

MAR 17 1971

JL:JPT:SHR:peb;swh  
DJ 166-012-3

Robert W. Hutchins, Esquire  
Norman, Rodman, Hutchins & Romanet  
Attorneys at Law  
Plymouth, North Carolina 27962

Dear Mr. Hutchins:

This is in reference to the application of the Town of Plymouth for approval of certain enactments of the North Carolina Legislature submitted to the Attorney General on December 23, 1970, pursuant to Section 5 of the Voting Rights Act of 1965.

As we understand it the change to an at-large method of electing city councilmen was made in 1967 to conform to the one man-one vote requirement of the Fourteenth Amendment. According to the relevant judicial interpretations it is the responsibility of the Attorney General to evaluate such changes under the Voting Rights Act to determine if the change has the purpose or effect of discriminating against voters on the basis of race. As the Supreme Court stated in Allen v. Board, 393 U.S. 544, 569:

"The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot."

The Court further explained that such dilution could occur in an at-large system of voting:

"Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting."

In applying the Court's criteria to the City of Plymouth's application we find that overall there is a substantial white population majority, but that in the existing Ward 1 there appears to be a black majority. While we understand that a redesignation of the ward boundaries to comply with the Fourteenth Amendment would likely have a significant effect on these facts, we are forced to conclude that the circumstances described by the Supreme Court appear to exist. Accordingly, we are obliged to enter an objection to the at-large voting provisions which you have submitted on behalf of the City.

While I do not believe that this objection will have any effect on acts of the present or past city council (see McDowell v. United States, 159 U.S. 596 (1895)), it would seem that no further elections could be conducted on an at-large basis.

Should you wish to present further justification for the change in election procedure objected to, or propose procedures which will insure against racially discriminatory effects in its implementation, the Attorney General will reconsider his position. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that such a change in election procedure does not have the purpose or the effect of denying or abridging the right to vote on account of race or color.

Please be advised that the Attorney General's objection reaches only the change in procedure for electing councilmen and will not affect the continued implementation of the other changes relating to zoning authority and council-manager form of government which also were submitted pursuant to Section 5 by your December 23, 1970 letter.

Sincerely,

JERRIS LEONARD  
Assistant Attorney General  
Civil Rights Division