

Department of Justice  
Washington, D.C. 20530

JUL 30 1974

Ms. Treva Ashworth  
Assistant Attorney General  
State of South Carolina  
Wade Hampton Office Building  
Post Office Box 11549  
Columbia, South Carolina 29211

Dear Ms. Ashworth:

This is in reference to your submission of 1967 Acts No. 519 and 523, 1968 Act No. 1594, 1972 Act No. 1622 and 1973 Act No. 325. Your submission was completed May 30, 1974.

After careful consideration of your submission, Lancaster County's recent election history and demographic characteristics and recent court decisions in voting rights cases, the Attorney General interposes no objection to the implementation of the submitted Acts with the exception of the specific features enumerated below. However, we feel a responsibility to point out that the failure of the Attorney General to interpose an objection does not bar subsequent judicial action to enjoin the enforcement of these Acts.

However, after examination of the available materials, I am unable to conclude that the staggering of the terms of the members of the district boards of trustees do not adversely effect minority voting rights because our analysis demonstrates that Lancaster County's black voters



have the potential to elect the candidate of their choice through the selective use of single-shot voting whereas this potential is dissipated if an otherwise at-large election to fill multiple identical offices is transformed into a number of separate election contests through the imposition of residency requirements and the staggering of trustees' terms of office. In comparable situations, recent court decisions indicate that residency requirements and staggered terms may effectively operate to dilute minority voting strength. Georgia v. United States, 411 U.S. 526 (1973); Dunston v. Scott, 336 F. Supp. 206 (E.D. N.C. 1972); Sims v. Amos, 336 F. Supp. 924 (M.D. Ala. 1972). Accordingly, on behalf of the Attorney General, I must interpose an objection to the staggering of a district's trustees' terms of office, so long as district trustees are elected by all voters of the district at large.

The Attorney General is also unable to conclude that certain features of the new system for the selection of members of the Lancaster County Board of Education do not adversely affect minority voting rights. Specifically, the changes effected by abolishing the former system of selecting nine persons, each of whom represents the residents of a geographic area which resulted in the appointment of a black board member to represent a black constituency during the last years in which the appointive procedure was actually implemented, and instituting a system of selecting seven persons, three from numbered posts and four named by district boards of trustees to represent much larger geographical areas, collectively operate to adversely affect minority voting rights. The particular combination of direct and indirect elections

of board members, coupled with decreased board size created by the submitted enactments operate to render effective minority representation less likely than under the system of gubernatorial appointments of school board members. Under relevant voting rights case law, cited above, courts have concluded that numbered posts and majority requirements may effectively operate as devices to dilute minority voting strength, and the same theories of dilution are applicable to the reduced opportunity to influence election results and achieve elective office which result from a decrease in the number of board members chosen through a single process. Beer v. United States, (D. D.C. 1974) C.A. 1495-73. Accordingly, on behalf of the Attorney General I must interpose an objection.

The Attorney General is, however, cognizant of the legitimate governmental interests which the objected-to changes in procedure were intended to further and that in the context of an otherwise modified selection process, the implementation of the submitted provisions may not adversely effect minority voting rights. Accordingly, should Lancaster County adopt and obtain pre-enforcement clearance for implementation of such a racially neutral system, the Attorney General will, upon request, reevaluate the racial effects of the provisions objected to above.

The Voting Rights Act of 1965 prohibits the enforcement of election law changes in jurisdictions subject to Section 5's review procedures unless and until the United

States District Court for the District of Columbia or the Attorney General determines that no adverse racial effect will result from their enforcement. Since neither judicial nor administrative clearance was obtained prior to the elections of current trustees and board of education members their elections were conducted pursuant to legally unenforceable procedures and the results of those elections must be invalidated and new elections conducted. The Attorney General is charged under the Voting Rights Act of 1965 with the responsibility for taking necessary legal action to insure compliance with the Act; and he therefore requests that you advise this Department within 30 days of the date of this letter as to the steps you intend to take with respect to the features of your submission objected to in this letter.

Of course, the Attorney General's interposed objections do not foreclose to Lancaster County the alternative under Section 5 of the Voting Rights Act of instituting an action for a declaratory judgment in the District Court for the District of Columbia that the submitted enactments do not have the purpose or effect of denying or abridging the right to vote on account of race or color and may in the future be enforced.

If you have any questions about the subject matter of this letter, please do not hesitate to contact us.

Sincerely,

*J. Stanley Pottinger*  
J. STANLEY POTTINGER  
Assistant Attorney General  
Civil Rights Division