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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 91-014

COUNTIES:

Change in Compensation of
Offices Upon Decrease in
County Population

Honorable Greg McClintock
Warren County State's Attorney
Warren County Courthouse
Monmouth, Illinois 61462

Dear Mr. McClintock:

I have your letter wherein you inquire whether the salary of the sheriff and the salary of the State's Attorney will be subject to change if the 1990 Federal decennial census figures, as expected, show that the population of Warren County has fallen from over 20,000 to slightly under 20,000 inhabitants since the last census in 1980. For the reasons hereinafter stated, it is my opinion that the salary of the sheriff

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will not be affected by a decline in population. The State's Attorney's salary, however, will be subject to reduction.

Initially, I believe that it is necessary to address the question of when Federal decennial census figures are to be deemed effective, for purposes of State statutes fixing compensation based upon population. I note that the Illinois Supreme Court has never addressed this issue. Courts of other States have split on the question of whether the decennial census is effective as of the date it was taken (in this case April 1, 1990), or as of the date it is officially released and published. (See 1971 Ill. Att'y. Gen. Op. 61, and cases cited therein.). Opinions of the Illinois Attorneys General, however, have consistently taken the position that the effective date of the Federal census is the date upon which the figures are officially published by the Federal Census Bureau (see, 1941 Ill. Att'y. Gen. Op. 78; 1950 Ill. Att'y. Gen. Op. 165; 1951 Ill. Att'y. Gen. Op. 160; 1963 Ill. Att'y. Gen. Op. 72; 1971 Ill. Att'y. Gen. Op. 611), a position in which I concur. Therefore, it is my opinion that the 1990 Federal decennial census will become effective, for purposes of statutes fixing compensation, when the census is officially published, and will not refer back to the date upon which the census was taken.

The sheriff's salary is determined in accordance with section 4-6003 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 4-6003). Subsection 4-6003(a) provides that the

county board shall fix the sheriff's compensation at not less than \$31,000 per annum in counties containing from 10,000 to 20,000 inhabitants, and at not less than \$34,000 per annum in counties containing 20,000 to 30,000 inhabitants. Subsection 4-6003(a) further provides:

" * * *

The population of each county for the purpose of fixing compensation as herein provided, shall be based upon the last Federal census immediately previous to the election of the sheriff in question in such county.

* * * "

Because the salary of the sheriff is required by statute to be determined on the basis of the "last Federal census immediately previous to the election of the sheriff" in November, 1990, and the 1990 Federal decennial census was not effective prior to the election, it is my opinion that the sheriff's salary will not be subject to change if the census figures, as officially published, show a decrease in the population of Warren County below 20,000 inhabitants.

Moreover, I note that subsection 4-6003(b) of the Counties Code, provides that:

" * * *

(b) Those sheriffs beginning a term of office before December 1, 1990 shall be compensated at the rate of their base salary. 'Base Salary' is the compensation paid for each of those offices, respectively, before July 1, 1989.

(Emphasis added.)

* * * "

Further, subsection 4-6003(c) of the Counties Code, which, together with subsection 4-6003(b), was added by Public Act 86-482, effective December 1, 1990, provides that those sheriffs beginning a term of office on or after December 1, 1990, are to be compensated at a rate equalling the statutory base salary plus a specified percentage of base salary in each of the ensuing four years. Thus, subsections 4-6003(c) and (d) would appear to prohibit the reduction of the sheriff's salary below the base salary, as defined therein, in any event.

The State's Attorney's salary is set under section 4-2001 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 4-2001), which establishes compensation levels based upon the population of the county which the State's Attorney represents. While subsection 4-2001(d) provides that State reimbursement for assistant State's Attorneys will be based upon the last Federal census immediately previous to the appointment of an assistant State's Attorney, there is no similar provision applicable to State's Attorneys generally. Further, the constitution provides only that the salary of a State's Attorney shall be as provided by law. (Ill. Const. 1970, art. 6, sec. 19; see, Ingemunson v. Hedges (1990), 133 Ill. 2d 364.)

In opinion No. S-311, issued June 23, 1971, Attorney General Scott indicated that where a statute provides for a

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salary based upon population, and the statute does not specify a time at which the population is to be determined, for purposes of setting those salaries, the salaries will automatically be adjusted upon the official publication of census figures by the Census Bureau which show a change above or below the statutory population limits upon which the salary is based.

Therefore, it is my opinion that when the 1990 census is officially published by the Federal Census Bureau, the State's Attorney's salary will change to reflect the most recent population data for the county. Moreover, since State's Attorneys are not subject to a constitutional prohibition against the increase or decrease of their salary during their term of office (see *Ingemunson v. Hedges* (1990), 133 Ill. 2d 364), there is no constitutional impediment to such a construction of section 4-2001 of the Counties Code.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL