APR 26 1974

Honorable A. F. Summer
Attorney General
State of Mississippi
Jackson, Mississippi 39201

Dear Mr. Attorney General:

This is in reference to your resubmission, on February 25, 1974, of House Bills 362 and 363 (1970 Session) pursuant to Section 5 of the Voting Rights Act of 1965.

I have given careful consideration to the material submitted along with voluminous material in our files compiled during and after the prior submission of these acts in 1970, and the comments of interested parties. Our review discloses substantial activity relating to these acts since the time they were submitted previously.

As indicated in your resubmission, these acts were submitted to the Attorney General, pursuant to Section 5, on July 23, 1970. On September 21, 1970, we sent a response to that submission. In that letter you were advised that the problem involved was complex, that the Department was still receiving and analyzing information concerning the submission, that the information was conflicting and that, under the circumstances, the Attorney General was not prepared to make a determination at the expiration of the 60 days allowed under

cc: Public File (Rm. 920)

Section 5. As a result of subsequent litigation, as authorized by Section 5, however, the United States District Court for the Southern District of Mississippi ruled in Evers v. State Board of Election Commissioners, 327 F. Supp. 640, that the prior submission had not received the required Section 5 scrutiny and that the acts in question, therefore, remained unenforceable.

As alluded to in your resubmission, in an amicus brief filed by this Department with the Supreme Court during the State's appeal of the Evers case, the Department took the position that since no objection had been interposed to Acts 362 and 363 by the Attorney General within the allowed 60-day period, Section 5 requirements had been met. However, due to the failure of the State to pursue its appeal, the Supreme Court dismissed on procedural grounds and the three-judge district court's ruling was left undisturbed. Thus, it would seem that the disposition proposed in your suggestion that the Attorney General simply reaffirm the action previously taken is foreclosed by the court's determination in Evers.

We turn then to the merits of the submission. We have reviewed all of the material available to the Department at the time of the previous submission along with other information developed during a subsequent investigation and that coming to our attention in connection with the instant submission. As was indicated in the prior response, some of that information consists of reported statements of proponents of the measures and statements of purpose made with respect to prior similar proposals to the effect that one purpose

of the legislation is to deny independent black candidates the opportunity to run for and be elected to office in the general election with a plurality of the votes cast.

Our subsequent investigation and more recent experience in connection with the kind of changes here involved show that irrespective of what might be established as to the validity of the purpose of the acts, the effect of their implementation likely will be to minimize the opportunity of black voters to elect a candidate of their choice for a substantial number of district and county-wide offices. Our analysis shows that the composite change to be occasioned by these acts would have the practical effect of imposing a majority vote requirement on the general election which heretofore has been subject only to a plurality requirement. The plurality in turn, has accounted for the recent success of blacks who, for the most part, have won as independents in general elections. We note that some 195 blacks ran as independents in the 1971 general elections alone. That the dilutive effect on black voting strength would be substantial is demonstrated further by Census statistics which show that some 10 of the 82 Mississippi counties have voting age populations which are 42%--49% black and that 6 others are 37% or more black.

As you know, since the time these acts previously were considered, the Attorney General has promulgated procedural guidelines for the administration of Section 5. (Part 51, 28 C.F.R.) Those guidelines provide, among other things, that:

> "If the Attorney General is satisfied that the submitted change does not have a racially discriminatory purpose or effect, he will not object to the change and will so notify the submitting authority. If the Attorney General determines that the submitted change has a racially discriminatory purpose or effect, he will enter an objection and will so notify the submitting authority. If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall . . . enter an objection and so notify the submitting authority."

In Georgia v. United States, 411 U.S. 526, 536-539 (1973), the Supreme Court specifically considered this provision and held it to be a "reasonable means of administering his [the Attorney General's] §5 obligations."

While we have reviewed and considered all of the material submitted by the State presently and previously, in view of the above-mentioned indications of racial purpose and effect we cannot conclude that the changes involved in Acts 362 and 363 do not have a racially discriminatory purpose and will not have a racially discriminatory effect within the meaning of Section 5. For that reason, and consonant with the Section 5 guidelines, I must, on behalf of the Attorney General interpose an objection to the implementation of these statutes.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division