D.J. 166-012-3
A2838

JUN 3 0 1978

Mr. Raymond Pridgen
City Attorney
City of Mullins
Post Office Box 447
Mullins, South Carolina 29574

Dear Mr. Pridgen:

This is in reference to the changes affecting voting made by the Ordinance of September 29, 1977, for the City of Mullins, Marion County, South Carolina. Your submission was completed on May 2, 1978.

Except as explained below, the Attorney General does not interpose any objections. 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 change.

With respect to Section 6 of the Ordinance, which provides for the majority vote run-off method of election, we have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from other interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of the City of Mullins, that the city council is elected at-large, and that racial bloc voting may exist. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that a majority vote requirement could have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-67 (1973), Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); Nevitt v. Sides, 571 F.2d 209 (5th Cir. 1978).

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that a submitted change in voting practice and procedure does not have a racially discriminatory purpose or effect. (See Georgia v. United States, 411 U.S. 526 (1973), 28 C.F.R. 51.19.) Because of the potential for diluting black voting strength inherent in the use of a majority vote requirement under circumstances such as exist in Mullins and because the city had advanced no compelling reason for its use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the majority requirement, in the context of an at-large election system, will not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the majority vote requirement contained in Section 6 of the Ordinance of September 29, 1977.

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 this 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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.2(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the Attorney General's objection is to make the change to majority vote made by the Ordinance of September 29, 1977, legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

SEP 28 1978

Mr. Raymond Pridgen
City Attorney
City of Mullins
Post Office Box 447
Mullins, South Carolina 29574

Dear Mr. Pridgen:

This is in reference to your request that the Attorney General reconsider his June 30, 1978 objection under Section 5 of the Voting Rights Act of 1965, as amended, to the imposition of a majority vote requirement for the election to the City Council of Mullins (Marion County), South Carolina. Your request for reconsideration was received July 31, 1978.

We have carefully considered the information you have provided. In your letter (1) you state that no substantial change was made in the method of election for the City of Mullins, (2) you offer an analysis of city elections with the purpose, presumably, of showing that the small number of blacks who have been elected to the city council is the result of the small number of blacks who have been candidates, and (3) you present election returns for a recent bond election, presumably to show responsiveness of white electors of the City of Mullins to the needs of the black community.

First, it is our view that the adoption of a majority vote requirement for the general election, in which previously a plurality was sufficient for election, is a change within the meaning of Section 5 and one that contains the potential for abridging the right of blacks to vote. Secondly, our analysis of election returns reveals evidence of racial bloc voting, and our research indicates that black candidacies may be deterred by the existence of a majority vote requirement. Finally, the results of the bond election for the Mullins School District No. 2, by themselves, do not provide sufficient evidence of responsiveness of the white electors of the City of Mullins to the needs of the black community to overcome the otherwise apparent adverse effect the majority vote requirement may have on the opportunity for blacks to elect representatives of their choice. Therefore, I must on the behalf of the Attorney General decline to withdraw the objection to Section 5 of the Ordinance of September 19, 1977, which provides for the majority vote runoff method of election.

As you know, Section 5 permits your seeking a declaratory judgment in the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by the court, the effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division