

**OPINION
69-133**

July 30, 1969 (OPINION)

Honorable Lynn W. Aas

Representative, District No. 5

Minot, North Dakota

RE: Counties - Redistricting - Population Included

This is in response to your letter in which you call our attention to House Bill No. 88 as passed by the 1969 Legislative Assembly, which amends and reenacts Chapter 11-07 of the North Dakota Century Code. This bill, amongst other things, provides for the redistricting of counties and sets forth the manner in which the redistricting is to be accomplished. The question upon which you ask for an opinion is what definition is to be given the term "population" as such term is found in House Bill No. 88, Chapter 128 of the 1969 Session Laws, which has now been codified to constitute Chapter 11-07 of the North Dakota Century Code.

Section 11-07-02, as amended by House Bill No. 88, provides in part as follows:

"WHEN DISTRICTS MUST BE CHANGED - PUBLIC HEARING - NOTICE.
Each redistricting board shall, within three months after official publication of each federal decennial census meet at the call of the chairman to organize as provided in this chapter and to consider redistricting and if any one district in the county varies more than ten percent from the average population per commissioner in such county determined by dividing the total population of the county at the last federal decennial census by the number of commissioners' districts in such county, the redistricting board shall redistrict the county, as provided in this chapter. * * *." (Underscoring ours.)

It is thus observed that the population is determined by the federal decennial census is the basis for redistricting.

In Section 11-07-03, we find the following sentences:

"* * * In redistricting a county, the redistricting board shall make the districts as regular and compact in form as practicable, and as substantially equal in population as possible. * * * In no event shall any commissioner's district vary in population more than ten percent from the average population per commissioner as determined in section 11-07-02."

In addition to this, we find the term "population" used repeatedly in the aforementioned section.

In Section 7, Chapter 128, House Bill No. 88, we find the term "population" and the term "inhabitants." Again, we find the

reference to "census" in the following sentence:

"* * * All procedures and requirements in regard to the redistricting of county commissioners' districts following each federal decennial census shall apply to the redistricting required by this section, except that such redistricting shall be completed by December 31, 1969."

Thereafter we again find the term "population" and "inhabitants" used in the same section.

The term "population" as found in Webster's Dictionary is defined as follows:

"population, n. 1. The whole number of people or inhabitants in a country, section, or area. 2. Act or process of populating. 3. The body of inhabitants of a given locality.
* * *."

The same term has been defined judicially to mean the "whole number of people or inhabitants regardless of age, sex, business or occupation, whether civilian or military in character, who live in a county or a county commissioner's district." (See Ludvig v. Board of County Commissioners of Sarpy County, 103 N.W.2d. 838.)

The term "inhabitant" is defined in Webster's Dictionary, as follows:

"inhabitant, n. One who dwells or resides permanently in a place, as distinguished from a transient lodger or visitor. Syn. Inhabitant, citizen, denizen (est. in the literary implications). Inhabitant, the general term, implies permanent abode; citizen, enjoyment of the full rights and privileges of allegiance; denizen (sometimes merely poetical or elevated for INHABITANTS) often suggests admission by favor to privileges not claimable as rights."

The actions required to be taken are all predicated upon a federal decennial census. The expression "official publication of each federal decennial census" leaves no doubt as to what was meant. Obviously the Legislature intended that upon the publication of the results of a federal decennial census, if the results so indicate, certain procedures be implemented and completed to bring about a redistricting in accordance with the population as determined by the federal decennial census.

The term "census" has been defined by Webster's Dictionary, as follows:

"census, n. (L., fr. censere. See CENSOR.) 1. Rom. Hist. A numbering of the people, and valuation of their estates, for taxation, etc. 2. An official enumeration of the population of a country, city, or town, often with classified social and economic statistics."

Such term has also been judicially defined to mean the "numbering of people; an official enumeration of the population of a county, city or other administrative district." (City of Bisbee v. Williams, 317

Pac. 2d. 567.) In the case of Republic of Hawaii v. Paris, 10 Haw. 579, 581, the Court said that "* * * the word census is derived from the Latin 'censere' to reckon, and means an official registration of the number of people, the value of their estates and other general statistics of the country."

While the word "inhabitant" can have a different meaning than the word "population", nevertheless such word or words may be used interchangeably or synonymously in the plain, ordinary and popular sense, depending on the context in which they are used. In this respect the term "inhabitant" and the term "population" as found in the statute in question are used to express the same idea and thought, and are interchangeable.

We are aware and have taken into account the numerous cases, both federal and state, relating to apportionment of state legislative districts and congressional districts. The prevailing thought in all of these cases is that people constitute the factor upon which representation is founded.

We are also aware that population, inhabitants, citizens and voters can and will fluctuate from time to time in a given area, and that a person may be counted as an inhabitant, but at the same time would not qualify as a resident or a voter. Changes can occur within short periods of time. A person may not be a voter today but can become an eligible voter a day or a week hence. The same holds true with residence.

We believe that population can fluctuate significantly over a short period of time. Yet, we must recognize that the prevailing thought in all of these matters, particularly as pertaining to representation, is the one man, one vote principle which refers to people or population, or inhabitants as distinguished from electors or voters.

We are firmly impressed that when the Legislature referred to the publication of each federal decennial census, the Legislature was aware of the fluctuations and determined that the population resulting from a given census be the determining factor in causing the redistricting of certain counties if the facts so indicated.

We are aware that certain areas which have a military base within the county that the population of such county can be increased and for that matter be disproportioned to the number of voters within that county. At the same time we recognize that the Legislature did not base redistricting of counties on the voters' concept but rather upon population, or inhabitants. Thus, we are not concerned with voters in the redistricting of county commissioners' districts.

The only reference to voters which is significant is found in Section 6 of House Bill No. 88, which is now Section 11-07-06. The reference here relates to instances when a petition may be presented to the county commissioners. It provides that the petitions be signed by at least ten percent of the electors of the county. The petition in this instance relates to the procedure which may be employed to compel an election to determine whether or not the commissioner shall be elected at large. This section does not directly relate to

redistricting of the county commissioners' districts.

The reasoning in the Sarpy County case, *supra*, is impressive if not compelling.

It is therefore our opinion that the term "population" as used in House Bill No. 88, Chapter 128 of the 1969 Session Laws, which now constitutes Chapter 11-07 of the North Dakota Century Code, means the whole number of people or inhabitants regardless of age, whether civilian or military in character, who live in a county at the time of making or taking the federal decennial census.

It is our further opinion that the population determined by the latest federal decennial census shall be used in redistricting the counties when such redistricting is required under the provisions of Chapter 11-07.

HELGI JOHANNESON

Attorney General