

D.J. 166-012-3  
V9991

DEC 12 1975

Mr. Kent Brunson  
Assistant Attorney General  
State of Alabama  
Montgomery, Alabama 36130

Dear Mr. Brunson:

This is in reference to Act No. 698, 1975 Alabama Legislature, dealing with changes in the manner of electing city commissioners in Phenix City, Alabama, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your submission was received on October 13, 1975. Although we have noted your request for expedited consideration of this submission pursuant to 28 C.F.R. §51.22, we have been unable to reach a determination in this matter until the present time.

In examining, under Section 5 of the Voting Rights Act, changes in the method by which members of a city commission are elected, it is incumbent upon the Attorney General to determine whether the changes, either in purpose or effect, result in a minimization or dilution of minority voting strength. In this instance, we have concluded that the staggered term requirement for the election of the Phenix City Commission which would result from Act No. 698 would have such an effect.

We have examined this matter carefully, including a consideration of the following factors. The population of Phenix City, according to the 1970 Census, is 25,281, 37% of which is black. The city's three-member governing body is elected on an at-large, majority vote basis, and single-shot voting is permissible. No black person has

ever been elected to the Phenix City Commission. It is our understanding that, recently, a coalition of black and white leaders in the city urged the adoption of a more representative electoral system which would give the city's sizeable minority group an opportunity to elect some representation of their own choice.

We also took into consideration the changes in the method of electing the City Commission which have occurred since the effective date of the Voting Rights Act of 1965. Significant to that consideration is the fact that the adoption of the numbered post system authorized pursuant to Act No. 1173, 1971 Alabama Legislature, is unenforceable since the changes incorporated into that legislation has never met the preclearance requirements of Section 5. Thus the only presently enforceable method of electing the three city commissioners is on an at-large basis as resulting from the changes contained in Act No. 52, 1971 Alabama Legislature, which has met Section 5 requirements.

In our view, the reduction of the field of candidates which would result from the imposition of staggered terms would have the effect of limiting the potential for black voters to elect a candidate of their choice and thus would constitute an impermissible dilution of black voting strength. See Dunston v. Scott, 336 F. Supp. 206, 213, n. 9 (E.D. N.C. 1972). Under such circumstances, the Attorney General cannot conclude, as he must under Section 5, that the implementation of staggered terms for the Phenix City Commission will not have the effect of abridging or denying the right to vote on account of race or color. I must, therefore, on behalf of the Attorney General interpose an objection to the implementation of Act No. 698.

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Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this plan has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render Act No. 698 unenforceable.

Sincerely,

J. Stanley Pottinger  
Assistant Attorney General  
Civil Rights Division