U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 14 1989

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 195, H.B. 595 (1989), which allows, until August 1, 1990, the board of commissioners to change its method of election without holding a referendum election and permits the adoption of specified additional election features; and the June 26, 1989, Resolution of the board of commissioners, which implements Chapter 195 (1989) to provide for an increase in the number of commissioners from five to seven; a change in the method of election from at large by majority vote and staggered terms (3-2) to four commissioners elected from single-member districts and three commissioners elected at large, all by plurality vote for staggered terms (4-3), with the three at-large seats elected concurrently without numbered posts; a districting plan; an implementation schedule; and procedures for selecting party nominees in the event of a tie in the primary for Lee 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. Information completing your submission was received on November 9, 1989.

The information initially provided by the county with respect to these changes was received by the Attorney General on June 19 and July 7, respectively. Thereafter, on August 16, 1989, pursuant to Section 51.37 of the Procedures for the Administration of Section 5, 28 C.F.R. 51.37, we requested additional information needed to analyze the changes. In response you submitted additional information on several dates

culminating with a letter received by us on November 9, 1989, in which you specifically addressed various allegations by other interested parties which we had passed on to you at your request. As we explained in our November 20, 1989, letter, we found the supplemental information you provided in the response received November 9, 1989, necessary to a proper review of the changes under Section 5 and we, therefore, advised you that the statutory sixty-day period for substantive review of the submitted changes began with your response received November 9, 1989, making a final determination regarding the submitted changes due no later than January 8, 1990.

By your November 29, 1989, letter, you have taken the position that the response received November 9, 1989, does not materially supplement the county's submission so as to extend the statutory sixty-day period of review to January 8, 1990, and you therefore take the position that the deadline for an objection under Section 5 is December 4, 1989. Of course, we disagree.

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. 51.52(a)). In making the required determination, we view it important to take into consideration all of the information and comments available to us. Because we have not had an adequate opportunity to do so subsequent to receiving your November 9 response in this matter and to eliminate any question about whether these changes may be considered as precleared after December 4, 1989, we feel it incumbent upon us to interpose an objection, provisionally, until such time as we can complete a careful analysis of this submission. See Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). Therefore, on behalf of the Attorney General, I must interpose an objection to the submitted changes at the present time. However, we will continue to evaluate all of the material that we have received, including the supplemental information and arguments received November 9, 1989, and will let you know as soon as a determination on the merits can be made. At that time we will advise you as to whether the objection interposed herein will be continued or withdrawn. In the meantime, we understand that the county is anxious to obtain a determination quickly and we will expedite our review to the extent possible consistent with our responsibilities under Section 5.

If you have any questions concerning these matters, feel free to call Sandra S. Coleman, Deputy Chief, Voting Section, at 202-724-6718.

Sincerely,

for James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Civil Rights Division

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

January 8, 1990

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to our letter of December 4, 1989, interposing a provisional objection, under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 195, H.B. 595 (1989), which allows, until August 1, 1990, the board of commissioners to change its method of election without holding a referendum election and permits the adoption of specified additional election features, and the June 26, 1989, Resolution of the board of commissioners, which implements Chapter 195 (1989) to provide for an increase in the number of commissioners from five to seven; a change in the method of election from at large by majority vote and staggered terms (3-2) to four commissioners elected from single-member districts and three commissioners elected at large, all by plurality vote for staggered terms (4-3), with the three at-large seats elected concurrently without numbered posts; a districting plan; an implementation schedule; and procedures for selecting party nominees in the event of a tie in the primary for Lee County, North Carolina.

As promised in the December 4, 1989, letter, we have now completed our analysis of the proposed changes. In doing so, we have considered carefully all of the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. As a result, we find no basis for continuing the objection to the changes involved in Chapter 195 (1989) or to the proposed method of election changes, districting plan, and related changes involved in the June 26, 1989, Resolution. Accordingly, the objection is hereby withdrawn. 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).

Sincerely,

Gerald W. Jones

for James P. Turner
Acting Assistant Attorney General
Civil Rights Division