



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Charles A. Graddick
Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130

18 JUN 1984

Dear Mr. Attorney General:

This refers to Act No. 376, H.B. No. 1040 (1975), and Act No. 507, H.B. No. 830 (1983), which create and specify the methods by which elected officials appoint members of the racing commission in Greene 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 your submissions on April 19, 1984.

The Attorney General does not interpose any objection to the change embodied in Act No. 376 (1975). However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We have carefully considered the information you have provided concerning Act No. 507 (1983), as well as Census data and information provided by other interested parties. According to the 1980 Census, Greene County is 78-percent black. We note that, as a result of the latest reapportionment of the Alabama representative and senatorial districts in 1983 (Act No. 83-154), a unified Greene County has elected two blacks as its local delegation. Prior to that election, a divided Greene County had been represented by an all-white local delegation. We note further that Act No. 507 (1983) was proposed and first advertised in the Greene County Democrat, a local newspaper, on April 14, 1983, three days after the court in Burton v. Hobbie, 561 F. Supp. 1029 (D. Ala. 1983), confirmed its order requiring the special elections which brought the black representatives into office.

Our analysis shows that Act No. 507 (1983) removes the authority to appoint county racing commission members from the county's legislative delegation and places it with the governor. Thus, as the result of Act No. 507, the local delegation from Greene County, now consisting of two blacks, has lost its authority to appoint the members of the Greene County racing commission.

The question of whether a change in the powers of elected officials is a change subject to the preclearance provisions of Section 5 is one which has been addressed and resolved by the United States District Court for the District of Columbia in Horry County v. United States, 449 F. Supp. 990 (1978). That court, in concluding that a change such as that embodied in Act No. 507 (1983) is subject to the preclearance provisions of the 1965 Act, stated (449 F. Supp. at 995):

An alternate reason for subjecting the new method of selecting the Horry County governing body to Section 5 preclearance is that the change involved reallocates governmental powers among elected officials voted upon by different constituencies. Such changes necessarily affect the voting rights of the citizens of Horry County, and must be subjected to Section 5 requirements. Cf. Perkins v. Matthews, supra; Allen v. State Board of Elections, supra.

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 (1983); see also 28 C.F.R. 51.39(e). Our analysis shows that the change will have the proscribed effect because it is retrogressive with respect to minority voting strength within the constituency of the electorate which will elect the appointing authority after the change as compared to the minority strength in the constituency which would elect the appointing authority absent the change. Beer v. United States, 425 U.S. 130 (1976). In addition, the facts

surrounding the enactment of Act No. 507 (1983) strongly suggest that it was enacted with the purpose of reducing the voting strength of the black electorate in Greene County with regard to this particular governmental function previously exercised by the delegation to the state legislature.

In light of the circumstances discussed above, I am unable to conclude that the State has met its burden of showing that the change is free of the prohibited racial purpose or effect. Accordingly, on behalf of the Attorney General, I must object to the provision in Act No. 507, H.B. No. 830 (1983), which changes the method of appointing the members of the county racing commission.

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 implementation of Act No. 507 (1983) 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 the State of Alabama plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division