

OFFICE OF THE ATTORNEY GENERAL

92-00101



JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

DEC 2 0 1991

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable George Grayson
Member, House of Representatives
District No. 19
P. O. Box 38
Normal, AL 35762

Municipalities - Redistricting
- Residence Requirements -
Offices and Officers

The City Council of Huntsville
is not authorized by state law
to adopt a redistricting plan
providing for more than five
single-member city council
districts.

Dear Representative Grayson:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

If a Class 3 municipality established a
five-district city council subsequent to the
enactment of Act No. 87-191, can the
municipality now change to a seven- or
nine-district city council under Act No.
87-191 or is new legislation required?

FACTS, LAW AND ANALYSIS

A Class 3 municipality pursuant to Code of Alabama 1975, § 11-40-12 has a population of not less than 100,000 and not more than 174,999 inhabitants. The City of Huntsville is a Class 3 municipality.

Act No. 87-191 is codified at Code of Alabama 1975, § 11-43-63. This provision states in pertinent part:

"Any city or town council of this state not currently electing its members from single-member districts pursuant to state law may, not less than six months prior to the regular general municipal election, by ordinance adopted by a majority of the membership of the council, divide the municipality into single-member districts (wards) of not less than five nor more than seven districts (wards). Provided, however, that the number of districts (wards) in any Class 1, 2 or 3 municipality may not exceed nine districts (wards)." (Emphasis added.)

Act No. 738, Acts of Alabama 1971, p. 1453 provided that cities with a population of not less than 135,000 nor more than 185,000 inhabitants were to be governed by a mayor and five councilmen who were elected at large. When enacted, Act No. 738 applied to the City of Huntsville.

On June 2, 1988, the United States District Court for the Northern District of Alabama entered an order in Grayson v. Madison County, Civil Action 84-V-5770-NE, which divided the City of Huntsville into five city council and board of education districts with the council and board members elected from single-member districts. The court order did not provide that alteration of the number of city council districts for Huntsville is permissible.

The City of Huntsville is a Class 3 municipality which elects its city council members from single-member districts pursuant to Act No. 738, as amended by a federal court order issued subsequently to the enactment of Act No. 87-191 (§ 11-43-63).

As to whether the City of Huntsville may increase the number of its council districts under § 11-43-63, in City of Birmingham v. Graffeo, 551 So.2d 357 (Ala. 1989), the Alabama Supreme Court held that the Legislature when enacting § 11-43-63 (Act No. 87-191) intended for its provisions to apply to each city and town in the state and, therefore, the Legislature intended to amend the mayor-council act of the City of Birmingham. The mayor-council act of the City of Birmingham was a pre-Peddycoart general act of local application, as was Act No. 738. The Court in the Birmingham decision stated that § 11-43-63 "explicitly allows a city by the vote of its city council to change from the at-large election of city council members to election in single member districts." (Emphasis added.)

It is clearly indicated by the wording of § 11-43-63 and by the Alabama Supreme Court's construction that § 11-43-63 is only applicable to those municipalities which have the at-large method of electing city council members and which wish to change to electing these officers from single-member districts. The City of Huntsville, a Class 3 municipality, which subsequently to the enactment of § 11-43-63 changed to a single-member district election of city council members, cannot under that provision, increase the number of single-member districts for its city council.

Code of Alabama 1975, § 11-43-40 provides for the election of governing bodies of cities operating under a mayor-council form of government to allow eight single-member districts and one at-large district. Since the federal court order provides for election by single-member districts only and the city stated its desire not to proceed under this section, we express no opinion on the applicability of this provision to the City of Huntsville.

CONCLUSION

The City of Huntsville, a Class 3 municipality, which subsequently to the enactment of Code of Alabama 1975, § 11-43-63, changed to a single-member district election of city council members, cannot under that provision increase the number of single-member districts for its city council.

Honorable George Grayson
Page 4

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/LKO/dn

08110