

Gerald C. Mann  
Attorney General

*Superseded by  
art. 29d. V.C.A.*

Hon. E. C. Moseley  
Civil District Attorney  
Hall of Records  
Dallas, Texas

Opinion No. 0-2337

Re: When does the 1940 Federal census become controlling under our statutes involving population?

Dear Mr. Moseley:

We beg to acknowledge receipt of your letter of May 6, 1940, requesting an opinion from this department upon the above captioned question, which has been propounded to you by the County Auditor of Dallas County, being the third of the group of questions so propounded, as follows:

"We were further requested to give our opinion as to when the 1940 census would become controlling. It was this third question which we desired particularly to refer to the Attorney General. Our tentative opinion on this third question is that it becomes operative and controlling as to the laws applicable as to the particular bracket when the census figures for Dallas County have been compiled and made available to the public; that is, public information, without regard to the fact that the Washington Bureau reserves the right to make such corrections as might become necessary."

The Act of the Congress authorizing and regulating the taking of the decennial censuses prescribes:

"He (the director of the census) is further authorized to have printed by the public printer, in such editions as the director may deem necessary, preliminary and other census bulletins, and final reports of the result of the several investigations authorized by this chapter or by chapters 1 and 3 of this Title and to publish and distribute said bulletins and reports." -- Sec. 213 Title 13 U.S.C.A.

The question propounded by you is ruled by the cases of *Holcomb v. Spikes*, 232 S.W. 891, (App. for writ dis.) and *Ervin v. State*, 44 S.W. (2) 380.

The opinion in *Holcomb-Spikes* declares:

"It would seem when the bulletin is so published and distributed it then becomes an official pronouncement of the law, of which the public and all officials may take notice.  
\* \* \*

"The bulletin does not indicate that it (the enumeration) was incomplete or negligently done, but rather indicates it may be subject to correction. It does not carry the idea that it was incomplete, but that it was complete. We think when the bulletin was given to the public, officials who were required to act with reference thereto may take official notice that the enumeration had been made and was then in the archives of that office subject to the inspection of the public in which the population of Lubbock County had been determined. The fact that it may be corrected does not indicate that the census was not complete and then a public document under the law."

*Ervin v. State* declares:

"There is no specific provision in the Act of Congress June 18, 1929 (13 USCA § 201 et seq.) with reference to the time of final announcement of the census; nor is there any provision as to the time the census shall become effective. Under the terms of the Act of Congress March 6, 1902, § 11 (13 USCA § 4), the Director of the Census is required 'to have printed, published, and distributed, from time to time, bulletins and reports of the preliminary and other results of the various investigations authorized by law.' Substantially to the same effect is section 13, Act of Congress June 18, 1929 (13 USCA § 213), which imposes on the Director the duty to have printed preliminary and other census bulletins and final reports of the results of the several investigations. Section 205, 13 USCA, reads as follows: 'Each supervisor shall perform

such duties as may be imposed upon him by the Director of the Census in the enforcement of this chapter,' etc.

"In *Holcomb et al. v. Spikes*, 232 S.W. 891, 894, the Court of Civil Appeals at Amarillo, Tex., in holding that a preliminary announcement of the census by the Director was an official pronouncement of which the public and all officials may take notice, said: 'It would seem by the act of 1902 duties were imposed upon the Director to publish and distribute bulletins and reports of the preliminary and other results of the various investigations authorized by law. This, in so far as we can ascertain, is the only method to inform the public and of giving it access to the information ascertained and compiled by the enumerators and supervisors. It would seem when bulletin is so published and distributed it then becomes an official pronouncement under the law, of which the public and all officials may take notice. \* \* \* In this case the undisputed facts show the Census Bureau, under the signature of its Director, issued a bulletin showing before the election the population of Lubbock County to be 11,096. This seems to have been official. This information appears to have been given to leading papers of the State. Under the law this information could have been obtained in no other way than through the Director's official act, without violating the law and subjecting the parties to a charge of felony. We think the case of *Nelson v. Edwards*, 55 Tex. 389, indicates, when the enumerators' list is filed, as required by the law, as it then existed, this made it such evidence as that public officials could and should act upon it. There was no other method provided or shown requiring a proclamation placing the census in effect. \* \* \*

"The opinion is expressed that the preliminary announcement of the census of the

city of Abilene was an official pronouncement. This announcement was made prior to the time the jury commissioners selected the panel from which the jury was drawn. The announcement of the population in the preliminary report should have been the guide of officials whose duty it was to act with reference thereto. The effect of the preliminary announcement was to place the county of the prosecution under the provisions of Article 2094, Revised Statutes 1925, as amended. Hence the motion to quash the jury panel should have been sustained."

Your tentative advice to the County Auditor is, in our opinion, a correct pronouncement of the law.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ocie Speer

Ocie Speer, Assistant

OS:MR:wb

APPROVED MAY 18, 1940

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE

BY: R.U.F. Chairman