

NOV 18 1972

DJ 166-012-3

Mr. Hardwick Stuart, Jr.  
Assistant Attorney General  
State of South Carolina  
Post Office Box 11545  
Columbia, South Carolina 29211

Dear Mr. Stuart:

This is in reference to your letters of June 30, September 8 and October 4, 1972, concerning the submission to the Attorney General under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, of Act No. 1244 which proposes a referendum and upon a favorable vote, the establishment of the Hollywood School District No. 4 in Saluda County, South Carolina.

Our examination of South Carolina law has not revealed any statutory provisions authorizing the creation of new school districts where the final determination of whether the new school district should be created is dependent upon a referendum of voters residing solely within the prospective new district. Further, it appears that under the language of Kearga v. Lancaster, 172 S.E. 767 (1934), such a procedure may not be authorized by the state legislature for the creation of a specific school district except under a statute generally applicable to the creation of school districts throughout South Carolina.

It appears that the referendum procedure contained in Act No. 1244 is a new voting practice for the creation of school districts in South Carolina and is, therefore, subject to review under Section 5. Our study of this referendum procedure reveals that its effect is to exclude the great majority of Saluda County's residents, including black voters from expressing their interest in an issue which affects them. The result of the referendum procedure used is to limit voting on a school question to a small overwhelmingly white electorate where a county is in the process of desegregating its educational facilities. In view of this and in the absence of any reasonable governmental justification for the unusual voting requirements, we are unable to conclude as we must under Section 5, that the new referendum procedure contained in Act No. 1244 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.

I must, therefore, interpose an objection to the referendum procedure in Act No. 1244 on behalf of the Attorney General. This determination is based on our understanding of South Carolina law as described in state statutes, state court decisions and, in part, in conversations between you and members of my staff.

As you may know, further review of this matter can be requested in accordance with our Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.24. Also, the Voting Rights Act

permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the change has previously been submitted to the Attorney General.

Sincerely,

DAVID L. NORMAN  
Assistant Attorney General  
Civil Rights Division