

OPINION
60-53

October 13, 1960 (OPINION)

COUNTIES

RE: County Officers - Official Census - Salaries

This is in reply to your letter in which you state that recently there appeared in the newspapers figures released by the Census Bureau stating the population of the various counties as the result of the census taken earlier this year. You then ask whether the figures so reported in the newspapers can be considered an official report for the purpose of determining whether the salaries of the county officials may be lowered or raised as the case may be.

The statute in question is section 11-1010, subsection 1, of the 1957 Supplement to the North Dakota Revised Code of 1943, and is as follows:

SALARIES OF COUNTY OFFICERS.

1. The salary of the county auditor, county treasurer, sheriff, county superintendent of schools, register of deeds, county judge, state's attorney, and clerk of district court shall be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census shall have been published by the director of the census or such other official as may be charged with the duty of making such official publication;" (Emphasis supplied)

The North Dakota Supreme Court in State, Nedreloe v. Kennard, 38 N.D. 612, had a similar provision of law under consideration. The language in the section under consideration was somewhat different and provided as follows:

. . . that the salary of the sheriff shall be regulated by the population in his county according to the last preceding official state or Federal census."

The court on the basis of the statutory provision concluded and held that the section referred to contemplates an annual salary and that the increase will not begin until the beginning of the new year. In other words, the increase will not begin until the beginning of the new year. In other words, the increase in salary commences at the beginning of the year after that in which the census is reported.

It is significant, however, to note the difference of the statutory provisions involved. The one under consideration by the Supreme Court above provided that the salary shall be

regulated according to the last preceding state or federal census. The statute under consideration now provides that the salary shall be regulated according to the last preceding census from and after the date when the official report of such census shall have been published.

The distinguishing factor between the case under consideration by the Supreme Court and the statute presently involved is that the present statute provides that the salary becomes effective from and after the date which indicates that the change becomes effective at the date of the official publication, whereas the former statute merely provided that the salary shall be regulated according to the last official census.

The next problem or question is, what constitutes an official publication? In the absence of any specific definition we would have to deem an official publication one which is made to comply with a duty or obligation, or one which is made as a result of a duty imposed by law upon an official to make such report.

Under title 13 of the United States Code, section 141(a), the Secretary of Commerce is required to take the population census. He is the person charged with the duty of taking the census and making a report thereon. Under section 141(b), it also specifies that the census must be completed and a report made thereon by the Secretary of Commerce to the President of the United States within eight months. This means that the report must be filed with the President of the United States on or before December 1, 1960.

The statute that we have under consideration has also the provision "or such other official as may be charged with the duty of making such official publication." The Census Director to whom the Secretary of Commerce has delegated the duty of taking the census and making the report would constitute such other official. In reviewing the laws pertaining to the taking of the census we are unable to find where the Census Director is required to make any other official publication or report except the one to be made to the President of the United States. It would, therefore, be the report which is submitted to the President which would constitute an official report or an official publication.

It is recognized that the statute we have under consideration is rather comprehensive as far as it goes, but it does not provide what constitutes an official publication, nor does it charge any state office or officer, or for the matter any officer, with the duty of publishing the results of the census taken. It could well be that the statute had in mind the situation where the state took the census rather than the federal government.

We recognize that newspaper reports are very informative and for the most part reliable, nevertheless, we cannot deem such news items as official reports.

It is, therefore, our opinion that the report filed by the Secretary of Commerce, or the Census Director under the direction of the Secretary of Commerce, with the President of the United States would constitute an official publication. In so much that neither the Secretary of Commerce nor the President of the United States is required to transmit to the State of North Dakota the results of the census, or is required to advise the State of

North Dakota when such report has been filed and received, we must take the date of December 1, 1960 as the date on which the report is received.

It is our further opinion that the census population would be deemed officially published on December 1, 1960.

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