



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 3, 1983

John J. Ossick, Jr., Esq.  
P.O. Box 1087  
Kingsland, Georgia 31548

Dear Mr. Ossick:

This is in reference to Act No. 907 (1976), which incorporates numbered positions and staggered terms into the method of electing councilmembers, and the 1977 and 1979 polling place changes for the City of Kingsland in Camden County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on November 4, 1982.

The Attorney General does not interpose any objection to the staggered terms for councilmembers nor to the 1979 polling place change from the Kingsland Woman's Club to the Kingsland City Hall. 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 the 1977 polling place change from City Hall to the Kingsland Woman's Club, we have received allegations that this was a "white members-only" club and that its use as a polling place served to intimidate black voters, thereby creating an adverse impact on the exercise of minority voters' right to vote. Absent a compelling reason for selecting a polling location of this nature, such a change clearly is contra to the purpose of the Voting Rights Act. See Coalition for Education in District One v. The Board of Elections of New York, 370 F. Supp. 42 (S.D. N.Y. 1974), aff'd, 495 F.2d 1090 (2nd Cir. 1974). However, since the Kingsland Woman's Club is no longer being used as the city's polling place, having been replaced by the Kingsland City Hall, which change we preclear above, the Attorney General makes no further determination on this matter at this time. However, should the Kingsland Woman's Club be selected again as a polling location, it, like any other new polling location, will have to meet Section 5 preclearance requirements.

In reviewing the changes relating to the method of election, we note at the outset that you have declined to submit a change from plurality to majority vote requirement which we understand was adopted by the City in 1977. Instead, you have assured us that the city will return to use of the plurality requirement. Nevertheless, you should be advised that unless or until the City of Kingsland receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General interposes no objection, the change to majority vote is not legally enforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

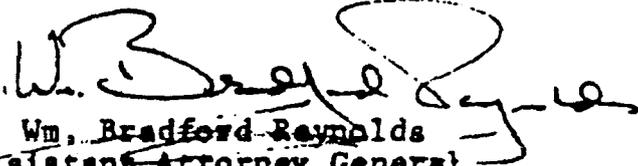
Because the majority vote requirement has not been submitted and is legally unenforceable in Kingsland, we have undertaken to review Act No. 907 (1976) in the context of the legally enforceable method of voting, the plurality vote requirement, which is set out in Section 10 of the 1927 Kingsland city charter. We have considered carefully the information you have provided, as well as comments from other interested parties, in our review of Act No. 907 (1976). Although a minority candidate has been elected to the city council under the proposed method of election, i.e., numbered positions and staggered terms, and while it appears that the use of staggered terms will not necessarily affect adversely minority voting rights, our analysis of the available information indicates that implementation of numbered positions, in the context of racial bloc voting that seems to exist in Kingsland, would effectively nullify the advantage to the minority community of single shot voting and, thus, diminish their opportunity to elect a candidate of their choice. The effect of the change is to place minority candidates in head-to-head contests with white candidates which minority candidates cannot win when such contests are characterized by racially polarized voting. Such a situation would lead to retrogression in the position of minority voters and thus would have an impermissible effect under the Act. See Beer v. United States, 425 U.S. 130 (1976).

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)). Because of the potential for dilution of the black voting strength inherent in the use of numbered positions and because the city has not advanced any compelling reason for their use, I am unable to conclude that that burden has been sustained in this instance. Accordingly, I must interpose an objection to the implementation of Act No. 907 (1976) insofar as it incorporates the use of numbered positions for city council.

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, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to 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 numbered position provisions of Act No. 907 (1976) legally unenforceable. See also 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 City of Kingsland plans to take with respect to this matter. If you have any questions concerning this letter, please 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