

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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ARIZONA ATTORNEY GENERAL

March 16, 1971

DEPARTMENT OF LAW OPINION NO. 71-9 (R-38)

REQUESTED BY: THE HONORABLE RAY EVERETT
Arizona State Representative

QUESTION: If House Bill 248 is enacted into law, would the provision which prevents any city with less than 10,000 population from being divided for inclusion in more than one district be constitutional?

ANSWER: No.

By prohibiting the division of cities of less than 10,000 population for inclusion in more than one district, House Bill 248 allows the possibility of districts of unequal population. This unequal weighting of votes flies directly in the face of the "one man, one vote" mandate laid down by the United States Supreme Court in Baker v. Carr, 369 U.S. 186 (1962), and expanded in Reynolds v. Sims, 377 U.S. 533 (1964).

Any doubt that "one man, one vote" applies to local elections was finally laid to rest in Avery v. Midland County, 390 U.S. 474 (1968), where the Supreme Court held "that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general powers over the entire geographic area served by the body." 390 U.S. at 484-485.

Likewise, the application of "one man, one vote" can no longer be avoided by the claim that the local body is of an administrative nature. In Hadley v. Jr. College Dist., 397 U.S. 50 (1970), the Supreme Court clearly rejected the administrative/legislative dichotomy in applying equal protection standards. The Court states that there was no "discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election." 397 U.S. at 54.

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The majority reasoned that it would be impractical for the courts to decide which elections were important enough to require voting equality. The utilization of popular election was regarded as conclusive evidence of the importance of the election. The Court succinctly held:

" . . . [A]s a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. . . ." 397 U.S. at 56.

It is the opinion of this office that the questioned provision of House Bill 248 would clearly be unconstitutional.

Respectfully submitted,

Gary K. Nelson
by F.S.

GARY K. NELSON
The Attorney General

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