

**OPINION
70-112**

November 5, 1970(OPINION)

Mr. Leo J. Beauclair
State's Attorney
Barnes County

RE: Counties - Officials - Salaries

This is in response to your letter in which you state the following:

"Several weeks ago, I believe that your office issued an opinion relative to the salaries of county officials as the same will be affected by the Federal Census for 1970. I believe that the opinion states that the officials elected to office in 1970 will not have a salary decrease until another election is held. Is this correct?

"In Barnes County we will have a Court of Increased Jurisdiction as of January 1, 1971. Will the salary for this office be based on the old census?

"Your opinion on the foregoing will be greatly appreciated."

The opinion to which you refer apparently was the one addressed to Charles E. Crane dated May 29, 1970. This opinion did not address itself to the question of salaries, but dealt primarily with the question when the offices of county judge, register of deeds and clerk of court would be combined. In that opinion we concluded that the official population existing at the time of election controlled rather than the unofficial population figures issued by the census taker from time to time.

As to the salary of county officials, Section 11-10-10 as amended, sets forth the controlling factors. The opening paragraph of said section provides as follows:

"11-10-10. 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;

* * *

As to the salary of the county court of increased jurisdiction, Section 27-08-08 as amended, contains the pertinent elements and factors to be taken into consideration.

Both sections base the salary in part upon the population of the county.

Section 1-01-47 defines population as follows:

"The term 'population' shall mean the number of inhabitants as determined by the last preceding state or federal census."

Section 11-10-10 provides that the salary for certain officials shall be based upon the census "from and after the date when the official report of such census shall have been published by the director of census of such other official as may be charged with the duty of making such official publication;"

The State of North Dakota has not caused any census to be taken; consequently, the only official census we may consider is the one conducted by the federal government.

The federal act does not specifically state when an official announcement is to be made as to the results of the census taken.

The federal act, 13 USCA 141 among other things provides that the census are to be taken as of the first day of April and are to be completed within eight months and reported by the secretary to the president of the United States. By computing eight months from April 1, we arrive at December 1, the date when such report is required to be made by law. In the absence of any other provision of law, we must take December 1 as the date on which the census shall become official. We take this date as being official even though the purpose of reporting the census is for apportionment of representatives, because this is the only official duty imposed upon the secretary for reporting the results of the census.

In arriving at this conclusion, we are aware that numerous news media provide for public consumption, numerous preliminary reports, or other reports, which for all practical purposes remain unchanged. However, until the final date for making such report arrives, it is possible that the preliminary reports or figures released by the secretary might be changed.

It is therefore our opinion that the report filed on December 1 is controlling, and the population existing as of such date will determine the salaries of the various county officials including that of a county court of increased jurisdiction. If the population figures are such that the county court of Barnes County will be affected by same, the salary change will take effect on December 1, 1970. However, because the county court will be a court with increased jurisdiction as of January 1, 1971, the official population report as of December 1, 1970, will be used to determine the salary of the county court of increased jurisdiction as of January 1, 1971.

HELGI JOHANNESON
Attorney General