

D.J. 166-012-3

A0930

JUL 1 1977

Mr. L. Jack Swertfefer, Jr.
Rockdale County Attorney
Swertfefer, Scott & Tunage, P.C.
Attorneys and Counsellors at Law
1000 First National Bank Building
Decatur, Georgia 30030

Dear Mr. Swertfefer:

This is in reference to Act 119 (H.B. 610) of the 1977 Georgia General Assembly which changes the form of government for Rockdale County. Your submission was received on May 10, and the additional information which you provided was received on May 25, 1977. We have noted your request for expedited consideration but have been unable to respond before this time.

It is our understanding that Act 119 will increase the number of County Commissioners from one to three and that ultimately all three Commissioners will be elected at-large, by majority vote, to designated posts for staggered four-year terms. We further understand that the present appointed advisory board will be abolished.

We have given careful consideration to the information you have provided as well as to comments and information from other interested parties. Our analysis has shown that while blacks represent between 10 and 17% of the population of Rockdale County and previous black participation in County government has been virtually nonexistent, within the recent past black political

activity has increased substantially. As we understand it, blacks have begun to seek elective office and, for the first time, a black has been appointed to the county advisory board.

Section 5 of the Voting Rights Act requires the Attorney General to examine a submitted change that affects the voting process to determine that it does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In making this determination on behalf of the Attorney General we apply the legal principles developed by the courts in the same or analogous situations. Recent court decisions, to which we feel obligated to give great weight, indicate that the combination of such features as designated posts, staggered terms and the majority vote requirement with an at-large election system may have the effect of abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change will not have a discriminatory effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In view of circumstances as present information show them to exist in Rockdale County, I cannot conclude that that burden has been sustained in this instance. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the implementation of the new form of government incorporating, as it does, designated posts, staggered terms and the majority vote requirement in the context of an at-large voting system while at the same time abolishing the advisory board.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the District Court for the District of Columbia that the changes in question neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Sections 51.21, 51.23 and 51.24 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.21, 51.23 and 51.24) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change in form of government in Rockdale County required by Act 119 legally unenforceable.

Finally, we note that elections for two of the three Commissioners are scheduled for July 19, 1977. Accordingly, we ask that you advise us by July 12, 1977, of the steps the County plans to take to comply with this objection.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

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Mr. L. Jack Swertfeger, Jr.
Rockdale County Attorney
Law Firm of Swertfeger,
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1000 First National Bank Building
Decatur, Georgia 30030

Dear Mr. Swertfeger:

This is in reference to Act 119 (H.B. 610) of the 1977 Georgia General Assembly, which changes the form of government for Rockdale County, Georgia.

On July 1, 1977, an objection pursuant to Section 5 of the Voting Rights Act was interposed on behalf of the Attorney General to the implementation of the new form of government in Rockdale County. As a result of that objection we have received a large number of comments from interested groups and individuals and have met with several groups and individuals seeking an audience with us concerning the objection. These comments and meetings have involved members of the black community, political leaders and other interested parties. Based on the extent and intensity of this additional input I believe it appropriate under our administrative procedures (see 28 CFR 51.25) that the Attorney General reconsider his prior determination in this matter.

During the course of our re-examination we have considered all materials and information that were the basis of the original determination along with all materials, information and comments received since that

time. While the more recently received information added little to the basic facts which were before us at the time of our initial decision, the comments and views shared with us have served to highlight the significance of certain of those facts and, to some extent, to redirect our focus.

In our July 1, 1977, letter of objection I cited Supreme Court decisions for the principle that "the combination of such features as designated posts, staggered terms and majority vote requirement with an at-large election system may have the effect of abridging minority voting rights." As a general proposition this is true. However, it is likewise true that the principle loses its vitality when the minority proportion of the population decreases to a point where even alternative systems would not significantly enhance the opportunity of such a minority to elect a candidate of its choice. Also, necessary to the vitality of the principle is the existence of racial bloc voting.

Our re-evaluation has persuaded us that the black population in Rockdale County is slightly less than 10% of the total population and that even if three single-member districts were created and all of the black population were included in a single district they would not approach a majority of that district. Thus, assuming the racial bloc voting necessary to making the above-stated dilution principle operative exists, under such a plan blacks still would not have a realistic opportunity to elect a candidate of their choice.

In this connection we have noted the suggestion from blacks and others that the County should go to a five-member commission elected from single-member districts. While it is obvious that the larger the

number of single-member districts the greater the chances of the minority electing representation of its choice, suffice it to say that the Attorney General has no authority under Section 5 to require the adoption of any particular form of government. Rather, our function under Section 5 is to determine as best we can whether a change as proposed has the purpose or will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. After the closer scrutiny occasioned by our reconsideration of this matter, I conclude that this change does not have that purpose or effect. Accordingly, on behalf of the Attorney General I am withdrawing the objection to the implementation of Act 119 (H.B. 610).

In connection with our reconsideration and withdrawal of the objection, however, I wish to share with you several observations which may lead to fuller participation in the electoral process by all citizens in Rockdale County. Our analysis both prior to the objection and now reveals that responsible spokesmen for the black community do not feel that the black community has had an effective voice in the governmental affairs of the County. Thus, they view the establishment of an at-large system for electing the multi-person commission as adverse to their potential and they advocate an enlarged commission to be elected from single-member districts. Also, in spite of the apparently limited role played by the Commission's advisory board, blacks view the appointment of a black to that body as at least some representation in county affairs and so they appear to attach more significance to that instrumentality than do others.

During the course of our reconsideration we have received from the 18 candidates for the commission election that had been scheduled for July 19, 1977, a resolution pledging their support for the retention of the advisory board under the new system. While I recognize the lack of any legal significance of such a document I pass this along to you for the County's information and consideration. With respect to the concern of blacks over the form of government selected by the County, and while we have concluded that under the circumstances an objection is not warranted here, it concerns us too that the system of election adopted is one which incorporates all the features which our experience and court decisions have found to contain the potential for discriminating against minorities. I relate those concerns to you because our analysis also has revealed an emerging political awareness in the black community in Rockdale County and I am sure the County would wish to take steps to encourage such political participation and avoid any actions which would tend to obstruct or dampen that interest.

Finally, even though I have withdrawn the objection, I 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 enforcement of this change.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division