

**OPINION  
51-168**

December 6, 1951            (OPINION)

**TAXATION**

**RE: Cigarette Tax, Special, Allocation**

This is in reply to your letter of December 5, 1951, in which you ask the opinion of this office on the following:

The Legislature at the last session enacted as Chapter 323 of the 1951 Session Laws an act which levied a tax of one-half mill on each cigarette sold in this state. The revenue derived from this tax is to be allocated on a per capita basis to the incorporated cities and villages of the state, which allocation is to be based upon the population of each incorporated city or village according to the last official decennial federal or official state census.

The City of Jamestown with a population of 10,697 annexed on August 27, 1951 and included within its corporate limits the territory comprising the State Hospital at Jamestown with a population of approximately 2,380. You ask whether these 2,380 inhabitants must be included within the per capita count and figure in the distribution of the tax moneys to the City of Jamestown.

The Bureau of Census determined the corporate limits of a city or village by maps or charts certified to them as of April 1, 1950. That is the date of the official corporate boundaries. After that date the Bureau will not credit any territory as belonging within the corporate limits unless a mistake has been made in the charts or maps. The final report of the official 1950 census was made on the 27th of June, 1951.

Chapter 323 of the 1951 Session Laws expressly states that the allocation will be based upon the "last official decennial federal or official state census."

Since no change in the corporate limits will be recognized by the Federal Census Bureau after April 1, 1950, the census report of June 27, 1951 must be taken as the last official federal census. If the City of Jamestown were allowed to include the 1,380 persons at the State Hospital as a part of their population it would, in effect, be allowing them an allocation on other than the last official census and would be going outside the clear meaning of the law as stated in Chapter 323 of the 1951 Session Laws.

Therefore, it is the opinion of this office that the distribution of revenue derived from this tax must be made on the basis of the figures in the census report of June 27, 1951, and only in those cases where it can be shown that a mistake was made by the Census Bureau may a different figure be used.

ELMO T. CHRISTIANSON

Attorney General