



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

5 DEC 1983

James K. Kerley, Esq.
Kerley & DeFrancesco
Suite One
1201 East Fry Boulevard
Sierra Vista, Arizona 85635

Dear Mr. Kerley:

This is in reference to the December 8, 1981, special election; the two consolidations of voting precincts and the establishment of two polling places therefor; the change to a charter government; the May 18, 1982, special charter election; the change from partisan to nonpartisan elections; changes in the minimum age requirements for the mayor and councilmembers from 18 years of age to 25 and 21 years of age, respectively; a change from unlimited numbers of terms for the mayor and councilmembers to no more than three terms or six years for the mayor and no more than two terms or eight years for councilmembers; the change in the length of councilmembers' terms from two years to four; the establishment of staggered terms for councilmembers; the change in the method of electing councilmembers from single-member districts to at-large with residency districts; the adoption of the majority vote requirement; three annexations; three polling place changes; and a redistricting of city council districts for the City of Douglas in Cochise County, Arizona, 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 initial submissions on May 23, 1983, October 6, 1983, and October 28, 1983; additional information needed to complete the May 23 submission was received on October 6, 1983.

We have given careful consideration to the information you have provided along with information and comments from other interested parties. We have also considered Bureau of the Census and Immigration and Naturalization Service data in our analysis.

The Attorney General does not interpose any objections to the two consolidations of voting precincts and the establishment of two polling places therefor for the December 8, 1981, special election; the change to a charter form of government; the change from partisan to nonpartisan elections; the May 18, 1982, special charter election, the proposed redistricting, the changes in the age requirements for mayor and councilmembers; the extension of council terms from two to four years; the limitation on the number of terms the mayor may serve; the three annexations and the three polling place changes. 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We are unable to reach a similar conclusion with regard to the at-large method of election with residency districts, staggered terms, and a majority vote requirement; the limitation on the number of terms councilmembers may serve; and the December 8, 1981, special election. First of all, our analysis of city election returns demonstrates that a pattern of racially polarized voting exists generally in the City of Douglas. Thus, in the past the Mexican American community has elected representatives from the three wards which are over 80 percent Mexican American. However, the proportion of potentially eligible Mexican American voters is substantially less on a city-wide basis, and the at-large election system, with residency districts, staggered terms, and the majority vote requirement, likely will result in city-wide, head-to-head competition with Anglos, thereby reducing the potential for Mexican Americans to elect representatives of their choice to the city's governing body.

Secondly, the proposed limit to the number of terms councilmembers may serve is likely to make campaigning more difficult and expensive because the advantage of incumbency will be eliminated. The lower economic status of minorities in Douglas makes this impact particularly detrimental to them. It also serves immediately to eliminate two of the council's three current Hispanic representatives since, under the new system they would be ineligible for a new four-year term at the time of the next election.

Finally, the inaccuracy of the Spanish translation on the ballot used for the December 8, 1981, special election was of the nature to have a direct and meaningful impact on the manner in which Mexican Americans cast their ballots, to their detriment, since the belief that they were required to vote for at least 14 candidates eliminated the option to

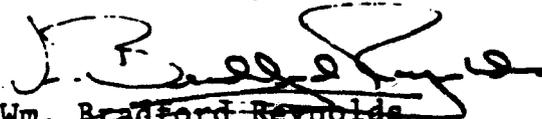
single-shot vote for candidates of their choice. The impact of this translation mix-up fell only on Mexican American voters, and such action is likely to have had a disparate effect on minorities in the exercise of their voting strength.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that changes affecting voting were not adopted with a discriminatory purpose and that their implementation will not have a discriminatory effect. See Beer v. United States, 425 U.S. 130 (1976), Wilkes County v. United States, 450 F. Supp. 117 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978), and Georgia v. United States, 411 U.S. 526 (1973). See also 28 C.F.R. 51.39(e). In view of the circumstances involved in this matter, however, we do not find that that burden has been sustained in this instance with respect to the specified changes. Accordingly, I must, on behalf of the Attorney General, object to the at-large method of election, residency districts, staggered terms, majority vote requirement, limitation on the number of terms councilmembers may serve, and the December 8, 1981, special election.

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, Section 51.44 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 effect of the objection by the Attorney General is to make the objectionable changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Douglas plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division