Civil Rights Division

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

Mr. David Silva
Superintendent of Schools
Apache County Courthouse
St. Johns, Arizona 85936

20 MAR 1980

Dear Mr. Silva:

This is in reference to the September 11, 1979, special dissolution election and changes relating to that election, including polling place changes and multilingual election procedures, for Apache County High School District No. 90, Apache County, Arizona, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on January 21, 1980.

Under Section 5, Apache County High School District No. 90 has the burden of proving that the multilingual (English, Spanish, Navajo) procedures employed in the special dissolution election satisfied the minority language election procedure provisions of Section 4(f)(4) of the Voting Rights Act. See 28 C.F.R. 55.1 et seq. Further, the District has the burden of proving that none of the submitted changes violated the Fifteenth Amendment to the Constitution or resulted in a retrogression in the position of black, Spanish heritage or American Indian voters in Apache County. See Beer v. United States, 425 U.S. 130 (1976).

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. It is our understanding that a large portion of the electorate of Apache County High School District No. 90 are Navajo Indians, that among these Indians the rate of English-language literacy is significantly lower than that of the population generally, and that the Navajo language, in oral form, is customarily used for communication among them. It is also our understanding that the District's minority language procedures adopted for the September 11, 1979, dissolution election did not include oral publicity in the Navajo language, while effective English- and Spanish-language publicity were provided. Based on our analysis, we have reason to believe that this lack of oral publicity may have prevented full and effective participation by Navajo Indians in the election.

We have also noted that the submitted polling place changes, which included the closing of fifteen polling places on the Navajo Reservation and three polling places off the Reservation relative to those used in the November, 1978, school board election, the last Apache County election for which polling place changes have been precleared under Section 5 and legally implemented, affected a significantly greater number of Navajo than of white voters. Based on our analysis, we have reason to believe that these polling place changes imposed a greater burden upon Navajo than upon white voters, a burden not offset by the District's policy in the submitted election of permitting voters to vote at any of the fifteen polling places used for that election. At the same time, the District failed to consider alternative procedures that could have compensated for the reduction in polling places. For example, our analysis suggests that effective Navajo-language oral publicity regarding absentee voting opportunities, coupled with the implementation of a multilingual absentee voting procedure that addressed the special needs of the Navajo language minority, could have alleviated the burden imposed by the polling place reductions.

Finally, we have noted that the submitted multilingual election procedures are much like those employed in the August 31, 1976, bond election held by the District, to which procedures the Attorney General has previously interposed an objection on May 3, 1977. We have also noted that the submitted polling place changes represented a reduction in the number of polling places on the Navajo Reservation relative to those employed in the 1976 bond election.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the polling place and bilingual election procedure changes submitted.

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 membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the changes implemented for the September 11, 1979, dissolution election and the results of that election legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Apache County High School District No. 90 plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. Andrew Karron (202--724-7403) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

7 MAY 1980

Mr. David Silva
Superintendent of Schools
Apache County Courthouse
St. Johns, Arizona 85936

Dear Mr. Silva:

This is in reference to your request that the Attorney General reconsider his March 20, 1980, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to the September 11, 1979, special dissolution election and changes relating to that election, including polling place changes and multilingual procedures, for Apache County High School District No. 90, Apache County, Arizona. Your request was received on April 14, 1980.

As you know, our objection was based on our determination that the submitted polling place changes placed a disproportionate burden upon Navajo voters in the district, that the district had taken no effective action to offset this greater burden, and that the district had failed to provide effective oral Navajo-language publicity as required pursuant to Section 4(f)(4) of the Voting Rights Act. Although we were aware that bilingual publicity for the election had occurred, it was our understanding, based on information obtained from the district and other interested parties, that the publicity was undertaken by individuals acting on their own initiative and not as agents to whom the district had formally or informally delegated authority.

The additional information that you have provided in your request for reconsideration, to the effect that the bilingual publicity was undertaken on behalf of the district, that absentee voting procedures, which could have compensated for the reduction in polling places on the reservation, were publicized orally in the Navajo language; and that Navajo representatives did have input into the polling place selection process, indicates that some of the information

upon which our decision to object was based was incorrect. This additional information, and information obtained from other interested parties, has convinced us that the district has now met its burden of proving that the submitted election, polling place changes, and multilingual procedures satisfied the minority language requirements of the Voting Rights Act and did not result in a retrogression in the position of Navajo voters within the district. Accordingly, pursuant to the reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.33 through 51.25, the objection interposed to the polling place changes and multilingual procedures is hereby withdrawn.

Finally, with regard to the dissolution of Apache County High School District No. 90 and the establishment of six high school districts with boundaries coterminous with those of the existing Apache County elementary school districts, the Attorney General does not interpose any objections to the changes in question. 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.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division