

MAY 6 1974

DJ 166-012-3

Mr. Phillip A. Middleton
Attorney at Law
407 Peoples Building
18 Broad Street
Charleston, South Carolina 29401

Dear Mr. Middleton:

This is in reference to the two annexations to the Town of McClellanville, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on March 7, 1974.

We have reviewed all of the material we have received from the Town of McClellanville, along with information we have received from the Berkeley-Charleston-Dorchester Regional Planning Council and interested citizens in the Town of McClellanville and surrounding areas. This information clearly shows that the Town of McClellanville serves as a voting district for the purposes of town elections and that the expansion of the town boundaries will, therefore, effect a similar expansion of the voting district represented by the town. Such an expansion is, of course, a change affecting voting within the meaning of Section 5. The information also clearly shows that there is an area of concentrated black population immediately contiguous to the town, and that this area is not included in your submission.

The information available to us is, however, conflicting with regard to the desire for annexation among the residents of the area of black population adjacent to McClellanville. Information which we have received from town officials would indicate that the majority of the adjacent black residents prefer to remain outside the town's boundaries. But our direct discussions with those residents, and with private citizens who claim familiarity with the desires of those residents, indicate a strong desire for annexation. Moreover, residents of this adjacent black area, who appear to be representative of the majority of the residents involved, have informed us that town officials have made clear to them that any formal request for annexation of the area would be rejected, primarily because the addition of the residents of the area would serve to dramatically alter the racial composition of the town's present predominantly white population.

The procedural guidelines promulgated by the Attorney General, 28 C.F.R. 51 et seq., provide in part at Section 51.19 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."

Section 51.19 of the Section 5 guidelines places on a submitting authority the burden of proving that the purpose or effect of a change does not deny or abridge the right to vote on account of race or color. Thus, in view of the unresolved conflict regarding the above-mentioned indications that the black area adjacent to the Town of McClellanville has been effectively denied annexation for a racial purpose, I must, on behalf of the Attorney General and consonant with the Section 5 guidelines, interpose an objection to the expansion of the McClellanville boundaries, and the accordant enlargement of the town voting district, through implementation of the submitted annexations. Such an expansion when coupled with an exclusion of the adjacent black area would also appear to occasion a racial effect within the meaning of Section 5 with regard to the town's voting population.

I note that on May 6, 1974, a Departmental attorney was informed by Mayor Ashley that the Mayor intends to meet as soon as possible with the leaders of the black community from McClellanville and the adjacent area to more clearly determine the desires of the area's residents for annexation, and to inform them that the necessary steps under state law should be taken by those residents if a desire for

annexation is evidenced. Mayor Ashley also stated that minutes of such a meeting will be forwarded to this Department. As provided by the section 5 guidelines, 28 C.F.R. 51.23 and 51.24, we will examine any information not previously available to you in support of a request to reconsider the objection to your submission, including information regarding the meeting, the actions of the residents taken in pursuit of annexation, and the actions and determination of the town officials in response to the efforts of the black residents.

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 these annexations neither have 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

JUN 21 1974

Mr. Phillip A. Middleton
67 Broad Street
Charleston, South Carolina 29401

Dear Mr. Middleton:

This is in response to your letter dated August 20, 1974, and received on August 23, 1974. In this letter you enclosed a copy of a Resolution of the Town Council of Mclellanville which states that any future petitions for annexation will be considered by the Town Council for appropriate action without regard to race, color or creed. You requested reconsideration of the objection interposed by the Attorney General to the two annexations to the Town of Mclellanville, South Carolina, on the basis of this resolution and pursuant to 28 C.F.R. §51.23.

We have re-examined the two annexations in view of the information furnished by you and others interested in this matter. In my July 25, 1974, letter I stated that we might be able to withdraw our objection if we were to receive assurance that future annexations to the Town of Mclellanville will be considered without regard to race or color. I also stated that in this connection we should receive assurance that we will be advised of the receipt of annexation petitions from the black areas adjacent to the town and of the town's actions regarding such requests for annexation.

I note that on September 17, 1974, Anita Runkle of my staff was informed by you that the Town of Mclellanville would inform this Department of the

recognition of the petitioners from the case in question and
of the court's action in response to those petitions.
With the undersigned being that this Department will be
notified as mentioned above, and on behalf of the
Attorney General, withdraws the objection which was
interposed to the two applications to the town of
Northampton, Mass. petitioners.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division