



STATE OF KANSAS

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November 21, 1991

ATTORNEY GENERAL OPINION NO. 91- 149

David C. VanParys
County Counselor
Courthouse
4th & Walnut
Leavenworth, Kansas 66048

Re: Census--Population or Census Statistics;
Application--Census or Population Figures; Use in
Application of Statutes; Rearrangement of County
Commissioner Districts

Counties and County Officers--County Commissioners;
Powers and Duties--Rearrangement of Commissioner
Districts; Census or Population Figures

Synopsis: As a general rule, the board of county
commissioners must use the most recent population
figures available from the United States bureau of
the census as certified to the secretary of state
by the division of budget on July 1 when the board
reapportions the county commissioner districts
pursuant to K.S.A. 19-204. Alternatively, the
board may rely on the population figures derived
through an actual census of the county conducted
pursuant to K.S.A. 11-202. The board may not
exclude a portion of the population in fulfilling
its duties and obligations under K.S.A. 19-204.
Cited herein: K.S.A. 11-101 (repealed, 1979);
K.S.A. 1990 Supp. 11-201; K.S.A. 11-202; K.S.A.
1990 Supp. 11-204; 11-205; 11-208; K.S.A. 19-204;
L. 1978, ch. 55, § 2, 5.

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Dear Mr. VanParys:

As counsel to the board of county commissioners for Leavenworth county, you request our opinion regarding whether the board of county commissioners may, in reapportioning the county commissioner districts pursuant to K.S.A. 19-204, adjust the population figures for Leavenworth county so as to exclude the population of Fort Leavenworth, the United States federal penitentiary at Leavenworth, and the Lansing correctional facility.

The board of county commissioners is obligated under K.S.A. 19-204 to reapportion the county commissioner districts every three years. The only standard provided in K.S.A. 19-204 is that the county commissioner districts must be as compact and equal in population as possible. Andrews v. Board of County Commissioners, 207 Kan. 548, 551-52 (1971). Historically, the population figures to be used in redistricting were those figures derived from the last official census of the county, notwithstanding the claim of the county commissioners that there were errors in that census. State, ex rel., v. Reno County Commissioners, 158 Kan. 573, 578 (1944). The last official census of the county was generally held to be that enumeration conducted pursuant to K.S.A. 11-101 et seq. (repealed) by the county assessor of each county. State, ex rel., v. Montgomery County Commissioners, 125 Kan. 379, 381 (1928). In 1978, K.S.A. 11-101 was repealed (effective July 1, 1979), and the statute passed in its stead required that the most recent population figures available from the United States bureau of the census as published by the division of state planning and research be used for all purposes in the application of the statutes of the state. L. 1978, ch. 55, §§ 2, 5. (The board of county commissioners was granted the authority in L. 1978, ch. 55 to conduct an actual census or to contract with the United States bureau of the census to conduct an actual census of the county with the population figures derived therefrom to be used for local purposes. K.S.A. 11-202.)

L. 1978, ch. 55, § 2 has been amended a number of times since its original enactment in 1978. At present, the statute states in part:

"(a) Except as otherwise provided in subsections (b) & (c), the most recent population figures available from the United States bureau of the census as certified to the secretary of state by the

division of the budget on July 1 of each year shall be used for all purposes in the application of the statutes of this state.

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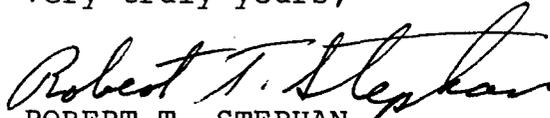
"(c) Population figures established by the enumeration authorized under K.S.A. 1987 Supp. 11-204 to 11-208 and amendments thereto shall be used only as a basis for the reapportionment of any state legislative districts, reapportionment of which is authorized pursuant to section 1 of article 10 of the constitution of the state of Kansas, in the year 1989, and for such other purposes as shall be specifically authorized by K.S.A. 1987 Supp. 11-204 and amendments thereto."
K.S.A. 1990 Supp. 11-201.

K.S.A. 1990 Supp. 11-204 to 11-208 provide the procedure to be followed by the secretary of state in conducting an enumeration of the residents of the state of Kansas as of January 1, 1988. Pursuant to K.S.A. 1990 Supp. 11-205, such enumeration was to include persons at the site of their permanent residence. The population figures achieved through the enumeration conducted by the secretary of state were available for use in reapportioning county commissioner districts provided reapportionment occurred prior to April 1, 1991. K.S.A. 1990 Supp. 11-204(b).

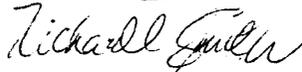
Reapportionment of the county commissioner districts for Leavenworth county will occur after April 1, 1991. As a general rule, the board of county commissioners must use the most recent population figures available from the United States bureau of the census as certified to the secretary of state by the division of budget on July 1 when the board of county commissioners reapportions the county commissioner districts pursuant to K.S.A. 19-204. Alternatively, the board of county commissioners may rely on the population figures derived through an actual census of the county conducted pursuant to K.S.A. 11-202. The board of county commissioners

may not exclude a portion of the population in pursuing its
duties and obligations under K.S.A. 19-204.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm