

DJ 166-012-3
W0121

December 19, 1988

Michael S. Harper, Esq.
Hornsby & Schmitt
P. O. Box 606
Tallassee, Alabama 36078

Dear Mr. Harper:

This refers to Ordinance No. 86-213 which revises the procedures for annexation to the City of Tallassee in Elmore and Tallapoosa Counties, 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 the information to complete your submission on October 20, 1988.

We have reviewed carefully the information you have provided, as well as Census data and comments from other interested parties. At the outset, we note that the proposed procedures require petitioners for annexation to hire both a licensed attorney and a professional engineer or land surveyor and, thus, would entail substantially higher costs than the existing procedures. We note further, from 1980 Census data, that black and white residents of Elmore and Tallapoosa Counties are not similarly situated socio-economically, with blacks lagging significantly behind whites in income, education, and occupational status.

In our view, these factors are of particular relevance here since the proposed procedures appear to have been adopted at a time when an annexation petition by residents of the predominantly black East Tallassee area had been pending before the city council for several months and despite the fact that this largely black group of petitioners had experienced difficulty complying even with existing procedures. In fact, it is our understanding that, when the city eventually responded to the petitioners, they were given only 30 days in which to meet the existing requirements even though that included getting detailed information relative to an estimated 124 households. In the process, we understand that the city declined to provide to the petitioners specific property owner information in its possession that formed the basis for rejecting the petition--and

was informed that any subsequent petition would be subject to the new procedures. Moreover, even though the city has been fully aware for some time of the interest in this area to be annexed, the city apparently has declined to exercise its option under state law to annex, of its own motion, persons, such as the rejected group of predominantly black applicants from East Tallassee, who wish to become citizens of Tallassee but who have difficulty satisfying the petition requirements.

In this setting, then, we cannot ignore the fact that the proposed procedures make no provision for economically disadvantaged applicants and that the city has declined to consider reasonable alternative procedures that would appear to satisfy the city's stated legitimate goals regarding annexations without imposing undue hardship upon the less affluent. In that regard, we note that, in comparable circumstances, the City of Northport, Alabama, which initially proposed an annexation ordinance similar to Ordinance No. 86-213, later amended it to eliminate requirements such as those that are of particular concern here.

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. 51.52(c)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Ordinance No. 86-213 insofar as it imposes annexation requirements which would appear unnecessarily to hinder the ability of black citizens in the Tallassee area to annex themselves to the city.

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 Ordinance No. 86-213 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 Tallassee 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 in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 19, 1988

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We have reviewed carefully the information you have provided, as well as Census data and comments from other interested parties. At the outset, we note that the proposed procedures require petitioners for annexation to hire both a licensed attorney and a professional engineer or land surveyor and, thus, would entail substantially higher costs than the existing procedures. We note further, from 1980 Census data, that black and white residents of Elmore and Tallapoosa Counties are not similarly situated socio-economically, with blacks lagging significantly behind whites in income, education, and occupational status.

In our view, these factors are of particular relevance here since the proposed procedures appear to have been adopted at a time when an annexation petition by residents of the predominantly black East Tallassee area had been pending before the city council for several months and despite the fact that this largely black group of petitioners had experienced difficulty complying even with existing procedures. In fact, it is our understanding that, when the city eventually responded to the petitioners, they were given only 30 days in which to meet the existing requirements even though that included getting detailed information relative to an estimated 124 households. In the process, we understand that the city declined to provide to the petitioners specific property owner information in its possession that formed the basis for rejecting the petition--and

was informed that any subsequent petition would be subject to the more demanding new procedures. Moreover, even though the city has been fully aware of the annexation interest in this area since 1985, the city apparently has declined to exercise its option under state law to annex, of its own motion, persons, such as the rejected group of predominantly black applicants from East Tallassee, who wish to become citizens of Tallassee but who have difficulty satisfying the petition requirements.

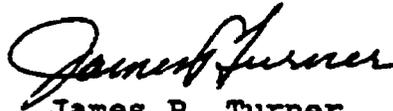
In this setting, then, it becomes relevant that the proposed procedures make no provision for economically disadvantaged applicants and that the city has declined to consider reasonable alternative procedures that would appear to satisfy the city's stated legitimate goals regarding annexations without imposing undue hardship upon the less affluent. In that regard, we note that, in comparable circumstances, the City of Northport, Alabama, which initially proposed an annexation ordinance similar to Ordinance No. 86-213, later amended it to eliminate requirements such as those that are of particular concern here. We are advised that only Tallassee among Alabama cities now requires annexation petitioners to retain attorneys and surveyors or engineers.

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. 51.52(c)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Ordinance No. 86-213 insofar as it imposes annexation requirements which would appear unnecessarily to hinder the ability of black citizens in the Tallassee area to annex themselves to the city.

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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 Tallahassee 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 in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division