



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 30, 2008</p>	<p>No. I08-013 (R07-031)</p> <p>Re: Application of One-Person, One-Vote Requirement of U.S. Constitution to Joint Technological Education District Elections</p>
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To: The Honorable Steve M. Gallardo
Arizona House of Representatives

Question Presented

If a joint technological education district ("JTED") is divided into single-member districts from which its governing board members are elected, must it redistrict following each federal census or at any other time if necessary to comply with the one-person, one-vote requirement of the U.S. Constitution?

Summary Answer

Yes. Because JTEDs possess general governmental powers and perform important governmental functions, their elections must comply with the one-person, one-vote principle mandated by the U.S. Constitution. Therefore, the single-member districts from which a JTED elects its governing board members must be redistricted periodically to ensure that the districts' populations are as nearly equal as practicable.

Background

Two or more school districts can form a JTED to provide vocational and technological training to students from those districts. To form a JTED, each school district must submit a plan to the voters of each district. A.R.S. § 15-392(B). Once approved by the electors, the JTED is managed and controlled by a JTED governing board. A.R.S. § 15-393(A).

The JTED's governing board is initially composed of persons that each member school district appoints. A.R.S. § 15-392(D). The appointed governing board members serve until January 1 following the next general election. *Id.* At the next general election, the voters within the JTED boundaries elect the JTED governing board. A.R.S. §§ 15-392(D), -393. The governing boards of the member districts must choose between the following two potential systems for electing a JTED governing board: the standard election system described in the statute, or an alternative election system submitted by the governing boards of the school districts that form the JTED and approved by the voters. A.R.S. § 15-393(A), (B). Under Section 5 of the federal Voting Rights Act of 1965, the U.S. Department of Justice must preclear whichever process is chosen. 42 U.S.C. § 1973c (2006).

Under the standard election system, the JTED governing board consists of five members elected from five single-member districts within the JTED. A.R.S. § 15-393(A). The boundaries of these single-member districts are required to be nearly equal in population and to generally follow election precinct lines where practicable. A.R.S. § 15-393(A)(1) (“The governing boards of the school districts participating in the formation of the joint district shall define the boundaries of the single member districts so that the single member districts are as nearly equal in population as is practicable. . . .”). The alternate election system has no express requirements regarding the formation of the districts from which the JTED governing board is elected.

The governing boards of the school districts participating in the formation of the joint district may vote to implement any other alternative election system for the election of joint district board members. If an alternative election system is selected, it shall be submitted as part of the plan for the joint district pursuant to § 15-392, and the implementation of the system shall be as approved by the United States justice department.

A.R.S. § 15-393(B).

Analysis

In *Reynolds v. Sims*, the U.S. Supreme Court addressed the one-person, one-vote principle embodied in the Fourteenth Amendment's Equal Protection Clause. 377 U.S. 533, 554-58 (1964). The Court reviewed Alabama's method for electing state house and senate legislators and held that it was unconstitutional because the districts from which representatives and senators were elected were not being periodically reapportioned to account for population shifts. *Id.* at 577. "Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." *Id.* at 579. The Court held in *Reynolds* that the U.S. Constitution required Alabama to periodically reapportion its legislative voting districts in accordance with population changes. *Id.* at 583-84.

The Court extended the one-person, one-vote principle to members of a local school board in *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 631-33 (1969) (holding that each vote in district should be counted as equally as practicable). And, in *Hadley v. Junior College District*, the Court applied the one-person, one-vote requirement to the election of community college district trustees because those trustees exercised general governmental powers and performed important governmental functions:

We hold today that as 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 practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

397 U.S. 50, 56 (1970). In so doing, the Court noted that “[e]ducation has traditionally been a vital governmental function.” *Id.* Further, “since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college[,]” the trustees perform “important governmental functions” with sufficient impact to require compliance with the one-person, one-vote standard. *Id.* at 53-54.

Courts have subsequently used these characteristics as a litmus test for determining whether to apply the one-person, one-vote requirement to an entity. *See Kelleher v. Se. Reg’l Vocational Tech. High Sch. Dist.*, 806 F.2d 9, 11 n.7 (1st Cir. 1986) (finding that apportionment violated the one-person, one-vote requirement); *Baker v. Reg’l High Sch. Dist. No. 5*, 520 F.2d 799, 801 (2d Cir. 1975) (finding that school boards performed a sufficiently extensive range of governmental functions to require the application of the one-person, one-vote requirement to their elections). “Relying on *Hadley*, federal courts have consistently held elected state boards of education and local school boards bound by the ‘one person, one vote’ standard.” *Panior v. Iberville Parish Sch. Bd.*, 498 F.2d 1232, 1235 (5th Cir. 1974) (reversing district court and finding one-person, one-vote requirement applicable to election for members of Louisiana parish school board).

The one-person, one-vote requirement, however, does not apply to certain entities “whose duties are so far removed from normal governmental activities and [whose functions] so

disproportionately affect different groups that a popular election . . . might not be required.” *Hadley*, 397 U.S. at 56; *see also Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 69 (1978) (stating people who did not live within geographical limits of governmental unit at issue did not have right to vote in that government unit’s elections). The Court also has held that when a board’s governing members are appointed rather than elected, the one-person, one-vote requirement does not apply. *Sailors v. Board of Educ.*, 387 U.S. 105, 111 (1967); *see also Burton v. Whittier Vocational Reg’l Sch. Dist.*, 449 F. Supp. 37, 38-39 (D. Mass. 1978) (holding that because board is appointed, one-person, one-vote principle inapplicable).

In sum, the Fourteenth Amendment’s Equal Protection Clause requires that whenever popular elections to state and local bodies possessing general governmental powers and performing important governmental functions involve multiple electoral districts, each district must elect a number of officials proportionate to its number of voters.

The governing board of a JTED consists of “five members elected from five single member districts formed within the joint district,” and “[t]he governing boards of the school districts participating in the formation of the joint district shall define the boundaries of the single member districts so that the single member districts are as nearly equal in population as is practicable.”¹ A.R.S. § 15-393(A) & (A)(1). Thus, the language of A.R.S. § 15-393 contemplates a popular election of board members proportionate to votes in each district in compliance with the one-person, one-vote requirement.

Moreover, the JTEDs’ statutory functions and powers indicate that they are governmental entities that are required to comply with the one-person, one-vote requirement. The statutory powers of a JTED include the power to:

¹ The alternate election system permitted under A.R.S. § 15-393(B) does not contain any such description of the single-member districts to be formed therein. However, as described later, the functions of the JTED and its general application to all members of the district indicate that the one-person, one-vote requirement applies regardless.

- Issue bonds (A.R.S. § 15-393(D)(1));
- Levy taxes (A.R.S. § 15-393(F));
- Allocate and request funding from various sources, including federal monies (A.R.S. § 15-393(C)(2), (D)(7)-(10));
- Charge tuition for adult students and students from nonparticipating school districts (A.R.S. § 15-393(H));
- Enter into intergovernmental agreements (A.R.S. § 15-393(L));
- Appropriate monies for adult education under A.R.S. § 15-234 (A.R.S. § 15-393(C)(2));
- Employ and fix the salaries and benefits for employees (A.R.S. § 15-502,); and
- All the powers and duties of a regular school-district governing board under A.R.S. § 15-341 (A.R.S. § 15-393(C)(3)).

Thus, like the board of trustees in *Hadley*, the JTED can levy taxes, issue bonds, hire and fire teachers, make contracts, collect fees, supervise and discipline students, and generally manage the school district's operations. *See Hadley*, 397 U.S. at 54. Based on similar functions, the Court in *Hadley* held that the trustees performed "important governmental functions within the districts" and those powers were "general enough and have sufficient impact throughout the district to justify the conclusion that the principle" of one-person, one-vote be applied. *Id.* at 53-54.

At least one other court has come to the same conclusion. In *Kelleher*, the First Circuit held that the one-person, one-vote principle applied to a vocational school district. 806 F.2d at 13. In that case, the district court found inapplicable the one-person, one-vote requirement because the apportionment scheme had been voted on and approved by a majority of the voters. *Id.* The First Circuit reversed, holding that "[a] majority of citizens willing to have their rights diluted cannot deprive the minority of their right to cast an equally weighted vote." *Id.* at 12.

The court reasoned that the one-person, one-vote requirement was applicable because the committee “possesses many of the same powers held by the trustees in *Hadley v. Junior College District.*” *Id.* at 11 n.7. Specifically, the vocational school district could exercise the same powers as the school district and could “sue and be sued; acquire property; build, operate, and organize schools; incur debt; issue bonds and notes; and assess member municipalities for the [vocational d]istrict’s expenses.” *Id.*

In contrast, the Seventh Circuit found a joint technological board was not subject to the one-person, one-vote requirement, but the school council at issue in that case did not have the power to tax. *See Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098, 1102-03 (7th Cir. 1995) (local school councils for public schools are not subject to the one-person, one-vote requirement because they did not have power to tax).

As set forth above, JTEDs have essentially the same powers as those described in *Hadley* and *Kelleher*. Therefore, JTED elections must comply with the one-person, one-vote requirement, and the JTED member districts must be periodically redistricted.

Conclusion

Because JTEDs possess general governmental powers and perform important governmental functions, their elections must comply with the one-person, one-vote principle mandated by the U.S. Constitution. Consequently, the single-member districts from which a JTED elects its governing board members must be periodically redistricted to ensure that their populations are as nearly equal as practicable and that no vote is diluted.

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