U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

August 20, 1984

Sara M. Fotopulos, Esq.
Assistant Hillsborough
County Attorney
P. O. Box 1110
Tampa, Florida 33601

Dear Ms. Fotopulos:

This refers to the July 28, 1983, ordinance adopting the home rule charter; the districting plan; the increase in the number of commissioners from five to seven; the change in the method of election from at large with residency districts to four single-member districts with three at-large positions (4-3 plan); the transfer of power over municipalities from the legislative delegation to the board of county commissioners; the initiative, referendum, and recall powers; and the limitation on the number of terms for commissioners in Hillsborough County, Florida, 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 the information to complete your submission on June 21, 1984. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have carefully considered the information furnished by you as well as information and comments from other interested parties. In regard to the limitation on the number of terms for members of the board, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the 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).

We are unable to reach the same conclusion, however, with respect to the other changes. Our review shows that, under the submitted changes, a substantial legislative function relating to county affairs would be transferred from a legislative group (the county's legislative delegation) containing minority representation to a legislative body (the board of county commissioners) which, under either the existing at-large, or the proposed 4-3, system of election, contains no elected black representation and does not offer blacks an equal opportunity to elect representation of their choice. Thus, whether the proposed transfer of legislative powers be viewed in the context of either the existing at-large system or the proposed 4-3 plan, the change would appear to us to be retrogressive.

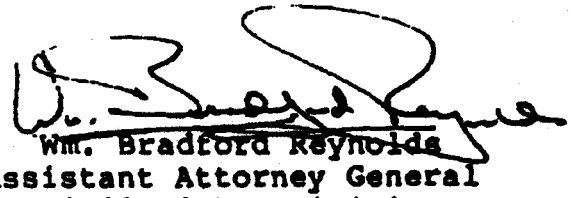
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). Such an effect is present if the change results in a retrogression in the position of the minority voting strength. Beer v. United States, 425 U.S. 130 (1976). 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 the transfer of legislative powers and other related changes sought to be accomplished by the changes under submission whether in the context of the existing at-large system or the proposed 4-3 method of election.

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. In that connection, I should emphasize that withdrawal of the objection to the transfer of legislative powers may be obtained upon adoption by the county of any method of election which insures that the black minority's ability to participate in, and have influence on, the legislative process through elected county officials will not be diminished. 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 above-described changes 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 Hillsborough County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 4, 1985

Joe Horn Mount, Esq.
Hillsborough County Attorney
P. O. Box 1110
Tampa, Florida 33601

Dear Mr. Mount:

This refers to your request that the Attorney General reconsider the August 20, 1984, objection to the home rule charter; the transfer in power; the districting plan; the increase in the number of commissioners from five to seven; the change in the method of election from at-large with residency districts to four single-member districts with three at-large positions (4-3 plan); and the initiative, referendum, and recall powers in Hillsborough County, Florida, 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 letter on October 19, 1984, and, at the county's request, met with you and other county representatives on December 18, 1984.

We have given careful consideration to the information you have provided us both in your initial request for reconsideration and during the December 18, 1984, conference, as well as that contained in our files and information and comments received from other interested parties. As we noted in our August 20, 1984, letter of objection, the decision to object to the home rule charter was based on a determination that substantial legislative powers had been transferred from the legislative delegation to the county commission causing a retrogression in the position of minority voting strength. Information and explanations provided by you subsequent to our initial letter, however, indicate that the charter does not in any way enhance the powers of the commission or diminish the powers of the legislative delegation. A public perception that the commission is likely to exercise broader powers under the charter than previously is too speculative to form the basis for an objection under Section 5, especially where such action by the Attorney General would, in effect, overturn a vote by

the people to change the county government. That is particularly true where, as here, we find that the 4-3 method of election and the districting plan provided by the charter are not retrogressive, and we have found insufficient evidence of a discriminatory purpose in the drafting of the plan.

For these reasons, and pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section 5 (28 C.F.R. 51.47), the objection interposed to provisions of the home rule charter for Hillsborough County is hereby withdrawn. 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 preclude judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division