Office of the Assistant Attorney General

Washington, D.C. 20530

January 20, 1984

W. Dean Belk, Esq.
Clark, Davis & Belk
200 Second Street
Indianola, Mississippi 38751

Dear Mr. Belk:

This is in response to your submission under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of the annexation adopted April 12, 1965 (approved by the Chancery Court May 25, 1965) and the annexation adopted October 12, 1981 (approved by the Chancery Court September 8, 1983) to the City of Indianola, Mississippi. Your submission was received on November 21, 1983.

As you know, an objection to the 1965 annexation was made on behalf of the Attorney General on June 1, 1981, and pursuant to 28 C.F.R. 51.47, your request for reconsideration of this objection was declined on April 14, 1982. Each of these letters indicated that one remedial alternative "might be to offset the dilutive effect of the annexation in question by annexing the black residential area adjacent to the city."

It is our understanding that the current annexation is an attempt by the city to comply with this suggestion. Accordingly, we are treating the current submission as a request to reconsider and withdraw the 1981 objection based on the existence of new circumstances, viz., the 1983 annexation of predominantly black populated territory which is simultaneously submitted for Section 5 review on its own merits.

As we understand the city's proposed annexation of nine subdivisions in predominantly black Southgate, it is an effort to meet the concerns expressed in our earlier letter by annexing that portion of Southgate which will have the effect of restoring the black-white population ratio in Indianola to approximately what it was at the time of the effective date of the Voting Rights Act, i.e., prior to the 1965 annexation of predominantly white areas.

According to information you have furnished, confirmed by our own research, the present annexation would accomplish such a restoration. Based on the 1960 Census, the City of Indianola, as then constituted, was 2,950 (43.9%) white, and 3,714 (55.3%) black. The current population, including both the 1965 and 1983 annexation, is 3,957 (41.9%) white, and 5,448 (57.7%) black. Thus, over the 18-year period from 1965 to 1983 there has been an increase of 2,717 persons, in essentially the same racial proportions.

However, there have also been other demographic changes. At the time of the 1965 annexation, the Southgate area had not yet been constructed. When a jurisdiction such as Indianola fails to submit covered voting changes for a number of years, applicable court decisions require that the Attorney General must make his Section 5 determinations on the basis of the current demographic situation rather than that which originally obtained. City of Rome v. United States, 472 F. Supp. 221, 246-247 (D. D.C. 1979) aff'd, 446 U.S. 156 (1980).

Applying this rule to the present submission (and the accompanying request for reconsideration and withdrawal of the objection), we find that the Southgate area adjacent to and receiving services from the city contains a total population of some 4,000 persons, most of whom are black. The present submission annexes nine of the twelve subdivisions in this area, adding about 1,300 blacks. Even accepting the city's claim that this will eliminate any racial effect attributable to the series of annexations since 1965, it poses the question of whether the city's annexation policy -- viewed as of this time -- is based on the kind of racial purpose proscribed by Section 5.

Our analysis begins -- as it must -- with the relevant Supreme Court decisions. In City of Richmond v. United States, 422 U.S. 358, 378 (1975) the Court in a comparable situation faced a need to define such a purpose. There the Court had concluded that modifications to Richmond's electoral system had cured any discriminatory effect or dilution which the annexation had occasioned, but set forth the following purpose analysis:

> If this is so, it may be asked how it could be forbidden by §5 to have the purpose and intent of achieving only what is a perfectly legal result under that section and why we need remand for further proceedings with respect to purpose alone. The answer is plain, and we need not labor it. An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color. * * * Annexations animated by such a purpose have no credentials whatsoever; for "[a]cts generally lawful may become unlawful when done to accomplish an unlawful end . . ." [citations omitted] * * * An annexation proved to be of this kind and not proved to have a justifiable basis is forbidden by §5, whatever its actual effect may have been or may be. (Emphasis added.)

Accordingly, we are required to determine not only the effect of the proposed annexations but whether they have a "justifiable basis" not related to considerations of race. In your submission you have provided copies of the court's opinion in Dotson v. City of Indianola, 551 F. Supp. 515 (N.D. Miss. 1982) (Dotson III), as well as the opinion of the Chancery Court on the present annexation. (Letter opinion of the Chancery Court for the Ninth Chancery District of Mississippi; August 29, 1983, Cause No. 18,978). The Chancery Court, without discussing the impact of racial purpose, approved the proposed annexation under the state annexation laws, but made no effort to analyze its validity under the federal statute's Section 5 standard. In Dotson III, however, the district court found that the city had a clear racial purpose in proposing this limited annexation, which carves up the Southgate area in a manner that excludes a large portion of the black population because of race. As there stated (p. 519-520):

> [W]e do not agree that defendants may use race as a basis for refusing to annex the neighborhoods in which such plaintiffs reside. The reason expressed by Mayor Fratesi opposing annexation manifestly violates the Constitution because of racial motivation that invidiously discriminates against blacks. We hold that official conduct so actuated contravenes the Due Process and Equal Protection clauses of the fourteenth amendment.

It is well settled that the Voting Rights Act will not permit preclearance of an annexation defined solely by reference to race that is calculated to divide a population center in a way that will tolerate inclusion into the municipality of a select number of blacks while continuing to exclude others similarly situated. A redistricting that uses gerrymandering techniques to fragment and divide a black community for no reason other than to insure the maintenance of white voting strength in the several adjacent districts plainly cannot survive the purpose test under Section 5. So, too, an annexation drawn to separate black neighborhoods and thus carefully limit the number of blacks in the community that are brought into the city suffers similar preclearance problems -- especially where (as here) municipal services are already being provided to the entire area so that voter participation is the only impetus to annex.

Accordingly, on behalf of the Attorney General I must enter an objection to this annexation pursuant to Section 5 (and decline to withdraw the outstanding objection to the 1965 annexation). Court review of this matter has found that the city's limited annexation of portions of the Southgate area was based on the unconstitutional purpose of excluding adjacent areas for reasons of race. No sound, nondiscriminatory economic and administrative reasons have been offered for the configuration of the area selected for annexation.

In coming to this conclusion, I have carefully considered the city's concern that the annexation of all eligible areas of black population concentrations in the Southgate area (together with a withdrawal of the outstanding objection to the 1965 annexation) would occasion an overall reduction in the percentage of white citizens residing in the enlarged city, thereby diluting their voting strength in city elections. While acknowledging the city's concern, our analysis of such a comprehensive annexation reveals that the percentage change from today's white population figures would, in such circumstances, be exceedingly small, from 33 percent to 32.6 percent. Conversely, the increase in the black population would be from 66.5 percent to 67.1 percent. If such marginal differences are unacceptable to the city, the Supreme Court suggested yet another course in City of Richmond, supra. Commenting directly on the situation where the voting strength of a racially identified group is diminished by annexation, the Court observed (422 U.S. at 370):

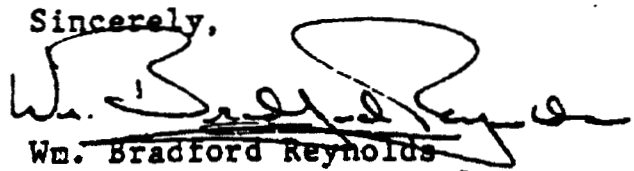
> that consequence would be satisfactorily obviated if at-large elections were replaced by a ward system of choosing councilmen. It is our view that a fairly designed ward plan in such circumstances would not only prevent the total exclusion of [the disadvantaged group] from membership on the council but would afford them representation reasonably equivalent to their political strength in the enlarged community.

Let me close by acknowledging the long and troubling efforts made by the city to achieve a result perceived as fair to all the residents in and around Indianola. I encourage the continuation of those efforts. For, while the law compels the result I have reached today, it is my firm belief that the desired annexations can be accomplished in a manner that satisfies Section 5 requirements. I stand ready to co-operate with the city in all future efforts to deal with this problem.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the voting changes occasioned by the annexations legally unenforceable. Dotson v. City of Indianola, 521 F. Supp. 934, 943-44 (N.D. Miss. 1981); 28 C.F. R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Indianola plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 17, 1986

W. Dean Belk, Esq.
Clark, Davis & Belk
P. O. Box 229
Indianola, Mississippi 38751

Dear Mr. Belk:

This refers to the districting plan and the establishment of an additional polling place for the City of Indianola in Sunflower County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. This also refers to your request for reconsideration of the June 1, 1981, and January 20, 1984, objections to the 1965 and 1983 annexations to the City. We received your submission and your request for reconsideration on August 18, 1986.

The Attorney General does not interpose any objection to the districting plan. Also, in view of the adoption of that plan, which meets the standard set forth in City of Richmond v. United States, 422 U.S. 358 (1975), and pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section 5 (28 C.F.R. 51.47), the objections interposed to the 1965 and 1983 annexations are hereby withdrawn. However, we feel a responsibility to point out that under Section 5 of the Voting Rights Act neither the failure of the Attorney General to object to the districting plan nor the withdrawal of the objections to the annexations would bar any subsequent judicial action to enjoin the enforcement of any of these changes. See also 28 C.F.R. 51.48.

However, regarding the establishment of the new polling place, we find that the information sent is insufficient to enable us to determine that the proposed polling place does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In order that we may resolve this matter, please provide us with the basis for the city's decision to utilize only two polling places for the implementation of the newly adopted districting plan which consists of five districts. In this connection, we note that the October 2, 1985, order of the United States District Court for the Northern District of Mississippi in Gregory v. City of Indianola, Civil Action No. GC 84-235-WK-O, states:

> The lawyers further agreed upon the following polling places:
>
> District 1 - Lockhard Elementary School
> 2 - American Legion Home
> 3 - Neighborhood Facility Center
> 4 - Carver Middle School
> 5 - Gentry High School

The information we have obtained to date indicates that the schools are available for use as polling places and are accessible to voters.

The Attorney General has sixty days in which to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when this Department receives the information necessary for the proper evaluation of the change you have submitted. 28 C.F.R. 51.35(a). Further, you should be aware that if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. 28 C.F.R. 51.38. Therefore, please inform us of the course of action the City of Indianola plans to take to comply with this request.

Finally, should an election date implementing the new method of election be selected that is different from that of a regularly scheduled election, the procedures for conducting such a special election are subject to the preclearance requirements of Section 5.

If you have any questions concerning the matters discussed in this letter or if we can aid you in any way to obtain the additional information we have requested, feel free to call Ms. Corliss Ibbott (202-724-6311) of our staff. Refer to File No. R2155 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JUN 3 1985

W. Dean Belk, Esq.
Clark, Davis & Belk
P. O. Box 229
Indianola, Mississippi 38751

Dear Mr. Belk:

This is in response to your submission under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of the amendment to Section 2 of the charter for the City of Indianola which provides that the five aldermembers are to be elected from single-member districts, and your request that the Attorney General reconsider the Section 5 objection interposed to the annexation adopted April 12, 1965 (approved by the Chancery Court on May 25, 1965) and the annexation adopted October 12, 1981 (approved by the Chancery Court on September 8, 1983) to the City of Indianola in Sunflower County, Mississippi. Your submission was received on April 2, 1985.

The Attorney General does not interpose any objection to the charter amendment. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the request for reconsideration of the objections interposed previously to the 1965 and 1983 annexations, we note that the charter amendment is a positive step toward remedying the concerns which led to those objections. However, until a fairly drawn plan that would afford black voters "representation reasonably equivalent to their political

strength in the enlarged community" has been adopted and precleared under Section 5, the objections cannot be withdrawn. City of Richmond v. United States, 422 U.S. 358, 370 (1975). It is our understanding that the city is in the process of drawing such a plan. When adopted, it would be appropriate to submit it for Section 5 review, and at that time we would be pleased to consider a withdrawal of the objections to the 1965 and 1983 annexations.

In view of the above considerations, we find that your request for reconsideration is premature. Accordingly, I must, on behalf of the Attorney General, decline to withdraw the objections at this time.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division