

D.J. 166-012-3
V7007

SEP 12 1975

Mr. J. Howard McNairy, Jr.
City Attorney
City of Bessemer
Post Office Box 236
Bessemer, Alabama 35020

Dear Mr. McNairy:

This is in reference to the 45 annexations to the City of Bessemer which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your submission was completed on July 14, 1975.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. It is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern then is not with the validity of the annexations as such but with the changes in voting which proceed from them.

With this understanding of the Attorney General's role under Section 5 in mind, I can advise you that the Attorney General does not interpose an objection to 38 of the annexations submitted. Our analysis reveals that

those 38 annexations, set forth in Appendix A to this letter, involve either areas that are not populated or areas the population of which have at most a de minimus effect on minority voting strength.

With regard to the other 7 annexations under submission, listed in Appendix B attached, we cannot reach a like conclusion. We have given careful consideration to those annexations, the supporting information afforded by the city and other interested parties, and recent federal court decisions which have involved the question of the racially dilutive effect of annexations where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 43 U.S.L.W. 4865 (U.S. June 24, 1975); City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972) aff'd 410 U.S. 952 (1973). On the basis of our analysis, we have concluded that the City of Bessemer has failed to satisfy its burden of proving that the 7 annexations listed in Appendix B do not have the effect of abridging the right to vote on account of race or color.

Our evaluation took into consideration a number of factors which can be summarized as follows. The City of Bessemer has a three-member commission form of government which is elected at-large with numbered posts and majority vote requirements. In 1960, black persons represented 57.4% of the city's total population and 52.4% of the voting age population, according to the 1960 Census.

From 1964 to 1970 there was a total of 18 annexations to the City of Bessemer, one of which has not been submitted for Section 5 preclearance. Of the twelve submitted annexations which actually involved population increases, only two contained black persons

and those represented a negligible increase in the black population. Based upon household data provided by the city and using the average number of persons per household according to the 1970 Census, we find that approximately 4,791 whites and approximately 74 blacks were added to the population during this period.

Our analysis shows that the cumulative effect of the 4 pre-1970 submitted annexations, along with the unsubmitted annexation accomplished by Act No. 245 of the 1964 Alabama Legislature, was to contribute significantly toward a decrease in black population percentages. According to Census statistics blacks represented 57.4% of the city's population in 1960 but only 52.7% in 1970. The black voting age population dropped from 52.4% in 1960 to 47.1% in 1970. We find further that this reduction in black percentage was exacerbated by the relatively substantial all-white population additions occasioned by the 3 post-1970 submitted annexations listed in Appendix B.

I am mindful of your view that the annexation resulting from 1964 Act No. 245 is not a change required to be submitted under Section 5 and that no such submission of that annexation is intended. While we do not agree with your view on the coverage question, we have not considered Act 245 as having been submitted. Nevertheless, since the annexation there involved contained the largest of all the post-1964 additions to the city's population, that factor of necessity forms a significant portion of the context in which we must analyze the dilution issue in this case.

Another factor which we must consider in reviewing serial annexations, particularly where there is a number of all-white or majority-white annexations, is

whether there are minority communities outside the city limits which have sought, or are interested in, but have been unsuccessful in being annexed to the city. In the course of our review, it has come to our attention that there are indeed several such areas, e.g., Carver-Robertstown, Pipe Shop, Hillside Homes, "Northside" (identified as an area between the city limits and the Braswell housing project), Paula Hill, Muscoda and Old Jonesboro, which are either immediately adjacent to the city's corporate limits or nearby.

The City of Bessemer has represented that none of the black areas has satisfied the legal requirements necessary for annexation to the city. Black persons with whom we have spoken have made allegations, which we are presently unable to conclusively prove or disprove, that these areas have been treated in a racially discriminatory manner over the past years and that they have been denied annexation to the city because of the race and/or economic status of the areas. However, we believe it is of some consequence that the great majority of annexations of white areas have been achieved apparently with a minimum of, if any, difficulty.

In view of the foregoing considerations, we cannot conclude, as we must under the Voting Rights Act, that the 7 annexations reflected on Appendix B do not have a significant dilutive effect on black voting strength. I must, therefore, on behalf of the Attorney General, interpose an objection to those 7 annexations.

I am not unmindful that our consideration under Section 5 regarding the individual annexations may have resulted in a different conclusion had each annexation been submitted promptly upon its completion. However,

once confronted with the simultaneous submission of multiple annexations, and faced with the question of whether an impermissible dilution under the law has occurred as the result of those annexations, it is incumbent upon us to examine the population of the annexed territory as of the time of submission and to consider collectively the annexations to determine their total effect under judicially enunciated standards.

In connection with this determination, however, we note that the Supreme Court has recently ruled that annexations which otherwise impermissibly reduce a racial group's political strength in a community do not necessarily violate Section 5 if the post-annexation electoral system fairly recognizes the minority's political potential or steps are taken to neutralize the adverse racial effects occasioned by the annexations. City of Richmond v. United States, 43 U.S.L.W. 4865 (U.S. June 24, 1975). The litigation there, as well as that involved in City of Petersburg v. United States, supra, considered that one such remedy might be the adoption of a fairly drawn system of single-member wards for the election of the representative governing body.

I note that there is now pending a lawsuit in the United States District Court for the Northern District of Alabama which challenges the at-large method of electing the Bessemer City Commission. Pursuant to our policy where the substance of objections under Section 5 bears an apparent relationship to issues or questions of relief in pending cases, I am taking the liberty of sending a copy of this letter to that Court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division