

FEB 25 1976

Mr. Jack Sheen, Jr.
City Attorney
City of Tyler
Post Office Box 2034
Tyler, Texas 75701

Dear Mr. Sheen:

This is in response to your letter dated December 24, 1975, in which you submit annexations, a referendum to decide inter alia, the form of government in Tyler, Texas, and a reapportionment plan for the City of Tyler, Texas, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on December 27, 1975.

The Attorney General does not interpose any objection to the annexations and the aforementioned referendum. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With regard to the submitted reapportionment, we have completed our analysis and review of the change. Our analysis shows that blacks comprise 23.5% of the total population of Tyler, Texas and that Mexican-Americans comprise about 5% of the total

population, that no minority candidates have been elected to city office in Tyler, and that reasonable alternate plans could be drawn (including a seven single-member district plan), that would be more reflective of minority voting strength in Tyler.

Not insignificant to our consideration of this change is our recognition of the fact that in establishing the plan under submission the city increased the size of its governing body from five to seven members. Thus, while the determination here well might have been different had this single-member districting involved the 20% representation that the minority groups could have elected to a continued five-member council, we find it not only appropriate but necessary that we consider several factors in the context of the enlarged seven-member council. First, we are mindful that under the enlarged seven-member council the representation which the affected minorities are given a realistic chance of electing is reduced to 14%. Second, we find it logical to presume that, in the absence of evidence to the contrary, racial bloc voting exists since no minority candidate (of whom there have been several) has ever been elected to the council under the at-large system. Third, we cannot ignore the fact that the five-member system is presently under challenge in the United States District Court for the Eastern District of Texas (Square v. Halbert, C.A. No. T.Y73-54). Fourth, the city has presented no evidence of a compelling need to incorporate in its proposal an at-large feature.

Under these circumstances, therefore, the Attorney General cannot conclude, as he must under the Voting Rights Act, that the proposed reapportionment plan does not have the effect of impermissibly diluting the voting strength of protected minorities in the City of Tyler. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the implementation of this plan.

Of course, you are permitted under Section 5 of the Voting Rights Act to seek a declaratory judgment in the District Court for the District of Columbia that the proposed reapportionment plan does not have the purpose, and will not have the effect of denying or abridging the right to vote on account of race or color. Until such judgment is obtained, however, the legal effect of the Attorney General's objection is to render unenforceable the legislation authorizing the proposed reapportionment.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division