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May 16, 1973

The Honorable Jim Kaster, Chairman
Intergovernmental Affairs Committee
P. O. Box 2910
Austin, Texas 78767

Letter Advisory No. 37

Re: House Bill 1296 - relating to the election of the city council of certain cities from single-member districts.

Dear Representative Kaster:

You have asked our opinion as to the constitutionality of that portion of House Bill 1296 which limits its application.

The Bill, designed to require the city council of each city subject to its provisions to provide for single-member districts in city council elections, limits its application in Section 1:

> "This Act applies to all cities in the state having a population in excess of 700,000 and having an identifiable ethnic minority population of Mexican Americans and Blacks in excess of 40 percent of the total population, according to the preceding federal census."

Section 56 of Article 3 of the Constitution of Texas provides, in part:

> "The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing: . . . .
>
> "Regulating the affairs of counties, cities, towns, wards or school districts; . . . .
>
> "And in all other cases where a general law can remain applicable, no local or special law shall be enacted; . . . ."

Defining the application of a bill by population is not a new device. It has been before the courts on many occasions. For some of its earlier history, see Attorney General Opinion H-8 (1973).

In modern times the courts have evolved some rather clear rules. The ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class. There is a presumption that a statute is valid and that the Legislature did not act unreasonably or arbitrarily.

It is our opinion that if House Bill 1296 only classified according to population, even though only two cities (Houston and Dallas) fall within the definition according to the 1970 census, presumably the classification would be valid and the Bill, if enacted into law, would be constitutional.

However, to the population classification, House Bill 1296 adds a classification based upon race and national origin.

Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the presumption of constitutional validity of a classification disappears when a state has enacted legislation whose purpose or effect is to create classes based upon criteria that are "inherently suspect."

Among the criteria which are "suspect" is classification based upon race or national origin. While a statute containing such a classification may be upheld, it must be considered unconstitutional unless it can be established that the classification according to race and national origin is "reasonably related to some proper legislative purpose." House Bill 1296 does not recite its purpose, and we are of course not permitted to extend our inquiry beyond the scope of your request, and the specific language of the proposed statute. We are not, therefore, able to say whether there are facts of population and political reality, which, if fully developed in a court of law, would adequately show that the classification of House Bill 1296 is "reasonably related to some proper legislative purpose." We can only say that such purpose is not apparent from the language of the bill itself, and that in the absence of a strong showing of such purpose, the Bill will be declared unconstitutional by the courts.

Relevant to this Letter Advisory are the following decisions: Watts v. Mann, 187 S. W. 2d 917 (Tex. Civ. App., 1945, err. ref'd); Rodriguez v. Gonzales, 227 S. W. 2d 791 (Tex. 1950); Smith v. Davis, 426 S. W. 2d 827

(Tex. 1968); Railroad Commission of Texas v. Miller, 434 S. W. 2d 670 (Tex. 1968); County of Cameron v. Wilson, 326 S. W. 2d 162 (Tex. 1959); Rinaldi v. Yeager, 384 U.S. 305, 16 L ed 2d 577, 1497 (1966); Brown v. Board of Education, 347 U.S. 483, 98 L ed 873, 72 S Ct 686 (1954); Oyama v. California, 332 U.S. 633, 92 L ed 249, 68 S Ct 269 (1948); Reynolds v. Simms, 377 U.S. 533, 12 L ed 2d 506, 84 S Ct 1362 (1964); and see concurring of Mr. Justic Stewart in San Antonio School District v. Rodriguez, ____U.S.____, 36 L ed 2d 16, 93 S Ct 40 (1973).

Very truly yours,

John L. Hill

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APPROVED

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Opinion Committee