



U.S. Department of Justice

Civil Rights Division

Voting Section  
P.O. Box 66128  
Washington, D.C. 20045-6128

SEP 23 1988

C. Dennis Aughtry, Esq.  
County Attorney  
1701 Main Street  
Suite 405  
Columbia, South Carolina 29202

Dear Mr. Aughtry:

This refers to Ordinance No. 3 (1973), Ordinance No. 174 (1975), Section 4-1117, Ordinance No. 1446-86 (1986) and Ordinance No. 1553-86 (1986), as each applies to the political activity of county employees for Richland 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. We received the information to complete your submission on July 25, 1988.

We have considered carefully all of the information provided with your submission as well as that from other interested parties. In making our determination it will be helpful to recount the history of the changes before us.

In 1973, Richland County passed Ordinance No. 3, which prohibited full-time county employees from participating in political activity. In 1975 Ordinance No. 174 was passed that provided that dismissal for participation in political activity would preclude re-employment with the county. Subsequently, Section 4-1117 was passed requiring that full-time nonelected employees of the county take a leave of absence to run for political office.

In 1979, the Attorney General precleared Ordinance No. 502-78, which deleted a portion of Section 4-1117 regarding the Federal Hatch Act, and superseded the 1973 political activity restrictions. This ordinance, however, maintained the language requiring full-time, nonelected county employees to take a leave of absence to run for political office.

In 1986, the Richland County Council passed Ordinance No. 1446-86 which required all full-time and part-time county employees to resign their employment to run for political office. Ordinance No. 1446-86 exempted nonpartisan and nonsalaried elected offices from this requirement.

In December of 1986, the Richland County Council passed Ordinance No. 1553-86, which deleted the exempted language for nonpartisan and nonsalaried elected offices from Ordinance No. 1446-86. This ordinance also contained a section requiring that any employee dismissed for political activity cannot be re-employed by the county. Another section of Ordinance 1553-86 prohibited the illegal use of influence by county employees to intimidate or coerce an individual to vote for a particular candidate.

At the outset, we note that the United States Supreme Court has determined that a change which affects employee political activity is a change in a standard, practice, or procedure which affects voting within the meaning of the Voting Rights Act and, thus, is subject to Section 5 scrutiny. See Dougherty v. White, 439 U.S. 32 (1978). Accordingly, all of the changes enumerated above are properly before us for review. However, it appears that the 1973 political activity provisions and Section 4-1117 were superseded by the provisions of Ordinance No. 502-78 which was precleared in 1979. Thus, no further determination relative to those changes is appropriate or required.

Regarding to the other political activity provisions, with the exception of the requirement that a county employee resign to run for office, the Attorney General does not interpose any objections. 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. 51.41).

With regard to the resignation requirement, we note from 1980 Census data that blacks constitute approximately 39 percent of the population of Richland County. According to information provided by the personnel department of Richland County, blacks constitute approximately 31 percent of the employees of Richland County. In addition, the 1980 Census data and data from the county concerning

salaries of county employees lend support to the concerns expressed by some that the resignation requirement will operate as an economic disincentive which will impact more heavily on the black potential candidates than on the white potential candidates. This burden will in turn significantly affect black voters in Richland County because it limits the pool of potential candidates likely to be the choice of the black constituency.


An additional concern raised by information received from black and white county residents is that the 1986 change requiring resignation was designed to inhibit potential black candidates. A change cannot be precleared if it is tainted with an invidious racial purpose. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 459 U.S. 1166 (1983), aff'g mem. 549. F. Supp. 494 (D. D.C. 1982).

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. 51.52. Under the circumstances involved here, I am unable to conclude, as I must under the Voting Rights Act, that these provisions are free of the proscribed purpose and effect. Therefore, on behalf of the Attorney General I must object to the provisions now before us which require the resignation of full-time and part-time county employees running for office.

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 these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 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 these political activity provisions legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Richland County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Sincerely,



Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division