

151

SALARIES—ANNUAL—MEMBERS OF BOARDS OF ELECTIONS AND CLERKS OF BOARDS—NOW HOLDING OFFICE—SALARIES SHOULD BE COMPUTED, BEGINNING APRIL 1, 1950, ACCORDING TO 1950 CENSUS—ALL MEMBERS AND CLERKS APPOINTED SUBSEQUENT TO JANUARY 2, 1948, SHOULD RECEIVE SUCH SALARIES FROM APRIL 1, 1950.

## SYLLABUS:

The annual salaries of members of boards of elections and clerks of such boards now holding office should be computed, beginning April 1, 1950, according to the 1950 census. All members and clerks appointed subsequent to January 2, 1948, should receive such salaries from April 1, 1950.

Columbus, Ohio, March 2, 1951

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

Dear Sir:

Your request for my opinion reads as follows:

“May the annual compensation of the clerk, and members of the Montgomery County Board of Elections as provided for by Sections 4785-18, General Code, and 4785-19, General Code, and based on the 1950 Federal census, be computed and paid from and after the first day of April, 1950; or must the annual compensation for the period beginning April 1st, 1950 and ending with the last day of February, 1951 be computed on the basis of the 1940 Federal census, and paid accordingly?”

Section 4785-8, General Code, provides in substance for a board of elections, consisting of four members, appointed by the Secretary of State, to serve for a period of four years and until their successors have been appointed and qualified. Members' terms begin March 1st in the even numbered years and two of such members are appointed each two years in the manner provided in this statute.

The basis of compensation of members and clerks of boards of elections is provided in Section 4785-18, General Code, effective January 2, 1948, which reads as follows:

“The annual compensation of members and clerks of the boards of elections shall be determined on the basis of the population of the county according to the *next preceding federal census*, and shall be paid monthly out of the appropriations made to the board of elections and upon vouchers or payrolls certified by the chairman, or a member of the board designated by it, and countersigned by the clerk or in his absence by the deputy clerk. Upon presentation of any such voucher or payroll the county auditor shall issue his warrant upon the county treasurer for the amount thereof as in the case of vouchers or payrolls for county offices and the treasurer shall pay the same.

“The amount of annual compensation of members of the board shall be as follows: eighteen dollars for each full one thousand of the first one hundred thousand population; eight dollars for each full one thousand of the second one hundred thousand population; six dollars for each full one thousand of the third one hundred thousand population; four dollars for each full one thousand of the fourth one hundred thousand population; and three dollars for each full one thousand above four hundred thousand population; except that in counties containing registration precincts additional compensation of two dollars for each full one thousand population in the total area consisting of such registration precincts in the county shall be allowed; provided, however, that the compensation of a member of the board shall not be less than two hundred fifty dollars and shall not exceed four thousand five hundred dollars annually. If the population of the total area consisting of such registration precincts in a county is not completely ascertainable from the official reports of the next preceding federal census as certified by the director of the federal census the board shall determine the population of such area by using such census reports to ascertain the population of such portions thereof, the populations of which are reported therein, and by determining the population of the remainder thereof in such manner as it may deem proper.”

(Emphasis added.)

This statute provides for an annual compensation of members of boards of elections, and for the method of determining such compensation, which is based upon the *next preceding federal census*. It, therefore, seems relevant to ascertain the application of “next preceding” as it relates to annual compensation of the election board members.

Webster’s International Dictionary defines the word “next” as “nearest; having nothing similar intervening; immediately preceding.” It defines “preceding” as, “going before in time, rank, or importance” and the synonym as, “former, previous, prior.” It would seem that “next preceding” then would indicate the latest census available, the census immediately preceding, and would be restricted to the last census available, to-wit, the federal census of April 1, 1950.

In the case of *People v. Sears*, 344 Ill. 189, 176 N. E., 273, the court said at page 275:

“Moreover, the ordinary definition and use of the word ‘preceding’ does not limit its application exclusively to the section immediately preceding it as the words ‘next preceding’ or ‘immediately preceding’ are generally used when such restricted application is intended.”

In *Dowty v. Pittwood*, 20 Mont. 113; 57 Pac. 727, the court said "next preceding the election" means immediately preceding the election.

I must conclude that the annual compensation of the election board members is based on the federal census which is the most recent, the latest or last enumeration of population made, to-wit, April 1, 1950.

Section 2252, General Code, provides that in addition to the salary allowed by Section 2251, General Code, each judge of the Court of Common Pleas shall receive annual compensation as ascertained by the *latest federal census*.

The case of *The state, ex rel. Mack Judge v. Guckenberger, Auditor*, 139 O. S. 273, held that an increase or decrease of a judge's compensation during his term, in accordance with the provisions of a statute in effect prior to the inception of his term, did not violate the provisions of Section 14, Article IV of the Constitution of Ohio and a writ was issued ordering payment of a judge's compensation, based on the 1940 census, although the census was taken subsequent to the beginning of his term of office. This action was based on the refusal of the auditor to honor a voucher presented to him by relator in October, 1941 for that month's salary based on the 1940 federal census. The court said at page 277:

"Again, the language and meaning of the statute as amended in 1927 are plain. The statute shows a legislative intent to provide, prior to the commencement of a judicial term, a compensation which may vary in amount during the term, depending upon the 'latest federal census' \* \* \*."

The election boards, as now constituted, consist of members appointed March 1, 1948 and March 1, 1950, as provided in Section 4785-8, General Code. The effective date of Section 4785-18, General Code, providing for their annual compensation, was January 2, 1948. It is obvious that the statute, which provided the basis for calculation of annual compensation for members of boards of elections, was in effect prior to the appointment of all the members whose compensation is here under consideration. It also appears that such annual compensation may increase or decrease during the term, dependent on the results of the next preceding census.

In a former Attorney General's opinion, reported in *Opinions of the Attorney General* for 1943, page 586, the question of payment of vouchers for salaries of judges of common pleas courts was considered. The

vouchers provided an increase of salary from April 1, 1940 to December 31, 1941, based upon the census of 1940. The judges' terms in question continued through this period of time and Section 2252, General Code, was in effect at the time their terms began. The Bureau of Inspection and Supervision of Public Offices made a finding to the effect that the increase from April 1, 1940 to December 31, 1941 should be returned to the County. The Attorney General held, however, that a judge serving a term which began prior to April 1, 1940 and receiving the increase in compensation from April 1, 1940 through December 31, 1941, even though the increase was reflected by separate vouchers after the judges had received their salary based on the previous census, was not required to repay such increase to the county but, on the contrary, was lawfully entitled to receive the same.

There is a similarity of language in the two statutes, Sections 4785-18 and 2252, General Code. In an opinion of my immediate predecessor in office, rendered under date of December 20, 1950, it was held that annual compensation of common pleas judges may be paid from and after April 1, 1950, based upon the increase or decrease of population as ascertained by the 1950 census and such compensation may be paid prior to any official report of the Secretary of State. I conclude that the salary of members of boards of elections also fall within this ruling.

There would seem to me to be no marked distinction between "next preceding" and "latest" census, as contained in the respective Sections 4785-18 and 2252, General Code, heretofore pointed out. The annual compensation, payable monthly, based on the result of the federal census as provided in the statute, was effective prior to the terms of office of the members of the election boards and any constitutional doubt involved was resolved by the decision in the case of State, ex rel. Mack, Judge v. Guckenberger, supra.

I have examined the opinion of one of my predecessors, reported in Opinions of the Attorney General for 1941, page 684. I find that the same question was considered by the then Attorney General in Opinions of the Attorney General for 1943, page 586, referred to above. In the latter opinion following the decision in the Mack case, supra, the following conclusion was reached:

"It follows that the judges named in your communication, who were in office prior to the taking of the 1940 census, were

entitled from and after April 1, 1940, to the increase of salary brought about by the increased population of the county as shown by that census.”

This opinion clearly overrules the rule stated in Opinions of the Attorney General for 1941, page 684, as related to the subject of this opinion.

Clerks of boards of elections receive such annual compensation as is provided in Section 4785-19, General Code. Such compensation is based upon the compensation of the members of the board to which the clerk is attached.

It is my opinion, therefore, that the annual salaries of members of boards of elections and clerks of such boards now holding office should be computed, beginning April 1, 1950, according to the 1950 census. All members and clerks appointed subsequent to January 2, 1948, should receive such salaries from April 1, 1950.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General