DSD:DHH:JAS:gml
DJ 166-012-3
A3381

JUL 28 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J. Gorman Houston, Jr.
Houston & Martin, P.C.
Attorneys at Law
Post Office Box 14
201 East Broad Street
Eufaula, Alabama 36027

Dear Mr. Houston:

This is in reference to Act No. 10, Acts of Alabama, 1965, and Act No. 171, Acts of Alabama, 1967, changing the method of electing members of the Barbour County Commission, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 30, 1978.

Prior to the 1965 legislation, six of the seven members of the governing body of Barbour County were elected from single-member districts and the seventh member was elected at-large. Under the 1965 legislation all members of the governing body were elected at-large and the districts were retained as residency districts only. The 1967 legislation reduced the size of the governing body from seven to five members and divided the county into four districts, with two members required to reside in districts one and one member in each of the other three districts. The positions for the first district were numbered. We have given careful consideration to these changes as well as to the supporting information you have provided, demographic data, comments from interested parties, and relevant court decisions.

We note that according to the 1970 census blacks constitute 46 percent of the population of Barbour County but that no blacks have been elected to the governing body under the at-large system of election. Our analysis indicates that some of the districts in use prior to the 1965 legislation and some of the districts adopted

in 1967 have black population majorities and that under a system of fairly-drawn districts satisfying one person, one vote requirements some districts with black population majorities could be expected to result. We also note that the at-large election system was adopted soon after the Voting Rights Act of 1965 enabled substantial numbers of blacks to participate in the electoral process for the first time. In this regard see Smith v. Paris, 257 F. Supp. 901 (M.D. Ala. 1966), affirmed, 386 F. 2d 797 (5th Cir. 1967), and United States v. Executive Committee of Barbour County, Alabama, 283 F. Supp. 943 (M.D. Ala. 1968). We also note that a majority vote is required for nomination, that numbered posts are used, and that terms are staggered, and our analysis indicates that voting in Barbour County is along racial lines. See White v. Regester, 412 U.S. 755 (1973), and Nevett v. Sides, 571 F. 2d 209 (5th Cir. 1978).

Under these circumstances, and guided by the applicable legal standards—see Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U. S. 358 (1975), and Wilkes County, Georgia v. United States, C.A. No. 76-1045 (D.D.C. April 28, 1978)—the Attorney General is unable to conclude that the adoption of at-large elections effected by Act No. 10 (1965) and the modification of that at-large system effected by Act. No. 171 (1967) do not have the purpose and have not had the effect of denying or abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to Act No. 10 (1965) and Act No. 171 (1967).

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 these changes have 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 obtained, the effect of the objection by the Attorney General is to make these acts legally unenforceable. This includes, specifically, the holding of any primary or general election pursuant to them this year. Please notify me within ten days of your receipt of this letter of the steps that will be taken to comply with the requirements of Section 5. If you have any questions concerning this matter, please telephone Voting Section Attorney Sheila Delaney, at 202-739-4492.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division