U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 11 1991

Michael E. Hobbs, Esq.
Senior Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Hobbs:

This refers to Act No. 1155, S.B. No. 623 (1990), which provides for a change from an elected board (six members elected from single-member districts in the City of Milledgeville and the mayor of Milledgeville, who is elected at large) to a statewide board of twelve members appointed by the governor for the Georgia Military College (GMC) in Baldwin County, Georgia, 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 January 22, 1991.

We have given careful consideration to the information contained in your submission and information from other sources. We note that the current method of electing the GMC board was the result of a private lawsuit filed on behalf of black residents of Milledgeville challenging the at-large system of electing the GMC board then in place. Barnes v. Baugh, C.A. No. 88-262-1-MAC (DF)(M.D. Ga. May 12, 1989). The consent decree entered in that case provides for a seven-member board of trustees, six of whom are elected from single-member districts, of which three are majority black. This change, which we precleared on August 15, 1989, resulted in black representation on the board for the first time in its 110 year history.

Under the current method of electing the GMC board, black voters in the City of Milledgeville have an opportunity to elect three of the seven members of the board. With the proposed change, these voters will no longer have an opportunity to elect members of the board. Moreover, black voters statewide will have

considerably less influence over the appointment choices of the governor, who is elected by a predominantly white constituency. Thus, the proposed change to an appointed board would appear to effect a retrogression in the position of minority voters in Milledgeville contrary to the requirements of Section 5.

While we recognize the state's interest in increasing state funding for GMC, there is no suggestion in the information you provided that a locally elected board poses a legal impediment to increased state funding. The state attorney general determined in 1988 that GMC was an appropriate recipient of state funding, at the discretion of the General Assembly. Based upon the information you have provided, the only legal barrier to GMC's receipt of state funding commensurate with that provided other schools is the statutory prohibition against per student "QBE" payments to elementary and secondary schools which charge tuition. This prohibition is not addressed, however, by Act No. 1155.

Moreover, you have not provided any information to show that Act No. 1155 will accomplish the objective of increasing state funding for GMC. The statute does not provide specifically for any change in the level or source of state funding for GMC. In addition, neither the prep school tuition nor tax support from the City of Milledgeville are eliminated by the statute.

Secondarily, you have claimed that the change to a statewide board is necessary to provide a form of governance which is consistent with and representative of increased state participation in GMC financing and a student population reflecting a broad cross-section of the citizens of the state. While Act No. 1155 refers to the latter goal, it does not provide a means of achieving it. So long as tuition is charged for the prep school and there is no provision for funding the scholarship program envisioned in the statute, the prep school is likely to continue serving a student population that is predominantly white and local.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted change has no discriminatory purpose or 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). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that this burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted change.

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 this change has 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 51.44 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 at-large method of election occasioned by Act No. 1275 (1972) legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Baldwin County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 15, 1991

Honorable Michael J. Bowers
Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Attorney General:

This refers to your request that the Attorney General reconsider the March 11, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Act No. 1155, S.B. No. 623 (1990), which provides for a change from an elected board (six members elected from single-member districts in the City of Milledgeville and the mayor of Milledgeville, who is elected at large) to a statewide board of twelve members appointed by the governor for the Georgia Military College (GMC) in Baldwin County, Georgia. We received your letter on August 14, 1991.

We have reconsidered our earlier determination in this matter 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 persons.

Your request for reconsideration emphasizes the statewide service of the junior college component of GMC. Our objection, however, was based, in major part, upon concerns that the proposed change would deprive minority voters in the City of Milledgeville of an opportunity to elect candidates of their choice to a board which also governs the essentially local GMC preparatory school. These concerns were heightened by the controversy over low black enrollment at the preparatory school, its tuition charges, and the fact that the submitted change was proposed immediately after the election of the first black members of the GMC Board of Trustees in its history.

These concerns still have not been adequately addressed by any of the information provided with your request for reconsideration. In that regard, we note that earlier proposals for retention of a locally elected board to oversee operation of the local preparatory school component of GMC with the addition of state-appointed members to focus on the junior college program, or the assignment of the latter responsibility to the University System Board of Regents, would seem to provide the statewide perspective to satisfy the state's interest in having a statewide governing body for a statewide school. We also note the possibility of a board for the entire school in which some members are state-appointed and others are locally elected. Yet, the state continues to provide no satisfactory explanation for rejecting such alternatives.

In view of these circumstances, we are still unable to conclude that the state has met its burden of showing that the proposed 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 submitted change.

As previously noted, 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, however, that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 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 Georgia General Assembly plans to take with respect to this matter. If you have any questions, feel free to call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division