U.S. Department of Justice

Civil Rights Division

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

George Daly, Esq.
Attorney, Anson County
Board of Education
Suite 226, One North McDowell
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Charlotte, North Carolina 28204

MAY 29 1990

Dear Mr. Daly:

This refers to Chapter 288 (1989), which provides for a change in the method of election for the county board of education from nine members elected at large by numbered positions and plurality vote to seven members elected from single-member districts with terms staggered 4-3 and two members elected at large with terms staggered 1-1; a 40-percent plurality with a runoff requirement for nomination to the at-large positions; nomination for district seats under general state law which is a 40-percent plurality; the implementation schedule; and the use of the method of election for the 1990 election in Anson 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. We received the information to complete your submissions on March 29, 1990; supplemental information was received April 9, 11, 25, and 30, 1990.

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. At the outset we note that black candidates have had limited success in at-large countywide elections, despite seemingly good support from black voters, due largely to a prevailing pattern of racially polarized voting in combination with the existing at-large structure in a county whose electorate is majority white. Under

the existing system, all positions for the school board are at large with a plurality win requirement, but since each position is defined by a numbered place, there is no opportunity for single shot voting, a technique which to some extent allows minority voters to compensate for their numerical minority within an at-large electorate.

It is against this electoral background in Anson County, therefore, that concerns have been raised with respect to the proposed system. While the school board has adopted fairly drawn single-member districts for electing seven of its members, it also proposes to elect two at-large positions by staggered terms, a choice that, like the existing system, does not permit single shot voting, and to elect the proposed at-large positions by a 40-percent plurality win rule. We note that a 40-percent plurality requirement can lead to a situation in which a candidate supported by black voters might win a plurality of the votes in a primary election, but be forced into a head-to-head runoff contest where the black supported candidate would have to receive a majority of the votes in order to secure nomination. Thus, the 40-percent requirement, especially in conjunction with the staggered term provision, could place candidates preferred by the minority community in the same disadvantageous position in which such candidates have been in the past when they have run at large and lost in countywide elections for either a single position or a numbered place contest.

With regard to the proposed electoral structure, we note that a stated purpose for many of the choices reflected in the 7-2 system is to afford incumbent white officeholders the opportunity to retain their positions on the county school board. In particular, it appears that the school board proposes to retain the two at-large seats on a staggered basis primarily to prevent white incumbents from having to challenge each other either in a single-member district contest or in contests for the at-large positions. Moreover, the school board seeks to retain elements of the existing at-large structure notwithstanding the electoral history in Anson County which demonstrates that such positions are almost certainly foreclosed to black voters. While we recognize that preservation of incumbency certainly is not necessarily an inappropriate consideration, it cannot be accomplished at the expense of minority voting potential. See Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

Nor do we find it insignificant that there is strong opposition within the Anson County black community to the retention of at-large positions and that black and white community leaders have requested that the size of the board be reduced to seven members which was its size when state legislation created it as an elected body and which is the present size of the county commission. While we are mindful that

the board's size was expanded some years ago from seven to nine members specifically to permit the appointment of two minority members, and in conjunction with the Department's efforts to desegregate county schools, maintaining a nine-member board no longer serves the original purpose for expanding to that size, especially if, as proposed, the eighth and ninth members are to be elected in the restrictive at-large manner. Of course, we do not suggest that the board members must reduce their numbers, since we understand that alternative nine-member districting plans would provide black voters with an equal opportunity to participate in the electoral process and to elect candidates of their choice to four of the nine seats. Indeed, our information is that such an alternative was proposed but rejected by the school board in favor of retaining the at-large seats.

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 change is 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 change. 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 these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county school board has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the method of electing the Anson County Board of Education provided for in Chapter 288, insofar as it incorporates the at-large election feature with staggered terms and run off vote requirement.

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 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 voting changes occasioned by Chapter 288 continue to be legally unenforceable. See also 28 C.F.R. 51.10.

Because the implementation schedule is directly related to the objectionable features of the proposed electoral structure, the Attorney General will make no determination concerning this matter at this time. See 28 C.F.R. 51.22(b). In addition, we note that the date for the proposed 1990 implementation of the electoral system provided by Chapter 288 has passed. Accordingly, no determination by the Attorney General is now required or appropriate concerning that matter. See 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Anson County board of education plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division