



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

March 31, 1989

Honorable Mike Moore  
Attorney General  
P.O. Box 220  
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to Section 47 of Chapter 492 (1986) of the State of Mississippi insofar as it repeals Section 37-7-611 of the Mississippi Code, dealing with the modification of municipal school district boundaries. We received the information to complete your submission on January 30, 1989.

We have carefully considered the information you have provided along with the comments and information received from other interested parties. As a result of our review, a number of factors emerge as being very significant to the determination the Attorney General is called upon to make in a situation of this nature.

First, Section 37-7-611 provides that when a municipality with a municipal school district annexes land that is not in the municipal school district, the boundary between the municipal school district and adjoining school districts shall be modified to accord with the newly established municipal boundaries. Under that system, Mississippi currently has in place a mechanism whereby all political boundary disputes relating to a proposed annexation, whether they concern school or other matters, may be aired and considered in a proceeding conducted by the chancery court to determine whether the annexation should be approved.

Secondly, it appears that the state, by repealing Section 37-7-611, proposes to replace this judicial, case-by-case approach to reviewing annexations as they relate to municipal school districts with a system in which the neighboring school district can, and apparently often will, exercise veto authority over such a municipal school district annexation.

Thirdly, according to our information it is generally recognized in the state that there is a demographic trend toward the movement of whites out of the cities into suburban and rural areas while blacks are moving from the rural areas of the state into the cities. It further appears that this demographic trend may play a significant role in the opposition to annexations by school districts that neighbor a municipal district since we have noted specific recent annexation disputes where a principal issue has been opposition by predominantly white areas to transferring their students into a majority black school system.

While we recognize that demographic patterns are not uniform throughout the state, demographic data available to us suggest that the repeal of Section 37-7-611 will have a significant racial impact. According to information published by the State Department of Education, approximately half the municipal school districts in the State of Mississippi have a student population that is majority black and about two-thirds are 40 percent black or higher. Thus, with the repeal of Section 37-7-611, the long term effect appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner.

Finally, we note that the repeal of Section 37-7-611, by allowing for annexations to cities without the concomitant expansion of municipal school district boundaries, is likely to create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board. We have received no explanation for the establishment of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. That is especially so here, since a covered jurisdiction may not seek to establish or revise political boundary lines so as to include some voters in the

jurisdiction and fence others out based on race. Perkins v. Matthews, 400 U.S. 379 (1971); accord, City of Pleasant Grove v. United States, 623 F. Supp. 782 (D.D.C. 1985), aff'd 479 U.S. 462 (1987). Therefore, on behalf of the Attorney General, I must object to the repeal of Section 37-7-611.

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 this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the repeal of Section 37-7-611 legally unenforceable. 28 C.F.R. 51.10.

In addition, we wish to again bring to your attention the fact that Chapter 379 (1977), which occasioned a similar change concerning the modification of municipal school district boundaries where a municipality annexes territory outside its principal county, has not received the requisite Section 5 clearance. Accordingly, unless and until the State of Mississippi receives a declaratory judgment from the District of Columbia Court or the Attorney General grants clearance, this change also is not legally enforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division