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DJ 166-012-3  
X7706; 7758-7759

OCT 4 1976

Mr. Joe R. Parcell  
Gust, Rosenfeld, Eivolsness  
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Attorneys at Law  
3300 Valley Bank Center  
101 North Central Avenue  
Phoenix, Arizona 85073

Dear Mr. Parcell:

This is in reference to my letter of September 29, 1976, advising you of the Attorney General's provisional determination with respect to the bond election, additional polling places used for the bond election and bilingual procedures by Apache County High School District No. 90, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act on August 4, 1976.

Subsequent to my correspondence of September 29, 1976, we received information indicating, *inter alia*, a lack of notice concerning the nature and purpose of the bond election to those residents of Apache County who reside on or near the Navajo Reservation. Specifically, we received complaints that several public meetings were held in the St. Johns area in an effort to explain the purpose of the election; while no similar meetings were held on or near the Navajo Reservation portion of the County. In addition, we note that some complaints allege that certain school board public officials expressly stated that the timing of the special bond election was related to the recent reapportionment decision of the three-judge federal court in Goodluck and EE v. Apache County, Ariz., C.C. 873-626, (D. of Ariz. 1976).

These claims raise serious questions which we are unable to resolve within the 60 days allowed the Attorney General to render his final determination under Section 5, which in this case expires on October 6, 1976, since we have not had the opportunity to fully explore and evaluate the information thus received. Therefore, in accordance with the Attorney General's guidelines for the administration of Section 5 (28 C.F.R. 51.19), I must interpose an objection to the School District bond election held on August 31, 1976. However, you may be assured that I will have my staff expedite its consideration of this matter and, as soon as we can determine the merits of the claims, will advise you of our ultimate determination.

Sincerely,

J. Stanley Pottinger  
Assistant Attorney General  
Civil Rights Division

Mr. Joe P. Purcell  
Cust, Rosenfeld, Givelbass  
and Henderson  
Attorneys At Law  
3300 Valley Bank Center  
261 North Central Avenue  
Phoenix, Arizona 85073

Dear Mr. Purcell:

This is in reference to the objection under Section 5 of the Voting Rights Act of 1965, as amended, interposed on behalf of the Attorney General to the bond election of the Apache County High School District.

Our letter of October 4, 1976, indicated that following our letter to you of September 29, 1976, we had received allegations raising serious questions concerning the purpose or effect of the submitted change. Because we did not have the opportunity to fully explore and evaluate these allegations an objection was interposed to the bond election. We advised you that we would expedite our continued consideration of this matter and advise you of our ultimate determination as soon as we could determine the merits of the allegations we had received.

This is to notify you that our investigation is still continuing. We expect to be able to notify you of our final determination early in January of 1977.

In addition, we have noted your request for a conference, contained in your letter of October 14, 1976, and will be in communication with you to arrange one if it appears that the ultimate decision might be not to withdraw the objection.

If you have any questions about this matter please call David Hunter of my staff at 202-739-3649.

Sincerely,

J. Stanley Pottinger  
Assistant Attorney General  
Civil Rights Division

MAY 3 1977

Mr. Joe Purcell  
Law Offices of  
Gust, Rosenfeld, Divelbess  
& Henderson  
3300 Valley Bank Center  
201 North Central Avenue  
Phoenix, Arizona 85073

Dear Mr. Purcell:

This is in reference to the submission under Section 5 of the Voting Rights Act of 1965, as amended, by the Apache County High School District of changes for the August 31, 1976 bond election conducted by the district.

Your submission was originally received on August 4, 1976. On October 4, 1976, an objection was interposed to the bond election on the basis of information received shortly before the end of the 60-day period in which the Attorney General must make a determination under Section 5. Because that information raised serious questions which we could not resolve within the 60 day period the Attorney General was unable to determine that the submitted changes did not have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. As a result, under our Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.19, an objection was required. You were assured at that time that Civil Rights Division staff would continue its consideration of this matter and that, as soon as we could determine the merits of the claims, you would be advised of the ultimate determination.

Since that time, we have investigated this matter, including field inquiries by the Federal Bureau of Investigation and an attorney from our Office of Indian Rights. We have also had the benefit of your letters of October 14, 1976, February 9, 1977, and March 23, 1977. In addition, at your request, a conference pursuant to 28 C.F.R. 51.23

was held on March 11, 1977. Present at the conference were representatives of the Department, the high school district, and Navajo Legal Services.

We have given careful consideration to the information and legal arguments you have presented, the other information that is before us, and the opinion of the Supreme Court in Beer v. United States, 425 U.S. 139 (1976), cited in your letter of March 23, 1977. On the basis of our review, however, we are unable to conclude, as we must under the Voting Rights Act, that the minority language procedures adopted for the August 31, 1976 bond election and submitted to the Attorney General did not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

It is our understanding that a large portion of the electorate of the Apache County High School District are American Indians, that among these Indians the rate of English language literacy is significantly lower than that of the population generally, and that the Navajo language, in oral form, is customarily used for communication among them. It is also our understanding that the district's minority language procedures adopted for the August 31, 1976 election did not include publicity in the Navajo language. Based on our analysis, we have reason to believe that this lack of oral publicity may have prevented effective participation by American Indians in the August 31, 1976 election.

In this connection, I should note that under Section 5 the burden of proof is on the submitting authority. See 28 C.F.R. 11.19 and Georgia v. United States, 411 U.S. 526 (1973). In addition, Section 4(f)(4) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975, provides:

Whenever any State or political subdivision subject to the prohibitions of the second sentence of Section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language. Provided, that where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting."

It is our view that "other information relating to registration and voting" includes publicity for an election. In this regard, Section 55.20(a) of our Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 41 Fed. Reg. 29998 (July 20, 1976), states: "Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process."

In view of the above, on behalf of the Attorney General I must decline to withdraw the objection to the minority language procedures adopted for the August 31, 1976 bond election of the Apache County High School District.

Of course, Section 5 permits your seeking a declaratory judgment in the United States District Court for the District of Columbia that the change does not have the proscribed purpose or effect irrespective of whether the change has previously been submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Sincerely,

Brew S. Nays III  
Assistant Attorney General  
Civil Rights Division

JUN 10 1977

Ms. Jane Rox Greer  
Law Offices of Gust,  
Rosenfeld, Divilbess & Henderson  
3300 Valley Bank Center  
201 North Central Avenue  
Phoenix, Arizona 85073

Dear Ms. Greer:

This is in reference to your letter of May 13, 1977, received on May 17, 1977, requesting that the Attorney General again reconsider his October 4, 1976 objection under Section 5 of the Voting Rights Act of 1965, as amended, to the minority language procedures adopted for the bond election of the Apache County High School District.

As was noted in our letter of May 3, 1977, we have given careful consideration to the information and legal arguments you have presented, and the other information that is before us. On the basis of our review, we were unable to conclude, as we must under the Voting Rights Act, that the minority language procedures adopted for the August 31, 1976 bond election and submitted to the Attorney General did not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Because your letter of May 13, 1977 brings to our attention no new information on this matter, I must on behalf of the Attorney General again decline to withdraw the objection.

As you know, Section 5 permits your seeking a declaratory judgment in the United States District Court for the District of Columbia that the change does not have the proscribed purpose or effect irrespective of whether the change has previously been submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Sincerely,

Drew S. Days III  
Assistant Attorney General  
Civil Rights Division