

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

November 13, 2006

Opinion No. 06-168

Reapportionment of South Carroll Special School District

QUESTION

Where, within the South Carroll Special School District in Carroll County, one voting district has experienced growth resulting in that area having more than three (3) times the population of other voting districts within the school district, is reapportionment of the voting districts required so as to comply with the principle of “one person, one vote?”

OPINION

Yes.

ANALYSIS

We have, in the past, issued a number of opinions recognizing the application of the principle of “one person, one vote” to school board voting districts. *See, e.g.*, Op. Tenn. Atty Gen. 80-127 (March 4, 1980); Op. Tenn. Atty. Gen 82-34 (January 29, 1982); Op. Tenn. Atty. Gen. 91-98 (December 5, 1991). As discussed in these opinions, the United States Supreme Court has held that the Fourteenth Amendment requires that county governmental bodies with legislative powers be apportioned on a one person, one vote, basis. *Dallas County, Alabama v. Reese*, 421 U.S. 477, 479-481, 95 S.Ct. 1706, 1707-1708 (1975); *Avery v. Midland County, Texas*, 390 U.S. 474, 486, 88 S.Ct. 1114, 1121 (1968); *Sudekem v. Hayes*, 414 F. 2d 41, 42 (6th Cir. 1969); *Otis v. Boyd*, 294 F. Supp. 813, 814 (E.D.Tenn. 1968). These cases define legislative powers broadly, so as to include any body which is able to make decisions with an impact on the community represented. Courts have expressly held that local school boards fall within this requirement. *See, e.g., Rader v. Cliburn*, 476 F.2d 182, 183-184 (6th Cir. 1973).

The South Carroll Special School District was created by a 1955 Private Act.¹ Section 2 of that private act provided that the board of education for the special school district would have five (5) members, and the same private act set forth the geographical boundaries of the five (5) voting districts.² Each member of the board must “reside in and be elected by the qualified voters of”

¹1955 Private Acts, Chapter 278.

²*Id.*, Sections 1 and 2.

that member's voting district.³ There are no "at large" school board members.

According to population figures⁴ from Carroll county that were provided with your opinion request, and confirmed with the Carroll County Election Commission, one voting district, the "Clarksburg" district, has experienced more growth than other voting districts within the special school district. Consequently, while the Clarksburg district now has a population of approximately 1222, other voting districts have populations of approximately 833 (Concord district), 387 (Yuma district) and 357 (Westport district). For one voting district exact population figures were not available.⁵ As a result, the Clarksburg voting district currently has a population nearly three and a half times larger⁶ than that of the voting district with the smallest population, Westport. This disparity is clearly far beyond what might be deemed acceptable in light of the Supreme Court's holding that "the Constitution permits no substantial variation from equal population in drawing districts for units of local government. . . ."⁷ Accordingly, reapportionment is required to fashion voting districts with substantially equal populations.

Because the special school district and its voting districts were created by the General Assembly with the passage of Chapter 278 of the 1955 Private Acts, it will be necessary for the General Assembly to amend the previous private act and reapportion the voting districts that comprise the South Carroll Special School District. Op. Tenn. Atty. Gen. 00-059 (April 3, 2000); Op. Tenn. Atty. Gen. 80-127 (March 4, 1980).

ROBERT E. COOPER, JR.
Attorney General and Reporter

³*Id.*, Section 2.

⁴These population figures are from the 2000 census.

⁵This is a "split district" comprised of portions of three (3) Civil Districts, and for which a precise population figure is unavailable. We are informed by the Carroll County Election Commission that the "split district" has 353 registered voters. Comparing population to registered voters in the other districts yields the following: Clarksburg: 1222 population/669 registered voters; Yuma: 387/293; Westport: 357/213; and Concord 833/303.

⁶The exact population difference between Clarksburg and Westport districts is 342%.

⁷*Avery v. Midland County, Texas, Id.*, 390 U.S. at 484-485, 88 S. Ct. at 1120.

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Douglas Henry
State Senator
Suite 11, Legislative Plaza
Nashville, TN 37243-0021