AG Op. EDUCATION: SCHOOL BOARDS; SELECTION, 1999 Va. AG 103 (99-037)

EDUCATION: SCHOOL BOARDS; SELECTION, ETC.

Change from appointed to elected school board in City of Petersburg. Members elected at large to replace 9-member appointed board in city comprised of seven established election districts. Preclearance by U.S. Department of Justice under Voting Rights Act. Election of school board from single-member election districts would require authorization from General Assembly.

DATE: October 29, 1999
SDATE: 991029
REQUESTOR: The Honorable Jay W. DeBoer, Member, House of Delegates
CITE: 1999 103 [Page 104]

You ask whether the City of Petersburg may elect the members of its school board in a manner that conforms with both state law and the federal Voting Rights Act of 1965.

You advise that, at the November 1998 general election, the voters of the City of Petersburg approved a referendum to change from an appointed to an elected school board, as authorized by § 22.1-57.2 of the Code of Virginia. The present school board is comprised of nine members appointed by the city council. The appointed members represent three school districts, which are not similar to election districts. The city council appoints three school board members each June, one from each school district, for a three-year term. This procedure is in accordance with the statutory provisions relating to appointed school board members in cities constituting school divisions.

You advise also that the Petersburg city council is comprised of seven members elected from seven wards, or elections districts. You state that the seven wards have been precleared by the United States Department of Justice in accordance with § 5 of the Voting Rights Act. The council members serve staggered terms, with each member elected for a four-year term.

Section 22.1-57.3 establishes the procedure for the election of school board members following approval at the referendum. Section 22.1-57.3(A) requires that elections of school board members in a city are to be held to coincide with the elections for members of the city council at the regular general election in May. Section 22.1-57.3(B) requires that "[t]he initial elected [school] board shall consist of the same number of members as the appointed school board it replaces, and the members shall be elected . . . on the same basis as the school board previously was appointed," either from the established city election districts, at large, or a combination of the two. Section 22.1-57.3(B) further provides:

If the appointed school board being replaced has not been appointed either on an at-large basis or on the basis of the established county or municipal election districts, or a combination thereof, the members shall be elected at large unless the governing body of the county, city, or town provides for the election of school board members on the basis of the established county or municipal election districts.

This provision applies only in part to the situation existing in the City of Petersburg. Because the appointed school board was not appointed at large, or on the basis of established municipal election districts, or a combination of the two, the members of the school board are to be elected at large unless the city council provides for election on the basis of the established municipal election districts. Section 22.1-57.3(B) also requires, however, that the initial elected school board consist of the same number of members as the appointed school board being replaced. Thus, because the appointed school board consists of nine members and the city has only seven established election districts, the city council would be unable to provide for the election of school board members on the basis of the established election districts.

It is accordingly my opinion that, under § 22.1-57.3, the nine members of the City of Petersburg school board are to be elected at large. [Page 105]

As you are aware, the holding of the referendum and the implementation of the potential change must be precleared by the United States Department of Justice under § 5 of the Voting Rights Act.

I cannot predict whether such at-large elections of the members of the school board would be deemed to be consistent with the requirements of the Voting Rights Act.

Should the Department of Justice require that the city elect its school board from single-member election districts, it would be necessary for the city to request that the General Assembly enact legislation authorizing the city to implement the plan in this manner.

FOOTNOTES

1 See §§ 22.1-48 to 22.1-50. Section 22.1-49 authorizes "[t]he school board of a city . . . to prescribe the number and boundaries of the school districts." Under this provision, the City of Petersburg has prescribed three school districts. Section 22.1-50 requires that the school board "shall consist of three members for each [school] district."


3 It is my opinion that the city does not have the authority under state law to decrease the size of the school board by abolishing two of the seats on the board. This authority exists only in instances in which a county, pursuant to § 22.1-44, has appointed two additional at-large members to a county school board. Prior opinions of the Attorney

4 See Op. Va. Att'y Gen.: 1992 at 113, 119 n. 3, 1992 Va. AG 113, 119 n. 3; 1990 at 82, 84, 1990 Va. AG 82, 84. Preclearance may be obtained either by submission of the plan to the United States District Court for the District of Columbia or by submission to the United States Department of Justice. The city attorney is generally the person who would submit the city plan for preclearance. For purposes of this opinion, I assume that the changes either have not yet been submitted or that the Department of Justice has not yet approved the changes.

5 The District Court recognized that the at-large system has certain advantages over a ward system. See City of Petersburg, Virginia v. United States, 354 F. Supp. at 1027.

6 In Citizens Committee, etc. v. City of Lynchburg, Va., 528 F.2d 816, 818 (4th Cir. 1975), the court refused to invalidate the city annexation itself as having a dilutive effect on voting within the prohibitions of § 5 of the Voting Rights Act, stating that there were "no sound reasons why state and local laws cannot be amended to devise a ward system . . . that will meet the requirement of the Act."