on December 31, 2001.

Whether the office of municipal court clerk is filled by appointment or election depends upon whether the population of the court's territory equals 100,000 or more "at the regular municipal election immediately preceding the expiration of the term of the present clerk." R.C. 3501.01(B) defines "[r]egular municipal election" for purposes of sections of the Revised Code relating to elections to mean "the election held on the first Tuesday after the first Monday in November in each odd-numbered year." Where the current clerk will leave office on December 31, 2001, see note 2, supra, the regular municipal election immediately preceding that date is November 6, 2001. Thus, if on November 6, 2001, the population of the court's territory equals or exceeds 100,000, the office of clerk of the municipal court must be filled by election rather than by appointment.

### Determination of Population

We must next examine how the population of the court's territory is to be determined. The term "[p]opulation" is defined for purposes of the entire Revised Code as "that shown by the most recent regular federal census." R.C. 1.59(D).[3] After examining the various types of population information compiled by the federal Bureau of the Census, see, e.g., 13 U.S.C.A. §§ 181, 196 (1990), 1999 Op. Att'y Gen. No. 99-033 (syllabus, paragraph two) concluded that "the only regular federal census is the decennial federal census, which is required by the provisions of 13 U.S.C.A. § 141(a) (West 1990)." Pursuant to 13 U.S.C.A. § 141(a) (1990), the Secretary of the U.S. Department of Commerce[4] must take a decennial census of population as of the first day of April beginning in the year 1980 and every ten years thereafter. The most recent census conducted pursuant to 13 U.S.C.A. § 141(a) was taken in April 2000, and thus it is the population as determined by this enumeration that must be used to determine whether the territory of a municipal court equals or exceeds 100,000 on November 6, 2001.

Neither federal nor state law, however, fixes a date or specifies an event upon which the population figures from the decennial census become effective or final. 1982 Op. Att'y Gen. No. 82-047 addressed the issue of the effective date of the 1980 federal decennial census for the purpose of determining changes in the compensation of county officers under

---

[3]Although division (A)(1)(a) of R.C. 1901.31 makes no mention of how the population of the court's territory is to be determined, division (I) states: "For the purposes of this section, whenever the population of the territory of a municipal court falls below one hundred thousand but not below ninety thousand, and the population of the territory *prior to the most recent regular federal census* exceeded one hundred thousand, the legislative authority of the municipal corporation may declare, by resolution, that the territory shall be considered to have a population of at least one hundred thousand." Both divisions (A) and (I) relate to whether the population of the municipal court's territory exceeds one hundred thousand, and reading them *in pari materia*, it is apparent that the General Assembly intended for the population of the municipal court's territory to be determined pursuant to the most recent regular federal census for purposes of division (A) as well as division (I). *See generally State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject ... are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent").

[4]The Bureau of the Census (Bureau) is located within the U.S. Department of Commerce, and the Secretary of Commerce is charged with performing functions and duties relating to the Bureau as are imposed upon him by law. 13 U.S.C.A. §§ 1, 2 (1990). The Bureau is headed by the Director of the Census, who is appointed by the President. 13 U.S.C.A. § 21 (1990).

R.C. Chapter 325. The opinion sets forth a detailed analysis of earlier Attorney General opinions and pertinent case law from other states, noting at 2-133 that the conclusions reached by these authorities are inconsistent.

1982 Op. Att'y Gen. No. 82-047 at 2-134 specifically rejects use of the "decennial census date," which is defined by 13 U.S.C.A. §141(a) as the first day of April of the year in which the census is taken, as the effective date for census results, stating, that "before federal census figures can be given effect ... there must be a legal ascertainment of the census results." *See also Kelly v. City of Aberdeen*, 680 So. 2d 208, 209 (Miss. 1996) (rejecting for purposes of determining whether a local option election may be held, reliance on preliminary census results published in newspaper articles, as well as preliminary census bulletins, *see* 13 U.S.C.A. § 7, stating, "[f]uture election results from local option elections based on preliminary numbers would merely be a source of intolerable inconvenience and confusion"). Noting that the U.S. Secretary of Commerce is required to complete and report the population tabulations to each state within one year of the decennial census date, 13 U.S.C.A. § 141(c), 1982 Op. Att'y Gen. No. 82-047 at 2-134 found that use of the date on which the Governor receives such tabulations resolved concerns that census results be implemented promptly and uniformly, and concluded that it is "the most reasonable date for the figures to become effective in Ohio." The conclusion that the population figures shown by the federal decennial census become effective as of the date the Governor receives the official tabulations from the U.S. Secretary of Commerce pursuant to 13 U.S.C.A. § 141(c) has been followed in subsequent opinions. 1992 Op. Att'y Gen. No. 92-035; 1991 Op. Att'y Gen. No. 91-057. *But cf. Board of Comm'rs v. City of Elyria*, 174 Ohio St. 135, 187 N.E.2d 33 (1962) (distinguished at note 5, *infra*).

Although 1982 Op. Att'y Gen. No. 82-047 addresses the population of counties for purposes of determining the compensation of officers, and your request concerns the population of the territory of a municipal court for purposes of determining whether the clerk of court is to be elected or appointed, we discern no basis in statutory language or purpose for deviating from the date the 1982 opinion describes as the "most reasonable" effective date for the federal decennial census population figures for Ohio. Although it is obviously desirable to know as early as possible whether a primary and general election are to be held, it is essential that elections agencies and possible candidates be able to proceed with assurance. No earlier date in the process of conducting and reporting the results of the federal decennial census provides the certainty and finality of result that is reflected in the report provided to the Governor by the U.S. Secretary of Commerce pursuant to division (c) of 13 U.S.C.A. § 141. *See Kelly v. City of Aberdeen*, 680 So. 2d at 209-210 (finding that the official promulgation of results of the 1990 census released on April 1, 1991 was "the proper benchmark" for determining whether a municipality was entitled to hold a local option election, and stating that, "[t]o promote stability, uniformity, and the avoidance of confusion and duplicate efforts, municipalities must rely on the official results of the latest federal census in determining whether it may hold a local option election"). *See also Commonwealth of Virginia v. Reno*, 117 F. Supp. 2d 46, 52-53 (D.D.C. 2000), *aff'd*, 2001 U.S. LEXIS 6 (Jan. 8, 2001) (holding that Virginia's attempt to prevent statistically adjusted 2000 Census population data from being used for state redistricting was not ripe since the Bureau had not yet decided to release adjusted data, and rejecting the state's claim of "irreparable hardship" because it is "operating under a "'compressed schedule' in preparation for the 2001 elections").

Thus, for purposes of determining the population of a municipal court's territory as of November 6, 2001, we adopt as the effective date of the 2000 federal decennial census the date the census results are received by the Governor from the U.S. Secretary of Commerce

pursuant to 13 U.S.C.A. § 141(c).[5] (1982 Op. Att'y Gen. No. 82-047 and 1999 Op. Att'y Gen. No. 99-033, approved and followed). Because the tabulations are not required to be reported to the Governor for one year after the decennial census date, the population of the territory of a municipal court may not be known until April 1, 2001.

### Nomination and Election

Assuming that the census results, when they become effective, show that the population of the territory of a municipal court equals or exceeds 100,000, we turn now to a discussion of the manner in which R.C. Chapter 1901 provides for the election of municipal court clerks.

You ask at what election a clerk must be first elected if, on November 6, 2001, the census figures indicate the population of the municipal court's territory equals or exceeds 100,000. The only election referenced in R.C. 1901.31(A)(1)(a) is the first regular municipal

---

[5]In *Board of Comm'rs v. City of Elyria*, 174 Ohio St. 135, 187 N.E.2d 33 (1962), the Secretary of State relied upon an unofficial certification from the Census Bureau to find that a village's population exceeded the minimum for a city and proceeded pursuant to R.C. 703.06 to declare it to be a city. The declaration was challenged on the basis that the census results were not "officially made known" to the Secretary of State as required by R.C. 703.06. In upholding the Secretary of State's declaration, the court concluded that the results of a federal census are "officially made known" to the Secretary of State for purposes of his proclamation under R.C. 703.06 "where such results are furnished to the Secretary of State from the agency taking the census by one who presumably has the authority to issue such information." *Board of Comm'rs v. City of Elyria*, 174 Ohio St. at 137, 187 N.E.2d at 35.

The court's ruling is distinguishable from the issue at hand for two reasons. First, R.C. 703.06 states that, "[w]hen the result of any federal census or an enumeration as provided in [R.C. 703.02-.05] is officially made known to the secretary of state, he forthwith shall issue a proclamation" as to the population and status of municipal corporations. The Secretary of State is not limited to acting only upon the results of the federal decennial census. *See* R.C. 703.02 and 703.03 (enumeration conducted by a city auditor); *State ex rel. Brubaker v. Brown*, 163 Ohio St. 241, 126 N.E.2d 439 (1955) (syllabus) ("[a]n enumeration of the inhabitants of a village at a particular time, made by the Bureau of the Census of the United States Department of Commerce at the request of that village and pursuant to a contract between that village and the Department of Commerce, is included within the meaning of the words, 'any federal census,' as those words are used in Sections 703.01 and 703.06, Revised Code"). The transmission of tabulations to the Governor from the U.S. Secretary of Commerce under 13 U.S.C.A. § 141(c) applies only to the results of the federal decennial census, and thus may not be used as an effective date for the results of other enumerations upon which the Secretary of State may base his proclamations pursuant to R.C. 703.06. By holding that the Secretary of State may use unofficial results issued by the agency taking the census for purposes of R.C. 703.06, the court has articulated an event upon which the Secretary of State may rely regardless of the particular type of census or enumeration at issue.

Second, the *Elyria* case involved the issue of whether a change in a village's status to a city divested the board of county commissioners of jurisdiction in an annexation proceeding. In light of the important role that finality of result plays in determining elections matters, as discussed above, we decline to extend the holding of *Elyria* to a determination of whether an election is to be held pursuant to R.C. 1901.31(A)(1)(a).

election immediately preceding the expiration of the current clerk's term, and the paragraph, read as a whole, indicates that, if the population equals or exceeds 100,000 on the date of that election, then it is at that election that the clerk must be chosen by the voters.

Turning now to the nomination of candidates for election at the November 6, 2001 election, we note first that, pursuant to R.C. 1901.31(A)(1)(a), the clerk of a municipal court whose territorial population is 100,000 or more shall be nominated and elected in the same manner that is provided in R.C. 1901.07 for the nomination and election of municipal court judges. R.C. 1901.07(A) states that municipal court judges "shall be elected on the nonpartisan ballot for terms of six years." However, candidates for municipal court judge may be nominated either by primary election or by nominating petition. R.C. 1901.07(B).

Candidates who seek party nomination must file a declaration of candidacy and petition no later than the seventy-fifth day before the primary election. R.C. 1901.07(B). Candidates filing nominating petitions must file no later than the day before the day of the primary election. *Id.* Write-in candidates for the primary are required to file their declarations of intent no later than fifty days before the primary. R.C. 3513.041. However, if no valid declaration of candidacy is filed for nomination as a candidate of a political party, then no primary election is held for the purpose of nominating a candidate of that party for election to office. R.C. 1901.07(B). *See also* R.C. 3513.02. Division (B) of R.C. 1901.07 reiterates that "the candidacies of the judges nominated shall be submitted to the electors of the territory on a nonpartisan, judicial ballot."

In the instant situation, therefore, partisan candidates for nomination to the office of municipal court clerk would be required to file their declarations of candidacy by February 22, 2001 (75 days prior to the primary date of May 8, 2001) and write-in candidates for the primary would be required to file their declarations of intent by March 19, 2001 (50 days prior to the primary). Candidates filing nominating petitions would be required to file by May 7, 2001 (one day before the primary).

Thus, while the results of the 2000 census will have become effective by November 6, 2001, it is possible that the deadlines for partisan candidates to file declarations of candidacy and for write-in candidates to file declarations of intent for the primary election will have passed before the census figures become effective and a determination can be made whether the office of municipal court clerk is to be filled by appointment or by election at the November 6, 2001 election.[6] It is necessary to determine, therefore, the proper course of

---

[6]As discussed, the deadline for partisan candidates to file their declarations of candidacy is February 22, 2001 and the deadline for filing declarations of intent to be a write-in candidate for the primary election is March 19, 2001. It is possible (although unlikely) that the census results will be received after February 22nd, but before March 19th, which raises the issue whether persons could be write-in candidates for party nomination at the primary election. R.C. 1901.07(B) and R.C. 3513.02 provide that if no valid declaration of candidacy is filed for nomination as a candidate of a political party, then no primary election shall be held to nominate candidates of that party for election to the office and no primary ballot for the office shall be provided for such party. In such a situation, it is apparent that no provision could be made for write-in candidates. Thus, even if the 2000 census results were to become effective prior to March 19th (but after February 22nd), persons could not be write-in candidates for party nomination since no valid declarations of candidacy could have been filed and consequently no primary election would be held for that office. *See* 1973 Op. Att'y Gen. No. 73-094 (syllabus) ("[w]hen no primary is held ... a board of elections should refuse to accept the filing of declarations of intent to be write-in candidates").

action for state and county elections officials and possible candidates, assuming that in late March or early April the census figures will show that the population of a municipal court's territory is 100,000 or more and the office of clerk is to be filled by election.

In *State ex rel. Fahrig v. Brown*, 28 Ohio St. 2d 12, 274 N.E.2d 458 (1971), the court was faced with a similar issue as to the office of clerk of the Kettering Municipal Court. Previous to the 1970 census, the population of the court's territory was below 100,000 and the office of clerk was appointive. Census figures were received on May 3, 1971, showing the office would be subject to election. The deadline for filing a declaration of candidacy and petition was February 3, 1971. As the court summarized, "on that date [February 3rd] there was no provision in law for an elective clerk for the Kettering Municipal Court, as the census figures which would make such office elective rather than appointive were not received by the Secretary of State until May 3, 1971." *Id.*, 28 Ohio St. 2d at 13, 274 N.E.2d at 459.

An individual interested in becoming a candidate filed a writ of mandamus to compel the Secretary of State to establish a new filing date. The court denied the writ, stating:

> Relator does not refer us to any provision in the law granting the Secretary of State authority to set a time for filing other than that specified in R.C. 1901.07. There is no provision in law authorizing the acceptance of a late filed petition and relating it back to the statutory date of filing.
>
> In the absence of such authority, the respondent is under no clear legal duty to establish a new filing date as requested by relator.

*Id.*, 28 Ohio St. 2d at 14, 274 N.E.2d at 459. *See also State ex rel. Easton v. Brown*, 160 Ohio St. 184, 115 N.E.2d 1 (1953) (where a vacancy occurs in the office of municipal court judge after the deadline for filing nominating petitions for the unexpired term, there is no method in law for the formal nomination of candidates by petition). Thus, the Secretary of State (and county board of elections) are unable to act administratively to remedy the situation by setting a new filing deadline or accepting late filings.[7]

Returning to the timetable set forth in R.C. 1901.07 and R.C. Title 35, it is apparent that if the results of the 2000 census do not become effective until late March or early April 2001, there will be, as in *State ex rel. Fahrig v. Brown*, no provision in law for the election of a municipal court clerk as of the final date for filing as a partisan candidate. Thus, there can be no valid declarations of candidacy filed for nomination as a partisan candidate, and pursuant to R.C. 1901.07(B) (and R.C. 3513.02), no primary election will be held for the purpose of nominating partisan candidates for election to that office.

However, as noted above, R.C. 1901.07 and R.C. 1901.31(A)(1)(a) provide a second method of nominating candidates for election. Candidates for clerk may be nominated either

---

[7]*Cf.* 1951 Op. Att'y Gen. No. 409, p. 159 (discussing the General Assembly's enactment of 1951 Ohio Laws 172 (Am. S.B. 173, eff. May 25, 1951), which moved the 1951 primary election from May to September for municipalities that advanced from a village to a city based on population growth as ascertained by the 1950 federal census). *See also Commonwealth of Virginia v. Reno*, 117 F. Supp. 2d 46, 53 (D.D.C. 2000), *aff'd*, 2001 U.S. LEXIS 6 (Jan. 8, 2001) (discussing Virginia's statute allowing the State Board of Elections to reschedule primaries if it appears that the necessary 2001 reapportionment and redistricting will not be completed in time).

by primary election *or* by nominating petition. Nominating petitions need not be filed until the day before the primary election. R.C. 1901.07(B). In this instance, the deadline for candidates to file nominating petitions is May 7, 2001. Thus, by the time nominating petitions must be filed, the results of the 2000 decennial census will have become effective, and it will be possible for elections officials and persons interested in becoming candidates to ascertain whether the office of municipal court clerk will be filled by election or appointment and to proceed accordingly. If the office is to be filled by election, it will be possible for candidates to qualify for the November ballot by filing a nominating petition by May 7, 2001.[8]

Furthermore, R.C. 3513.041 requires there to be a write-in space provided on the ballot for every office, unless the board of elections has received no declarations of intent to be a write-in candidate. Qualified persons who file a declaration of intent no later than the fiftieth day prior to the general election may receive write-in votes. *Id.* In this instance, persons who file a declaration of intent by September 17, 2001 (50 days prior to the general election date of November 6, 2001) may have votes counted for them as a write-in candidate. *See also* 1955 Op. Att'y Gen. No. 5852, p. 523 (syllabus, paragraph four) (where the Secretary of State did not act pursuant to R.C. 703.06 to proclaim that a municipality's population had increased, such that it advanced from a village to a city, until September when it was too late for candidates to file for the November election, "it would be the duty of the board of elections to provide on the ballot blank spaces for writing in the names of candidates for the several offices to be filled, where no nominations or petitions for nomination for said offices have been presented").

Thus, even if the results of the 2000 census do not become effective until after the February 22, 2001, deadline for candidates to file declarations of candidacy for nomination as a party's candidate at the primary election, qualified candidates may appear on the ballot at the general election on November 6, 2001, by filing a nominating petition by May 7, 2001, or they may receive write-in votes if they file a declaration of intent to be a write-in candidate by September 17, 2001.

### Limitations on Scope of Opinion

As a final matter, it is important to note that the foregoing conclusions do not apply to each municipal court throughout the State of Ohio. R.C. 1901.31 and 1901.07 make special provision for a number of municipal courts and, in certain instances, provide for the application of a municipality's charter. For example, R.C. 1901.31(A)(1)(a) excepts from its provisions the Akron, Medina, Clermont county, Hamilton county, Portage county, and Wayne county municipal courts, and provides for them separately in subdivisions (A)(1)(b)-(f). In the Alliance, Lorain, Massillon, and Youngstown municipal courts, the clerk is elected to office regardless of population, R.C. 1901.31(A)(2)(b), and in the Auglaize county municipal court, the county clerk of courts serves as the clerk of the municipal court. R.C. 1901.31(A)(2)(c). *See also* R.C. 1901.31(B) and (C).

R.C. 1901.07 also provides separately for the nomination of candidates in particular jurisdictions. Where the jurisdiction of a municipal court does not extend beyond the corporate limits of the municipal corporation in which the court is located, and the municipality operates under a charter, then all candidates must be nominated in the manner specified in

---

[8]Nominating petitions filed by candidates for the office of municipal court judge, and thus municipal court clerk, must be filed in the form prescribed by R.C. 3513.261 and comply with the requirements of R.C. 3513.257. R.C. 1901.07(B); R.C. 1901.31(A)(1)(a).

the charter for the office of municipal court judge, or if there is no specific provision in the charter for municipal court judge, then in the same manner as the charter prescribes for the nomination and election of candidates for the municipality's legislative authority. R.C. 1901.07(B). If a municipal corporation has a charter that specifies a primary date other than the date specified in R.C. 3501.01(E), and if the jurisdiction of the municipality's court extends beyond the corporate limits of the municipal corporation, then candidates for the office of municipal court judge may only be nominated by petition.[9] R.C. 1901.07(B). Also, the third and fourth paragraphs of R.C. 1901.07(B) governing the filing of declarations of candidacy and nominating petitions pertain only "if no charter provisions apply," and the fifth paragraph governing the election of judges states that, in a municipal corporation operating under a charter, "all candidates for municipal judge shall be elected in conformity with the charter if provisions are made in the charter for the election of municipal judges." Finally, R.C. 1901.07 makes special provision for the Cleveland, Toledo, Akron, Hamilton county, Franklin county, and Auglaize, Clermont, Crawford, Hocking, Jackson, Lawrence, Madison, Miami, Portage, and Wayne county municipal courts. R.C. 1901.07(C).

Accordingly, it is essential that persons carefully examine R.C. Chapter 1901 and relevant charter provisions to determine the extent of this opinion's applicability to any particular municipal court.

It is, therefore, my opinion, and you are hereby advised that:

1.    Pursuant to R.C. 1.59(D), the most recent federal decennial census must be used to establish the population of the territory of a municipal court for purposes of determining under R.C. 1901.31(A)(1)(a) whether the office of municipal court clerk must be filled by election or appointment. The results of the most recent federal decennial census are effective as of the date on which the Governor receives the completed tabulations of population from the U.S. Secretary of Commerce pursuant to 13 U.S.C.A. § 141(c) (1990). (1999 Op. Att'y Gen. No. 99-033 and 1982 Op. Att'y Gen. No. 82-047, approved and followed.)

---

[9]You have mentioned the Delaware Municipal Court as an example of a court whose territorial population is expected to equal or exceed 100,000 for the first time after the 2000 census results are released. The jurisdiction of the Delaware Municipal Court extends beyond the corporate limits of the City of Delaware, see R.C. 1901.01; R.C. 1901.02(A) and (B), and the City has a charter. Section 111 of Article XXII of the Delaware City Charter provides for holding regular municipal elections and special elections, but states that "[n]o primary elections shall be held for the nomination of candidates for any office of the City of Delaware."

Your office has indicated that the City of Delaware's law director interprets this charter provision as *not* providing for a primary date other than that specified in R.C. 3501.01(E), and that since 1959, when judges of the Delaware Municipal Court were first elected to office, candidates for judge have been nominated by both primary election and nominating petition as provided in R.C. 1901.07(B). Such a well-established practice, supported by the City's current legal adviser, is entitled to deference. *See generally State ex rel. Doerfler v. Otis*, 98 Ohio St. 83, 94, 120 N.E. 313, 316 (1918); *State ex rel Brower v. Graves*, 89 Ohio St. 24, 104 N.E. 999 (1913). Therefore, the analysis and conclusions of this opinion apply to the selection of the next clerk of the Delaware Municipal Court.

2.     If the population of the territory of a municipal court that is subject to R.C. 1901.31(A)(1)(a) equals or exceeds 100,000 at the time of the regular municipal election immediately preceding the expiration of the term of the present clerk of court, then the next clerk of court must be elected to office at that election.

3.     If the population of the territory of a municipal court that is subject to R.C. 1901.31(A)(1)(a) is, according to the 1990 federal decennial census, less than 100,000 and the results of the 2000 federal decennial census do not become effective until after the deadline for filing declarations of candidacy for the primary election, then no primary election shall be held for the purpose of nominating candidates for the office of municipal court clerk, even though the results of the 2000 census are expected to become effective before the date of the regular municipal election in November 2001, and are expected to show that the population of the territory equals or exceeds 100,000. If, however, the results of the 2000 census, when they become effective, in fact indicate that the population of the territory equals or exceeds 100,000, then a person may qualify to be a candidate for the office of municipal court clerk at the regular municipal election in November 2001 by timely filing a nominating petition or a declaration of intent to be a write-in candidate.