



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

*Superseded By  
Art. 29d V.C.S.*

Hon. Geo. H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. 0-2378

Re: Whether the Legislature should make appropriation for the next biennium based on the 1930 or the 1940 census to counties operating under the Salary Bill; and related questions.

Your letter of recent date requesting an opinion of this department on the questions as are herein stated has been received. We quote the questions submitted in your inquiry as follows:

"1. Should the Legislature make appropriation for the next biennium based on the 1930 or 1940 census to counties operating under the Salary Bill?

"2. If the 1940 census shows that a county has a population of twenty thousand (20,000) or more, which now shows a population of less than twenty thousand, would that county be required to adopt the salary plan, and if so, when would the change become effective?

"3. Certain counties are now receiving from the State payment on the basis of 25¢ per capita as provided in Article 3912e, Section 6, RCS. If the 1940 census shows any of these counties to have a population in excess of sixty thousand (60,000) would that county receive appropriation on the basis of 14¢ or 25¢ per capita for the next biennium?"

Article 3898, Vernon's Annotated Civil Statutes, as amended Acts 1935, 44th Legislature, 2nd C.S., reads as follows:

"The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this Act not later than February 1st of each year; provided, however, that officers receiving an annual salary as compensation for their services shall, by the close of each month, pay into the Officers' Salary Fund or funds, all fees, commissions and compensation collected by him during said month. Whenever such officer serves for a fractional part of the fiscal year, he shall nevertheless file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time for his service bears to the entire year."

Section 1 of Article 3912e reads:

"No district officer shall be paid by the State of Texas any fees or commission for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund or or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Section 6, subdivision (a) of Article 3912e reads:

"In counties wherein the county officials are on a salary basis, in addition to the monies deposited in said Officers' Salary Fund or funds under the provisions of Sections 1, 3 and 5 of this Act there shall be deposited therein quarterly on the first day of

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January, April, July and October of each year, such sums as may be apportioned to such county under the provisions of this Act, out of the available appropriations made by the Legislature for such purposes provided, however, that in counties wherein the Commissioners' Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the Commissioners' Court that the county officers of such county shall be compensated on a salary basis for the fiscal year, and in that case the first quarterly payment of such apportionment shall be made in fifteen (15) days after receipt of such notice by the Comptroller, and the remaining payments on the dates hereinabove prescribed. It shall be the duty of the Comptroller of Public Accounts to annually apportion to all counties in which the county officers are to be compensated on the basis of a salary any monies, appropriated for said year for such apportionment; each county entitled to participate in such apportionment shall receive for the benefit of its Officers' Salary Fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each county according to the last preceding Federal Census; provided that the annual apportionment for such purposes shall not exceed fourteen (14¢) cents per capita of said population of each county where county officers are compensated on a salary basis under the provisions of this Act. Provided that in all counties which had a population of less than sixty thousand (60,000) inhabitants in 1930 according to the last preceding Federal Census and which now have ad valorem valuations for all purposes according to the last approved tax roll of such county, which have increased at least fifty (50) per cent over the valuation for 1930, the amount to be paid to each of said counties for its salary fund shall be the sum not to exceed twenty-five (25¢) cents per capita based on the 1930 population. The quarterly payment of such apportionment of such appropriation shall be made on warrants drawn by the State Comptroller upon the State Treasury payable to the county treasurer of the county in whose favor the apportionment is made and said warrants shall be registered by the Comptroller and the Treasurer and shall be mailed by the Comptroller to the treasurer of the county."

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Section 13 of Article 3912e reads in part as follows:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars, according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; and provided that in counties having a population of thirty-seven thousand five hundred (37,500) and less than sixty thousand (60,000) according to the last preceding Federal Census, and having an assessed valuation in excess of Twenty Million (\$20,000,000.00) Dollars, according to the last preceding approved tax roll of such county, the maximum amount allowed such officers as salaries, may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Twenty Million (\$20,000,000.00) Dollars valuation over and above the maximum amount allowed such officer under laws existing on August 24, 1935."

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It is generally held that in the absence of a statute providing when the census shall go into legal effect, it becomes official and effective as of the date of publication, by a bulletin, certificate, etc., by the Director of the Census. 14 C. J. Sec. 103; Holcomb v. Spikes, 232 S.W. 891. It is then, but not until then, that the courts will judicially notice the population of a given county so as to permit changes in classification based thereon. Smith v. Patterson, 242 S.W. 794.

This department has heretofore ruled in Opinion No. O-2337 as to when the 1940 Federal Census becomes controlling under our statutes involving population. We are enclosing a copy of this opinion for your convenience.

You have further informed us that your first question above quoted has reference to the appropriation mentioned in Section 6 of Article 3912e, supra, and also as mentioned in your third question.

It will be noted from Section 6 of Article 3912e that the appropriation therein mentioned shall be distributed among the several counties entitled to participate therein on the basis of the per capita population of each county according to the last preceding Federal Census, and that the annual apportionment for such purposes shall not exceed 14¢ per capita of said population of each county where county officers are compensated on an annual salary basis.

In answer to your first question you are respectfully advised that it is the opinion of this department that the Legislature should make appropriations for the next biennium to all counties operating under the Officers' Salary Bill, based on the 1940 census, not to exceed 14¢ per capita of said population of each county, except in those counties which had a population of less than 60,000 inhabitants in 1930, and which now have ad valorem valuations for all purposes, according to the last approved tax roll of such county, which have increased at least 50% over the valuation for 1930. Said counties coming within this provision are entitled to the sum not to exceed 25¢ per capita, based on the 1930 population.

With reference to your second question, in view of Article 3898, supra, and section 13 of Article 3912e, you are advised that a county which has a population of 20,000 or more inhabitants according to the 1940 census, and which shows a population of less than 20,000 according to the 1930 census,

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would be required to adopt the Officers' Salary Plan, and the change would become effective January 1, 1941.

Your third question is answered in the above answer to your first question.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

APPROVED JUN 1, 1940

*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

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