

DSD:DHH:LH:gm1
DJ 166-012-3
COOK17

FEB 26 1979

Honorable Fred L. Higgins
Judge of Probate, Clarke County
Courthouse
Grove Hill, Alabama 36031

Dear Judge Higgins:

This is in reference to Act No. 2446, Alabama Laws, 1971, page 3512, which provides for the at-large motion of election for the county commission of Clarke County, submitted to the Attorney General pursuant to Section 3 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 27, 1978.

Under Section 3 Clarke County has the burden of proving that the at-large electoral system was not adopted with a discriminatory purpose and that the operation of the at-large system does not have a racially discriminatory effect. See Beer v. United States, 425 U.S. 130 (1976); Wilkes County v. United States, 436 F. Supp. 1171 (D.D.C. 1978), affirmed, 67 U.S.L.W. 3351 (Dec. 4, 1978) (No. 78-70). See also 28 C.F.R. 51.19.

The county commission of Clarke County consists of four commissioners and the judge of probate, who serve four-year terms. A majority vote is required for nomination in the Democratic primary. Although blacks constitute 48 percent of the population of the county (according to the 1976 census), blacks have not been elected to the commission. Prior to the adoption of Act No. 2446 the four commissioners were elected from single-member districts. Our analysis indicates that one of these districts, Number 3, likely has a black population majority, and that a system of fairly-drawn single-member districts of equal population would probably contain at least one district in which blacks are in a substantial majority.

The county has presented no explanation of why it chose to adopt the at-large system as a means of complying with the one person, one vote requirement rather than reapportionment of its districts. Finally, our analysis of precinct election returns for the 1972 and 1976 primary elections and the 1976 run-off primary indicates that voting in Clarke County follows racial lines.

Under these circumstances I am unable to conclude, as I must under the Voting Rights Act, that the at-large method of election established by Act No. 2466 has neither a discriminatory purpose nor a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection pursuant to Section 3 to the submitted method of election.

Of course, as provided by Section 3 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 the at-large election system established by Act No. 2466 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 3 (28 C.F.R. 31.21 (b) and (c), 31.23, and 31.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the at-large method of electing members of the county commission of Clarke County legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Clarke County plans to take with respect to this letter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney Sheila Delaney at (202) 633-4052.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division