DJ 166-012-3
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Mr. John P. Howell
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Attorneys at Law
P. O. Box 187
Covington, Georgia 30209

Dear Mr. Howell:

This is in reference to your submission of Act 163, Georgia Laws, 1967; Act 332, Georgia Laws, 1971; and Act 292, Georgia Laws, 1975, all pertaining to the Newton County Board of Education and School Superintendent, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on September 4, 1975.

With regard to Act 292 (1975), we are advised that a referendum was defeated by the voters of the county. Therefore, the Attorney General's review of that Act is not appropriate and no further consideration will be given to Act 292 pursuant to Section 5.

Our analysis of Act 163 reveals that the Act establishes an elective instead of an appointive Board of Education and establishes districts from which seven school board members are to be elected by a majority vote with staggered terms; Act 163 provides for 3 single member districts, two members to be elected from a single multimember district

composed of the City of Covington, and two members to be elected at large in the county. We note that blacks constitute about one-third of the county's population and 44% of the population of the City of Covington, but no black has ever served on the Newton County Board of Education.

While we have no objection to that portion of Act 163 which changes the method of choosing the members of the Board of Education from an appointive to an elective method, recent court decisions indicate that under circumstances such as those existing in Newton County the districts and the voting system set out in Act 163, especially with respect to the multimember district within the City of Covington, will operate to minimize or dilute the voting strength of the minority and, thus, have an invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973).

Further, our analysis shows that under the cases cited above a similar discriminatory effect will be occasioned by the changes contained in Act 332 which result in requiring all Board of Education members to run for staggered terms at large with residency required in the county's districts. However, we have no objection to the portions of Act 332 which delete the freeholder requirement to run for office and change the term of office from six years to four years.

In view of the court decisions cited above, and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude as he must under the Voting Rights Act that the at large requirements

of Act 332 and the districts established by Act 163 do not have a racially discriminatory effect on voting. Therefore, I must interpose an objection to the implementation of the districts created by Act 163 and the at large system of election established by Act 332.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these acts neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render unenforceable Act 163 and Act 332 as presently enacted.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division