JAN 16 1978

Mr. John F. Pettit
Assistant Secretary of State
Capitol Station
Austin, Texas 78711

Mr. Cecil A. Morgan
Morgan, Gambill & Owen
2108 Continental Life Building
Fort Worth, Texas 76102

Dear Messrs. Pettit and Morgan:

This is in reference to House Bill 2152, 65th Legislature, Regular Session, 1977, and to the implementation, as set forth below, of House Bill 2152 by the Fort Worth Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. The submission of House Bill 2152 was originally received on July 1, 1977. Additional information with respect to this submission was received on October 31 and November 17, 1977. The submission of the implementation of House Bill 2152 by the Fort Worth Independent School District was originally received on October 31, 1977, and was supplemented on November 17, 1977. Because House Bill 2152 at this time directly affects only the Fort Worth Independent School District, we have considered it appropriate to analyze this legislation in connection with our analysis of its implementation by the Fort Worth Independent School District. Similarly, because the changes adopted by the Fort Worth Independent School District are authorized or required by House Bill 2152, we can make a determination with respect to these changes under Section 5 only after a determination has been made with respect to House Bill 2152. Although we noted your request for expedited consideration, we have been unable to respond until this time.

With the condition specified below, the Attorney General does not interpose any objection to House Bill 2152. 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.

cc: Public File

Any changes affecting voting made by independent school districts pursuant to House Bill 2152 are subject to the preclearance requirement of Section 5. Such changes include, but are not limited to, the increase in size of the board of trustees, the selection by the electorate of the president and vice-president of the board, the use and creation of single-member districts, the use of a majority vote requirement pursuant to Section 23.023(e) of the Texas Education Code, a change in the length of terms or in the staggering of terms, and the method of transition from the old to the new system of election.

With respect to the implementation of House Bill 2152 by the Fort Worth Independent School District, your submission, as we understand it, includes the following changes: (1) changes required by House Bill 2152: the increase in the size of the board of trustees from seven to nine members, the use of single-member districts for the election of seven members of the board, the selection of the president and vice-president of the board by the electorate by means of an election held at large, the use pursuant to Section 23.023(e) of a majority vote requirement in the selection of trustees, a decrease in the length of terms of office from six years to four years, and a change in the system of staggering the terms of office; (2) changes partially provided for by House Bill 2152: the method of transition from the old to the new system of election, and (3) changes adopted by the Fort Worth Independent School District: a districting plan for seven single-member districts. Except as specified below, the Attorney General does not interpose any objections to these changes. However we feel a responsibilty 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.

Section 23.023(h) of the Texas Education Code, as amended by House Bill 2152, specifies the method of transition from the old electoral system to the system specified by Section 23.023. Under this system trustees representing two of the seven single-member districts will be elected in 1978. Trustees representing the remaining five single-member districts will not be elected until 1980 or 1982. In our analysis of this method of transition we have considered the legislative findings contained in Section 3 of House Bill 2152 and have been mindful of the pending lawsuit challenging

the at-large election of trustees of the Fort Worth Independent School District. As a result, we are unable to conclude, as we must under the Voting Rights Act, that the delay in the implementation of the use of the seven single-member district plan by the Fort Worth Independent School District does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Therefore, on behalf of the Attorney General, I must interpose an objection to the implementation by the Fort Worth Independent School District of Section 23.023(h) of the Texas Education Code.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change in question neither has 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, the Attorney General's Section 5 guidelines (28 C.F.R. 51.21, 51.23 and 51.24) permit you to request reconsideration of this matter. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the method of transition specified by Section 23.023(h) legally unenforceable for the Fort Worth Independent School District.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
A3674-A3687

JAN 31 1979

Mr. David A. Owen
Morgan, Gambill & Owen
Attorneys at Law
2108 Continental Life Building
Fort Worth, Texas 76102

Dear Mr. Owen:

This is in reference to your request for reconsideration of the objection interposed on January 16, 1978 to the implementation by the Fort Worth Independent School District of Section 23.023(h) of the Texas Education Code and to the changes in polling places in Fort Worth Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your request for reconsideration was received on January 23, 1978; your submission of polling place changes was received on January 9, 1978.

The Attorney General does not interpose any objections to the changes in polling places. 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.

In reference to your request for reconsideration, we have given careful consideration to the new information furnished by you as to the manner in which Section 23.023(h) of the Texas Education Code will be implemented by Fort Worth Independent School District.

As indicated to you in a letter of January 14, 1972, our original objection was based on the concern which we shared with respect to questions then pending relative to the delayed transition to the new election system. The information now furnished shows that one district having the potential for minorities to elect a candidate of their choice will have that opportunity this year. However, with respect to the other two districts where minorities have the potential for electing representatives of their choice the present incumbents will continue in office until 1980.

While our concerns have been allayed with respect to the district which will choose its representation this year the concerns which led to our initial objection remain in regard to the two districts which will not hold elections until 1980. Accordingly, the Attorney General cannot withdraw his objection to the delayed election in those districts.

Since we understand that related issues are pending before the District Court in Williams v Londherbury, CA4-24-44, I am taking the liberty of sending the Court a copy of this letter.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division