

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88-24

The Honorable Theo Cribbs
State Representative, Eighty-Ninth District
State Capitol, Room 273-W
Topeka, Kansas 66612

Re:

Elections--City Elections--Commissioners Nominated

From Districts and Elected At Large

Synopsis:

The issue of whether there has been a violation of

the Voting Rights Act or the Fourteenth and Fifteenth Amendments to the United States

Constitution in utilizing at large or

multi-member electoral systems is a question of fact. Relevant factors a court will consider in making such a factual determination are set forth in this opinion. Cited herein: 42 U.S.C.A. §1973a.

Dear Representative Cribbs:

You have requested an opinion as to the constitutionality of Charter Ordinance No. 93 of the city of Wichita, whereby members of the city commission are nominated from districts and are elected at large. For reasons set forth below, this office cannot provide a definitive opinion as to the legality of the Wichita voting system under the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act; however, I would like to briefly summarize the principles which have been applied in determining the legality of at large or multi-member electoral systems.

In <u>Thornburg v. Gingles</u>, 92 L.Ed.2d 25 (1986), the U.S. Supreme Court held that where there is a claim of vote dilution through districting, a court must consider the totality of the circumstances and determine, based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters. 92 L.Ed.2d at 65. The court also set forth the following factors which may be relevant in assessing the impact of a voting system on minority electoral opportunities:

- "1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
- "2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
- "3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- "4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- "5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
- "6. whether political campaigns have been characterized by overt or subtle racial appeals;

"7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

"Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

"whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;

"whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." 92 L.Ed.2d at

The above factors would be relevant in determining whether minority voters in the city of Wichita have an equal opportunity to participate in the political process and to elect candidates of their choice. However, the issue of whether there has been a violation of the Voting Rights Act or the Fourteenth and Fifteen Amendments to the U.S. Constitution is a question of fact. Rogers v. Lodge, 73 L.Ed.2d 1012, 1021 (1982); Thornburg v. Gingles, 92 L.Ed.2d 25, 64 (1986). As this office is limited to providing opinions on questions of law (see enclosed policy statement), we cannot provide an opinion as to the legality of the Wichita voting system. The federal district court is the appropriate forum to consider questions as to the constitutionality of a voting system, and I would encourage you to take any evidence of discrimination to the U.S. Attorney who is responsible for enforcing the provisions of the Voting Rights Act. U.S.C.A. §1973a.

Very truly yours,

ROBERT T. STEPHAN

Attorney General of Kansas

Terrence R. Hearshman Assistant Attorney General

RTS:JLM:TRH:jm