



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 15, 1993

William H. Mills, Esq.  
P. O. Box 565  
Blakely, Georgia 31723

Dear Mr. Mills:

This refers to Act No. 21 (1993), which provides for election of the board of education from single-member districts in a nonpartisan system by majority vote, a districting plan, regular four-year terms, a method of staggering terms (3-2), a method of filling vacancies on the board, candidate qualifications to serve in office (including minimum residency and education requirements), compensation for board members, a regular election date, use of county polling places, and the schedule for the November 2, 1993, special election for the Early County School District in Early 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 submission on May 20, 1993; supplemental information was received on August 16, September 27, and October 1, 5, and 8, 1993.

We have carefully considered the information you have provided, as well as Census data and information provided by other interested parties. According to the 1990 Census, black persons comprise 44.1 percent of the total population and 38.8 percent of the voting age population in Early County. The five members of the Early County Board of Education currently are selected by grand jury appointment.

The Attorney General does not interpose any objection to the provisions of Act No. 21 that provide for election of the board of education from single-member districts in a nonpartisan system by majority vote, the districting plan, regular four-year terms, a method of staggering terms (3-2), a method of filling vacancies on the board, the minimum residency requirement, compensation for

board members, the regular election date, and the use of county polling places. 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 28 C.F.R. 51.41.

With regard to the proposed educational requirement for school board members, however, we cannot reach the same conclusion. Act No. 21 provides that candidates for school board positions must possess a high school diploma or general educational development (GED) equivalent. We recognize the interest in establishing reasonable qualifications for those who are to hold office. However, because such requirements have the potential to discriminate against minority citizens, they must be reviewed carefully. See Dougherty County Board of Education v. White, 439 U.S. 32, 42-43, n.12 (1978).

According to the 1990 Census, in Early County, only 38 percent of black persons age 25 and older possess a high school diploma or its equivalent, compared to 64 percent of white persons age 25 and over. State law generally does not appear to require or endorse the proposed educational qualification and the existing system of grand jury appointments to the school board has no such requirement. In these circumstances, requiring that persons who wish to run for the school board demonstrate that they have a high school diploma or a GED equivalent would appear to have a disparate impact on the ability of black voters in Early County to elect their preferred candidates. Against this backdrop, your submission does not provide an adequate non-racial justification for this requirement.

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 requirement in Act No. 21 that school board members must possess a high school diploma or GED equivalent.

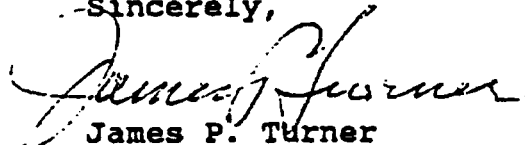
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, 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 requirement that school board members possess a high school diploma or GED equivalent continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Since the provisions of Act No. 21 that provide for the schedule for the November 2, 1993, special election are dependent on the education requirement, the Attorney General will make no determination with regard to this matter. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Early County School District plans to take concerning these matters. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the Voting Section. Refer to File No. 93-1830 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division