



**WILLIAM J. SCOTT**  
**ATTORNEY GENERAL**  
**STATE OF ILLINOIS**  
**SPRINGFIELD**

June 23, 1971

FILE NO. S-311

**COUNTY OFFICERS:**  
Supervisor of Assessments.

Honorable Robert J. Bier  
State's Attorney  
Adams County  
County Building  
Quincy, Illinois 62301

Dear Mr. Bier:

I have your recent letter wherein you state:

"Chapter 120, Section 484 b, Illinois Revised Statutes, 1965, states that the salary for the Supervisor of Assessments is no less than \$9000 for counties with a population of no less than 48,000 and no more than 70,000. Further, that if the population is no less than 70,000 and no more than 100,000 the minimum is \$10,000.

"The Supervisor of Assessments in Adams County was appointed on May 3, 1959.

"The official census of 1960 indicated that Adams County had a population of more than 48,000 but less than 70,000. The 1970 census

indicated that the population of Adams County exceeded 70,000. Is the Supervisor of Assessments' salary dependent upon the official census of the United States government? If so, does the Supervisor of Assessments' salary increase to \$10,000 as of the date of the official U.S. census certification of accuracy, approximately March, 1971, or does the Supervisor of Assessments' salary increase to \$10,000 as of April 1, 1970, the date the census was actually taken?"

The office of Supervisor of Assessments is created by Illinois Revised Statutes 1969, chapter 120, paragraphs 483 and 484a. Those paragraphs provide that the Supervisor of Assessments shall be appointed by the County Board for a term of 4 years from the date of appointment. The office of Supervisor of Assessments is an office created by statute, and the Supervisor of Assessments serves for a fixed term rather than at the pleasure of the person or body appointing him. And since a county is a municipal corporation, his office falls within the scope of Illinois Constitution (1870), Article IX, Section 11, which provides that:

"The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be decreased or diminished during such term."

See Wolfe v. Hope, 219 Ill. 50, 60 N.E. 1082 (1904); Morgan v. DuPage County, 371 Ill. 53, 20 N.E. 2d 40 (1939); County of Cook v. Sennott, 136 Ill. 314, 26 N.E. 491 (1891); People v. Cook Co. Comrs., 260 Ill. 345, 103 N.E. 282 (1913) affirming 177 Ill. App. 58; People v. Williams, 232 Ill. 519, 83 N.E. 1047 (1908).

Therefore, the rate of compensation for the Supervisor of Assessments in Adams County who was appointed on May 3, 1969 will be determined by the statutory provisions in effect at that time. Those provisions are contained in Illinois Revised Statutes 1969, chapter 120, paragraph 484b which reads in pertinent part as follows:

"Any person appointed pursuant to Section 3a [paragraph 484a] shall hold no other lucrative public office or public employment and shall receive annual compensation in an amount fixed by the County Board but shall be not less than the following:

. . .  
In counties of 48,000 or more but less than 70,000 population, \$9,000; in counties of 70,000 or more but less than 100,000 population, \$10,000;  
. . . . Such annual compensation in any county shall not be more than \$3,000 in excess of the minimum amount herein provided."

It was held in Brissenden v. Howlett, 30 Ill. 2d 247, 195 N.E. 2d 625 (1964) that a county officer's salary may be increased or decreased during his term without violating Section 11

of Article IX of the Illinois Constitution of 1870 if such salary is dependent upon the population of the county. The Illinois Supreme Court stated at page 250 that:

"It would follow that the spirit and purpose of the constitutional prohibition would not be violated by an Act establishing a fixed scale of pay to be determined during the term of office according to such an extraneous fact as the Federal census. As a practical matter this has long been the practice in this State and many elected public officials have long received an additional rate of pay during their term by reason of increased population. This practice was approved by an exhaustive opinion of the Attorney General of Illinois in 1941. Attorney General's Opinions, 1941, No. 75, page 146."

The Court further stated at page 251 that:

"The constitutional prohibition is directed not against a change in income but against a change in the law determining such income during the term of office."

Therefore, it is clear that the salary change which you have inquired about does not involve a constitutional violation.

Two questions remain to be answered. First is the matter of how population is determined. Second is the matter of when a change in population effects a change in salary. The first question is answered by Illinois Revised Statutes 1969, chapter 120, paragraph 483, when it states:

"In counties under township organization having less than 150,000 inhabitants, and in counties under township organization in which by the last preceding Federal census the population had reached or exceeded 150,000 but less than 500,000 and in which no Board of Assessors has heretofore been elected as provided in Section 4 of this Act [Ch. 120, par. 485], or authorized by referendum as provided in Section 10a [Ch. 120, Sec. 491a, repealed], there shall be a county supervisor of assessments appointed as provided in Section 3a [Ch. 120, par. 484a]." (Emphasis added.)

This paragraph is the first of the series of paragraphs 483 through 488 dealing with the subject of assessors. Wherever the word "population" is defined in these paragraphs, it is defined as the population as determined by the last Federal census. Therefore, absent any indication of contrary intent, it should be presumed that the meaning of the word "population" in paragraph 484b which sets the salary for the Supervisor of Assessments, will be the same as the explicit definition of the word "population" in paragraph 483 which creates the office of Supervisor of Assessments; i.e., in this case, "population" means the population as determined by the last Federal census.

State courts have split on the question of whether the Federal census is effective as of the date taken, (April 1, 1970) or as of the date officially released and published. The Supreme Court of Illinois has never passed upon the question as to the effective date of the Federal census.

Cases holding that the date of the official publication of the census figures is the effective date are: Commonwealth v. Walter, 274 Pa. 553, 118 Atl. 510 (1922), involving salary changes, but holding that the Pennsylvania Constitution prohibited a salary change in this case; Wolfe v. City of Moorhead, 98 Minn. 113, 107 N.W. 728 (1906), involving the determination of applicable voting hours; Broyles v. Mahaska County, 213 Iowa, 345, 239 N.W. 1 (1931), concerning salary changes where the applicable statute involved publication of a State census under the Secretary of State's certificate; Lewis v. Lackawanna County, 200 Pa. 590, 50 Alt. 162 (1901), involving salary changes; Ford v. Owens, 160 S.C. 168, 158 S.E. 147 (1931), involving the classification of cities and the determination of salaries where the State statute based classification upon the "last preceding published United States Census."

Cases holding that April 1 of the year in which the census is taken is the effective date are: City of Twin Falls v. Koehler, 63 Idaho 562, 123 Pac. 2d 715 (1942), involving salary changes; Underwood v. Hickman, 162 Tenn. 689, 39 S.W. 2d 1034 (1931), involving salary changes; Puterbaugh v. Wadham, 162 Cal. 611, 123 Pac. 804 (1912), involving salary changes; People v. Wong Wang, 92 Cal. 277, 28 Pac. 270 (1891), involving

the jurisdiction of police courts over certain offenses; Ervin v. State, 119 Texas, Cr. R. 204, 44 S.W. 2d 380 (1931), involving jury selection; Holcomb v. Spikes, 232 S.W. 891 (Tex. Civ. App. 1921), involving the determination of the number of grand jurors; State v. Braskamp, 87 Iowa 588, 54 N.W. 532 (1893), involving election of tax collectors; Board of Commrs. of Coal County v. Mathews, 147 Okla. 296, 296 Pac. 481 (1931), involving salary changes.

Previous Illinois Attorney General's opinions have consistently taken the position that the effective date of the Federal census is the date upon which the official publication of the census figures are published by the Federal Census Bureau. See Illinois Attorney General's Opinions 1941, No. 78, page 155; Id. 1950, No. 154, page 165; Id. 1951, No. 245, page 160; Id. 1963, No. F-843, page 72.

In Illinois Attorney General's Opinions 1941, No. 78, at pages 155-156 it is stated that:

"While the matter is not entirely free from doubt, it is my view that, under circumstances such as are involved in the question here considered, the date of publication must govern. Otherwise the officer charged with making monthly salary payments based on population figures would be unable to ascertain the correct amount of such payments at the time they were due during the period from April 1 until the official publication of the census figures. The law certainly does not

contemplate that such uncertainty should exist or that all payments should be withheld until the census figures are released. Nor does it appear logical that when payments are made under the previous census figures the matter should be adjusted from April 1 until the date of publication of the new census. If such were the case the officer would be obliged to collect amounts overpaid to those whose salaries might have been decreased. I do not believe the legislature ever intended that such confusion exist.

It is, therefore, my opinion that the previous census figures must be used as the basis for determining the salary rates until the later census figures are officially released and published."

I concur in this reasoning and conclusion.

Therefore, it is my opinion that the Supervisor of Assessments should be paid according to the salary schedule set out in Illinois Revised Statutes 1969, chapter 120, paragraph 464b, and that the minimum salary there required shall be appropriately and automatically changed upon an official publication by the Federal Census Bureau of the 1970 Federal census figures for Adams County. This automatic change does not violate the provisions of the Illinois Constitution of 1870, Article IX, Section 11.

Very truly yours,

A T T O R N E Y   G E N E R A L