

OCT 28 1977

Mr. John R. Justice
Attorney at Law
Post Office Box 728
103 McAliley Street
Chester, South Carolina 29706

Dear Mr. Justice:

This is in reference to Act No. 823 of the 1966 South Carolina General Assembly, to the resolution of July 12, 1976 and the two resolutions of July 29, 1976 of the County Council of Chester County relating to implementation by Chester County of the South Carolina Home Rule Act, and to Act No. 826 (1966) and Act No. 1341 (1968), which pertain to the election of members of the Chester County Board of School Trustees, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 29, 1977.

We have given careful consideration to the changes involved and the supporting materials, as well as information and comments from other interested parties. As the submitted materials involve a number of changes in the election procedures for the Chester County Council and the Chester Board of School Trustees, we shall first discuss the county council changes, followed by the school board changes.

In regard to Act No. 823 of 1966, Act No. 1341 of 1968, and to the July 1976 resolutions relating to the implementation of the South Carolina Home Rule Act, with the exceptions noted below, the Attorney General does not interpose any objections 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.

Sections 1 and 2 of Act No. 623 (1966) changed the method of election of the county board of directors from election from five single member districts to election at large with one or two member residency districts. Under both the old and the new methods a majority vote was required for nomination.

In reviewing these changes we have applied the legal principles developed by the courts in the same or analogous situations. Principal cases dealing with the proper approach to an evaluation of a method of election are White v. Regester, 412 U.S. 755 (1973), and Zimmer v. McKeithen, 435 F.2d 1297 (5th Cir. 1973), aff'd on other grounds sub nom. East Carroll Parish School Board v. Marshall 44 U.S.L.W. 4435 (March 30, 1976).

In our consideration of the method of election of the Chester County Council, we have taken note of the following facts: No blacks have been elected to the County Council although they represent approximately 39% of the county's population. Only one black has ever been elected to the Board of School Trustees. The use of residency districts in an at-large election system such as exists in Chester County has the effect of dividing the field of candidates into as many separate races as there are vacancies to be filled. Thus, the opportunity for blacks to effectively single-shot vote is countered and the white voting majority can control the election results for each residency district, if racial bloc voting exists. An analysis of precinct election returns in contests in which both black and white candidates were present reveals a pattern of racial bloc voting, although black candidates apparently do receive the votes of some white voters. In addition the majority vote requirement further impedes minority success by preventing the nomination of a minority candidate with a plurality of the votes.

We noted that in the 1974 Democratic Primary, the black candidate, Mr. Hall, was defeated by his white opponent, who received a majority of the votes cast. However, if all the candidates that year had run together, and a plurality vote requirement had been in effect, Mr. Hall would have been nominated with the fifth highest number of votes. In addition, in the 1976 Democratic Primary for the school board seat from the Lewisville-Landsford Township, the black candidate received the highest number of votes in the first primary. However, in the run-off election, he was defeated in a head-to-head contest with a white candidate.

Therefore, on the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the at-large election system with residency districts for the election of Chester County Council members in the context of a majority vote requirement will not have a discriminatory effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to that system as set forth in Sections 1 and 2 of Act No. 823 (1966).

With respect to the July 1976 resolutions, in view of the objection to Sections 1 and 2 of Act No. 823 (1966), I must also, on behalf of the Attorney General, interpose objections to the method of election of the county council specified in these resolutions.

Act No. 826 (1966) changed the method of election of the County Board of School Trustees from election from one or two member districts to election at-large with multi-member residency districts. Under both the old and the new methods a majority vote was required for nomination and terms of office were staggered. On the basis of our analysis, we are unable to conclude that this change will not have a racially discriminatory effect. In analyzing this change, we have once again taken into account the legal principles developed by the courts in the cases mentioned above.

The same analysis presented above with respect to the county council is applicable here. Moreover, we note that with a ten-member board of school trustees, under a fairly drawn single-member district plan, blacks will have a better opportunity to obtain fair representation on the school board. Under those circumstances, I must, on behalf of the Attorney General interpose an objection to Act No. 826 of 1966.

Under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and (c), 51.23, and 51.24) you may request the Attorney General to reconsider these objections. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, the legal effect of the objections by the Attorney General is to render the changes unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division