U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 19, 1983

George M. Stembridge, Jr., Esq.
Attorney, Baldwin County
Board of Education
P. O. Box 1013
Milledgeville, Georgia 31061

Dear Mr. Stembridge:

This is in reference to the November 7, 1972, referendum election and to Act No. 1275 (S.B. No. 614 (1972)), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. The changes submitted by Act No. 1275 (S.B. No. 614 (1972)) involve the change from an appointed to an elected county board of education; the method of electing members of the board (i.e., at-large, by numbered positions with a majority vote requirement); the decrease in the number of board members from seven to five; the decrease in the length of terms from five to four years; and the change from an elected to an appointed superintendent of the Baldwin County Board of Education in Baldwin County, Georgia. We received the information to complete your submission on July 21, 1983.

We have reviewed carefully the information you have provided, as well as comments from other interested parties. Except for the method of election adopted for the board of education, the Attorney General does not interpose any objections to the changes in question. 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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the method of election created by Act No. 1275, however, our analysis has revealed substantial bases for concern. At the outset, we note that the method of election chosen--namely, at-large by numbered positions with a majority

vote requirement--was adopted even though members of the minority community and the members of the board of education sitting at that time strongly opposed the adoption of such a system. Public opposition was based on the concern that the changes would likely reduce the minority representation which had been accomplished as a result of a special effort to assure minority representation on the then appointed board of education.

Our analysis shows that bloc voting along racial lines exists in Baldwin County. In that context, a system of elections such as that adopted for the election of the board of education tends to deny blacks an opportunity to participate fairly in the election process. This conclusion is buttressed by evidence that a biracial elections advisory committee, appointed to study the method of electing the county, school district and city governing bodies in Baldwin County, recommended that a change be made to provide for the election of members of each of these governing bodies from single-member districts. While the county and the city followed this recommendation and adopted the district method, the board of education refused to do so. The board has failed to articulate any nonracial reason for adopting this method of election. Although at-large elections may be appropriate in some circumstances, the additional features of numbered posts and majority runoffs plainly diminish the electoral impact of minority voters in jurisdictions where there is racial bloc voting.

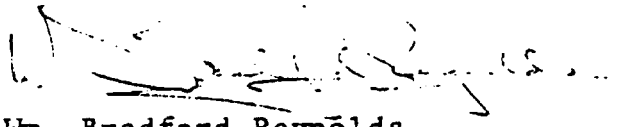
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). Because the board here has implemented this change for a number of years without the necessary preclearance, the board's burden is to show that the election system was not enacted and has not been maintained with a discriminatory purpose. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the board's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the at-large election method provided for in Act No. 1275 (S.B. No. 614 (1972)).

The transcripts of the public hearings show that such limitation on black voting strength was recognized. Other logical alternatives, such as Plans C, E, or F, or even the proposed plan using the existing plurality-win feature for the at-large seat, likely would easily pass Section 5 scrutiny and were readily available. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and districting plan.

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 these changes have 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 51.44 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 the changes occasioned by House Bill No. 605 (1985) legally unenforceable. 28 C.F.R. 51.9.

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 Quitman plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney/Reviewer in our Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division