

JSP:AJK:mrk
DJ 166-012-3

SEP 20 1974

Mr. Morris D. Kosen
Corporation Counsel
P. O. Box 27
45 Broad Street
Charleston, South Carolina 29402

Dear Mr. Kosen:

This is in reference to your submission under Section 5 of the Voting Rights Act of 1965 of 25 annexations to the City of Charleston, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on July 22, 1974.

In examining annexations under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the annexations, either in purpose or effect, result in racial discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. However, it is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern then is not with the validity of the annexations but with the changes in voting which proceed from them.

The following table delineates each annexation, the date it was accomplished, the population by race as of the 1970 Census (based on data supplied through your office), and the total population of each annexation.

<u>Annexation No.</u>	<u>Date</u>	<u>White Population</u>	<u>Black Population</u>	<u>Total Population</u>
1	Nov. 10, 1964	1275	44	1319
2	Dec. 22, 1964	25	0	25
3	Dec. 22, 1964	20	11	31
4	Nov. 9, 1965	750	8	758
5	Dec. 23, 1965	0	0	0
6	Mar. 22, 1966	12	0	12
7	Mar. 22, 1966	5	0	5
8*	Jan. 10, 1967	55	3	58
9*	May 23, 1967	198	2	200
10	Dec. 17, 1968	6	0	6
11*	Dec. 30, 1968	72	0	72
12	Aug. 19, 1969	0	0	0
13*	Sept. 16, 1969	0	0	0
14	Sept. 16, 1969	20	4	24
15	Oct. 14, 1969	0	0	0
16*	Oct. 23, 1969	192	12	204
17	Aug. 15, 1972	0	0	0
18	July 17, 1973	137	0	137
19	June 26, 1973	0	0	0
20	June 26, 1973	0	0	0
21	June 26, 1973	0	0	0
22	June 26, 1973	0	0	0
23	Sept. 6, 1973	0	0	0
24	Apr. 23, 1974	0	0	0
25	Apr. 23, 1974	331	0	331
Total all annexations		3098	84	3182

* Information supplied through your office indicates that the present population of particular annexations is significantly different from the 1970 Census data you supplied. The present population information for these annexations is as follows:

(footnote continued)

Based on the 1970 Census data regarding the annexations included in your submission as amended by the information which you supplied, the Attorney General will interpose no objection to those annexations of areas which are not populated (annexation numbers 5, 12, 15, 17, 19, 20, 21, 22, 23 and 24) since the addition of those areas do not affect voting within the City of Charleston. Nor will objection be interposed to annexation numbers 2, 3, 6, 7, 10 and 14 since the effect of those annexations on voting in the City of Charleston appears to be minimal given the number of persons in those areas, or to annexation numbers 13 and 16, since neither adversely affects blacks' voting rights.

The remaining seven of the 25 annexations were considered to be of major importance in the context of all the submitted annexations, and were carefully examined in the light of federal court decisions which have involved questions of annexations' racially dilutive effect where political subdivisions conduct elections on an at-large basis. City of Richmond v. United States, 376 F. Supp. 1344 (D. D.C. 1974); City of Petersburg v. United States, 354 F. Supp. 1021 (D. D.C. 1972) aff'd 410 U.S. 962 (1973). Under the procedural guidelines for the administration of Section 5 the burden of proving that changes affecting voting have no racial purpose and have had or will have no racial effect lies with the submitting authority. Georgia v.

(footnote continued from page 2)

<u>No.</u>	<u>White Population</u>	<u>Black Population</u>	<u>Total Population</u>
8	226	46	272
9	459	0	459
11	376	0	376
13	0	1367	1367
15	84	103	187

United States, 411 U.S. 528 (1973); City of Richmond v. United States, supra; City of Petersburg v. United States, supra.

According to the data we examined the major annexations under consideration now include 3554 white people and 98 black people to the City of Charleston. Our information regarding elections in the city demonstrates this net addition of 3456 white people appears to have had a substantial impact on voting in Charleston when viewed in combination with the close city elections in 1971 and with the readily apparent pattern of racial bloc voting in Charleston. We have also received allegations, which we have been unable to conclusively prove or disprove, that annexations in Charleston carry forward the character of racially motivated annexations in 1960 which changed the majority population of the city from black to white.

Under these circumstances, commensurate with the decisions cited above we cannot conclude that the major annexations taken together have not had a dilutive effect on voting in Charleston. Accordingly, I must on behalf of the Attorney General interpose an objection to the submitted annexation numbers 1, 4, 6, 9, 11, 18 and 25.

In City of Petersburg v. United States, supra, the court stated at page 1051:

The Court concludes then . . . in accordance with the Attorney General's findings, that this annexation can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i.e., that the plaintiff shift from an at-large to a ward system of electing its city councilmen.

Cf. City of Richmond v. United States. In this connection, should the city undertake to elect its councilmen from single-member districts, or should the consolidation of the City and County of Charleston be effectively completed in conformity with state and federal law prior to the next regularly scheduled city elections, the Attorney General will reconsider his determination in this matter.

As you know, the city's 25 annexations were submitted simultaneously under Section 5 despite the fact that the individual annexations were accomplished throughout the period within which Section 5 has been in effect, including some annexations which were accomplished nearly ten years ago. I am not unmindful of the fact that our consideration under Section 5 regarding the individual annexations may have resulted in a judgment different from that announced above, had each annexation been submitted promptly upon its completion. However, once confronted with the simultaneous submission of 25 annexations, and faced with the question of whether an impermissible dilution under the law has occurred in Charleston as the result of annexation, we have no alternative but to examine the population of the annexed territory as of the time of submission and to collectively consider the annexations to determine their effect under judicially enunciated standards.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose or effect of denying or abridging the right to vote on account of race or color. In any event we would be pleased to discuss with you any questions you may have in connection with this matter.

I note that there is now pending a lawsuit in the United States District Court in South Carolina seeking a redistricting of the City of Charleston. Pursuant to our policy where the substance of objections under Section 5 bears an apparent relationship to issues and/or questions of relief in pending cases, I am sending a copy of this letter to that Court.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

MAY 13 1975

Mr. Morris D. Rosen
Corporation Counsel
P. O. Box 527
45 Broad Street
Charleston, South Carolina 29402

Dear Mr. Rosen:

This is in reference to the proposed plan for reapportioning the City of Charleston, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on March 31, 1975. In accordance with your request, expedited consideration has been given to this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

The Attorney General does not interpose any objection to the change 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 change.

You will recall that upon interposing an objection on behalf of the Attorney General to the implementation of several annexations to the City of Charleston I advised you in my letter of September 20, 1974, that should the City undertake to elect its

council from single-member districts the Attorney General would reconsider that objection. On December 19, 1974, such a plan was submitted and on February 18, 1975, while advising you that the Attorney General did not object to that plan under Section 5, I pointed out potential Fourteenth Amendment problems with the single-member plan then under consideration. Thus, my February 18 letter noted that "we are prepared to undertake a reconsideration of the annexation objection at such time as this or another acceptable single-member plan is approved by the court in your pending litigation."

It is our understanding that the District Court did not approve the single-member plan previously submitted to the Attorney General but did approve the plan presently under submission. In view of that fact and our finding that the instant plan is not objectionable, on behalf of the Attorney General I am withdrawing the objection to the seven annexations interposed on September 20, 1974.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: U. S. District Court for the
District of South Carolina