

June 11, 1984

Charles W. Whetstone, Jr., Esq.  
Felder and Whetstone  
U.S. 601 North  
P. O. Box 437  
St. Matthews, South Carolina 29135

Dear Mr. Whetstone:

This refers to the April 5, 1984, referendum election; the change to four-year, staggered terms for councilmembers and four-year terms for the mayor; and the majority vote requirement for councilmembers and water commissioners for the Town of Elloree in Orangeburg 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 submission on April 10, 1984.

The Attorney General does not interpose any objection to the April 5, 1984, referendum election and the four-year terms for the position of mayor. 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).

We have considered carefully the information you have provided, as well as that provided by other interested parties regarding the change from concurrent, two-year terms to staggered, four-year terms for town councilmembers and the change from plurality to majority vote requirement for election to the town council and water commission. We note that blacks constitute 34.43 percent of the town's population. Our analysis also indicates that, in the context of the racial bloc voting patterns that seems to exist in Elloree, a change from concurrent elections by a simple plurality to staggered terms and a majority vote requirement adversely affect the ability of minorities to elect candidates of their choice to office, particularly where, as here, single-shot voting is permitted under state law.

cc: Public File

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); see also 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 change to staggered terms for councilmembers and a majority vote requirement for election to the town council and water commission.

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. 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 change to staggered terms for the town council and the imposition of a majority vote requirement for election to the town council and water commission 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 the Town of Elloree plans to take with respect to this matter. 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