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Re.T. 3/19/80
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D0002-0005

J. Reese Franklin, Esq.
Perry & Franklin
P. O. Box 647
110 N. Dogwood Drive
Nashville, Georgia 31639

24 MAR 1980

Dear Mr. Franklin:

This is in reference to Act No. 727 (R.B. 531) of the 1979 Session of the Georgia General Assembly which requires municipal electors to be registered both by the county and by the municipality and provides for the implementation of numbered posts, a majority vote requirement, filing fees, change in election date and change in the date for taking office for the mayor and members of the council of the Town of Alapaha in Berrien County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on January 21, 1980.

With regard to the changes in election date and date for the mayor and council members to assume office, the Attorney General does not interpose any objections to the changes in question. 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.

However, with regard to the filing fees, the dual registration requirement, the majority vote requirement and the implementation of numbered posts, the Attorney General is unable to conclude, as he must under Section 5, that these changes have neither a discriminatory purpose or effect.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that these changes were not adopted with a discriminatory purpose and that their implementation will not have a discriminatory effect. See Beer v. United States, 425 U.S. 130 (1976), Wilkes County v. United States, 450 F. Supp. 1171 (D. D.C. 1978), affirmed, 47 U.S.L.W. 1391 (U.S. Oct. 4, 1979) and Georgia v. United States, 411 U.S. 526 (1973). See also 28 C.F.R. 51.19.

We note that these changes were adopted soon after the election of the town's first minority council member, and that a minority candidate's chances of being elected under the proposed system would be significantly reduced by the majority vote and numbered post requirements that are proposed. In addition, requiring voters to be registered with the county as well as with the town clerk in order to vote in municipal elections has the potential for reducing the number of eligible minority voters. In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the town of Alapaha has sustained its burden of proof. Therefore, on behalf of the Attorney General, I must object to the filing fees, the implementation of numbered posts, the majority vote requirement and the requirement that municipal voters be registered with the county as well as with the town in order to vote in municipal elections.

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, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(a) and (c), 51.23, and 51.24, permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make these four changes legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Town of Alapaha plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Donna Clarke (202-724-7440), of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division