



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 5 1986

William C. Brewer, Jr.
Speight, Watson and Brewer
P. O. Drawer 99
Greenville, North Carolina 27835-0099

Dear Mr. Brewer:

This refers to the following acts concerning various board of education matters in Pitt County, North Carolina:

(1) Chapter 2, H.B. No. 29 (1985), which provides for the consolidation of the Pitt County School District and the Greenville City School District, the appointment of a twelve-member interim board, the election of a twelve-member permanent board, and the method of election (eight residency districts and one multimember residency district electing four members by a plurality vote to staggered, six-year terms of office);

(2) Chapter 495, H.B. No. 1397 (1985), which provides for the increase from twelve to fifteen appointed members to the interim consolidated board;

(3) Chapter 89, S.B. No. 113 (1965), which increased the Pitt County Board of Education from five to nine members and changed the method of nominating board members for appointment by the legislature;

(4) Chapter 656, S.B. No. 339 (1965), which extended the terms of office for the Pitt County board members;

(5) Chapter 360, H.B. No. 769 (1971), which changed the appointed Pitt County board to a nine-member board elected at large on a nonpartisan basis from residency districts with a plurality vote requirement to six-year, staggered terms, and specified the election schedule; and

(6) Chapter 856, H.B. No. 1498 (1979), which deleted the Greenville residency district from the Pitt County School District, thereby decreasing from nine to eight the number of board members.

These acts were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, and we received the information to complete your submission on March 6, 1986.

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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Our analysis of the submitted voting changes has been complicated by the fact that, prior to this submission, the Pitt County Board of Education had failed to submit for Section 5 review any of the changes affecting the method of electing board members effectuated since the enactment of the Voting Rights Act of 1965. In this regard, we note that, as of November 1, 1964, the operative date of the Voting Rights Act, county board members were appointed by the legislature following a primary election held for the purpose of determining candidates to be submitted to the legislature for its consideration. Candidate residency districts were added to the primary election structure in 1965 at the same time that the board was increased in size.

The origins of the at-large structure presently used to elect the county board remain confused. We are aware that certain state-wide legislation (Chapters 972 (1967) and 1301 (1969)) mandated at-large elections for the Pitt County Board of Education but we have been advised that such legislation was not implemented fully in Pitt County. It is clear, however, that at-large elections were required by Chapter 360, H.B. 769 (1971), and that that legislation constitutes a part of your current submission.

Our analysis reveals that patterns of racial bloc voting prevailing in Pitt County make it virtually impossible for black voters in the county to participate meaningfully in the school board elections under the unprecleared at-large

structure that has been used since 1971. The county school board has failed to provide a satisfactory nonracial explanation for establishing the election system currently being implemented. Under these circumstances, I cannot conclude that the county has sustained its burden of demonstrating that the existing at-large system is free of discriminatory purpose and effect. Accordingly, I must, on behalf of the Attorney General, interpose a Section 5 objection to the at-large voting procedures being used for the election of members to the existing county school board.

Our review of the proposed merger legislation (Chapter 2, H.B. No. 29 (1985), and Chapter 495, H.B. No. 1397 (1985)) proceeds from our analysis of the present method of electing the county board, which method is incorporated to a significant extent in the merger legislation. In this connection, we note that as opposed to the existing county board, the existing city school board is elected pursuant to voting procedures that have satisfied the preclearance requirements of Section 5 and have afforded black citizens an opportunity for effective political participation. The proposed merger plan provides that eight positions on the board for the merged school districts will be filled from the current eight county residency districts and that the Greenville Township area will constitute a four-member residency district; all positions will be elected on an at-large basis.

The submission reveals a recognition by the county that the merger legislation will not afford black citizens an equal opportunity for effective political participation. It was recognized that black citizens had been unable to elect candidates of their choice to the county board, and that the four-member city residency district would reduce the opportunity for effective single-shot voting, a device that has been utilized by blacks in the city school board district to their benefit in past elections. In an apparent effort to cure the disparate racial impact of the election method in the merger legislation, the supplemental provisions of Chapter 495 were enacted allowing for the appointment of three identified black citizens to serve on the merged district board until 1992 at which time a new, and at this time undefined, election plan is promised to be implemented.

The totality of facts here indicate that the merger legislation will result in a retrogression from the present position of city voters to elect candidates of their choice to the board. The submission reveals also that the method of election chosen was recognized by the county to have a discriminatory impact on black voters. The Voting Rights Act does not envision that the discriminatory impact of election procedures will be overcome by racially based appointments. Under these circumstances, then, I cannot conclude, as I must under the Act, that the county's burden imposed by Section 5 has been satisfied with regard to the method of electing the merged board. Accordingly, on behalf of the Attorney General, I must object to the voting changes to be occasioned by the merger legislation.

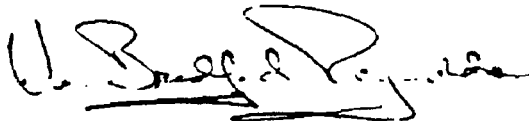
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the voting changes subject to the objection have neither the purpose nor will have the effect of denying or abridging 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 method of election for the merged board and the existing at-large election system for the county board legally unenforceable. 28 C.F.R. 51.9.

In light of the objection interposed herein, we believe it appropriate to make no determination at this time as to the voting changes occasioned by Chapters 89 and 656 (1965) particularly since those procedures are not being implemented and have not been proposed for re-implementation. Also, in light of the objection to the County board's current at-large election structure, we will make no determination concerning the voting changes occasioned by Chapter 856 (1979).

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Pitt County plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Acting Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", with a horizontal line drawn underneath the signature.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division