



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

December 21, 1950

*Superseded By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

Hon. F. T. Graham
County Attorney
Cameron County
Brownsville, Texas

Opinion No. V-1137.

Re: Effective date of the
1950 Federal census
of Cameron County.

Dear Mr. Graham:

Reference is made to your inquiry as to the date on which the 1950 Federal census became effective in Cameron County. You state that a bulletin of the Bureau of the Census dated September 14, 1950, shows Cameron County as having a population of 124,834 as of April 1, 1950. The bulletin states that this count superseded an earlier published report, the date of which is not given. The population of Cameron County according to the 1940 Federal census was 83,202.

You further state that the question of the effective date of the census has come up in connection with fees which may be retained by justices of the peace and constables in that county. We quote from your letter:

"Art. 3883, Sec. 8, V.C.S., applies to counties with a population of not less than 77,750, nor more than 88,750, according to the last preceding Federal census of the United States. Under that article justices of the peace and constables are permitted to retain as their fees \$2,750.00 each per annum, and also to retain one-third of the excess fees until such one-third of such excess fees, together with the said amount of \$2,750.00, equals the sum of \$3,000.00.

"Section 5 of the same article provides that in counties containing as many as 100,001, and not more than 150,000 inhabitants, justices of the peace and constables may retain \$2,500.00 each, out of the fees collected.

"In order that justices of the peace and constables in this county may make their final

reports and their settlement of the annual fees collected, it is necessary to know as of what date the 1950 Federal census is or was effective."

Federal law directs that a census shall be taken in the year 1930 and every ten years thereafter "as of the 1st day of April." 13 U.S.C.A., §§ 201, 206. Provision is made for the publication and distribution of the results of the census, but there is no Federal statute which determines its effective date. As observed in Ervin v. State, 119 Tex. Crim. 204, 205, 44 S.W.2d 380, 381 (1931), "there is no specific provision . . . with reference to the time of final announcement of the census; nor is there any provision as to the time the census shall become effective." Likewise, there is no State statute on this matter.

Decisions of the courts of this State have established that the preliminary announcement by the Area or District Census Supervisor of the results of a census amounts to an official pronouncement, of which officials may take notice and upon which they thenceforth are authorized to act, even though the preliminary figures are subject to correction by the final report. Holcomb v. Spikes, 232 S.W. 891 (Tex. Civ. App. 1921, error dism.); Ervin v. State, 119 Tex. Crim. 204, 44 S.W.2d 380 (1931); Garrett v. Anderson, 144 S.W.2d 971 (Tex. Civ. App. 1940, error dism., judgm. cor.). However, in none of those cases was it necessary for the court to determine whether the effective date related back to the time the enumeration was made,--in this case, April 1, 1950. There is no Texas decision directly on this point. However, the reasoning and language of the cases indicate that a census does not take effect until its result is announced.

Decisions in other States are conflicting as to the precise date on which a Federal census becomes effective in the absence of a State statute prescribing the effective date. In Underwood v. Hickman, 162 Tenn. 689, 39 S.W.2d 1034 (1931), the court held that an increase in the salary of the county court's clerk because of an increase in the population of the county became effective April 1, 1930, the date of the enumeration. A contrary view was expressed in Lewis v. Lackawanna County, 200 Pa. 590, 50 Atl. 162 (1901), which also involved the salaries of county officers. This case held that the effective date does not relate back to the time of enumeration, but that "the fact

becomes applicable only from its legal ascertainment" through "an official statement of the facts."

After weighing the arguments in support of each of these conflicting views, and after considering the expressions by the Texas courts in the above-cited cases and the provisions of the statutes relative to the compensation of county and precinct officers, we are of the opinion that the effective date of a census, within the contemplation of these statutes, coincides with the date of the official announcement of the result. This holding accords with previous rulings of this department, as expressed in Att'y Gen. Ops. 0-2337 (1940), 0-2742 (1940), 0-2932 (1940), and 0-3351 (1941).

You are therefore advised that the effective date of the 1950 census in Cameron County was the date on which the Area or District Supervisor released his first official preliminary report for that county. We have not been informed of the date of the original report, and for that reason we cannot tell the exact date when the census became official in your county.

SUMMARY

The effective date of a Federal census, within the contemplation of the statutes providing for the compensation of county and precinct officers, is the date on which the Area or District Census Supervisor makes an official announcement of the census result for the particular county.

APPROVED:

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MKW:wb:em

Very truly yours,

PRICE DANIEL
Attorney General

By *Mary K. Wall*
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