



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 12, 1990

David R. Boyd, Esq.
Balch & Bingham
P. O. Box 78
Montgomery, Alabama 36101

Dear Mr. Boyd:

This refers to Resolution No. 89-20R, which divided the county school system to establish an independent school system for the City of Valley in Chambers 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 submission on August 13, 1990.

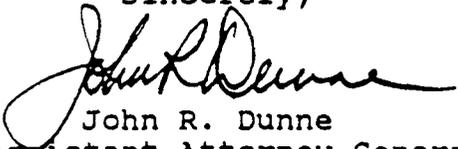
We have given careful consideration to the materials you have provided, as well as comments and information from other interested parties. Our investigation has revealed evidence that racially invidious considerations may have played a role in the decision to create a new city school system. First, we note, with regard to the 1980 incorporation of the City of Valley, that despite assurances to the contrary made when the incorporation of Valley was before us for Section 5 review, present indications are that the incorporation was especially motivated by the desire to create a separate city school system. That incorporation defined an irregularly shaped city which included the six schools intended for the Valley School System, but which excluded significant areas of black population concentration. No satisfactory explanation has been provided for the city's ten-year delay in bringing within its boundaries these areas of black population concentration despite assurances that this would be done promptly. Indeed, information has been brought to our attention that black citizens living in areas just outside the city limits had petitioned the city for annexation, but these petitions were unfavorably received. Second, it appears that one of the reasons for the proposal to create the Valley School System was to separate the predominantly white City of Valley area from the Chambers County School District because of a perception by Valley officials that black voters exercise significant political influence on the election of the county board and superintendent.

We also note that black persons residing within the proposed school district limits will essentially be transferred from a governmental system (the Chambers County School District) in which blacks have an equal opportunity to participate in the political process and elect candidates of their choice to a governmental system (City of Valley) in which currently blacks have no such comparable opportunity.

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. 326 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, and because we are faced with having to make a determination within the 60-day review period allowed by Section 5, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the creation of the Valley School System. However, we will continue to look further into this matter and will let you know in the near future whether we find a basis for altering our present conclusion.

If you have any questions, please feel free to call Keith L. Borders (202-514-6450), an attorney in this office. Because the creation of the Valley School System is currently before the court in Lee and United States v. Chambers County Board of Education, No. 844-E (M.D. Ala.), a copy of this letter is being provided to the court and counsel of record in that case.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Truman M. Hobbs

cc: Counsel of record



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 31, 1991

Donald B. Sweeney, Esq.
Rives & Peterson
505 North Twentieth Street
Birmingham, Alabama 35203-2607

Dear Mr. Sweeney:

This refers to your request that the Attorney General reconsider the October 12, 1990, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the creation of the Valley City School System for the City of Valley in Chambers County, Alabama. We received your letter on April 1, 1991; supplemental information was received on May 30 and 31, 1991.

As you will recall, our earlier determination in this matter, as reflected in our letters of October 12 and October 23, 1990, was based on our concern that racially invidious considerations had played a part in the creation of the new school system and that black persons residing within the proposed school district limits will essentially be transferred from a governmental system in which they have an equal opportunity to participate in the political process and elect candidates of their choice to a system in which currently they would have no comparable opportunity. Thus, we concluded that the City had not sustained its burden of showing the absence of the proscribed racially discriminatory purpose and effect in the creation of the new school system.

We have reconsidered our earlier determination based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested parties. In this regard, we note that much of the information provided by the City in support of its request for reconsideration does address, to some extent, our racial purpose concerns, which relate, in major part, to the incorporation of and annexations to the City, which serves as the nucleus of the new school system. Yet, questions still remain with respect to the stated justification for excluding

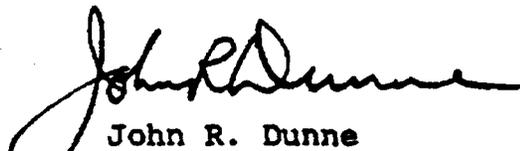
certain black neighborhoods from the original city boundaries and the failure to annex these areas thereafter. In any event, the City's request does not address the retrogression concern set forth in our letter of objection, namely, that black voters in the proposed new school system will be provided with a significantly less effective voice in electing the governing board of their school system. While we recognize the City's expressed willingness to consider future modifications to the City's at-large election system as a potential way to address this issue, we are legally constrained to make our judgment under Section 5 on the basis of presently existing, not projected, electoral arrangements.

In light of these considerations, then, I remain unable to conclude that the City of Valley has carried its 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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the creation of the Valley City School System.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See also 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

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 Valley plans to take with respect to this matter. If you have any questions, feel free to call George Schneider (202-307-8696), an attorney in this office. Because the creation of the Valley School System is currently before the court in Lee and United States v. Chambers County Board of Education, No. 844-E (M.D. Ala.), a copy of this letter is being provided to the court and counsel of record in that case.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division