



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 13, 1989

Ken W. Smith, Esq.
Wilkes, Johnson and Smith
P. O. Drawer 900
Hazlehurst, Georgia 31589-0900

Dear Mr. Smith:

This refers to the change in the method of electing the city council from six members at large to four members elected from two multimember districts and two members elected at large, all by numbered posts; a districting plan; a change from plurality to majority vote for the mayor and council; and an implementation schedule which changes the existing two-year staggered terms to four-year staggered terms and provides for interim terms of four years and two years for councilmembers of the City of Lumber City in Telfair County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on September 14, 1989.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction has the burden of showing that a submitted change has neither a racially 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 the instant submission we are unable to conclude that the city has carried its burden in either respect.

While we note, at the outset, that the submitted changes result from a settlement in Woodard v. Mayor of Lumber City, CV 387-027 (S.D. Ga.), we are faced with unanswered concerns that the city may have sought here to limit the opportunity of blacks to elect candidates of their choice to the city council. In that regard, our information is that the city rejected a number of

alternatives that contained fairly drawn districting plans and provided minority voters with an opportunity to participate equally in the electoral process and, instead, insisted on features such as the use of a majority vote requirement, numbered posts and staggered terms for at-large seats. The history of the city's earlier efforts to impose similar requirements on the electoral process make it difficult for us to conclude now that black persons could elect a candidate of their choice to an at-large seat in Lumber City.

As you will recall, on July 8, 1988, the Attorney General interposed an objection to the use of a majority vote requirement for the election of persons running at large for the city council, and to the codification of the use of numbered posts for those positions. On October 7, 1988, the Attorney General declined to withdraw that objection. Underlying these decisions were our concerns that racial bloc voting exists in Lumber City elections, and that black persons do not constitute a majority of the voters in the city such as would mitigate the racially discriminatory impact of those electoral features. Our reexamination of the facts in these regards in connection with your submission of the instant changes, together with our examination of the information you provided with this submission, have provided no basis for altering our earlier conclusions.

Therefore, because the city has not carried its burden of showing the absence of the proscribed purpose and effect, I must, on behalf of the Attorney General, interpose an objection to the submitted changes insofar as they establish majority vote for the mayor and majority vote, numbered posts and staggering of terms for the at-large council positions.

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 51.45 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 settlement plan legally unenforceable as presently constituted. 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 Lumber City plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Because the status of the submitted changes is at issue in Woodard v. Mayor of Lumber City, we are providing a copy of this letter to the court in that case.

Sincerely,

A handwritten signature in dark ink, appearing to read "James P. Turner". The signature is fluid and cursive, with the first name "James" and last name "Turner" clearly distinguishable.

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Dudley H. Bowen, Jr.
United States District Judge