

1972 S.C. Op. Atty. Gen. 88 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3284, 1972 WL 20428

Office of the Attorney General

State of South Carolina

Opinion No. 3284

March 20, 1972

***1** PLAN OF COUNTY GOVERNMENT FOR MARION COUNTY WHICH DIVIDES THE COUNTY INTO FIVE ELECTORAL DISTRICTS OF UNEQUAL POPULATION AND REQUIRES AT LEAST ONE COUNTY COUNCILMAN TO BE RESIDENT IN EACH ELECTORAL DISTRICT WHERE COUNTY COUNCIL IS COMPOSED OF SIX MEMBERS AND A MAJORITY OF THE ELECTORATES CANNOT ELECT A MAJORITY OF THE COUNCIL VIOLATES THE CONSTITUTIONAL STANDARD OF ONE-MAN ONE VOTE

TO: HON. WADDELL BYRD

You have asked this office for an opinion as to the constitutionality of a Bill proposing a plan of County Government for Marion County. Several problems of construction occur in trying to interpret the Bill which you have submitted to us. Therefore, this opinion will be premised upon the assumption that the following is a correct interpretation of the Bill.

The proposed plan would divide Marion County into five electoral districts, each entitled to a separate numbered seat on the County Council. These electoral districts are unequal both in total population and in total number of registered voters. The sixth member of the Council would be elected at large without regard to his district of residence.

U. S. Supreme Court cases dealing with local governmental bodies suggest that it is permissible to have a residency requirement which guarantees representation to various communities (e.g. urban or rural) within a county where such an arrangement facilitates the conduct of local government, so long as a majority of the county's electorate can elect a majority of the members on the governing body. See *Dusch v. Davis*, 387 U.S. 112, 18 L. Ed. 2d 656, 87 S. Ct. 1544 (1967). However, where such a scheme highlights the principle of one man one vote, it can not be upheld. Because the proposed scheme of County Government for Marion County does not guarantee that those districts with a majority of the county's population will control a majority of the seats on the County Council, it does not meet the requirements of the United States Constitution.

In addition, it should be noted that the proposed change in Marion County government is subject to Section 5 of the Voting Rights Act of 1965. Because the proposed scheme is a multi-member plan with a residency clause, numbered seats, and a majority vote requirement in the primary, it may be objected to by the Attorney General of the United States for racial discrimination. The 1971 Reapportionment Act for the State Senate was objected to by the United States Attorney General for precisely these reasons.

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