U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 6, 1989

Mr. Fred G. Mott
City Administrator/Clerk
Drawer 400
Foley, Alabama 36536

Dear Mr. Mott:

This refers to the twelve annexations, the change in the method of election from at large to single-member districts, and the districting plan for the City of Foley in Baldwin County, Alabama, submitted 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 September 5, 1989.

The Attorney General does not interpose any objections to the nine annexations set forth in Attachment A to this letter, which we understand are unpopulated and are not contemplated to include any future residential development. The Attorney General also does not interpose any objections to the change in method of election and the districting plan. 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

After carefully considering the information provided by the city as well as information provided by other interested parties, we cannot reach a similar conclusion with respect to the residential annexations listed in Attachment B. At the outset, we note that these annexations do not effectuate a discriminatory dilution of black voting strength since the precleared method of election would appear to fairly reflect black voting strength in the city as it would be enlarged by the residential annexations.

City of Richmond v. United States, 422 U.S. 358 (1975). However, an annexation also affects voting "by including certain voters within the city and leaving others outside, [thereby] determin[ing] who may vote in the municipal election and who may not," Perkins v. Matthews, 400 U.S. 379, 388 (1971), and a covered jurisdiction is required to show that this decision has not been made in a discriminatory manner.

The submitted residential annexations were adopted in 1983, 1984, and 1986, and include white residential areas contiguous to the city limits. It appears that the city took an active role in obtaining these annexations, by encouraging property owners to petition for annexation and by obtaining local legislation to adopt one of the annexations, and also obtained at least one federal grant to improve one of the annexed areas.

In its initial response to our request for additional information regarding this matter the city informed us that, 1) at the same time these white areas were being welcomed into the city, a black residential area known as Mills Quarters likewise was requesting annexation, and 2) the city turned aside this request and, in doing so, used the same informal annexation criteria which were applied to the areas annexed and also to two white residential areas which unsuccessfully requested annexation in the 1980s. However, the information furnished later by the city, after a protracted effort to obtain a complete and accurate response to our request for additional information, reveals no nonracial explanation for the rejection of the Mills Quarters petition.

In that regard, the city apparently advised the Mills Quarters petitioners that annexation was not feasible because the area is not contiguous to the city, and this representation also was made to this Department for over a year. Yet, the city ultimately provided a map to us from the local tax assessor's office which clearly shows Mills Quarters to be contiguous to the city limits (i.e., contiguous to the area annexed in 1982 which previously was precleared). The city also has claimed that there was "considerable opposition" to annexation within the Mills Quarters area, but has been unable to provide us with any specific information in that regard. Lastly, the city has

argued that it would be unreasonably costly to annex this area, though the city already is providing fire and police services to the Mills Quarters residents. The city initially provided us with its estimate of the cost of installing water and sewer lines, but subsequently advised us that the cost of the water lines is not a substantial problem, and provided us with a county planning study which states that sewer lines appear not to be needed. We also understand that federal block grants are available to the city for such community development and that the Mills Quarters area would be a logical recipient. In sum, all of the nonracial reasons advanced by the city for failing to annex the Mills Quarters area have been contradicted by the city's own information.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In that regard, a jurisdiction does not have an affirmative duty to annex any particular area but, once it decides to undertake annexations, it must do so in a nondiscriminatory manner. In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the residential annexations set forth in Attachment B.

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 the objected-to 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 effect of the objection by the Attorney General is to make the three referenced annexations legally unenforceable to the extent they affect voting. Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981) (three-judge court) (municipal

residents of areas annexed after the 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.

Because the proposed method of election and districting plan are the result of a consent order in Dillard v. City of Foley, C.A. No. 87-T-1213-N (M.D. Ala.), we are providing a copy of this letter to the court and the attorneys in that case.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Foley plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner, an attorney in the Voting Section, at (202) 724-8388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Myron Thompson
United States District Judge

David R. Boyd, Esq.

James U. Blacksher, Esq.

Attachment A

Ordinance No. 220 (1975)

Ordinance No. 263 (1980)

Ordinance No. 278 (1981)

Ordinance No. 352-85

Ordinance No. 357-85

Ordinance No. 364-85

Ordinance No. 376-86

Ordinance No. 393-87

Ordinance No. 393A-87

Attachment B

Ordinance No. 324-83, as amended by Ordinance No. 331-84

Ordinance No. 344-84

Act Nos. 86-489 and 86-549