

OPINION
53-21

August 31, 1953 (OPINION)

COUNTIES

RE: Population When Determined

This office is in receipt of your communication of August 26, 1953, inquiring as to the effect of Chapter 109 of the 1951 Session Laws providing for the salaries of public officials. You ask specifically for an opinion as follows:

"Will you please give me your written opinion as to when the 1950 census became official so that the county auditor was charged with notice of the change in population."

It is the opinion of this office that your county is governed as to the increase in salary when you receive official notice from the Federal Bureau of Census as to what the population of your county is. To hold that you would have to take note of the population outside of your official notice would mean that the changes provided in said law would differ in the various counties. You have no specific and definite notice as to what the population of your county was until you received such official notice. Any other information would be hearsay.

You will note that chapter 109 of the 1951 Session Laws specifically provides that the salaries provided therein should be an increase and not a decrease. It is true that the said chapter provides that the increase in salary shall be retroactive to January 1, 1951. If the Legislature had in mind that there should be a refund in counties where the population had decreased, they could very readily have so said but this they failed to do. I direct your attention to the closing sentences of said chapter where it is specifically stated:

"This section shall not be construed to constitute either an amendment or a repeal of any of the provisions of section 11-1010 of the N.D.R.C. of 1943, or section 27-0808 of the 1949 Supplement to the N.D.R.C. of 1943, but shall be construed as authorizing additional compensation to the schedule of salaries provided by said sections during the calendar years 1951, 1952 and 1953, and those years only. The provisions of this section authorizing increase in salaries as herein provided shall be retroactive to January 1, 1951, and shall be based upon the population figures established by the last federal census."

It is therefore the opinion of this office that no refund is required from any of the county officials as the law does not provide for a retroactive provision dealing with overpayments but merely provides for an increase.

ELMO T. CHRISTIANSON

Attorney General