



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 4 1992

Ms. Debbie K. Mosely
City Administrator
P. O. Box H
Sparta, Georgia 31087

Dear Ms. Mosely:

This refers to Act No. 129 (1991), which provides for two annexations, the adoption of numbered posts for city council elections, the elimination of certain candidate and voter qualification requirements, vacancy procedures, and an election date change and the implementation schedule therefor; and Act No. 1188 (1968), which provides for an increase in the terms of office of the mayor and councilmembers from two to four years, staggered terms (2-2) for councilmembers and the implementation schedule therefor, candidate qualification requirements for the mayor and councilmembers, including the requirement that candidates have no outstanding debts to the city, a change in the election date and the times that polls are open, the prohibition on political activities of city employees, procedures for voter registration, voter purge procedures, voter challenge procedures, and special election procedures for the City of Sparta in Hancock 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 your response to our request for more information on December 6, 1991.

The Attorney General does not interpose any objection to Act No. 1188, or to the annexations, the candidate and voter qualification requirements, vacancy procedures, election date changes and the implementation schedule contained in Act No. 129. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the adoption of numbered positions for city council elections, however, we are unable to reach a similar conclusion. We have considered carefully the information you have provided, as well as information from other sources. At the

outset, we note that it is generally well established that numbered positions in an at-large context enhance the opportunity for discrimination against minority voters. See e.g. City of Port Arthur v. United States, 459 U.S. 159 (1982); Senate Report No. 417, 97th Congress, 2nd Session 6 (1982). Numbered positions are more likely to produce head-to-head contests in which the winner must obtain a majority of the votes cast. Where voting is racially polarized, as it seems to be in the City of Sparta, the imposition of the numbered post requirement would appear to make it more difficult for black voters to elect candidates of their choice to the at-large council positions, and the city has presented us with nothing to show that this would not be the case. Furthermore, it appears that numbered positions were adopted without any input from the minority community, and the city has advanced no valid, nonracial reason to justify the change.

Under Section 5 of the Voting Rights Act, the city has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. With respect to the proposed use of numbered positions for council elections, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden in this instance. Therefore, on behalf of the Attorney General, I must interpose an objection to the establishment of numbered positions.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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 numbered positions continue to be legally unenforceable. Clarke v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

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To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Sparta plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division