Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

NOV 2 1987

W. Leslie Johnson, Jr., Esq.
Johnson & Johnson
302 West Broad Street
Elizabethtown, North Carolina 28337

Dear Mr. Johnson:

This refers to Chapter 646 (1987) which authorizes the board of commissioners to change the method of electing the board for the 1988 and 1990 elections; and the August 20, 1987, resolution which provides for a change in the method of electing the board from at large to three double-member districts and one at-large, the districting plan, implementation schedule, and an increase in the size of the board from five to seven members in Bladen County, North Carolina, 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 September 1, 1987; supplemental information was received on October 30, 1987.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With respect to the change occasioned by Chapter 646, 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 change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to the proposed method of election, however, we cannot reach a similar conclusion. The board of commissioners presently is selected in at-large elections, under which only one black has been elected in modern times, despite numerous black candidacies. Our analysis of precinct returns for elections involving black candidates for the board of commissioners, as well as the county school board, indicates a pattern of racially

polarized voting in county elections. In this regard, we note that on October 21, 1987, we filed suit against the board of education under Section 2 of the Act, 42 U.S.C. 1973, alleging that the at-large system does not allow black citizens an equal opportunity to elect candidates of their choice to office.

In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes are non-discriminatory in both purpose and effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 (52 Fed. Reg. 497-498 (1987)). Our analysis confirms that the proposed method of election would enhance the opportunity for black political participation and thus will not have a retrogressive effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976).

We are unable to conclude, however, that the county has satisfied its burden that the proposed election system is free from discriminatory purpose. We recognize that the change is the result of a substantial effort by the black community to obtain the adoption of a method of election that will allow black citizens a fair opportunity for effective political participation. The initial response of the board appears to have been to reject any discussion or investigation into this issue. However, in mid-1986 the board appointed a districting study committee, composed of leading white and black citizens in the county, to investigate and make an appropriate recommendation. The committee met over a five-month period, and after hearing from experts in the field of voting and discussing alternative election systems, recommended a compromise system of five single-member districts (two of which would be majority black) and one at-large. The black community indicated that it would support such a plan, despite its preference for a five-district method with no at-large seats.

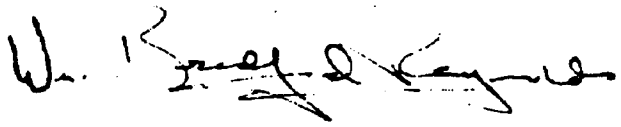
While it became clear that some change in the election method would be mandated, it appears that the responsible public officials desired to adopt a plan which would maintain white political control to the maximum extent possible and thereby minimize the opportunity for effective political participation by black citizens. Thus, the board rejected the recommendation of its redistricting committee and representatives of the black community, and instead adopted a plan under which blacks would appear to be limited to an opportunity to elect two of the seven members on the board. The board's membership would be increased by two though we have been advised of no reason for expanding the size of the board independent of the change in method of election. In addition, after the black community opposed the local bill which would have adopted the proposed election system and the bill was dropped from consideration, the change was then adopted pursuant to a transfer of authority which constitutes a significant deviation from the normal procedure followed in North Carolina for adopting election method changes. Of course, neither the increase in the size of a governing body nor the empowering of a local board to adopt a new election plan is per se unlawful but, in the circumstances present here, it appears that the board undertook extraordinary measures to adopt an election plan which minimizes minority voting strength.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of showing that the submitted election plan was not motivated by a discriminatory purpose. Therefore, on behalf of the Attorney General, I must object to the changes occasioned by the August 20, 1987, resolution.

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 these changes 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 51.45 of the guidelines (52 Fed. Reg. 496-497 (1987)) 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 changes occasioned by the August 20, 1987, resolution legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

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

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division