U.S. Department of Justice

Civil Rights Division

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

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Giles W. Bryant, Esq.
Special Assistant Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Bryant:

This refers to Chapter 567 (1990), which changes from mandatory to optional the single-member district method of electing trustees for consolidated and line consolidated school districts in the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

As of November 1, 1964, the Section 5 coverage date for Mississippi, consolidated and line consolidated school districts were governed by five-member boards elected on a nonpartisan basis with majority vote for staggered, five-year terms. An election was to be held for one board member in November of each year. Consolidated school boards were elected at large; line consolidated boards were elected from two multimember election districts or from a multimember (four-member) and a single-member district.

In 1988, the Mississippi Legislature enacted Chapter 523 mandating that all consolidated and line consolidated school boards be elected from single-member districts. The districting plans were to be adopted by the local boards of supervisors. On March 1, 1989, the Attorney General granted Section 5 preclearance to this voting change. Our records indicate that 20 of the 26 affected school boards now have obtained Section 5 preclearance for single-member district plans.

In 1990, Mississippi adopted Chapter 567, the legislation which is now before us for Section 5 review. This legislation provides that consolidated and line consolidated districts may change to single-member districts or, instead, may retain the election methods that were in use prior to the 1988 legislation.

The state submitted the change occasioned by Chapter 567 on April 30, 1990. The submission, however, did not contain sufficient information to enable us to make the requisite determination under Section 5 that the change has neither a discriminatory purpose nor a discriminatory effect. Accordingly, on June 29, 1990, we made a timely request for additional information. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.37(a)). Approximately eight months later, on February 21, 1991, the state provided a partial response that omitted significant items of the requested information which the state did not indicate were unavailable. Accordingly, on April 22, 1991, we notified the state, by letter, that it had failed to provide a complete response, and identified the specific items of information that were missing (a copy of that letter is attached).

The state has not made any further response and now contends that the 1990 legislation has been precleared by operation of law since Section 5 provides that the failure of the Attorney General to interpose an objection within the 60-day review period results in the preclearance of a submitted change. As set forth in a September 8, 1993, Opinion of the Mississippi Attorney General, the state contends that the instant change was precleared when an objection was not interposed within the 60 days following the state's 1991 response to our request for additional information. The Opinion avers that the state's response was "detailed and voluminous" and that

> instead of objecting to the implementation of Chapter 567, [the Attorney General] issued another request for information contrary to the decision in Garcia v. Uvalde, County 455 F. Supp. 101 (W.D. Tex. 1978) [aff'd mem., 439 U.S. 1059 (1979)]. Under this decision, the Attorney General of the United States may not extend the 60-day period within which he must object to a voting law change by continually requesting additional information, thereby restarting the review period.

The state's contention that Chapter 567 has been precleared is without merit. Under Section 5, a timely written request by the Attorney General for additional information suspends the running of the statutory 60-day review period. 28 C.F.R. 51.9,

51.37. Thereafter, a new 60-day period commences "upon the receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable." 28 C.F.R. 51.37(c). As set forth in our April 22, 1991 reply, the state failed to provide numerous items of requested information which the state did not indicate were unavailable. Accordingly, the state's response did not commence the 60-day review period and the absence of an objection following that response did not result in the preclearance of the submitted change.

We assume that the state's reference to our "continually requesting additional information" relates to the fact that our April 22, 1991, reply also noted that it would be helpful to our analysis if the state were to provide certain new information. However, that request was not intended to have, and legally could not have, any effect on the statutory 60-day review period. 28 C.F.R. 51.37(c); Garcia v. Uvalde County, supra. The presence of that request in our April 22, 1991, letter does not alter the fact that the state's partial response to our initial request did not serve to commence the running of the 60-day review period.

Because the state has indicated that it will not provide the remainder of the requested information, we must proceed to make the Section 5 determination concerning the submitted change based upon the information currently available to us. We are aware that six consolidated and line consolidated school districts in Mississippi have not implemented single-member districts. The six school districts are the Enterprise and Quitman Districts in Clarke County; the North Pike and South Pike Districts in Pike County; the Nettleton Line District in Lee and Monroe Counties; and the Western Line District in Issaquena and Washington Counties. These school districts appear to range in black population percentage from about 20 to 50 percent. The available facts suggest that voting in elections for these school districts is racially polarized and that, in at least several of them, under the election methods in existence prior to the preclearance of the 1988 legislation black voters have been significantly hindered in their ability to elect candidates of their choice to office. It also appears that black majority single-member districts could be drawn in one or more of these school districts and we understand that in four of the six school districts in question the school board actually has sought, unsuccessfully, to have the board of supervisors adopt a single-member district

plan. Thus, the state has not shown that the 1990 change will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the elected franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority 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 28 C.F.R. 51.40 and 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change effectuated by Chapter 567 (1990) in the method of electing the trustees of consolidated and line consolidated school districts.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 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, you may 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 1990 change -- providing that single-member district plans are optional rather than mandatory -- continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

In addition, the Enterprise, Quitman, and South Pike School Districts held elections in 1993 under the election methods legally in force prior to the preclearance of the 1988 legislation, apparently pursuant to the state's advice that the 1990 law permitting the use of these election methods has been precleared under Section 5. We also understand that the Nettleton Line District similarly has held elections after March 1, 1989, using the method in force prior to the preclearance of the 1988 legislation. For the reasons set forth above, this implementation of the 1990 law is in violation of Section 5. Furthermore, these school districts, as well as the other two districts that have not implemented single-member district plans, have failed to conduct several regularly scheduled elections since 1988. These suspensions of elections also constitute changes affecting voting, which because they have not been precleared, violate Section 5.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us within ten days of the action the State of Mississippi plans to take concerning this matter. Please contact Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Attorneys for affected school districts
and boards of supervisors