Elections & Reapportionment
Reapportionment
Legislative Reapportionment
Re. Const Art 4 Pt First § 2

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Representative Edward C. Kelleher
Representative Richard J. Carey
House of Representatives
State House
Augusta, Maine

Dear Representatives Kelleher and Carey:

This responds to your request for advice regarding use of certain data in the legislative reapportionment process.

QUESTION:

The question is whether, in developing districts for reapportionment of the Maine House of Representatives in compliance with the single member district provision of the Constitution, Article IV, Part First, Section 2, there is any requirement of statute or any requirement imposed by court decision that census enumeration districts be used instead of individual city blocks with populations identified in census maps.

ANSWER:

The answer is that there is no requirement of state or federal statute nor any requirement imposed by state or federal court decision interpreting constitutional requirements that census enumeration districts must be used in designing state legislative districts.

DISCUSSION:

The law governing apportionment of legislative districts is generally summarized by the Maine Supreme Judicial Court in In Re Apportionment of House of Representatives, 315 A.2d 211 (Me., 1974). That decision reviewed federal court decisions up to that time and developed its reapportionment based on those decisions.

It recognized that there is some flexibility in the methods used to establish legislative districts as long as population deviations from the mean legislative district are within certain reasonable bounds and the population deviations can be reasonably justified.

Neither the Maine decision nor other decisions reviewing reapportionment of state legislatures cited in this memorandum focus on the question of which census data may be used. Rather, the apportionment question seems to be regardless of what census data is used, is the population of the districts and the end result of apportionment reasonable. Further, the United States Supreme Court decision cited most often by the Maine Supreme Judicial Court, Gaffney v. Cummings, 412 U.S. 735 (1973), included a rather extensive statement by the Court that even strict adherence to the census data itself, in whatever form, may not be necessary if other quantifiable factors relating to population are available. There the Court approved a reapportionment plan which attempted to strike a reasonable balance between the political parties. In sustaining that plan, the Court noted the flexibility which may be applied in reapportionment and the considerations which may be weighed with census data in developing reapportionment plans. The United States Supreme Court's observations are quoted here at length to indicate the flexibility which may be allowed.

> " * * * Politics and political considerations are inseparable from districting and apportionment. The political profile of a State, its party registration, and voting records are available precinct by precinct, ward by ward. These subdivisions may not be identical with census tracts, but, when overlaid on a census map, it requires no special genius to recognize the political consequences of drawing a district line along one street rather than another. It is not only obvious, but absolutely unavoidable, that the location and shape of districts may well determine the political complexion of the area. District lines are rarely neutral phenomena. They can well determine what district will be predominantly Democratic or predominantly Republican, or make a close race likely. Redistricting may pit incumbents against one another or make very difficult the election of the most experienced legislator. The reality is that districting inevitably has and is intended to have substantial political consequences.

> "It may be suggested that those who redistrict and reapportion should work with census, not political, data and achieve population equality without regard for political impact. But this politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results; and, in any event, it is most unlikely that the political impact of such a plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.
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> "It is much more plausible to assume that those who redistrict and reapportion work with both political and census data. Within the limits of the population equality standards of the Equal Protection Clause, they seek, through compromise or otherwise, to achieve the political or other ends of the State, its constituents, and its officeholders. * * * " 412 U.S. at 753-754.

Another case decided the same year, Mahan v. Howell, 410 U.S. 315 (1973) upheld a state legislative reapportionment plan that allowed for population variances between districts of up to 16.4 percent, from 6.8 percent over representation to 9.6 percent under representation from the mean. The Court found that the state's effort to maintain the integrity of traditional political subdivision boundaries within the Virginia House justified such a deviation. See also dictum, Reynolds v. Sims, 377 U.S. 533, 578 (1964).

Both Gaffney and Mahan also stand for the proposition that the federal courts will be more lenient in supervising state legislative apportionments than they will be in supervising Congressional apportionments, see Gaffney v. Cummings, supra, at 741.

However, a more recent decision has indicated that where reapportionment is done by a court rather than a political body or a reapportionment commission, the courts, in redrawing district lines, will be held to much stricter standards and allowed much less deviation from the mean than a political line-drawing body, Chapman v. Meier, 420 U.S. 1 (1975). Thus the Supreme Judicial Court may have less flexibility in line-drawing than the legislative reapportionment commission.

Other recent cases have also had occasion to address questions of adequacy of population variances and line-drawing relating to neighborhoods relating to reapportionment matters. United Jewish Organizations of Williamsburg, Inc. v. Carey, 45 U.S.L.W. 4221 (March 1, 1977); Beer v. United States, 425 U.S. 130 (1976); and White v. Regester, 412 U.S. 755 (1973). However, it must be emphasized that these three cases involved questions of discrimination and/or interpretations of the Voting Rights Act to a greater extent than they involved questions of reasonableness of apportionment and deviation from an absolute arithmetic mean. They are cited because examination of the facts in all of the cases cited above indicates that the Court is not concerned with the particular data by which district population or neighborhood breakdowns are determined; rather, they are concerned with the objectivity and end results of whatever data -- census tracts, enumeration districts, blocks, or other "political data" -- are used.

Thus, it may be said that apportionment commissions have certain flexibility which allows them to use available data which permits reasonably objective results and that no particular data base, such as census enumeration districts, must be used. Further, other factors including maintenance of political boundaries, neighborhoods, and considerations of compactness may also affect reapportionment decisions. Deviation from the arithmetic mean of population for the ideal legislative district is permitted to some extent to take into consideration these non-population factors.

For further discussion of the flexible standards for court review of legislative reapportionment decisions, see Martin: "The Supreme Court and State Legislatife Reapportionment: The Retreat from Absolutism," 9 Val. U.L. Rev. 31 (1974); Casper: "Apportionment and the Right to Vote: Standards of Judicial Scrutiny," 1973 Sup. Ct. Rev. 1.

If we can be of further assistance to you, please feel free to call on us.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

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