



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 20, 1995

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.66 (1995) and Section 19.67 of the 1995-96 State Government Appropriations Act for the State of South Carolina concerning the Spartanburg County School District in Spartanburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our July 17, 1995, request for additional information on September 20, 1995.

We have carefully considered the information that you have provided, as well as Census data, information and comments from other interested parties, and other information in our files. According to the 1990 Census, the county has a total population of 226,800 persons, of whom 20.6 percent are black. Act R.66 (1995) appears to transfer some, but not all, of the powers and duties of the county board of education for the Spartanburg County School District to the county's seven local school districts, and to reduce the amount of funds that can be allocated from the minimum foundation fund to the county board of education to cover its operating costs. Contrary to Act R.66 (1995), Section 19.67 of the 1995-96 State Government Appropriations Act allocates minimum foundation funds directly to the seven local school districts for the 1995-96 school year and prohibits any such funds from going to the county board of education. With regard to the overall effect of Section 19.67, the information you provided indicates that Section 19.67 jeopardizes the continued existence of the county board by eliminating all funds for its operation in the 1995-96 fiscal year.

The Supreme Court in Presley v. Etowah County Commission, 112 S. Ct. 820 (1992), held that transfers of power among elected officials and adjustments to their budgets generally do not constitute voting changes with respect to Section 5, except in instances where the transfer of power or budget adjustment rises to the level of a de facto elimination of the elected official's office. Id. at 831. Our review of the available information regarding the effect of Act R.66 (1995) indicates that while significant powers and duties of the county board have been transferred to the local school boards, the county board retains substantial powers and duties (similar to those proposed for an appointed education oversight committee in 1994), although it will have a very limited budget with which to perform those duties. We conclude, therefore, that Act R.66 (1995) does not constitute a voting change within the meaning of Section 5. Accordingly, no Section 5 determination by the Attorney General is necessary or appropriate with regard to this matter. See 28 C.F.R. 51.35.

We cannot reach the same conclusion with regard to Section 19.67 of the 1995-96 State Government Appropriations Act. Your response to our request for additional information and other available information indicate that Section 19.67 will, in effect, prevent the county board from carrying out the duties assigned to it under Act R.66 (1995), because the board will have no money to fund its operating costs. It appears, therefore, that the change embodied in Section 19.67 affects voting because it results in the de facto elimination of the county board (at least for one year) within the meaning of the exception recognized by the Court in Presley. On this basis, we conclude that Section 19.67 is a voting change subject to review under Section 5.

We review Section 19.67 against the backdrop of the objection interposed last year under Section 5 to the state's proposed abolishment of the county board and its replacement with an appointed education oversight committee selected by a majority of the members of the predominantly white boards of the local school districts. We interposed an objection to the 1994 change (Act R.631 (1994)) based on concerns regarding its retrogressive effect and the state's purpose in adopting the change. We concluded that the state had not met its Section 5 burden of proof regarding the absence of a discriminatory purpose given the sequence of events surrounding the enactment of Act R.631, and, particularly, the adoption of the change only after a new method of election was in place for the county board that promised equal minority electoral opportunity.

It appears that Section 19.67 raises the same concerns that formed the basis for our objection to Act R.631 (1994). For example, in February 1995 the first black representatives were elected to the sixteen-member county board of education pursuant to the board's new single-member district method of election. In April 1995 the state adopted Act R.66 (1995), which, while restructuring the county board and decreasing its funding, left the county board intact. Under Section 19.67, the county board would be effectively eliminated and minority voters would lose their newly-won electoral opportunities on that body. We understand, furthermore, that Section 19.67 was introduced in the state legislature after passage of Act R.66 (1995), in disregard of the views of other members of the local legislative delegation, in order to override the funding authorized for the county board in Act R.66 (1995) and, in effect, to eliminate the county board. The sponsor of Section 19.67 is the same legislator who sponsored the objected-to Act R.631 (1994). Moreover, the state has offered no legitimate, nondiscriminatory reason for the changes contained in Section 19.67.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Section 19.67 of the 1995-96 State Government Appropriations Act.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Section 19.67 ~~is~~ continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take on behalf of the Spartanburg County School District concerning this matter. If you have any questions, you should call Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", with a large, sweeping flourish on the left side.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division