



U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 17, 1992

Ms. Frances Vesley
City Secretary
P. O. Box 264
Ganado, Texas 77962

Dear Ms. Vesley:

This refers to the procedures for conducting the January 18, 1992, special election; the change in form of government from a Type C (commission) to Type A (aldermanic) city; the increase in the number of the governing body from three (mayor and two commissioners) to six (mayor and five councilmembers); the adoption of numbered positions and staggered terms; and the implementation schedule therefor, for the City of Ganado in Jackson 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 April 27, 1992, request for additional information on June 18, 1992.

With respect to the procedures for conducting the January 18, 1992, special election, the change in form of government from a Type C (commission) to Type A (aldermanic) city, and the increase in the number of officials from three (mayor and two commissioners) to six (mayor and five councilmembers), with election at large, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. 28 C.F.R. 51.41.

We cannot reach the same conclusion concerning the change to staggered terms and numbered posts, however. We have carefully considered the information you have provided, as well as information provided by other interested persons. The use of staggered terms and numbered posts in at-large elections limits minority electoral opportunity by foreclosing the use of single-shot voting. In light of the racially polarized voting that usually occurs in city elections, the proposed changes unnecessarily minimize the opportunity of minorities to elect candidates of their choice to office. (See City of Rome v. United States, 446 U.S. 156,

183-185 (1980).) The city has not adequately explained why other alternative election systems, such as five seats elected concurrently, could not be adopted by the city of Ganado. Finally, it appears that the minority community was not offered an opportunity to participate in the process of adopting these changes.

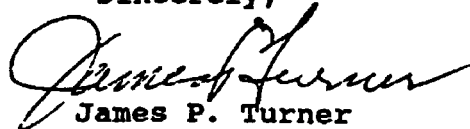
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance with respect to the use of numbered posts, staggered terms, and the implementation schedule therefor. Therefore, on behalf of the Attorney General, I must object to these changes.

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 objected-to 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. 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 proposed use of numbered posts, staggered terms and the implementation schedule therefor, continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Act, please inform us of the action the City of Ganado plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome, an attorney in the Voting Section, at (202) 514-8696.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Gary Olson, Esq.
City Attorney