



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 12, 1993

William H. Mills, Esq.  
P. O. Box 565  
Blakely, Georgia 31723

Dear Mr. Mills:

This refers to Act No. 8 (1993), which changes the method of selecting the superintendent of schools from elected to appointed, changes the method of selecting the members of the board from grand jury appointment to election from single-member districts in nonpartisan elections by majority vote, provides a districting plan, four-year terms for board members, a method of staggering terms, a method of filling vacancies on the board, minimum residency and education requirements, and the schedule for the November 2, 1993, special election for the Clay County School District in Clay 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. We received your submission on August 13, 1993; supplemental information was received on September 15, 1993.

Our analysis indicates that the changes from an appointed to an elected board of education and from an elected to an appointed superintendent of education received the requisite Section 5 preclearance on June 28, 1991, as part of Act No. 49 (1991). Accordingly, no further determination by the Attorney General is required or appropriate under Section 5 regarding these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.35).

We have carefully considered the information you have provided, as well as Census data and information provided by other interested parties. According to 1990 Census data, black persons comprise 60.4 percent of the total population and 55.4 percent of the voting age population in Clay County. The five members of the Clay County Board of Education currently are selected by grand jury appointment.

The Attorney General does not interpose any objection to the provisions of Act No. 8 that provide for election of school board members from single-member districts in nonpartisan elections by majority vote, provides a districting plan, four-year terms for board members, a method of staggering terms, a method of filling vacancies on the board, and the minimum residency requirement. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

With regard to the proposed educational requirement for school board members, however, we cannot reach the same conclusion. Act No. 8 provides that candidates for school board positions must possess a high school diploma or general educational development (GED) equivalent. We recognize the interest in establishing reasonable qualifications for those who are to hold office. However, because such requirements have the potential to discriminate against minority citizens, they must be reviewed carefully. See Dougherty County Board of Education v. White, 439 U.S. 32, 42-43, n.12 (1978).

In Clay County, only 37 percent of black persons age 25 and older possess a high school diploma or its equivalent, compared to 69 percent of white persons age 25 and over, according to the 1990 Census. State law generally does not appear to require or endorse the proposed educational qualification and the existing system of grand jury appointments to the school board has no such requirement. Indeed, we understand that none of the three black incumbents on the school board would meet this requirement. In these circumstances, requiring that persons who wish to run for the school board demonstrate that they have a high school diploma or a GED equivalent would appear to have a disparate impact on the ability of black voters in Clay County to elect their preferred candidates. Against this backdrop, your submission does not provide an adequate non-racial justification for this requirement.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory 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. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden

has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the requirement in Act No. 8 that school board members must possess a high school diploma or GED equivalent.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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 requirement that school board members possess a high school diploma or GED equivalent continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Since the provisions of Act No. 8 that provide for the schedule for the November 2, 1993, special election are dependent on the education requirement, the Attorney General will make no determination with regard to this matter. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Clay County School District plans to take concerning these matters. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the Voting Section. Refer to File No. 93-2816 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division