



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 18, 1989

Larry S. Overton, Esq.
Overton & Carter
P.O. Box 126
Ahoskie, North Carolina 27910

Dear Mr. Overton:

This refers to the eight annexations to the Town of Ahoskie in Hertford County, North Carolina, presently under submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. One of these annexations was adopted in 1969 by Chapter No. 360, H.B. No 478 (1969); two were adopted in 1970 on May 18 and August 3, respectively; one was adopted on June 29, 1976; one was adopted in 1988 by Ordinance No. 1988-22; and three were adopted in 1989 by Ordinance Nos. 1989-02, 1989-03, and 1989-04. We received your submission of the 1969 annexation and the information to complete your submission of the other annexations on October 17, 1989.

We have considered carefully the information that you have provided, as well as Census data and information and comments from other interested parties. As a result, the Attorney General does not interpose any objections to the annexations pursuant to Chapter 360, the ordinances adopted on May 18, 1970, August 3, 1970, and June 29, 1976, and Ordinance No. 1988-22. 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 these changes. See 28 C.F.R. 51.41.

With regard to the 1989 annexations, we are unable to reach a like conclusion. At the outset, we note that the town's total 1980 population was 4,887, of whom 2,232 (45.7 percent) were black citizens. In addition, although the total population of the town decreased between 1970 and 1980, the black proportion of the town's population increased by 3.8 percentage points during that period.

Based on 1980 Census data and the information you have provided, it appears that the instant annexations have had the cumulative effect of increasing the black proportion of the town's population by 7.5 percent from the level that existed prior to the annexations. We also note that even though the town is close to 50 percent black in total population, black candidates have had extremely limited success in winning seats on the five-member town council. Except for a brief period in the mid-1980's, the council has never had more than one black member at any one time although a number of black candidates have sought the office and those candidates appear to have been the choice of black voters. The limited success of black candidates thus seems to have been due largely to a pervasive pattern of racially polarized voting in town elections in combination with the existing at-large electoral structure for the town council.

According to information you have provided, the town's original proposal, formulated in 1988, for the annexations adopted in 1989 involved four discrete areas, designated as Study Areas I, II, III and IV. The combined population of these four areas would have added approximately equal numbers of black and white citizens to the town. When, later, the town learned that Study Area IV could not be annexed, it nevertheless pursued the annexation of the other three areas, which would have added a total of 682 residents to the town, 398 or 58 percent of whom would have been black persons.

In the meantime, during the November 1988 elections, black persons, who constituted about 56 percent of all registered voters in the county, obtained a majority of the seats on the Hertford County Board of Commissioners. Black persons also retained a majority of the seats on the county board of education. In December 1988, the town initiated efforts to reduce the size of the areas proposed to be annexed with the result that, in January 1989, the town adopted modified annexations which bring in a total of 445 residents, 252 or 57 percent of whom are white. These annexations, as thus modified, are the ones presently under submission.

The town has indicated that the alterations in the size of the three areas finally proposed for annexation were accomplished for economic reasons, *i.e.*, to reduce the amount of bonds that would have to be sold to pay the cost of installing municipal services, while also considering such factors as population, property tax values, and the years of amortization required to repay the bond debt. In our view, however, the town's selections among potential white and black residential areas to be included or excluded from these annexations cannot be reconciled on the basis of these neutral considerations.

For example, information you have provided shows that the town chose to exclude from Study Area II a black residential community of approximately the same population and tax valuation as a white residential area included in the annexation in Study Area III, when the capital cost of providing municipal services to the white residential area was more than five times that of the excluded black residential area. In addition, our information is that residents in the annexed white residential area were opposed to annexation, while the black residents who were excluded from the Area II annexation made known their strong desire to become town residents. Nor has it gone unnoticed that the effect of the town's decisions to alter the areas finally annexed is to maintain the same percentage of black persons in the town's population following annexation as existed in 1980 and that these decisions were made coincident with increasing black electoral gains in the county.

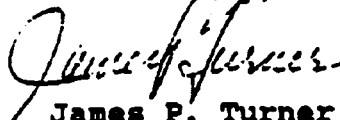
Finally, we note some indication that black persons may have been excluded from annexation in order to hold in reserve a number of black residents to balance the future annexation of white residents. Such racial considerations, however, are not permissible under Section 5 as a means of avoiding the otherwise naturally dilutive consequences of annexations. See City of Richmond v. United States, 422 U.S. 358, 378 (1979); see also City of Rome v. United States, 446 U.S. 156 (1980); 28 C.F.R. 51.61.

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). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the town has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the three 1989 annexations.

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 annexations 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 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 annexations pursuant to Ordinances 1989-02, 1989-03, and 1989-04 continue to be legally unenforceable insofar as they affect voting. See Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981) (three-judge court) (municipal residents of areas annexed after Section 5 coverage date may not participate in municipal elections unless and until the annexations receive Section 5 preclearance); see also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Ahoskie plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division