

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211

DEC 1 1986

Dear Mr. Jones:

This refers to Act No. 536 (R632) (1986) which consolidates School District Nos. 1 and 3 into a single school district to be known as Dorchester County School District No. 4; changes the method of selecting trustees for School District No. 3 from election at large by residency district to appointment on an interim executive committee for two-year terms of office; decreases terms from four to two years for current trustees in School District No. 3; reduces the number of trustees for School District No. 3 from seven to three; provides that beginning in 1988 five trustees for School District No. 4 will be elected from single-member districts and two trustees will be appointed by the legislative delegation; provides that beginning in 1992 all seven trustees will be elected from single-member districts; provides for an implementation schedule; changes the filing period and advertisement requirements for elections; provides the procedures for filling vacancies on the interim executive committee; provides for a referendum requirement in order for School District No. 2 and proposed District No. 4 to consolidate; provides that School District No. 2 will bear its own election costs; provides for the filing of a written notice of candidacy with the county election commission for School District No. 2; and defines a polling place change for the Clemson Voting Precinct in Dorchester County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On September 30, 1986, we received the information to complete your submission which also included an additional polling place change not embodied in Act No. 536.

We have considered carefully the information you have provided, as well as that provided by other interested parties. With the exception of the composition of the interim executive committee for the newly consolidated School District No. 4, the voting changes embodied in Act No. 536 would appear to satisfy the Section 5 standards and the Attorney General interposes no objection to these changes, nor to the polling place change from the Industrial Building to Do-Rite's Lounge which is not embodied in Act No. 536. 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the interim change which would result in a two-year appointed consolidated board, however, we note, at the outset, that because of legislation which was precleared in 1984 providing for elections, School District No. 3 has elected six blacks to a seven-member board of trustees for that district. Further, the information we have received suggests that the elected board of trustees for District No. 3 is composed of members who are expected to be accountable, and therefore responsive, to the concerns of a school system which is at least 66 percent black.

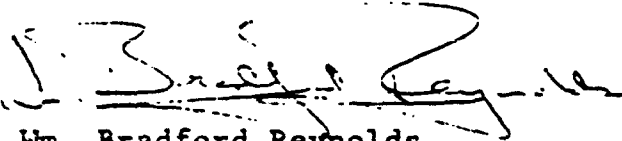
Under the proposed legislation the Dorchester County Board of Education will appoint three trustees from among the membership of District No. 3's board and four trustees from District No. 1 to serve on the interim committee. We have received expressions of concern that appointments to the interim board will diminish significantly the participation of blacks under the present system and we have sought unsuccessfully to obtain information on how such appointments will be made. Such information has yet to be provided and the state has not satisfactorily explained the extent to which the minority representation from the affected districts, particularly District No. 3, will be reflected on the interim body which will govern the consolidated constituencies for two years until the newly precleared method of election is to be implemented. We are, therefore, unable to conclude that this aspect of the proposed change will not have a prohibited retrogressive effect on the right of the minorities to be fairly represented on the board. 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 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 that burden has been sustained with regard to the interim governing committee. Therefore, on behalf of the Attorney General, I must object to Act No. 536 to the extent that it provides for an appointed interim executive committee for the consolidated district at least until such time as the effects of that appointive process on minority representation on the committee can be determined.

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. Relevant information which would be a basis for a withdrawal would include the racial composition of the interim board. 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 interim implementation provisions of Act No. 536 (R632) (1986) legally unenforceable. 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 State of South Carolina 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

February 12, 1987

Ms. Faith Sellers  
Chairperson, Dorchester County  
Board of Education  
111 West Fourth North Street  
Summerville, South Carolina 29483

Dear Ms. Sellers:

This refers to your request for reconsideration of the December 1, 1986, objection to the appointed interim executive committee for the Consolidated School District in Dorchester County, South Carolina, provided for in Act No. 536 (R632) (1986), 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 request on January 21, 1987.

As we noted in our objection letter, the earlier failure of the Dorchester County Board of Education to make appointments to the proposed interim executive committee, or to provide us with information as to how those appointments would be made, did not permit us to preclear Act No. 536 to the extent that it provided for an interim executive committee, "at least until such time as the effects of that appointment process on minority representation on the committee" could be determined. According to information you now have provided, we understand that on January 15, 1987, the Dorchester County Board of Education acted to appoint seven members to the interim executive committee in such a way that the representation of the minority community will not be retrogressed. Therefore, pursuant to the reconsideration guidelines promulgated in Section 51.45 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)), the objection to Act No. 536 is hereby withdrawn. 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. See also Section 51.41 (52 Fed. Reg. 496 (1987)).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division