



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 12, 1986

Marshall F. Dotson, Jr., Esq.
Onslow County School Board Attorney
320 New Bridge Street
Drawer 766
Jacksonville, North Carolina 28541-0766

Dear Mr. Dotson:

This refers to the following statutes concerning the method of electing the Onslow County Board of Education in North Carolina:

1. Chapter 436 (1965), which increased the terms from two to four years and provided for staggered terms;
2. Chapter 630 (1967), which increased the school board from five to seven members, with nomination and election on an at-large basis, five members nominated and elected from residency districts (which followed township lines) and two members nominated and elected simultaneously and without regard to residence;
3. Chapter 2 (1969), which eliminated the residency district requirement and imposed a majority vote requirement in primary elections;
4. Chapter 525 (1977), which reimposed the requirement that five of the seven board members be nominated and elected from residency districts (which followed township lines) and the plurality vote requirement; and
5. Chapter 287 (1985), which provided for the staggering of the two seats with no residency requirement.

The voting changes occasioned by these statutes were 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 March 11, 1986.

We have considered carefully the information you have provided, data obtained from the census, as well as comments and information from other interested parties. At the outset, we note that, prior to this submission, the Onslow 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. You have advised us that, as of November 1, 1964, the operative date of Section 5, there were five school board members who were nominated and elected at large on the basis of residency districts (which followed township lines) for concurrent, two-year terms. Elections were held on a partisan basis with a plurality vote requirement.

With regard to the voting changes occasioned by Chapter 436 (1965), Chapter 630 (1967) and Chapter 2 (1969), the Attorney General does not interpose any objection. Section 5 of the Voting Rights Act expressly provides, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to Chapter 525 (1977), we note that under the election system set forth in Chapter 2 (1969), precleared herein, the school board was comprised of seven members elected at large on a partisan basis for staggered, four-year terms, with a majority vote requirement in the primary election. The major change adopted in Chapter 525 (1977) is the re-imposition of the residency district requirement for five of the seven at-large seats.

Our analysis reveals that black candidates for county-wide office repeatedly have been unsuccessful due at least in part to what appears to be a prevailing pattern of racially polarized voting. The only successful black candidacy occurred in 1976 under the now precleared Chapter 2 system, when the residency district requirement was not in effect. It was, however, shortly thereafter that the residency district requirement was re-imposed by Chapter 525 even though at that time

there was substantial geographic diversity among the school board members. In addition, it appears that the change was adopted without any significant publicity or consultation with the black community.

The school district's residency district requirement in the context of the prevailing racial voting patterns reduces the utility of single-shot voting by black voters and thus diminishes the potential for blacks being able to elect candidates of their choice to the school board. In both 1980 and 1984, the black candidate received enough votes to have been nominated but for the residency district requirement, which allowed candidates with lower vote totals to be nominated. Under these circumstances, then, I cannot conclude that the board of education has sustained its burden of demonstrating that the residency district requirement has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973). Accordingly, I must, on behalf of the Attorney General, interpose an objection to the residency district requirement of Chapter 525 (1977).

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 this 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, 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 county board described in Chapter 525 (1977) legally unenforceable. 28 C.F.R. 51.9.

Finally, we note that the voting changes occasioned by Chapter 287 (1985) seek further to modify the election system established by Chapter 525 (1977). In light of the objection to the electoral method set forth in Chapter 525 (1977), we will make no determination concerning the voting changes enacted by Chapter 287 (1985).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Onslow County Board of Education 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 Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds". The signature is written in a cursive style with a large, looping initial "W".

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division