

OPINION NO. 92-035**Syllabus:**

Pursuant to R.C. 1907.16(A)(1), computation of the compensation of a judge of a county court is to be based on the population of the county court district "when elected or appointed," and, therefore, the judge's compensation should not be reduced when federal census figures that become effective after the date of the judge's election or appointment show a drop in county population during the judge's term.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, July 29, 1992

You have requested an opinion of the attorney general on the following question: Should the compensation received by a county court judge who takes office on January 1, 1989 be reduced because of a drop in the population within the county court district as reflected in the Federal United States Census figures for 1990?

The compensation of a county court judge is governed by both the constitution and statute. Ohio Const. art. IV, §6(B) provides that:

The judges of the supreme court, courts of appeals, courts of common pleas, and divisions thereof, and of *all courts of record established by law*, shall at stated times, receive, for their services *such compensation as may be provided by law, which shall not be diminished during their term of office.* (Emphasis added).

Although this language protects a judge's compensation from being reduced in-term by a statute enacted during the judge's term, it does allow in-term reductions in a judge's compensation that result from application of a statutory population formula enacted prior to commencement of the judge's term. *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E.2d 840 (1943) (syllabus, paragraph three).¹ It is, therefore, necessary to determine whether the statute governing the compensation of county court judges falls within this latter category.

The pertinent provision of R.C. 1907.16 was enacted in 1987, prior to the commencement of the term of office of the county judge to whom you refer. See 1987-1988 Ohio Laws 2170, 2228 (Am. Sub. H.B. 171, eff. July 1, 1987). The statute provides that the judge's compensation is composed, in part, of "[a]n amount, not to exceed seven thousand five hundred dollars per annum, *equal to eighteen cents per capita of the population of the county court district when elected or appointed.*" R.C. 1907.16(A)(1) (emphasis added). Although this is a population based formula, the plain language of the statute provides that the computation required under R.C. 1907.16(A)(1) is based on the county population at the time the judge was elected or appointed. See also 1977-1978 Ohio Laws, Part II, 2298, 2305 (Am. Sub. H.B. 280, eff. April 24, 1978) (adding the words "when elected or appointed" to the formula).

R.C. 1.59(D) states that "[p]opulation' means that shown by the most recent federal census." The population figures shown by a federal census become effective in Ohio as of the date the Governor receives the official tabulations transmitted by the Secretary of the United States Department of Commerce. 1982 Op. Att'y Gen. No., 82-047 (syllabus, paragraph two). The federal decennial census figures for 1990 became effective on February 19, 1991. See 1991 Op. Att'y Gen. No. 91-057 at 2-283. Because the county judge who is the subject of your question was elected before February 19, 1991, the 1990 census figures do not represent the population at the time your county judge was elected. Therefore, the computation required by R.C. 1907.16(A)(1) must be based on the federal decennial census figures for 1980 and the judge's compensation will not be affected by the reduced county population shown by the 1990 federal census. Thus, while Ohio Const. art. IV, §6 does not prohibit an in-term reduction in compensation based on the population changes reported in the federal census, the legislature has chosen to protect county court judges from such in-term reductions through the provisions of R.C. 1907.16(A)(1).

It is, therefore, my opinion and you are hereby advised that, pursuant to R.C. 1907.16(A)(1), computation of the compensation of a judge of a county court is to be based on the population of the county court district "when elected or appointed,"

¹ The court in *Mack* construed Ohio Const. art. IV §14, which provided that supreme court and common pleas judges should receive "such compensation as may be provided by law, which shall not be diminished, or increased during their term of office." *Id.* at 275, 39 N.E.2d at 842. As a result of subsequent amendments, this provision now appears at Ohio Const. art. IV, §6, without the prohibition against increases and with expanded coverage to "all courts of record." See 1967-1968 Ohio Laws, Part II, 2878 (Am. Sub. H.J.R. 42, adopted March 1, 1968); 1973 Ohio Laws, Part I, 2024 (Am. S.J.R. 30, adopted July 27, 1973).

and, therefore, the judge's compensation should not be reduced when federal census figures that become effective after the date of the judge's election or appointment show a drop in county population during the judge's term.