D.J. 166-012-3

JUN 22 1973

Mr. Harry Mixon
City Attorney
City of Ocilla
Post Office Box 145
Ocilla, Georgia 31774

Dear Mr. Mixon:

This is in reference to your submission to the Attorney General under Section 5 of the Voting Rights Act of 1965 of voting changes involving the imposition of a majority requirement in municipal elections in 1966, the raising of the qualifying fees for candidates for municipal offices in 1972, and the annexation of the Lakewood Subdivision in 1965. Your original submission was received January 19, 1973, and was completed on May 4.

Georgia Laws 1966, page 2893, amends election procedures in effect on November 1, 1964 by imposing a requirement that successful candidates for city office receive a majority, rather than a plurality, of the vote. Election of city councilmen, as with the mayor, is on an at-large basis and candidates must run for designated posts. The City of Ocilla is approximately 48% black. The racially discriminatory effect of imposing a majority requirement in a context such as this has been recognized by various courts. See, e.g., Graves v. Barnes (Goldberg, Justice, Wood, JJ.), 343 F. Supp. 704, 725 (W.D. Tex. 1972); Dunston v. Scott (Craven, Butler, Dupree, JJ.), 336 F. Supp. 206, n.9, (E.D. N.C. 1972); Sims v. Amos, (Rives, Thomas, Johnson, JJ.), 336 F. Supp. 924 (N.D. Ala. 1972), aff'd 409 U.S. 1942 (1972). In view of the legal precedent in

this area and the facts here involved, the Attorney General cannot conclude, as he must under the Voting Rights Act, that this change will not have the effect of denying or abridging the right to vote on account of race. On his behalf, therefore, I must object to this requirement.

With respect to the increase in the amount of filing fees for the offices of mayor and city council effected by a resolution of the City Council dated October 3, 1972, the courts have held in cases in which filing fees were challenged on equal protection grounds that the state must provide an alternative to filing fees to enable candidates to get onto the ballot. Bullock v. Carter, 405 U.S. 134 (1972); Jamness v. Little (Bell, Edenfield, Cooper, JJ.), 306 F. Supp. 925 (N.D. Ga. 1970); Georgia Socialist Workers Party v. Fortson (Bell, Edenfield, Andersen, JJ.), 315 F. Supp. 1035 (N.D. Ga. 1970); Thomas v. Mims, 317 F. Supp. 179 (S.D. Ala. 1970). It is clear that all filing fees plans fall with unequal weight upon candidates according to their economic status. Because of the substantially different economic levels of the races in Ocilla, this burden necessarily falls with substantially greater weight on Negro candidates. The City's claim of need to defray an increase in election expenses does not appear to be so compelling as to justify this result. See Bullock v. Carter, supra. For this reason I must also interpose an objection to the change in filing fees occasioned by the October 3, 1972, resolution.

As to the annexation of the Lakewood Subdivision the Attorney General does not interpose any objection to this change. We feel a responsibility to point out, however, 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 change.

In addition, Section 5 provides that you may seek a declaratory judgment from the District Court for the District of Columbia that the provisions to which the Attorney General objects neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that court, however, the legal effect of the objections of the Attorney General is to render unenforceable the specified provisions.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division