U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 5, 1987

George Azar, Esq.
City Attorney
P. O. Box 2028
Montgomery, Alabama 36197-1101

Dear Mr. Azar:

This refers to the January 7, 1965, city council resolution which establishes a city school system and its governing board of education for the City of Marion in Perry County, Alabama, 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 your submission on January 5, 1987; supplemental information was received on March 6, 1987.

We have considered carefully the information you have provided as well as Census data and information provided by other interested parties. We note, at the outset, that prior to the city council's action by resolution on January 7, 1965, the Perry County school district operated all public schools in the county, including those within the City of Marion. By virtue of the changes occasioned by the 1965 resolution, the governance of schools located within the City of Marion was removed from the county school board and placed under a city school board. County school board members were then and still are elected by the entire county whose population is 60 percent black. Members of the city school board are appointed by the city council, whose members are elected by the city which is 48 percent black.

A review of voting changes that occurs over twenty years after the fact presents complex issues. At the time of this change in 1965, jurisdictions in this part of Alabama were frequently involved in taking steps to avoid school desegregation and to delay effective black political participation, and there are some historical indications that the establishment of the Marion city school system and the method selected for choosing its board members were motivated in part by such considerations.

It is also true, however, that since that time black residents in Marion and Perry County have significantly expanded their participation in local political affairs. In fact, we are advised that there is presently an effort to reconsolidate the city and county school systems to improve efficiency and education that has broad-based support by both black and white groups. Such a restoration would, of course, cure any lingering impact on voting occasioned by the original establishment of the city school system.

Under Section 5 of the Voting Rights Act, submitted changes must be reviewed for racial purpose and effect with the submitting authority having the burden of satisfying the Attorney General that the change--even one this old--is free of discrimination. See Georgia v. United States, 411 U.S. 526 (1973); see also Subpart F of the Procedures for the Administration of Section 5 (52 Fed. Reg. 497-499 (1987)). We note that the recent change to a single-member district method of election for the city council (the selecting authority for the city school board), precleared by the Attorney General on April 29, 1987, incorporates the approach presently available to ameliorate to some degree the present racial effect of the method of choosing city school board members adopted and in use since 1965. Nevertheless, it appears that this method of selecting the school board is still less advantageous to blacks than the county-wide elections it replaced and the allegations of racial purpose in adoption have not been adequately rebutted.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that in this instance the city has sustained its burden under Section 5. See City of Richmond v. United States, 422 U.S. 358, 378-79 (1975) (jurisdiction must establish lack of purpose and effect under Section 5). Therefore, on behalf of the Attorney General, I must object to the implementation of the January 7, 1965, resolution creating the separate school district in the City of Marion.

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 this change 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 effect of the objection by the Attorney General is to make further implementation of the city school system legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

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 Marion plans to take with respect to this matter. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), Attorney Reviewer of the Section 5 Unit of the Voting Section.

Because this matter is in issue in Robinson v. Alabama State Department of Education, No. 86-T-569N (M.D. Ala), we are providing a copy of this letter to the court in that case.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron Thompson
United States District Court Judge