

CARPENTER v. BOARD OF APPORTIONMENT.

4-9505

236 S. W. 2d 582

Opinion delivered February 19, 1951.

CONSTITUTIONAL LAW—BOARD OF APPORTIONMENT—TIME WITHIN WHICH IT MUST ACT.—Amendment No. 23 to the constitution requires the board of apportionment (after 1937) to meet not later than February 1st following each federal census. *Held*, that the amendment contemplated that the board should use as a basis of apportionment the official figures enumerated by counties, and where such information is not procurable, and the board is not at fault in that respect, mandamus will not lie to compel it to make a temporary apportionment based on unofficial figures, subject to readjustments when the primary information is received.

Original proceeding in Supreme Court; writ denied.

*Robert E. Diles* and *Clayton Freeman*, for petitioner.

*Ike Murry*, Attorney General, and *Cleveland Holland*, Assistant Attorney General, for respondent.

PER CURIAM.

Respondents are the Board of Apportionment created by Amendment No. 23 to the Constitution, Sec. 1. The question is whether, under Sec. 4 of the Amendment, a reapportionment should have been made on or before February 1. Section 5 authorizes mandamus where the Board has failed to perform its duties. The response was to a petition by Carpenter in which it was alleged that the Federal census had been completed and that the Board had failed to act.

In extenuation the Board says that when it met January 26th, 1951, official census figures by counties were not available. Attached to the response is a telegram from Roy V. Peel, Director of the Census, who says that the official statistics should be available early in March, that the preliminary figures are at hand, and that ordinarily the difference between preliminary and final counts is slight.

With this information at hand the Board adjourned until it could obtain the official figures. In oral presentation counsel for the petitioner said that he did not ques-

tion accuracy of the Director's telegram, but did insist that the Board proceed on the basis of unofficial enumeration, subject to final verification, correction to be made if changes should be required by the final count.

There is no constitutional warrant for this procedure. No doubt those who wrote Amendment 23 and the people in adopting it thought that final census figures would be available not later than February 1. But it will not be presumed that the intention was to require the Board to act when the official data upon which its apportionment rested could not be procured. The Amendment makes no provision for a temporary setup and none seems to have been impliedly contemplated. The principle thought by the respondents to be applicable was discussed in *Childers v. Duvall*, 69 Ark. 336, 63 S. W. 802. It was there held that until the Director, by bulletin or otherwise, published results of the census, no official notice could be taken of a county's population.

The petition for mandamus is dismissed, but without prejudice.

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