

3 DEC 1976

Mr. E. M. DuBose
County Administrator
Sumter County
Courthouse, Room 210
Sumter, South Carolina 29150

Dear Mr. DuBose:

This is in reference to Act No. 371 of the 1967 South Carolina General Assembly and to the implementation of the South Carolina Home Rule Act by Sumter County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on October 4, 1976.

We have given careful consideration to the changes involved and the supporting materials, as well as information and comments from other interested parties. With the exception noted below, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

While the Attorney General does not object to the change in the form of government set forth in Act No. 371 and in the Sumter County's implementation of the Home Rule Act, we are unable to reach a like conclusion with respect to the at-large election system adopted for the election of the members of the Sumter County Commission. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the change to at-large elections will not have a racially discriminatory effect. Under recent Supreme Court decisions, to which we feel obligated to give great weight, such at-large election systems have been found to be invalid where the effect of their use is to minimize or cancel out the voting strength of racial minorities. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis 403 U.S. 124 (1971).

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Our analysis reveals that although blacks represent a substantial proportion of the population of Sumter County, only one black has ever been elected to the Sumter County Commission. Our analysis further reveals that bloc voting along racial lines likely exists in Sumter County. Where such a phenomenon does exist, under an at-large system of elections blacks have little chance of electing a candidate of their choice. On the other hand, we note that the black population of Sumter County is relatively concentrated and a fairly drawn single-member district plan would assure blacks of some representation on the Commission. Under these circumstances, therefore, I must, on behalf of the Attorney General, interpose an objection to the at-large election provisions of Act No. 371 and of the resolution and ordinance implementing the South Carolina Home Rule Act.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose nor will not have the effect of denying or abridging the right to vote on account of race or color. However, until such judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render this change legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

27 SEP 1979

Mr. Howard P. King
County Counsel
Bryan, Bachmuller, King, Goldman
and McElveen
Attorneys at Law
17 E. Calhoun Street
P. O. Box 2038
Sumter, South Carolina 29150

Dear Mr. King:

This is in reference to your request for reconsideration of the December 3, 1976 objection pursuant to Section 5 of the Voting Rights Act, as amended, to the at-large election provisions of Act No. 371 and of the county's implementation of the South Carolina Home Rule Act. Your request was received on June 4, 1979, and a conference was held on July 23, 1979. On August 10, 1979 I informed you that, while the objection would not be withdrawn, I would continue to study the matter and inform you of the result.

Under Section 5 Sumter County has the burden of proving that the at-large electoral system does not represent a retrogression in the position of black residents of the county, and that it does not transgress constitutional limits. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19. Under White v. Regester, 412 U.S. 755 (1973), to prove the constitutionality of the at-large elective system, the county must prove that the electoral process is equally open to black and white voters, and that both groups have an equal opportunity to elect candidates of their choice. *Id.* at 766.

We have carefully studied the information provided in your letter of June 1, 1979, and the meeting held on July 23, 1979, conducted additional research with respect to this matter, and reevaluated the information that was previously before us. We have not, however, been persuaded that our objection should be withdrawn.

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Although blacks have achieved some minimal access to the political process, the voting patterns in Sumter County indicate that race is still an important factor in elections. The evidence before us concerning the responsiveness of the county to the needs of its black citizens is conflicting. Several black leaders have argued strongly that the county is not responsive to the concerns of blacks, and that blacks have no meaningful access to the political process. Given these conflicting indications, I must resolve the considerable doubt that exists as to the ultimate issue of constitutionality against the submitting authority.

On this basis, and on behalf of the Attorney General, I must decline to withdraw the objection to the at-large election system implemented by Act No. 371 and adopted under the Home Rule Act.

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 these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the at-large system provided by Act No. 371 legally unenforceable.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division