

**OPINION**  
**52-63**

January 28, 1952           (OPINION)

FEDERAL CENSUS

RE: Effect on Municipal Corporations

In your letter of the twenty-fifth inst. you state that the federal census of 1950 gives the population of Elgin as nearly 900; that when the village of Elgin was changed to a city, the districts into which the village had been divided were retained as wards as the population was less than 600; that you have continued electing one alderman from each such ward; that at the city election of 1950 the aldermen for the second and the fourth wards were each elected for a two year term.

You ask our opinion as to the proper procedure to adjust the city council to the new population figures. It is our opinion that the council should reorganize the city council to comply with the provisions of law governing cities of over 600 population and of less than 2000 population.

Section 40-0803(2) provides that the number of aldermen in cities of more than 600 inhabitants and not more than 2000 shall be six. And section 40-0804 provides that in all cities operating under the council form of government "the aldermen shall be elected by wards, and two aldermen shall be elected from each ward."

Section 40-0502(12) gives the council the power to redistrict the city into wards and to prescribe the boundaries thereof.

Section 40-0503 applies only when it becomes necessary to adjust the boundaries of wards to equalize the population therein. In such redistricting the council may not change the number of wards. This does not mean that, when a change in number of wards is required by an increase of population as provided by sections 40-0803 and 40-0804, the council may not redistrict the city to comply with these sections. It is true that section 40-0803 does not require the council to make a change in the number of aldermen and wards, unless petitioned, etc. This merely means that if the council, of its own motion, does not make the adjustment required to correspond with the increase of population, the electors, by petition, can compel the adjustment.

If your city council is not composed of the number of aldermen required by section 40-0803, the validity of any action by the council might be questioned.

It is, therefore, our opinion that your present council should proceed to redistrict the city into three (3) wards and provide for the election of two (2) aldermen in each of such wards at your coming city election. In each ward the two aldermen elected should, at the first meeting of the council after such election cast lots to determine which shall have the long term. Since you have two

councilmen now who were elected for four year terms, this procedure would not be necessary, as the new alderman from the wards which these men represent would necessarily be elected for the four year term. In your redistricting we think you should draw the new boundary lines so that each of these four-year men should be in separate new wards.

Chapter 40-52, in our opinion, does not apply to your present situation, but only applies when a change of ward boundaries is petitioned for. Your present situation is one required by the increase in population.

ELMO T. CHRISTIANSON

Attorney General