U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

Ms. Pam Rhodes
Chairperson, Board of Directors
Nolan County Hospital District
200 Arizona Street
Sweetwater, Texas 79556

FEB 12 1990

Dear Ms. Rhodes:

This refers to Senate Bill No. 315 (1989), which provides for the creation of the Nolan County Hospital District with a seven-member board of directors with four elected from single-member districts and three elected at large; numbered positions for the at-large members; a districting plan; two-year, staggered terms; a plurality vote requirement; the election date; the implementation schedule; the candidacy requirements; and the procedures for filling vacancies for the district in Nolan County, Texas, submitted to the Attorney General on April 25, 1989, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 12, 1989.

We have considered carefully all of the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. As a result, the Attorney General does not interpose any objection to Senate Bill No. 315 insofar as it creates the Nolan County Hospital District. 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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining changes effected by Senate Bill No. 315, we cannot reach a similar conclusion. At the outset, we note that no minority candidate within Nolan County has won a contested election for office under an at-large system featuring numbered positions, a circumstance that appears to be due largely to the combination of the at-large electoral structures with a pattern of racially polarized voting in Nolan County elections. Indeed, it appears that even though minority candidates historically have had the support of minority voters, they have not achieved electoral success in any of the local governing bodies in Nolan County until after a change from an at-large method of election to an election system featuring single-member districts and a districting plan that provides for a significant majority of minority voters in a particular district.

Moreover, it appears that minority population in the hospital district is concentrated in such a manner that easily discernible districting alternatives would result in a plan that provides minority voters with a realistic opportunity to elect a candidate of their choice to the hospital board, an opportunity that the election system contained in Senate Bill No. 315 does not provide. In this regard, it is of particular note that the system contained in Senate Bill No. 315 not only incorporates the county commissioner election precincts, which themselves have been ineffective in affording minority voters a fair opportunity to elect candidates of their choice, but also superimposes upon its at-large positions features, such as numbered posts and staggered terms, which have been recognized as detrimental to minority voting strength where, as in Nolan County, a pattern of racial bloc voting exists.

Furthermore, the proposed method of election for the hospital board appears to have been adopted with virtually no input from the minority community. The question of what method should be used to elect the seven members of the hospital board arose subsequent to protests by minority citizens which led to the abandonment of the at-large election systems by the City of Sweetwater and the Sweetwater Independent School District, both of which are entities containing a major part of the hospital district's constituency. In addition, the proposed method of election was adopted at a time when persons active in the political process in Nolan County were aware that the at-large method of election, with numbered posts and staggered terms, was opposed by minority citizens because, in the context of Nolan County, it operated as a device to minimize or cancel out minority voting strength.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(c). In

satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 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 addition, a submitted change may not be precleared if its implementation would lead to a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, because minority voters have less opportunity than do white voters to elect candidates of their choice. See 28 C.F.R. 51.55(b). In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and districting plan for the hospital district's board of directors contained in Senate Bill No. 315.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or language minority. In addition, Section 51.45 of the guidelines permits you to 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 proposed new method of election changes and districting plan continue to be legally unenforceable. 28 C.F.R. 51.10.

Finally, the election date, the implementation schedule, the candidacy requirements, and the procedures for filling vacancies can be implemented only in the context of the method of election changes and districting plan to which an objection is interposed herein. Accordingly, the Attorney General is unable to make a determination regarding these directly related changes at this time. See also 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action that the Nolan County Hospital District plans to take with

respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division