

**Justices of the Peace—Salary—Township, Population of,
How Determined—Duty of County Commissioners.**

It is the duty of County Commissioners to determine population of township to ascertain if Justice of Peace is entitled to salary provided for under Chapter 84 of the 1917 Session Laws. If open question Justice of Peace may institute action to have salary claim allowed.

January 15th, 1919.

Mr. Stewart McConochie,
County Attorney,
Lewistown, Montana.

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Dear Sir:

Replying to your letter of January 9th, relative to the method of ascertaining the population of a township for the purpose of fixing the salary of Justices of the Peace under Chapter 84 of the 1917 Session Laws, I have to advise as follows:

The act in question is silent as to how the population of a township shall be determined, and I find no general statute of this state applicable to this law. Such being the case, I conclude that the correct rule is one heretofore announced by this office. Namely, that the only method of determining the inhabitants residing within a certain area is by actual count. (See Opinions of Attorney General, Vol. 6, page 179.) It is, in my opinion, the duty of the county commissioners to ascertain whether or not the population of any township within their county is sufficient to entitle a justice of the Peace to the salary provided by the Act. This fact may be ascertained by the commissioners in any way they see fit and I am satisfied that under subdivision 25 of Section 2894 of the Codes, the commissioners have authority to hire some person to take a census of a township in a case where it cannot reasonably be ascertained in any other way what the population of such township is.

It is not, in my opinion, *mandatory* upon the commissioners to hire such a censor, but the board should not by its mere refusal to perform its duty, namely, that of ascertaining the population, be permitted to nullify the act. In case the board should refuse to take any steps to ascertain the population of a township (in a case where it was open to question whether such population equaled ten thousand), a Justice of the Peace, claiming himself entitled to the salary provided in the act, might probably institute action to compel the allowance of his claim by the board. The question of the population of the township would then be a question of fact to be proved by any competent evidence in the same way as any other question of fact.

Respectfully,

S. C. FORD,

Attorney General.