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COMMUNITY COLLEGE DISTRICTS: Election of members of board of trustees.

CONSTITUTION: Equal Protection Clause.

The statutory provision for the election of members of a board of trustees of a community college district comprised of 5 school districts with 1 trustee to be elected from each component school district and 3 at large, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

No. 4726

April 8, 1971.

Hon. Marvin R. Stempien
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Does 1966 P.A. 331, § 34, which provides for the election of a board of trustees of a community college district composed of 3 or more school districts to consist of 1 member elected from each school district and 3 members elected at large, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

1966 P.A. 331, as amended, being M.C.L.A. 389.1 et seq.; M.S.A. 15.615(101), et seq., is known as the community college act of 1966. The provisions of Part 1, Chapter 2 of the community college act of 1966, supra, authorize the formation of a community college composed of 2 or more contiguous school districts which operate grades kindergarten through twelfth. Sec. 34 (2) of Part 1, Chapter 2 of the community college act of 1966, supra, provides as follows:

"If the community college district consists of 3 or more school districts, then 1 member shall be elected from each school district and 3 members shall be elected at large."

The general powers and duties of such board of trustees are set forth in § 101 to § 145, Part 2, Chapter 11 of the community college act of 1966, supra. Therein the board of trustees is empowered: (a) to operate an educational institution for all persons above the twelfth grade level which provides college and noncollegiate level education, including area vocational-technical education programs resulting in the granting of diplomas and certificates including associate degrees but not including baccalaureate or higher degrees (§ 105); (b) to acquire and construct buildings, establish and carry on schools and departments or courses of study consistent with the act (§ 121); (c) to borrow money (§ 122); (d) to hire necessary personnel (§ 124), and (e) to levy taxes for the operation of the community college district (§ 144).

Your question relates to the statutory method of election of the members of the board of trustees of Schoolcraft Community College District, which is a community college district composed of the Livonia Public Schools School District, Wayne County, Michigan, Northville Public Schools, Ply-

mouth Community School District, School District of the City of Garden City and Clarenceville School District. While total population figures for each of these school districts, based upon the 1970 census, are not available, the unaudited fourth Friday count of memberships thereof in the 1970-71 school year is a clear indication of wide differences in the population of the various component school districts. The fourth Friday count shows:

Livonia	38,195
Northville	3,331
Plymouth	9,829
Garden City	13,881
Clarenceville	3,837

Because the Schoolcraft Community College is composed of the territory of 5 contiguous school districts operating grades kindergarten through twelfth, it was established pursuant to the provisions of Part 1, Chapter 2 of the community college act of 1966, *supra*. In accordance with § 34 (2) thereof, its board of trustees is composed of 8 members, one member elected from each of the aforesaid school districts and 3 members elected at large.

The answer to your question is controlled by the recent decision of the United States Supreme Court in *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50; 90 S. Ct. 791; 25 L. Ed. 2d 45. In *Hadley*, *supra*, a Missouri statute authorized the formation of a junior college district composed of separate school districts voting to form the same. Six trustees were elected to conduct and manage the necessary affairs of the district. These six offices were apportioned among the separate school districts on the basis of school enumeration of persons between the ages of six and twenty years who reside in each district. Under the statute, the Kansas City school district elected 3 of the trustees even though that school district contained 60% of the total enumeration in the entire junior college district. Suit was brought claiming that the right of electors in the Kansas City school district to vote for trustees was being unconstitutionally diluted in violation of the Equal Protection Clause of the Fourteenth Amendment.

Writing for the majority, Mr. Justice Black examined the powers and duties of the board of trustees of the junior college district and concluded that the board of trustees performs an important governmental function within the district.

It should be noted that a comparison of the provisions of the community college act of 1966, *supra*, and the statute providing for the creation of a junior college district in Missouri¹ compels the conclusion that there is no substantial difference between a Missouri junior college district and a Michigan community college district.

The majority opinion then held:

“ . . . We therefore 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

¹ Mo. Rev. Stat. § 178.770 et seq.

be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionately equal numbers of officials. . . ." 397 U.S. 50, 56; 90 S. Ct. 791, 795; 25 L. Ed. 2d 45, 50.

Thus, once the state of Missouri had decided to use the process of popular election of the members of the board of trustees of a junior college district, and once the class of voters was chosen, there was no constitutional way by which equality of voting power could be evaded. Examining the facts in the case, the majority of the court held that the statute built-in discrimination against voters in large districts.

The legislature having decided to use the process of popular election of members of a community college district comprised of three or more school districts and having designated the class of voters, the statutory scheme for one member of the board of trustees to be elected from each of the component school district discriminates against the electors of the school districts with the larger population such as Livonia Public Schools School District and the School District of the City of Garden City in favor of the school districts with the smaller population. As to the majority of the offices of member of the board of trustees of a community college district formed by two or more school districts, the votes of electors are not equal.

Therefore, it must be concluded that the built-in discrimination against voters in a large school district comprising a community college district under the provisions of Part 1, Chapter 2 of the community college act of 1966, cannot be sustained as sufficient compliance with the constitutional mandate that each person's vote counts as much as another as far as practicable under *Hadley*, supra.

This conclusion does not, of course, affect any of the official acts taken by the board of trustees since they may act as de facto officers despite the failure of the statute to provide a constitutional method for their selection. *Scholle v. Secretary of State*, 367 Mich. 176 (1962). See, also, *Greyhound Corp. v. Public Service Commission*, 360 Mich. 578, 589-595 (1960).

The ruling of the United States Supreme Court in *Hadley*, supra, is clear and must be observed. Therefore, I am constrained to conclude that § 34 of the community college act of 1966, supra, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

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