



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 3, 1997

Susan K. Nichols, Esq.  
Special Deputy Attorney General  
P.O. Box 629  
Raleigh, North Carolina 27602-0629

Dear Ms. Nichols:

This refers to Chapter 667 (1996), which creates the Butner Advisory Council for the Camp Butner Reservation, consisting of seven members, elected at large to four-year, staggered terms in nonpartisan elections, and designates the implementation schedule, the candidate filing period, the general election date, and the method of selecting the chair of the council for the reservation located partly in Granville County, North Carolina, 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 your response to our September 30, 1996, request for additional information on December 3, 1996; supplemental information was received on January 16, 1997.

We have carefully considered the information that you have provided, as well as Census data and information from other interested persons. As a result, the Attorney General does not interpose any objection to the creation of the Camp Butner Reservation, the establishment of the elected Advisory Council, the number of officials, the term of office, the adoption of nonpartisan elections, the candidate filing period, the general election date, and the method of selecting the chair of the council. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion, however, regarding the proposed at-large method of election and the use of staggered terms in that context. According to 1990 Census data and the submitted map of the area, the population of the Camp Butner Reservation (hereinafter "the reservation") includes approximately 6,472 persons, of whom 2,471 (38.2 percent) are black. As of November 1996, the reservation has 2,063 registered voters, of whom 700 (33.9 percent) are black. Most of the reservation's population is located in Granville County, North Carolina. The reservation's councilmembers will be elected at large to staggered (4-3) terms.

As of 1987 no black candidate had ever been elected to the at-large elected Granville County Commission or School Board, despite the fact that the black percentage of the county's total population had grown to 43 percent and multiple black candidates had run for office. Private plaintiffs sued the county commission alleging vote dilution, McGhee v. Granville County, Civil Action No. 87-29-CIV-5 (E.D.N.C.), and three months later, the United States Department of Justice sued the county school board, United States v. Granville County Board of Education, No. 87-353-CIV-5 (E.D.N.C.). Both lawsuits were filed on the premise that the at-large method of election for the respective governing bodies did not provide black voters with an equal opportunity to elect candidates of choice. In response to each lawsuit, the county entered into consent agreements, with private plaintiffs as to the county commission and with the Department as to the school board, which included stipulations that the at-large method of election violated Section 2 of the Voting Rights Act; ultimately, single-member districts were implemented to cure the violations.

Implicit in these stipulations that the at-large method of election violates Section 2 was an admission that voting in the county was racially polarized. Our analysis of at-large elections for county offices since this time indicates that the pattern of racially polarized voting has not changed. While black-supported candidates have had some limited success in at-large and double-member district elections for state offices, they continue to be plagued by defeat in more local elections conducted on a countywide basis.

Despite this well-documented pattern of racially polarized voting for at-large elected county offices, an election system was selected for the reservation's Advisory Council that has impeded the ability of black voters to elect their candidates of choice. Alternative election systems, such as single-member

districts, that would allow black voters an equal opportunity to participate in the electoral process and to elect candidates of their choice do not appear to have been given serious consideration in the decision-making process. Our analysis revealed that it is relatively simple, for example, to create a seven single-member district plan with two naturally occurring, compact districts that have black voting age population majorities.

The election of a single black candidate in an unprecleared election for the Advisory Council conducted in November 1996 in which all seven council positions were elected and the number of candidates was double the number of positions to be filled does not compel a different conclusion regarding the impact of an at-large election system on the opportunity of minority voters to elect their candidates of choice. Nor is this election sufficient to counter the well established pattern of racially polarized voting observed in county elections conducted on a countywide basis or to allow us to conclude that an at-large election system with staggered terms (4-3) will enable black voters to elect candidates of choice in future Advisory Council elections.


Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a 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). In addition, an objection must be interposed where there is a clear violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; see also 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the at-large method of election and staggered terms for the Camp Butner Reservation.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the at-large method of election and staggered terms have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may 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 at-large method of election and staggered terms continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination with regard to the implementation schedule as it is directly related to the objected-to staggered terms. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane-Dabu (213-894-2931), an attorney in the Voting Section.

Sincerely,



Isabelle Katz Pinzler  
Acting Assistant Attorney General  
Civil Rights Division