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DJ 166-012-3
90-0003

August 23, 1991

Tom Harrison, Esq.
Special Assistant for Elections
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Harrison:

This refers to Chapter 206, S.B. No. 907 (1989), which mandates procedures for creating hospital districts; provides for special elections therefor; establishes petition, notice, and ballot requirements for elections to create hospital districts; restricts the frequency of creation elections under specified circumstances; provides for interim appointed and permanent elected boards of directors; mandates an odd number of directors, with no fewer than five; permits three methods of election for a board of directors; mandates two-year, staggered terms and a plurality vote requirement; provides implementation plans; mandates the first Saturday in May as the regular election date; mandates regular election petition and notice requirements; specifies candidate qualifications; provides procedures for filling vacancies; establishes compensation provisions and powers, duties, and responsibilities for elected directors; provides procedures for annexation; provides for dissolution of a hospital district created pursuant to the statute, subject to special elections therefor; and permits special bond and tax elections, for the State of 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 the information necessary to complete your submission on June 25, 1991.

Chapter 206 requires as a first step in creating a hospital district the circulation for signature of petitions which describe the method to be used to elect hospital directors. The act limits the permissible methods of election to three: (1) at large; (2) at large by place (numbered posts); or (3) a

combination of district and at-large seats. The third method requires the use of county commissioner districts. It appears that this last method would normally be unavailable to hospital districts that are not composed of whole counties, since it is likely that the resulting election districts would not satisfy the constitutional requirement of population equality.

Prior to the adoption of Chapter 206 the only means of creating a hospital district with direct control over financing was by a special act of the legislature which was tailored to the individual needs of the proposed district. Under this procedure there existed no express limitation on the method of selecting the board of directors of such a district.

Our understanding is that Chapter 206 was adopted to provide a general mechanism for hospital districts to be created without the need for individual legislation. The legislative history of the act indicates that no special consideration was given to the methods of selecting the hospital boards. It appears that the act's limitation on methods of election resulted from adapting language in a model bill previously used to create individual hospital districts. Although the three methods listed are said to be the methods most commonly specified in previous acts creating individual districts, the instant act apparently reflects no strong state policy that election methods for hospital districts should be so limited. Indeed, the legislature has on many previous occasions specified other methods of selecting hospital directors, and this Department has reviewed and precleared numerous such instances under Section 5. Such alternative methods, such as those using single-member districts exclusively or incorporating districts that do not correspond to commissioner districts would not be permitted under Chapter 206.

Our experience with hospital districts under Section 5 has shown that the method of selecting hospital district directors is often of significant interest and concern to voters, and raises important questions under the Voting Rights Act. We have twice interposed objections under Section 5 to the initial methods chosen by the legislature to elect individual hospital district boards. Our experience has led us to conclude that, as applied in particular cases, none of the methods of election specified in Chapter 206 would meet the requirements for preclearance under Section 5. The dilutive effect which at-large methods of election can have by submerging racial and ethnic minorities is well recognized in the case law and in our experience under Section 5. This effect is exacerbated by the limitation on single-shot voting resulting from the use of numbered posts or staggered terms. Nor are these concerns allayed by the inclusion in the act of the method employing commissioner districts. In the case of hospital districts formed of portions of counties,

this method would not appear to be available. Even when available, its limitation to four districts may well be insufficient to produce an electoral system in which minority voters would have an equal opportunity to participate in the electoral process and elect candidates of their choice and the requirement that there be at least one at-large seat could further reduce the likelihood that the electoral system would satisfy the Voting Rights Act.

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 voting changes occasioned by Chapter 206 (1989).

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 changes have 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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Chapter 206 (1989) continues to be legally unenforceable. See 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division