



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 16, 1999

Mr. Robert Gorsline
City Secretary
601 South First Street
Lamesa, Texas 79331

Dear Mr. Gorsline:

This refers to the deannexation by referendum of property previously annexed under Ordinance No. O-06-98, and an annexation (Ordinance No. O-05-99) for the City of Lamesa in Dawson County, Texas, 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 April 5, 1999, request for additional information regarding the deannexation on April 27, 1999, and your submission of the 1999 annexation on May 20, 1999.

We have considered carefully the information you have provided, as well as information from the 1990 Census, information from previous submissions from the city, and information and comments from other persons.

The Attorney General does not interpose any objection to the 1999 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach a similar conclusion with regard to the deannexation. The property that is the subject of the deannexation was annexed in 1998 and received Section 5 preclearance on December 8, 1998. The owner of the property

specifically sought annexation to obtain the necessary city services and rezoning which would permit the construction of a 72-unit apartment complex for occupancy by moderate to low income families. Other assisted housing for the elderly, including housing built by the same developer, already existed in this area, and had apparently been proposed and built with little accompanying controversy. We understand that this housing contains few, if any, minority residents.

According to 1990 Census data, Hispanics and blacks constituted 51 percent of the city's population. Had it not been for the deannexation by referendum, the area annexed by Ordinance No. O-06-98 and its future residents would have become part of City Council District 6, which, according to the 1990 Census, has by far the lowest percentage of minority residents (7 percent) in the city. While it is difficult to predict with certainty the racial and ethnic makeup of the future residents of the proposed housing project, the income limits for occupancy of this housing, considered in light of existing socioeconomic characteristics of the population in Lamesa and Dawson County, indicate that the future residents would more likely reflect the minority percentage of the city as a whole than the minority percentage of District 6.

It appears that elected city officials originally welcomed the request for annexation and the proposed development because of a generally recognized need for additional housing in the city.

Almost immediately, however, the annexation and the proposed development became the subject of intense opposition, led principally by residents of District 6. Opponents of the project appeared at public hearings regarding the annexation and the proposed rezoning of the property to voice their objections.

Following the city council's approval of the annexation and rezoning ordinances, the opponents presented sufficient petitions under the city's referendum procedure to force the council to repeal the ordinances or put them to a citywide vote. At the subsequent referendum election, the voters repealed the ordinances.

The minutes of public meetings and hearings and contemporaneous newspaper articles report on various statements made by the opponents of the project. We have closely examined this public record of statements made by opponents of the development for legitimate non-racial arguments why the annexation and the rezoning ordinances should not be approved. We note that a significant number of opponents' statements were based on who the proposed occupants would be, and included such

terms as "undesirables," "HUD people," "Section 8 people," and "criminal activity that could come from this project." Other opponents stated that they would not oppose the annexation if the development was for elderly housing instead of low to moderate income housing. To be sure, there were other asserted grounds for opposition which were not directed at the prospective tenants (e.g., concerns over flooding or reduced water pressure), but no information has been provided which indicates that these potential problems could not have been dealt with effectively by the city or the developer.

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 28 C.F.R. 51.52. Our examination of the circumstances regarding the deannexation indicates that the city has not met its burden of showing that a discriminatory purpose to exclude minority voters from taking up residence in District 6 was not a significant factor in the decision to adopt the change. Accordingly, on behalf of the Attorney General, I must object to the proposed deannexation by referendum of the property annexed under Ordinance No. O-06-98.

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 deannexation 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, the deannexation continues to be legally unenforceable insofar as it affects voting. 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 City of Lamesa plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,



Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division