

**INTOXICATING LIQUORS:**

Permits for the sale of intoxicating liquor by the drink at retail may be issued only in cities containing more than twenty thousand inhabitants according to the last Federal decennial census.

March 16, 1949

FILED

13

H-12  
Mr. Edmund Burke  
Supervisor  
Department of Liquor Control  
State Office Building  
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date for an official opinion of this department reading as follows:

"I have received two applications for retail liquor by the drink licenses in the City of Cape Girardeau.

"As you no doubt have been informed, the United States Department of Commerce, Bureau of Census recently completed a pretest census in the City of Cape Girardeau. A report issued September 1, 1948, by the Bureau of Census showing the results thereof states that, according to this pretest census, the City of Cape Girardeau now has a population of 20,208 persons. Under date of August 30, 1948, I wrote a letter to the Department of Commerce, Bureau of Census, a copy of which I attach hereto. Under date of September 7, 1948, I received a reply to my letter from the Department of Commerce, Bureau of Census, copy of which I attach hereto.

"Section 4890, R. S. Mo. 1939, provides as follows:

"Provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold, in any incorporated city having a population of less than twenty thousand (20,000) inhabitants, until the

sale of such intoxicating liquor, by the drink, at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of said city. Such authority to be determined by an election to be held in said cities having a population of less than twenty thousand (20,000) inhabitants, under the provisions and methods set out in this act. The population of said cities to be determined by the last census of the United States completed before the holding of said election: \* \* \*

(Underscoring ours.)

\* \* \* \* \*

"However, inasmuch as my decision on these applications may result in court action, I deem it advisable to secure your official opinion as to whether or not licenses to sell liquor at retail by the drink in Cape Girardeau may now be issued by me to persons who possess the requisit qualifications prescribed by the Liquor Control Act."

Your inquiry resolves itself into the question of whether or not the "pretest" census conducted by the Bureau of Census may be accepted as the "last census of the United States" as that term is used in Section 4890, R. S. Mo. 1939 quoted in your letter.

In construction of statutes the lode star is the determination of the intent of the General Assembly in enacting the law. This rule has been declared by the Supreme Court in *State ex rel. v. Trimble, et al.* 34 S.W. (2) 1103, wherein, quoting approvingly from *Grier v. Railways Company*, 228 S. W. 454, the court said:

"The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used."

Further, Section 655, R. S. Mo. 1939 provides additional rules for the construction of statutes among which we find the following:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

With these rules in mind, we believe that the phraseology employed in Section 4890, R. S. Mo. 1939 referring to "the last census of the United States" must be given the meaning of "last Federal decennial census of the United States." The regular decennial census is the only one that is ordinarily and commonly referred to by the use of the words "United States census." The so-called "pretest census" is but a creature of administrative procedure. Its prime purpose is to test the technique to be used at the time the official decennial census is made. We do not believe that such a census was within the contemplation of the General Assembly at the time Section 4890, R. S. Mo. 1939 was adopted.

We are further strengthened in this view by reason of Section 654, R. S. Mo. 1939 which reads as follows:

"All representation or other matters heretofore or now based on the state census shall be based on the United States census of this state."

The emphasized portion of the statute evinces an intention on the part of the General Assembly that matters which are to be determined by a population count of the inhabitants of any particular portion of the state are to be determined by the United State official census of the state as a whole.

In other words, it seems clear that by the adoption of this all inclusive statute it has been intended to refer all matters of population to the regular Federal decennial census.

Mr. Edmund Burke

-4-

CONCLUSION

In the premises we are of the opinion that the phrase, "last census of the United States" as used in Section 4890, R. S. Mo. 1939 refers to the regular Federal decennial census.

We are further of the opinion that no permit for the sale of intoxicating liquor by the drink at retail may be issued within a city until the population of such city shall have been determined to be twenty thousand or more according to such last Federal decennial census.

Respectfully submitted,

WILL F. BERRY, JR.  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

WFB:few