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August 4, 2000

Opinion No. 00-123

General sessions judges' compensation — 2000 federal census

QUESTIONS

1. If, as a result of the 2000 census, a county moves into a higher or lower population class for purposes of calculating a general sessions judge' s compensation, how should the compensation be calculated?

2. If a county moves from a lower population class into class 1, how should the general sessions judge's compensation be calculated? Specifically, if Cumberland County has a population over 49,000 according to the 2000 census, what would be the salary of its general sessions judge?

3. When would any increase (or decrease) in compensation resulting from the 2000 census take effect?

OPINIONS

1. Under Tenn. Code Ann. § 16-15-5001(d)(2), if a county moves into a higher classification as a result of the 2000 census, the compensation of a general sessions judge for that county should be determined based upon the higher classification for the remainder of the term for which the judge was elected. If, however, a county moves into a lower classification as a result of the 2000 census, the compensation of a general sessions judge for that county should be determined based upon the county's previous classification for the remainder of the term for which the judge was elected.

2. If Cumberland County is reclassified as a class 1 county as a result of the 2000 census, and if the compensation to be paid a general sessions judge in a class 1 county is less than the compensation received by the general sessions judge in Cumberland County as a class 3 county, then the judge's compensation should continue to be determined based upon the county's previous classification as a class 3 county.

3. Any increase in compensation due to reclassification based upon the results of the 2000 census would take effect as of the effective date of the census, or April 1, 2000. It should be noted, however, that while such increase would have taken effect as of April 1, 2000, no county would have the authority to actually pay such increase in salary until the results of the 2000 census are certified. Thus, any pay increases would need to be retroactive to April 1, 2000.

ANALYSIS

Tenn. Code Ann. §§ 16-15-5001, *et seq*., set forth a comprehensive plan for determining the compensation of general sessions judges. Under this plan, the counties of this State are divided into eight classes according to their populations as determined by the 1990 federal census, any subsequent federal census, or any special census conducted by the Department of Economic and Community Development. Tenn. Code Ann. § 16-15-5001(a) & (b). Tenn. Code Ann. § 16-15-5003(a) sets forth the base salaries for general sessions judges according to their county's class, effective as of September 1, 1990. Subsections (b), (c), and (d) provide that general sessions judges in classes 2 through 7, who have or by operation of law obtain additional jurisdictions (*e.g.*, juvenile, probate, domestic relations, workers' compensation, and mental health commitments), shall receive annual supplements in addition to their base salaries set forth in subsection (a). Additionally, pursuant to subsection (f), the ***base salaries*** were subject to certain annual adjustments to reflect changes in the consumer price index.

In 1997, the General Assembly amended Tenn. Code Ann. §16-15-5003 to add subsection (i), which provides:

(1) Effective September 1, 1998, the annual salary for a general sessions court judge shall be increased over the annual compensation and supplements and annual adjustments which each judge actually received as of August 31, 1998, by the lessor of:

(A) Ten thousand dollars ($10,000); or

(B) Twenty percent (20%) of such annual compensation and supplements and annual adjustments as of August 31, 1998.

Subsection (i) further provided that instead of the annual adjustments authorized in subsection (f), beginning July 1, 1999, and each succeeding July 1, the base salaries as adjusted annually and supplements as adjusted annually shall be adjusted in accordance with the provisions of Tenn. Code Ann. § 8-23-103.

Finally, Tenn. Code Ann. § 16-15-5003 provides that these compensation, supplement and annual adjustment provisions are to be construed as minimum levels, and there is nothing in the statute that shall be construed as prohibiting a county, by private act, from compensating its general sessions judge or judges at levels in excess of what is required; however, no general sessions judge shall be paid a salary that is greater than the salary paid to a judge of a circuit court. Tenn. Code Ann. § 16-15-5003(g), (i)(4)(C) & (j).

Your first question asks how the compensation of a general sessions judge should be calculated if a county moves into a higher or lower population class following the 2000 federal

census, given that the current term for general sessions judges began September 1, 1998. The General Assembly addressed this issue in subsection (d) of Tenn. Code Ann. § 16-15-5001:

(1) If a county is in one (1) class as provided in this section on September 1 of the year in which a judge is elected to office, and after such date such county moves into a lower class on the basis of a subsequent federal census, the salary of such judge shall not be diminished during the time for which such judge was elected.

(2) If a county is in one class as provided in this section on September 1, of the year in which a judge is elected to office and after such date, such county moves into another class on the basis of a subsequent census, the salary of such judge shall be determined by the higher classification for the remainder of the term for which the judge was elected.

Pursuant to this provision, therefore, it would appear that if a county moved into a higher classification as a result of the 2000 census, then the compensation of a general sessions judge in that county should be determined by the higher classification for the remainder of the term for which the judge was elected. But, if a county moved into a lower classification as a result of the 2000 census, the compensation of a general sessions judge in that county should be determined based upon the previous classification.

But Article VI, Section 7 of the Tennessee Constitution provides:

The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office nor hold any other office of trust or profit under this State or the United States.

At first glance, it would appear that the provisions of Tenn. Code Ann. § 16-15-5001(d) are in conflict with Article VI, Section 7, and that this constitutional provision would mandate that the compensation of a general sessions judge be determined based upon a county's classification prior to the results of the 2000 census for the remainder of the time for which the judge is elected.

The Tennessee Supreme Court addressed a similar conflict between Article VI, Section 7 and the provisions of a 1974 act providing for annual salary adjustments based upon increases in the consumer price index in *Overton County v. State ex rel. Hale*, 588 S.W.2d 282 (Tenn. 1979). In that case, the Supreme Court noted:

It is universally recognized that the rationale undergirding such constitutional provisions is the maintenance of judicial independence from legislative action to punish or reward judges for decisions that produce a favorable or unfavorable reaction. The key words of the Tennessee constitutional provision are "during the time" which obviously means legislative action taken within the time period of a judicial term of eight years, to increase or diminish compensation.

Id. at 288. The Court further noted that the theory behind hinging an annual change in salary to the consumer price index is that the index accurately measures the change in the purchasing price of the

dollar, with the result that by "indexing" judicial salaries, the "compensation" remains constant. The Court then found that because the "Legislature has no power over the amount of the index change and thus no power over the will of judges," the annual salary adjustment provided for in the statute did not violate Article VI, Section 7 of the Tennessee Constitution.

We think that a court would make a similar finding with respect to a change in the classification of a county as a result of a federal census. Clearly, the Legislature has no power over the amount of change in the population of a county and thus no power over the will of judges. Further, in this instance, the General Assembly enacted subsection (d) of § 16-15-5001 before the eight-year judicial term that commenced September 1, 1998. *See* 1997 Tenn. Pub. Acts ch. 555, § 1. Accordingly, we think that a court would find that the provisions of Tenn. Code Ann. § 16-15-5001(d) do not violate Article VI, Section 7 of the Tennessee Constitution. *See* Op. Tenn. Atty. Gen. 81-357 (June 5, 1981). As such, it is our opinion that if a county moves into a higher classification as a result of the 2000 federal census, the compensation of a general sessions judge in that county should be determined based upon the higher classification for the remainder of the term for which the judge was elected, pursuant to Tenn. Code Ann. § 16-15-5001(d)(2). If, however, a county moves into a lower classification as a result of the 2000 census, the compensation of a general sessions judge in that county should be determined based upon the county's previous classification for the remainder of the term for which the judge was elected, as Tenn. Code Ann. § 16-15-5001(d)(1) prohibits the diminishing of a general sessions judge's salary due to a change in classification as a result of a federal census.

Your second question deals specifically with the compensation of the general sessions judge in Cumberland County. The opinion request states that Cumberland County is currently a class 3 county and that the general sessions judge has juvenile, probate and domestic relations jurisdiction. Thus, he is entitled to the maximum amount in supplements allowed under Tenn. Code Ann. § 16-15-5003, in addition to his base salary. The opinion request also states that Cumberland County is expected to have a population over forty-nine thousand (49,000) as a result of the 2000 federal census, which would reclassify Cumberland County as a class 1 county. Because general sessions judges in class 1 counties are not allowed any supplements for having additional jurisdiction, you have raised the concern that the compensation of a class 1 general sessions judge may actually be lower than the compensation that would be received by the general sessions judge for Cumberland County as a Class 3 county.

By enacting subsection (d) of Tenn. Code Ann. § 16-15-5001, the General Assembly expressed a legislative intent that a general sessions judge's compensation should not be diminished by operation of a subsequent federal census. Accordingly, by reading the statute as a whole, we think a court would conclude that if Cumberland County is reclassified as a class 1 county as a result of the 2000 federal census, and if the compensation to be paid general sessions judges in class 1 counties is less than the compensation received by the general sessions judge in Cumberland County as a class 3 county, then the compensation of such judge shall continue to be determined based upon the county's previous classification as a class 3 county.

Your final question asks when any change in compensation resulting from the 2000 census takes effect. Again, the Tennessee Supreme Court has specifically addressed this question in

Underwood v. Hickman, 162 Tenn. 689, 39 S.W.2d 1034 (1930). That case involved the salaries of county officers that were determined according to classifications based on population, with such population to be determined by the federal census of 1920 and by each succeeding federal census. Prior to the 1930 census, Davidson County was classified as a class 2 county based upon its population. By the time of the 1930 federal census, Davidson County's population had increased such that it qualified as a class 1 county, and the County Court Clerk was entitled to an increase in salary as a result of such classification. The Supreme Court noted that the only issue before it was the date that this increase in salary became effective. *Id*. at 1034. The Court first held that the effective date of the 1930 census, provided for by act of Congress, was the date as of which the enumeration was taken, i.e., April 1st, notwithstanding evidence of the fact was not available until several months after April 1st. *Id*. at 1035. It then held that the Davidson County Court Clerk was entitled to the salary of the new class into which Davidson County moved as of April 1, 1930, because that was the effective date of the 1930 census. *Id*. at 1036. There has been no statute adopted or court decision that would overrule *Underwood*. Op. Tenn. Atty. Gen. 81-327 (May 27, 1981); Tenn. Code Ann. § 1-3-116(b); *see also* 13 U.S.C. § 141(a) ("The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year . . .").

Accordingly, it is our opinion that any increase in compensation due to reclassification based upon the results of the 2000 federal census would take effect as of the effective date of the census, or April 1, 2000. It should be noted, however, that while such increase would have taken effect as of April 1, 2000, no county has the authority to actually pay such increase in salary until the results of the 2000 federal census are certified. Thus, any pay increases would need to be retroactive to April 1, 2000.

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