

1137.

ELECTION LAW—FEDERAL CENSUS GOVERNING COMPENSATION OF VARIOUS ELECTION OFFICIALS FOR 1930 DETERMINED—EXPENSES UNDER SECTION 4785-20(b), GENERAL CODE, PAID BY COUNTY AND CHARGED BACK TO SUBDIVISION.

*SYLLABUS:*

1. *Under the provisions of Section 18 of Amended Substitute Senate Bill No. 2 enacted by the 88th General Assembly as an act to revise, codify and supplement the election laws of this state, which act was passed April 5, 1929, and which by its terms becomes effective on the first day of January, 1930, the compensation of members of the board of elections in each of the several counties of the state for the year 1930, will be governed by the federal census of 1920; and inasmuch as under the provisions of Section 19 of said act the compensation of the clerk of the board of elections for the year 1930 in each county of the state having a population of not more than four hundred and fifty thousand will be determined by the compensation of the members of the board of elections in such county, the federal census of 1920 will likewise govern the compensation of the clerks of the boards of elections in such counties. In counties having a population of more than four hundred and fifty thousand the compensation of the clerk of the board of elections for the year 1930 will be fifty percent more than the annual compensation of the deputy clerk, as fixed by the board of elections.*

2. *If the federal census for the year 1930 is completed before judges and clerks of elections render their services at elections held in the year 1930, the amount of their compensation under Section 28 of said act will be governed by the population of the county, according to the 1930 census.*

3. *The election expenses mentioned in paragraph "b" of Section 20 of said act are to be paid in the first instance by the county and charged back to the subdivision and the same are not required to be paid directly by the subdivision against which such election expenses are charged.*

COLUMBUS, OHIO, November 1, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication over the signature of R. M. Galloway, Assistant Prosecuting Attorney, which reads as follows:

"We respectfully ask your opinion in the following matters.

Under the provisions of the new election code especially Section 18, will the census of 1920 govern the compensation of the members and clerks of a board of election or will the census of 1930 control such compensation?

If the census of 1930 is completed before the expiration of the year 1930, will the members and clerks of a board of election be entitled to pay for the remaining part of the year upon the basis of the 1930 census?

Will the judges and clerks of election receive compensation on the basis of the census of 1920 or of that in 1930?

If the official census of 1930 is completed prior to the November election in 1930 and shows an increase in population to more than 250,000 population, will the judges and clerks of election be entitled to pay at the rate of \$10.00?

Section 20 of the election code provides for expenses and their apportionment. Is it the intention that in odd years as contained in paragraph b, expenses shall be charged to and paid directly by the subdivision or is it the intention under the second paragraph of Section 20 that the county shall pay

such expenses and the amount then be charged back to the sub-division and withheld by the county auditor.

Will you kindly give us your interpretation of this section? In view of the fact that it is necessary for the board of elections to make up its annual budget for the ensuing year, we would greatly appreciate an early reply."

The questions presented in your communication call for a consideration of certain pertinent provisions of Amended Substitute Senate Bill No. 2, enacted by the 88th General Assembly as an act to revise, recodify and supplement the election laws of this state, which act was passed April 5, 1929, and which by its terms becomes effective on the first day of January, 1930. Sections 18 and 19 of said act are applicable to the consideration of the first two questions here presented. These sections of said act provide as follows:

Sec. 18. "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: twelve 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; four dollars for each full one thousand of the fourth one hundred thousand; and three dollars for each full one thousand above four hundred thousand; except that in counties containing a registration city or cities an additional compensation of two dollars for each full one thousand population in such cities shall be allowed; provided, however, that the compensation of a member of the board shall be not less than two hundred dollars and shall not exceed four thousand two hundred dollars annually."

Sec. 19. "The clerk of the board in each county, except in counties containing a population of over four hundred fifty thousand, shall receive an annual compensation which shall amount to fifty (50) per cent more than is received by members of the board of elections of such county. In counties containing a population of over four hundred fifty thousand the clerk shall receive fifty per cent (50%) more than shall be received by the deputy clerk."

When Section 18 of said act goes into effect January 1, 1930, the provisions thereof will be effective on said date to fix the annual compensation of members of boards of elections in the several counties of the state for the whole of the year 1930, by an application of the rates of compensation therein prescribed to the population of the county according to the then next preceding federal census, which next preceding federal census will then be the federal census for the year 1920. Said Section 18, together with Section 19 of said act, when the same go into effect on January 1, 1930, will be effective on said date to fix the annual compensation of clerks of boards of elections in the several counties of the state for the whole of the year 1930, except as to clerks of boards of elections in counties of the state having a population of over four hundred fifty thousand.

The applicable provision of said Section 19, with respect to clerks of boards of elections first mentioned therein is, that their annual compensation shall be fifty per cent more than is received by the members of the board of elections of the particular county; and as above noted, the annual compensation of the members of the board of elections in each county for the year 1930, is fixed by the provisions of Section 18 of the act on the basis of the population of the county according to the federal census next preceding January 1, 1930, which will be the census of 1920.

By way of specific answer to the first question here presented, I am of the opinion that the federal census of 1920 will govern the compensation of members of boards of elections in the several counties of the state for the year 1930, and that such federal census, in the manner above indicated, will likewise govern the compensation of clerks of boards of election in the counties of the State other than those having a population of more than four hundred fifty thousand. Under the provisions of Section 19 of said act, the annual compensation of the clerk of the board of elections for the year 1930 in counties containing more than four hundred fifty thousand population will be fifty per cent more than the compensation of the deputy clerk, as fixed by the board of elections under Section 15 of said act.

I am further of the opinion, by way of specific answer to your second question, that the same should be answered in the negative.

Section 28 of said act applies in consideration of the third and fourth questions presented in your communication. This section reads as follows:

“The judges and clerks shall receive as compensation for their services, when actually serving, the sum of eight dollars for each general, primary and special election, in counties of less than two hundred and fifty thousand population according to the next preceding federal census; and ten dollars for each general, primary and special election in counties of more than two hundred and fifty thousand population. Where registration at the precinct polling place is required, the precinct registrars shall be paid for their services five dollars per day.”

The next preceding federal census referred to in Section 28 of said act above quoted, means the federal census next preceding the time when the judges and clerks of elections rendered their services, and if the federal census for the year 1930 is completed in said year before judges and clerks of elections render their services, the amount of their compensation will be governed by the population of the county according to the 1930 census.

What has been said is of sufficient answer to your third question and the same consideration requires that your fourth question as stated, should be answered in the affirmative.

Your fifth question is governed by the provisions of Section 20 of said act which reads as follows:

“The expenses of the board in each county shall be paid from the county treasury in pursuance of appropriations by the county commissioners, in the same manner as other expenses are paid. If the county commissioners fail to appropriate an amount sufficient to provide for the necessary and proper expenses of the board, the board may apply to the Court of Common Pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. Payments shall be made upon vouchers of the board certified to it by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor.

Such expenses shall be apportioned among the county and the various

subdivisions as hereinafter provided, and the amount chargeable to each subdivision shall be withheld by the county auditor from the moneys payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year the board shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year.

a. The entire compensation of members of the board and of the clerk, deputy clerk and other assistants and employes in the board's offices; the expenditures for the rental, furnishing and equipping of the offices of the board and for the necessary office supplies for the use of the board; the expenditures for the acquisition, repair, care and custody of polling places, booths, guard rails and other equipment for polling places; the cost of poll books, tally sheets, maps, flags, ballot boxes, and all other permanent records and equipment; the cost of all elections held in and for the state and county; and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section, shall be paid in the same manner as other county expenses are paid.

b. The compensation of judges and clerks of elections; the cost of renting, moving, heating and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof; the cost of printing and delivering ballots, cards of instruction and other election supplies; and all other expenses of conducting primaries and elections in the odd numbered years shall be charged to the subdivisions in and for which such primaries or elections are held.

c. The cost of all special elections shall be charged against the subdivisions for and in which such elections are held.

d. The compensation of registrars; the cost of renting, heating and lighting registration places; the cost of the necessary books, forms and supplies for the conduct of registration; and the cost of printing and posting precinct registration lists; shall be charged to the subdivision in which such registration is held."

Without restating the provisions of Section 20 of said act above quoted, it will be noted that all expenses of the board of elections of the county are to be paid from the county treasury in pursuance of appropriations made therefor by the county commissioners, in the same manner as other expenses of the county are paid, including such election expenses as under paragraph "b" are to be charged to the subdivisions in which primary or other elections are held. As to such latter expenses the county is reimbursed and secured by the action of the county auditor by withholding the amount of such expenses from the moneys payable to the subdivisions against which the same are charged at the time of the next tax settlement with said subdivisions.

By way of specific answer to your fifth question, I am of the opinion therefore, that the election expenses mentioned in paragraph "b" of said Section 20, are to be paid by the county and charged back to the subdivision, and that the same are not to be paid directly by the subdivision against which such election expenses are charged.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*