



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Larry T. Menefee, Esq.
Blacksher, Menefee & Stein
Fifth Floor Title Building
300 21st Street, North
Birmingham, Alabama 35203

FEB 3 1987

Dear Mr. Menefee:

This refers to the August 2, 1967, annexation; the two 1971 deannexations (Act No. 58, H.B. No. 450 and Act No. 793, H.B. No. 1401 (1971)); the two 1972 annexations (Act No. 826, H.B. No. 1402 and Act No. 303, H.B. No. 231 (1972)); and other voting changes effected by State Act No. 58 (1971) for the City of Prichard in Mobile 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 initially received information relating to your submissions on September 2, 1986; supplemental information was received on October 8, November 13, November 17, December 2, and December 5, 1986.

With regard to the 1967 annexation; the two annexations accomplished by Act No. 826, H.B. 1402, and Act No. 303, H.B. No. 231 (1972); and the deannexation accomplished by Act No. 793, H.B. No. 1401 (1971), the Attorney General does not interpose any objections. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to Act No. 58 and the 1971 deannexation that resulted from that act, we have been unable to reach the same conclusions. In that respect we note that, according to information provided by you and other interested parties, the impetus behind this deannexation effort was in large part

racially based and this information remains unrebutted. While an ordinary deannexation completed pursuant to applicable state law which increases the proportion of municipal black voters would not likely run afoul of Section 5 of the Voting Rights Act (even if voters considered the racial composition of the city), that is not all that is involved in these submissions. Act No. 58 was specially designed to restrict participation in the electoral phase of the deannexation to white voters desiring to leave Prichard, thus eliminating participation of the increasingly active black electorate as regularly allowed by Alabama law. This special election procedure has not been demonstrated to be free of racially discriminatory purpose or effect as required by Section 5. Obviously, a deannexation conducted pursuant to a procedure that has not been cleared is itself not entitled to preclearance.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a 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. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to State Act No. 58 and the resulting deannexation.

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 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 State Act No. 58 and the 1971 deannexation legally unenforceable. 28 C.R.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 City of Prichard plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division