



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Cindy Maria Garner, Esq.
City Attorney
P.O. Box 1076
Crockett, Texas 75835

DEC 21 1990

Dear Ms. Garner:

This refers to the five annexations (one adopted July 13, 1973, and four adopted March 27, 1990) to the City of Grapeland in Houston County, Texas, 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 October 24, 1990.

The Attorney General does not interpose any objection to the 1973 annexation. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

With regard to the four 1990 annexations, however, we are unable to reach a similar conclusion. We have considered carefully the information you have provided, as well as Census data and information from other interested parties. At the outset, we note that the city elects a mayor and five councilmembers under an at-large system with staggered terms. While two of the four areas annexed in this package appear to be virtually all-black in population, the overall effect of the proposed annexations is to reduce the proportion of the city's black population by about 3.0 percentage points. In addition, the information available to us suggests that municipal elections in Grapeland are characterized by racially polarized voting. In that context, then, the increase in the white majority, as a result of the annexations, serves only to enhance the ability of white citizens to preclude black voters from electing candidates of their choice to the city council under the existing election system.

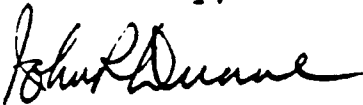
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Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (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 the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the four proposed 1990 annexations.

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 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection and, in this regard, annexations of this nature usually may meet Section 5 standards if the city's election system is modified in a way that fairly reflects minority voting strength in the expanded city. See City of Richmond, 422 U.S. 358, 370 (1979); see also City of Port Arthur v. United States, 459 U.S. 159 (1982). Also, in that connection, it should be noted that such modifications need not necessarily involve adoption of a districting plan, since acceptable adjustments might include the use of such corrective measures as limited or cumulative voting. See, e.g., Dillard v. Chilton County Board of Education, 699 F. Supp. 870 (M.D. Ala. 1988); see also Dillard v. Crenshaw County, No. 85-T-1332-N (M.D. Ala.). 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 that the voting changes occasioned by the proposed 1990 annexations continue to be legally unenforceable. 28 C.F.R. 51.10.

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 Grapeland plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), Attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division