U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 7, 1987

Henry Drake, Esq.
Attorney, Anson County
Board of Education
P. O. Box 746
Wadesboro, North Carolina 28170

Dear Mr. Drake:

This refers to the following changes affecting voting for the Anson 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: Chapter 261 (1967) which consolidated the Anson County, Wadesboro City, and Morven City school boards into one county school board, provided for the appointment of the initial seven-member consolidated board, established direct, at-large elections beginning in 1970 for seven members by numbered positions for staggered (3-2-2), six-year terms, provided for partisan elections, a plurality vote requirement, an implementation schedule, candidate qualifications procedures and filing period, the method of filling vacancies, and the compensation of board members; Chapter 377 (1969) which increased the size of the board to nine members, and provided for the initial appointment of the two additional members and the staggering of terms of the two additional members; and Chapter 216 (1977) which provided a majority vote (runoff) requirement, decreased the length of terms from six to four years, provided an implementation schedule for the shortened terms, and changed the method of staggering the terms (4-5) of board members. We received the information to complete your submission on October 7, 1987.

We have considered carefully the information you have provided, as well as data obtained from the Bureau of the Census and information received from other interested parties. Except as indicated below, the Attorney General does not interpose any objections with regard to the changes in question. 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. 51.41).

With respect to the change to majority vote made in 1977 by Chapter 216 however, we are unable to reach a similar conclusion. In that regard, our analysis of precinct returns for school board elections involving black candidates shows what appears to be a pattern of racially polarized voting in Anson County. Candidates favored by the black community generally have not received significant white support, and typically have been defeated. Indeed, while there have been black candidates in every school board election since 1970 (with the exception of 1972), only two such individuals have been elected over white opposition, and the pattern of polarized voting seems to be intensifying in recent elections. In the context of such voting patterns, the use of a majority vote requirement increases the possibility of head-to-head contests between a black and white candidate in which the white typically would prevail, as evidenced by the 1984 contest in which the black candidate for Seat 4 on the board finished first by a substantial margin against two whites in the initial primary, but was soundly defeated by one of the white candidates in the runoff.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discrimimatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained with regard to the imposition of the majority vote requirement. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement occasioned by Chapter 216 (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 use of the majority vote requirement prescribed by Chapter 216 (1977), legally unenforceable. See 28 C.F.R. 51.9.

Finally, we should advise you that even though we have found no basis for interposing an objection under Section 5 to other features of the elective system which have been instituted to replace the earlier appointive systems, we do note that other

features of the system may be problematic under amended Section 2 of the Act. Accordingly, I have asked my staff to consider further those concerns and they will be in contact with you concerning that matter in the near future. In the meantime, if you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

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MAR 18 1988

Henry T. Drake, Esq.
Anson County Attorney
P. O. Box 746
Wadesboro, North Carolina 28170

Dear Mr. Drake:

This refers to your request that the Attorney General reconsider his December 7, 1987, objection under Section 5 of the Voting Rights Act, as amended, to the adoption and implementation of a majority vote requirement for electing members of the board of education in Anson County, North Carolina. We received your letter on January 29, 1988.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files. As we noted in our earlier letter, our inability to preclear implementation of the majority vote requirement was based in large part on what appeared to be the existence of a pattern of racially polarized voting in elections in Anson County. This concern, in turn, was supported by a precinct by precinct examination of elections from 1970 to the present. While, as you have pointed out and, as we recognized at that time, black candidates have on rare occasions been successful, this does not negate the existence of the overriding pattern of polarization in Anson County elections which seems more consistently to defeat black candidacies. Indeed, from our information the pattern seems to have intensified rather than diminished in recent elections. In a system where black voters form a minority of the electorate, and where black candidates are not likely to receive much support from white voters, the majority vote requirement increases the likelihood that candidates supported by the minority group will be defeated by candidates of the majority group. This, as we noted in our earlier letter, is what appears to have happened to the 1984 black candidate for school board Seat 4 and is what apparently has happened to a succession of black candidates seeking election to other county offices from 1980 to 1984.

In light of these considerations, then, we still are unable to conclude that the county has carried its burden of showing that use of the majority vote requirement has no retrogressive effect on black voting strength in school board elections. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you 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, irrespective of whether the change previously has been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division