U.S. Department of Justice

Civil Rights Division

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

AUG 10 1990

William M. Brice, Jr., Esq.
City Attorney
P. O. Drawer 300
York, South Carolina 29745

Dear Mr. Brice:

This refers to the change in the method of electing the city council from at large to six members elected from single-member districts and the mayor elected at large, the districting plan, and the implementation schedule for the City of York in York 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 June 11, 1990.

We have considered carefully the information you have provided as well as comments received from other interested parties. At the outset, we note that under the existing at-large method of election only three blacks have been elected to the city council since the enactment of the Voting Rights Act 25 years ago, despite numerous candidacies by black residents of York. Our analysis indicates that in large part this is the product of a pattern of racially polarized voting in municipal elections. Accordingly, the adoption of a single-member district method of election, as ratified by the 1989 referendum, clearly enhances the potential of black voters to obtain an equal opportunity to participate in the political process and elect candidates of their choice, and seems in no way to be encumbered by a proscribed purpose. The Attorney General, therefore, does not interpose any objection to this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the districting plan adopted by the city to implement the new method of election, however, we cannot reach a similar conclusion. Where a districting plan is drawn to implement a newly approved single-member district system, the submitting authority has the burden of showing that the plan is

free of discriminatory purpose, in addition to having no discriminatory effect. See Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983); 28 C.F.R. 51.52. This analysis requires "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 266 (1977). In this regard, we note a number of significant factors.

First of all, city officials have acknowledged that the number of black majority districts should reflect the black percentage of the city population, yet refused to accord any weight to the consensus view that the black proportion of the population has increased significantly since the 1980 Census. Secondly, the city takes the position that the calculation of minority representation should be undertaken without regard to the mayor's vote on the council, thus positing a six-member council when in fact the city is governed by a council of seven members. Thirdly, superimposed upon the entire districting debate have been unfortunate comments by some expressing overt hostility to the effort of blacks to gain an equal opportunity to participate effectively in the city's political process. Thus, we note, especially, those comments of present and former city officials suggesting that blacks should be relegated to some limited role in city government.

In light of the considerations discussed above, then, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained with regard to the districting presently under review. Therefore, on behalf of the Attorney General, I must interpose an objection to the districting plan.

We hasten to add, however, that nothing we say here should be taken as a suggestion that the city is under an obligation to adopt any particular plan. Rather, our concern is that the city adopt a plan which fairly reflects the voting potential of its black constituency.

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 the change to which we have objected 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 51.45 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 districting plan continues to be legally unenforceable. 28 C.F.R. 51.10. Also, since the implementation schedule is directly related to the districting plan, no determination is appropriate with respect to that change at this time. 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of York plans to take with respect to this matter. We stand ready to work with you and other city officials to bring about compliance with Section 5 of the Voting Rights Act. In this regard, we are prepared to give any newly-adopted districting plan expedited review to allow the city an opportunity to conduct elections under a racially fair plan at the earliest possible date. If you have any questions about this matter, feel free to call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division