U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 13, 1994

David M. Guinn, Esq.
Guinn and Morrison
P. O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Guinn:

This refers to the change in the method of electing school trustees from seven at large to five from single-member districts and two at large, the districting plan, the elimination of numbered posts for the two at-large seats, the implementation schedule, and the establishment of additional voting precincts and polling places for the Mexia Independent School District in Limestone County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our February 7, 1994, request for additional information on April 12, 1994; supplemental information was received on May 10 and 16, and June 7, 1994.

We have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the Mexia Independent School District has a total population of 11,656 persons, of whom 25 percent are black and 6.6 percent are Hispanic. Black and Hispanic persons constitute, respectively, 22.9 and 5.1 percent of the voting age population in the school district. While you have not supplied us with voter registration data, by race, you have advised us that there are only 48 registrants in the school district with Spanish surnames. Currently, the school board consists of seven members elected at large by plurality vote to three-year, staggered terms. There are two black members on the school board, one of whom was first elected in May 1994.

The school board began its consideration of changing its at-large method of election after the black community raised concerns that the continued use of at-large elections for school board trustees unnecessarily limited the opportunity for black voters to elect their candidates of choice to the school board. After black leaders threatened to seek a change in the at-large system through voting rights litigation, the school district established a tri-racial study committee to consider alternative methods of election.

Among the plans considered by the tri-racial committee were plans with seven single-member districts (7-0 plan), six single-member districts and one at-large seat (6-1 plan) and five single-member districts and two at-large seats (5-2) plan. The fifteen member tri-racial committee voted unanimously to recommend a 7-0 method of election and districting plan with two districts having substantial black voting age population majorities. The school board, however, rejected that recommendation and decided to adopt a 5-2 method of election instead.

We have reviewed the school board's contention that minority voters will be able to elect their candidates of choice in the two districts in which they constitute a majority of the voting age population. Our analysis of election contests shows an apparent pattern of racially polarized voting in school district elections, which has limited the success of candidates of choice of minority voters. We have weighed the impact that the significantly low level of Hispanic voter registration may have upon the opportunity of minority voters to elect their chosen candidates. In these circumstances, the two districts with bare black voting age population majorities would appear to afford black voters an unnecessarily limited opportunity to elect candidates of their choice.

We also have considered the school district's proffered reasons for selection of the 5-2 method of election, including a desire to maintain continuity on the school board by maintaining the staggered election cycle. However, this criterion was not identified when the tri-racial committee was charged and apparently did not surface until after a 7-0 plan, preferred by the minority community, was recommended. In addition, the school board's reliance on continuity to explain its rejection of the 7-0 alternative appears to be pretextual since the electoral history of the board suggests that it is improbable that every board member would be replaced if all were up for election simultaneously.

Finally, it is apparent that the protection of the interests of incumbents played a significant role in the school district's decision to select a 5-2 method of election. The information

that you have provided suggests that the chosen method of election preserves the existing staggered election cycle as much as possible in order to permit incumbents to run for re-election without competing against each other. While protecting incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza v. County of Los Angles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents by selecting a method of election specifically designed to maintain incumbents is provided at the expense of minority voters, the school district bears a heavy burden of demonstrating that its choices are based on neutral nonracial considerations and are not tainted, even in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in method of election for the school district.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With regard to the remaining voting changes, we understand that those changes are dependent on the now objected-to method of election change. Accordingly, no determination is appropriate with respect to those voting changes. See 28 C.F.R. 51.22(b)

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Mexia Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 13, 1995

David M. Guinn, Esq.
Guinn and Morrison
P. O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Guinn:

This refers to your request that the Attorney General reconsider the June 13, 1994, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in method of electing school trustees from seven at large to five from single-member districts and two at large for the Mexia Independent School District in Limestone County, Texas. We received your request on December 13, 1994.

We have reconsidered our earlier determination regarding this matter based on the information and arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. Our review indicates that there has been no "substantial change in operative fact or relevant law" since the time we interposed the objection. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.46). Your request does not contain any factual information that addresses or rebuts the conclusions we previously reached regarding the unnecessarily limited opportunity afforded to black voters under the objected-to plan. For example, your request provides no information that suggests the apparent pattern of racially polarized voting in school board elections and the significantly low level of Hispanic voter registration will not have an adverse impact on the ability of black voters to elect candidates of their choice in the majority minority districts.

Without providing any new or additional facts to suggest that the majority minority districts will provide black voters with a reasonable opportunity to elect candidates of their

choice, the school district opines that by her objection, the Attorney General has adopted a policy that requires the school district to "maximize minority percentages without regard to any other legislative value." Under Section 5, a jurisdiction is not required to adopt a plan that maximizes minority voting strength; however, by the same token, a jurisdiction also is not free to reject a particular plan that enhances minority voting strength without a legitimate, non-racial justification for doing so.

Although the school district does not provide the specifics in its request, it implies that there was some "legislative value" in rejecting the 7-0 alternative unanimously recommended by the fifteen member tri-racial committee and adopting the objected-to plan in its place. During the course of our previous investigation of the objected-to plan, the school district argued that maintaining continuity on the board and protecting incumbents were among those values. Our analysis, however, revealed that serving these particular "legislative values" would be at the expense of black voting strength in the majority minority districts. We concluded that the school district's "legislative values" were pre-textual and that the objected-to plan was adopted, at least in part, to minimize black voting strength.

Absent entirely from the school district's request for reconsideration is any supporting documentation or any information that would enable us to conclude that black voters residing in the majority minority districts have a reasonable opportunity to elect candidates of their choice. Under these circumstances, the school district has not met its burden of demonstrating that the choices underlying the adoption of the objected-to plan over a plan that would have provided black voters with a reasonable opportunity to elect two of the seven school board members were not tainted, even in part, by an invidious discriminatory purpose. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

In light of the considerations discussed above, I remain unable to conclude that the Mexia Independent School District has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the change in method of election for the Mexia Independent School District.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Mexia Independent School District plans to take concerning this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the Voting Rights Act, should the school district determine to take no further action toward changing that system. If you have any questions, you should call Colleen M. Kane (202) 514-6336, an attorney in the Voting Section.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division