DJ 166-012-3
V8348-V8350

JAN 2 9 1976

Mr. John P. Howell
Crudup & Howell
Attorneys at Law
P. O. Box 157
Covington, Georgia 30209

Dear Mr. Howell:

This is in reference to your submission of Act 293, Georgia Laws, 1967; Act 436, Georgia Laws, 1971; and Act 1363, Georgia Laws, 1972, all pertaining to the Newton County Board of Commissioners and submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on December 3, 1975.

Our analysis of Act 293 (1967) reveals that the Act establishes an elective five-man County Board of Commissioners elected by majority vote with staggered six year terms rather than the previous one-man County Commission and appointed Board of Directors. This Act further provides for 3 single-member districts and one multi-member district composed of the City of Covington and surrounding area which elects two members. We note that population figures for the county indicate about one-third of the population is black and 44% of the population of the City of Covington is black. However, no black has ever been elected to serve on the County Board of Commissioners.

While we have no objection to that portion of Act 293 which changes the method of selecting the county governing body, recent court decisions indicate that under circumstances such as those existing in Newton County the districts set out in Section 1 of Act 293, particularly the multi-member district which includes 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). Also, the staggering of terms for the multi-member district, described as Districts 4 and 5, operates to dilute the voting strength of the minority voters and thus has a prohibited racially discriminatory effect.

Furthermore, our analysis indicates that under the cases cited above, a similar discriminatory effect will be occasioned by the changes contained in Act 436 (1971) which results in requiring all candidates for the Board of Commissioners to run for staggered terms, at-large, with a residency requirement in each of the districts.

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 staggered terms residency requirements of Sections 1 and 2 of Act 436 (1971), the districts set forth in Section 1 of Act 293 (1967), and the staggered terms set forth in Section 4 of Act 293 do not have a racially discriminatory effect on voting. Therefore, I must interpose an objection to the implementation of the voting procedures set forth in the above described Sections of Acts 293 (1967) and 436 (1971).

With regard to Act 1363, enacted in 1972 and amending Acts 436 (1971) and 293 (1967), the Attorney General does not interpose any objection to the changes occasioned by this Act. However, Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object to these changes does not bar any subsequent judicial action to enjoin enforcement of such changes.

Section 5 of the Voting Rights Act permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that the portions of Acts 436 and 293 to which an objection was interposed 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 this objection by the Attorney General is to render unenforceable Act 293 (1967) and Act 436 (1971) as presently enacted.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division