MBR:LLT:RAK:gmh:dvs
DJ 166-012-3
N5640-5642
R2382-2383

October 27, 1986

Daniel A. Manning, Esq.
Attorney, Martin County
Board of Education
P. O. Box 892
Williamston, North Carolina 27892

Dear Mr. Manning:

This refers to the several statutes, as enumerated below, concerning the method of electing the Martin County, North Carolina, board of education, 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 August 27, 1986.

Chapter 972 (1967), as amended by Chapter 1301 (1969), removed the power to appoint school board members from the state legislature and provided for the nonpartisan, direct election of the school board in an at-large system with plurality voting and no residency districts. Chapter 380 (1971) increased the size of the school board from five to six members and created five residency districts, including one two-member district. House Bill No. 64 (1975) added a seventh nonresidency seat to the school board.

We have considered carefully the information you have provided, data obtained from the Census, school enrollment figures provided by the superintendent's office, as well as comments and information from other interested parties. At the outset, we note that prior to this submission, the Martin County Board of Education had failed to submit for Section 5 review any of the changes affecting the method of electing board members since the Voting Rights Act became effective. In view of that circumstance, we further note that, according to information you have provided, as of November 1, 1964, the

operative date of Section 5, the Martin County school board consisted of five members nominated in at-large, partisan primary elections for staggered terms without residency districts, but appointed by acts of the North Carolina General Assembly to staggered, four-year terms.

With regard to the implementation in Martin County of the voting changes occasioned by Chapter 972 (1967), as amended by Chapter 1301 (1969), the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides 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 380 (1971), we note that under the method of election provided for by Chapter 972 (1967), as amended by Chapter 1301 (1969), and precleared herein under Section 5, the school board consisted of five members elected at large on a nonpartisan basis to four-year, staggered terms without residency districts. Under that system, black voters had the opportunity to single-shot, or "bullet," vote for the candidate(s) of their choice from among the entire field of candidates that appeared on the ballot at each election. Chapter 380 added a sixth seat to the school board and, in addition, provided for five residency districts, including one two-member district.

Our analysis has shown what appears to be a prevailing pattern of racially polarized voting in county-wide elections involving black candidates in Martin County. Black candidates seem generally to be the choice of black voters, but only one black candidate has ever won election to the board, despite a significant number of black candidacies, including a black incumbent who had been appointed to the board in 1975 but thereafter was unable in both 1978 and 1982 to win election to the school board. Our analysis further reveals that the black community apparently was not consulted about the adoption of residency districts until after that change effectively had become an accomplished fact.

While we find no basis for objecting to the addition of the sixth seat to the board, the school board's imposition of residency districts has had an unmistakable retrogressive effect on the ability of minority voters to elect candidates of their choice, particularly in light of the high degree of racial bloc voting that seems to exist in a county with a 40.6 percent black voting age population. Indeed, we note that on at least one occasion a black candidate received sufficient votes to be elected to the board, but for the use of residency districts. Under these circumstances, I cannot conclude that the Martin County Board of Education has sustained its burden of demonstrating that the residency district requirement is free from a prohibited discriminatory effect under Section 5. 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 380 (1971).

Notwithstanding the objection to the use of residency districts under Chapter 380 (1971), the Attorney General interposes no objection to the addition of the seventh seat added to the school board by House Bill No. 64 (1975). Of course, in the context of the method of election precleared herein--which under Chapter 972 (1967), as amended by Chapter 1301 (1969), provides for a school board to be elected at large to staggered, four-year terms with neither residency districts nor designated posts--the board member for the precleared seventh seat must be elected in the same manner as the other six board members. As noted previously, the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of these changes.

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 none of these changes has either the purpose or 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 use of residency districts as prescribed in Chapter 380 (1971) legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Martin County Board of Education plans to take with respect to these matters. If you have any questions, feel free to call Lora L. Tredway (202-724-8388), Attorney/Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division