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April 13, 1973

Honorable Jim Kaster, Chairman  
Intergovernmental Affairs Committee  
House of Representatives  
Austin, Texas

Letter Advisory No. 11

Re: The constitutionality of  
HJR 25 providing that  
certain counties and cities  
on the coast may issue bonds  
for construction of seawalls  
and breakwaters upon vote  
of majority resident taxpayers.

Dear Representative Kaster:

Section 7 of Article 11 of the Constitution of Texas now provides that, upon a vote of "a two-thirds majority of the resident property taxpayers", taxes may be levied and collected for the construction of seawalls, breakwaters or other sanitary purposes. House Joint Resolution No. 25 proposes a constitutional amendment that would change the quoted language to authorize the tax upon a vote of "the majority of the resident property taxpayers". Your letter asks our "opinion on the constitutionality of this measure".

Two questions are presented: The first is whether the change from a two-thirds majority to a simple majority would violate the federal constitution. The second is whether the limitation of the franchise to "resident property taxpayer" renders the proposed provision constitutional.

The change from a two-thirds majority to a simple majority is not unconstitutional. There is no requirement in the Constitution of the United States that bond elections be passed by a vote greater than a simple majority.

With regard to the second question, the Supreme Court of Texas in Montgomery Independent School District v. Martin, 464 S. W. 2d 638 (Tex. 1971), has upheld the constitutionality of limitation of the franchise to vote to resident property taxpayers, and we are bound by that opinion. The Supreme Court of the United States has struck down similar limitations on a number of occasions but its decisions were distinguished in

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the Montgomery decision. See for instance, Kramer v. Union Free School District No. 15, 395 U. S. 621, 23 L. Ed. 2d 583, 89 S. Ct. 1886 (1969); Cipriano v. City of Houma, 395 U. S. 701, 23 L. Ed. 2d 647 (1969) 89 S. Ct. 1897 (1969); Phoenix v. Kolodziejki, 399 U. S. 204, 26 L. Ed. 2d 523, 90 S. Ct. 1990 (1970). Compare Dunn v. Blumstein, \_\_\_ U. S. \_\_\_, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972).

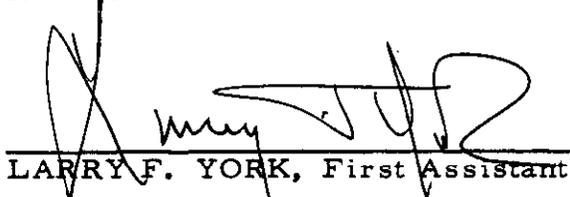
The Montgomery decision was not appealed to the United States Supreme Court. However, there is pending at the present time, before a three judge United States District Court, a suit involving the constitutionality of Texas voting requirements. We must assume that the court will uphold the Montgomery case and find the Texas voting requirements constitutional. However, until the United States Supreme Court has passed upon the Texas requirements or others identical to them, we cannot give an unequivocal answer as to the constitutionality of the limitation of voting rights to "resident property taxpayers".

Very truly yours,

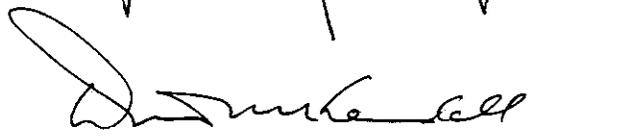


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