



U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

MAR 12 1993

Rabun Faulk, Esq.
Twiggs County Attorney
203 North Church Street
Jeffersonville, Georgia 31044

Dear Mr. Faulk:

This refers to the procedures for conducting the March 16, 1993 special tax referendum, 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 initial submission on March 1, 1993; supplemental information was received on March 9, 1993.

In the short time available, we have carefully considered the information you have provided in support of your submission, as well as information from other interested parties. Under state law, the county commission was authorized to schedule the special tax referendum on one of four available special election dates in 1993, in March, June, September or November. Under Section 5, the county must demonstrate that its choice of the special election date, as well as the procedures employed in conducting the special tax referendum, are not racially discriminatory in purpose or effect. See NAACP v. Hampton County Election Commission, 470 U.S. 166 (1985); See also Procedures for the Administration of Section 5, 28 C.F.R. 51.17.

We understand that the purpose for which the special tax would be used--renovation of the county courthouse--has been an issue that has divided the county along racial lines, with white voters generally supporting the referendum and black voters generally opposing the referendum. In addition, our analysis of the county's election history reveals a pattern of polarized voting.

Last fall, the county commission scheduled a special tax and bond referendum for the November 3, 1992 general election, at a time when it was anticipated that there would be maximum voter turnout. The funding at issue in that referendum would have been used to finance a new county courthouse, a project opposed by

some white officials and voters. We understand that Probate Judge David Crenshaw failed or refused to place the referendum on the general election ballot, an action challenged by the county commissioners in state court. Although the lawsuit was voluntarily dismissed, in a subsequent action denying Judge Crenshaw's attorney's fees, the court stated: "Inasmuch as the law presumes the validity and legality of the resolution served upon the election superintendent, it was incumbent upon him to carry out his legal duty and call for the election prescribed or come forward with competent evidence to refute the legal presumption in favor of the validity of the Board of Commissioners Resolution. He did neither." Twiggs County Commissioners v. David Crenshaw C.A. No. 92V-252 (Super. Ct. Ga. Jan. 20, 1983) (emphasis in original). The proposed election was then scheduled after the newly elected commissioners took office.

Our analysis of past elections in Twiggs County reveals that voter turnout is substantially lower on election dates other than November general election dates. Moreover, the depressed turnout rates at such elections are regularly lower among the county's black voters.

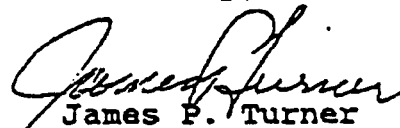
In addition, it appears that the county has not taken adequate steps to ensure that voters are properly notified about the election. For example, the county failed to provide sufficient public notice of the close of registration for the special election. Such notice was published for only two days--as opposed to the usual five-day period--prior to the close of registration, and the notice was not published in the newspaper as is the registrar's common practice. Nor has the county fully advised voters regarding where they should vote on March 16. Moreover, because of the similar wording in this referendum to the one previously scheduled for last fall, there are allegations that some county officials may be attempting to foster confusion among black voters about the effect of the referendum's passage. All of these circumstances suggest that the timing of the referendum and the procedures employed may have been chosen in order to diminish black voting potential, and the county has not provided persuasive evidence to the contrary.

Under Section 5 of the Voting Rights Act, the submitting authority 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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the March 16, 1993 special tax referendum.

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, color, or membership in a language minority group. 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 proposed special election continues to be legally unenforceable, and may not be held. See Clark v. Roemer, 111 S. Ct. 2096 (1991); Lucas v. Townsend, 486 U.S. 1301 (1988); 28 C.F.R. 51.10 and 51.45. We will be prepared, if necessary, to take appropriate legal action on Monday, March 15, to enforce the objection.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us by Monday, March 15, at 10:00 a.m., of the action Twiggs County plans to take concerning this matter. If you have any questions, you should call Ms. Nancy Sardeson (202-307-6264), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division