



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 1985

Lester G. Carter, Jr., Esq.  
James R. Nance, Jr., Esq.  
Nance, Collier, Herndon & Wheless  
P. O. Box 2304  
Fayetteville, North Carolina 28302

Dear Messrs. Carter and Nance:

This refers to the consolidation of the Cumberland County School District and the Fayetteville City School District; the establishment of an eight-member board of trustees and an appointed interim board; the method of election--two multimember districts with two members and six members, respectively; the election implementation schedule; and the districting plan for the consolidated school district in Cumberland County, North Carolina, 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 the information to complete your submission on February 6, 1985.

The Attorney General does not interpose any objections to the changes in question except for the election implementation schedule. 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 respect to the election implementation schedule, however, we cannot reach a similar conclusion. The election schedule before us proposes to delay until 1988 implementation of the newly created form of government to be elected under the districting plan being precleared this day by the Attorney General. The county proposes to accomplish this by appointing an interim board of eight members consisting of the five incumbents (all white) of the existing county board and three of the eight incumbent members (two whites and one black) of the existing city school board to govern the newly consolidated school district until 1988 when elections are to be held for the first time. The county has offered no compelling justification for this seemingly unnecessary delay in the implementa-

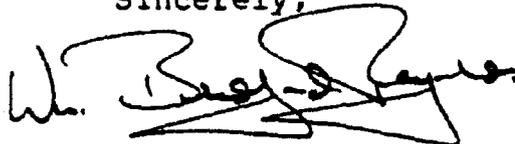
tion of its newly created school governance structure and our concerns are prompted by our observations that, contrary to the composition of the proposed permanent school board, the interim board does not appear fairly to reflect minority voting strength in the consolidated school district. Nor have we otherwise been able to discern any nonracial justification for the delay especially when 1985 or 1986 would appear to offer a much more normal opportunity for implementation.

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 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)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the election implementation schedule for the consolidated school district.

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 none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the consolidation resolution legally unenforceable insofar as it seeks to delay until 1988 the elections for the new school board. 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 Cumberland County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division