Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

AUG 26 1983

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This is in reference to the method of electing members of the county board of education and the area boards of trustees (Act No. R700 (1976)); the redefining of residency requirements for the trustees of the Andrew Jackson District to conform to the 1977 annexation, etc. (Act No. R304 (1977)); the referendum election to propose the abolishment of the office of county superintendent of education and the method of selecting the administrator of the county school system (Act No. R767 (1978)); and the delegation of duties by the county board of education to any of the four area boards of trustees (Act No. R528 (1982)) in Lancaster County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on June 27, 1983.

We have given careful consideration to the information you have provided, including information used in our analysis of similar changes in 1974. We have also considered Bureau of the Census data and comments and information provided by other interested parties.

The Attorney General does not interpose any objections to the changes contained in Act Nos. R304 (1977), R528 (1982), and the referendum election provided for in Act No. R767 (1978). 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

In a telephone conversation on August 18, 1983, Ms. Kathy Belnap of your staff advised Ms. Barbara Rohen of our staff that the State wishes to withdraw the submission of the other changes contained in Act No. R767 (1978) because the propositions failed to receive voter approval at the referendum election. Therefore, the Attorney General will make no determination with respect to these matters. See also 28 C.F.R. 51.23. We note that any future attempt to implement these changes will be subject to the preclearance requirements of Section 5.

We are unable, however, to conclude that you have satisfied your burden of showing that Act No. R700 (1976) is free of the prohibited racial effect or purpose. We note that on July 30, 1974, the Attorney General interposed an objection to certain provisions of Act No. 1622 (1972), including the use of staggered terms in area boards of trustees elections. Litigation was necessary to resolve a question of the scope of our objection, and on October 10, 1974, a consent decree was filed which enjoined the county from staggering terms in trustee elections as was described in Act No. 1622. United States v. Lancaster County Election Commission, et al., C.A. No. 14-1528 (D. S.C.). A similar staggering of terms was contained in Act No. R700 (1976) which was submitted to the Attorney General under Section 5 on May 31, 1976. While we requested additional information with regard to that submission on July 30, 1976, the information was not received until June 27, 1983. Thus, the use of staggered terms in trustee elections has been legally unenforceable throughout this period.

Our present examination of this matter shows, as we indicated in our previous objection letter, that the use of staggered terms limits the potential for blacks to participate effectively in the electoral process by reducing the ability of minority voters to use single-shot voting in at-large elections. This is particularly important in circumstances such as those in Lancaster County which include the apparent existence of racial bloc voting.

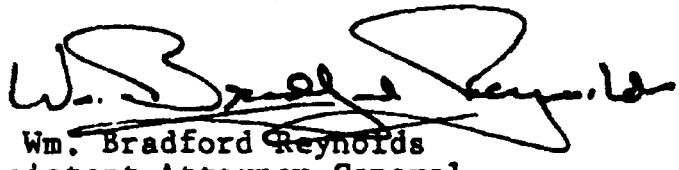
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.39(e). In light of

the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of staggered terms, which is provided for in Act No. R700 (1976).

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, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the further implementation of staggered terms legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Lancaster County plans to take with respect to this matter. This is especially important in view of the fact, as we understand it, that staggered terms have been used in boards of trustees elections since 1976. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division