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ATTORNEY GENERAL OPINION NO. 91- 99

The Honorable Ben Vidricksen
State Senator, Twenty-Fourth District
713 N. 11th Street
Salina, Kansas 67401-1814

Re: Constitution of the State of Kansas--Apportionment
of the Legislature--Reapportionment of Senatorial
and Representative Districts; Census

Synopsis: In reapportioning the senatorial and representative
districts during its regular session in 1992, the
legislature is obligated under section 1 of article
10 of the Kansas constitution to use those
population figures approved and certified by the
census bureau of the United States. Because the
census bureau has rejected those figures contained
in the post enumeration survey, the legislature is
not permitted to adjust federal census figures
based on information provided in the post
enumeration survey. Cited herein: Kan.
Const., art. 10, § 1.

* * *

Dear Senator Vidricksen:

As chairman of the senate committee for legislative, judicial
and congressional apportionment, you request our opinion
regarding whether the state legislature may use adjusted
population figures compiled in the post enumeration survey
(PES) in reapportioning senatorial and representative
districts.

Every ten years, the United States census bureau conducts a count of the population of the United States. In order to fulfill its obligation for 1990, the Kansas bureau conducted a mass mailing which was followed by door-to-door surveys of residences failing to respond to the mass mailing. The figures achieved through this procedure were then compiled into the federal census of 1990.

Following the mass mailing and the door-to-door follow-ups, a PES was conducted in an attempt to determine whether an under-count or over-count of the population may have occurred. The PES was used to make recommendations in adjusting population figures contained in the federal census for 1990. The United States census bureau and the United States secretary of commerce have rejected the recommendations of the PES, deciding instead to use the figures achieved through the mass mailing and the door-to-door follow-ups in compiling the official federal census for 1990.

Section 1 of article 10 of the constitution of the state of Kansas states in part:

"At its regular session in 1992, and at its regular session every tenth year thereafter, the legislature shall by law reapportion the state senatorial districts and representative districts on the basis of the population of the state as established by the most recent census of population taken and published by the United States bureau of the census. Senatorial and representative districts shall be reapportioned upon the basis of the population of the state adjusted: (1) To exclude nonresident military personnel stationed within the state and nonresident students attending colleges and universities within the state; and (2) to include military personnel stationed within the state who are residents of the state and students attending colleges and universities within the state who are residents of the state in the district of their permanent residence." (Emphasis added.)

In ascertaining the meaning of a constitutional provision, the primary duty of the courts is to look to the intention of the

makers and adopters of that provision. Board of Wyandotte County Comm'rs v. Kansas Ave. Properties, 246 Kan. 161, 166 (1990). In interpreting and construing a constitutional amendment, the court must examine the language used and consider it in connection with the general surrounding facts and circumstances that caused the amendment to be submitted. Id. The words of the constitutional amendment should be held to mean what the words imply to the common understanding of men; that in ascertaining the meaning of constitutional provisions, courts should consider what appears to have been the intendment and understanding of the people at their adoption. State ex rel. Frizzell v. Highland Service, Inc., 205 Kan. 821, 825 (1970).

The purpose for the adoption in 1988 of the amendment to section 1 of article 10 of the Kansas constitution was to permit the legislature to reapportion the senatorial and representative districts based on population figures contained in the most recent federal census rather than the state census. The federal census is:

"A census of each state or territory or of a certain state or of any subdivision or portion of any state, provided it is taken by and under the direction and supervision of the Census Bureau of the United States, and approved and certified by it as the census of that state or subdivision."
Deluxe Black's Law Dictionary 610 (1990).
(Emphasis added).

The federal census for 1990 is based on those figures achieved through the mass mailing and the door-to-door follow-ups. The census bureau of the United States has neither approved nor certified the figures of the PES. The federal census as certified by the census bureau of the United States is presumptively correct. Latino Political Action v. City of Boston, 568 F.Supp. 1012, 1018 (D.Mass. 1983). Therefore, in reapportioning the senatorial and representative districts during its regular session in 1992, the legislature is obligated under section 1 of article 10 of the Kansas constitution to use those population figures approved and certified by the census bureau of United States. Because the census bureau rejected those figures contained in the PES, the legislature is not permitted to adjust federal census figures based on information provided in the PES. The only adjustments authorized by section 1 of article 10 of the

Senator Ben Vidricksen

Kansas constitution are those adjustments regarding military personnel and students attending college.

Very truly yours,



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Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

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