U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 12 1989

Larry Anderson, Esq.
City Attorney
P. O. Box 2128
Dothan, Alabama 36302

Dear Mr. Anderson:

This refers to the following matters submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. 1973c:

1. Act No. 88-445, as amended by Act No. 88-331, which enables Class 5 municipalities to adopt the mayor-commissioner-city manager form of government to be governed by a mayor elected at large and commissioners elected from single-member districts; provides that there shall be four single-member districts with the districting plan to be enacted by local ordinance; specifies the powers and duties of the mayor (including a full vote on the commission); provides that officials are to be elected to four-year, staggered terms in nonpartisan elections with a majority vote requirement; specifies the date for general and runoff elections; provides an initial implementation schedule; provides for candidate qualification procedures and eligibility provisions, the method of filling vacancies, and recall procedures; and specifies the procedure for abandoning the mayor-commission-city manager form of government in the State of Alabama.

2. Ordinance No. 89-1 which adopts the mayor-commissioner-city manager form of government and associated election provisions provided in Act No. 88-445, as amended by Act No. 88-331; Ordinance No. 89-2 which adopts the districting plan; Ordinance No. 89-107 which establishes a new districting plan (superseding the district lines established by Ordinance No. 89-2); and three annexations (Ordinance Nos. 89-88, 89-116, and 89-117) for the City of Dothan in Houston County, Alabama. We received the information to complete your submission of all matters except the annexations on April 12, 1989, and the information regarding the annexations on April 27, 1989.

We have considered carefully the extensive information you have provided, as well as information received from other interested parties. At the outset, we note that in 1974, the district court in Yelverton v. Driggers, 370 F. Supp. 612 (M.D. Ala.) found that the city's at-large method of election did not provide blacks an equal opportunity to participate in the electoral process. For reasons explained in its opinion, the court determined that the city should be permitted to continue to use the at-large system on a trial basis.

In the latter part of 1987 and into 1988, various black citizen groups urged that the city change the method of electing the associate commissioners from at large to single-member districts, and provided the city with a six-district plan which would allow blacks the opportunity to elect two of the seven commission members. Though there was some divergence of views in the black community about the appropriate method of election, there apparently was little or no support for a four-district approach while, among the districting options, the six-district approach was overwhelmingly favored.

According to the records provided by the city, the commissioners initially raised certain procedural concerns about implementing the six-district plan but did not oppose, on its merits, the proposal to change the number of commissioners. In fact, the mayor, in his original draft of the state legislation, included a proposal for three, four, and six district alternatives. Subsequently, certain white city officials met privately and resolved to have enacted the changes now submitted for Section 5 preclearance, including the four-district plan. When the commission endorsed these changes at its April 7, 1988, meeting, the mayor explained that there was "a strong feeling in the white community" that the six-district approach would allow blacks too much of an electoral opportunity (though blacks constitute at least 26 percent of the city's population, and the six-district proposal would give blacks the opportunity to elect 28 percent of the commission).

A city, of course, has no obligation to accept an electoral system because it is supported by minority groups or is perceived to be beneficial to such groups' interests. In order to satisfy Section 5 of the Voting Rights Act, however, a jurisdiction such as Dothan, must show that the change it has selected is not motivated by racial considerations. Aside from the Mayor's candid explanation, our review of the circumstances leading to the enactment of the proposed changes reveals no substantial, nonracial explanation for the selection of the four-district alternative districting proposal. In that regard, we note that Dothan has used the current four (residency) district system for a relatively short period of time and that, for about 70 years,

the city had a government with six elected officials. Thus, any policy underlying the current commission size and the choice of a four-district plan would appear to be tenuous.

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. 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). In light of the considerations 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 the requirement in Act No. 88-445, as amended, that a Class 5 municipality (such as Dothan) that adopts the mayor-commissioner-city manager form of government be required to utilize a four single-member district method of election and to the districting plans which purport to implement that requirement.

The Attorney General is unable to make a determination concerning the implementation schedule specified in Act No. 88-445, as amended, since it is directly related to the objectionable four-district requirement and districting plans. See also 28 C.F.R. 51.35.

The Attorney General does not interpose any objections to the other specified changes occasioned by Act No. 88-445, as amended (including the change from at-large to single-member districts), the changes occasioned by Ordinance No. 89-1 (insofar as the ordinance adopts election provisions allowed by the state legislation which now have received Section 5 preclearance), or the three annexations. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See 28 C.F.R. 51.41.

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 the changes to which an objection now has been interposed 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 the judgment from the District of Columbia Court is obtained, the requirement that districting plans consist of four single-member districts and the proposed districting plans remain 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 Dothan plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Lynda K. Oswald, Esq.