

MAR 4 1974

Mr. Willie Malcolm Towson
165 North Franklin Street
Dublin, Georgia 31021

Dear Mr. Towson:

This is in reference to the Georgia Assembly's 1973 amendments to the East Dublin Charter and the East Dublin Resolution implementing election law changes submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on January 2, 1974.

The Attorney General does not interpose any objection to the resolution requiring payment of increased filing fees by prospective candidates for City Office.

However, after careful consideration of your submission and the additional information you have provided, the demographic characteristics of East Dublin, and recent court decisions in voting rights cases, we are unable to conclude that implementation of the changes providing for the numbering of the five council posts and the staggering of the terms of office of the five council members does not have a racially discriminatory effect for the reasons set forth below.

Our analysis demonstrates that under East Dublin's original charter system of at-large elections of council members, minority race voters have the potential to elect a candidate of their choice through the use of single-shot voting whereas this potential is lost if the candidates must restrict their candidacies to a single, specific council seat. Given the substantial (29%) black population and voter registration in East Dublin, the conclusion is inescapable that the numbering of the five council posts effectively operates as a dilution of minority voting strength. Georgia v. United States, 411 U.S. 526 (1973); Graves v. Basse, 343 F.Supp. 764 (N.D. Tex. 1972); aff'd, White v. Registrar, 412 U.S. 755, 1973; Dunston v. Scott, 336 F.Supp. 266 (N.D. N.C. 1972); Sims v. Area, 336 F.Supp. 924 (N.D. Ala. 1972). Accordingly, I must interpose an objection on behalf of the Attorney General to the numbering of council posts elected at-large.

The Attorney General's objection to the numbered post provision, of course, renders its implementation unenforceable and in view of its unenforceability, the significance of the provisions allowing staggered councilmanic terms is enhanced. This is the case when in the context of an election system, such as East Dublin's, there pre-exist the at-large, single shot and plurality features of election. Therefore, the staggering of the terms of council members elected at-large affects a dilution of minority voting strength by reducing the number of officials to be elected at any single election and, consequently, abridging the potential for minority voters to elect a candidate of their choice. Accordingly, the Attorney General must interpose an objection to the staggering of the terms of council members, so long as members are elected at-large.

This Department is, however, cognizant of East Dublin's legitimate interest in providing for continuity of governance; and if East Dublin adopts a racially neutral system such as the election of council members from numbered individual districts, rather than by the municipality as a whole, then upon your submission of such a system, the Attorney General's objections to staggered terms and numbered posts will be reconsidered. Also, as provided in the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, if there is any additional information in justification of the submitted changes which becomes available to you, we will give further consideration to these enactments. 28 C.F.R. 51.23.

The Voting Rights Act of 1965 prohibits the enforcement of election law changes in jurisdictions subject to Section 5's review procedures unless and until the United States District Court for the District of Columbia or the Attorney General determines that no adverse racial effect will result from their enforcement. Since neither judicial nor administrative clearance was obtained on or before November 14, 1973, the elections held on November 14, 1973 were conducted pursuant to legally unenforceable procedures. We do not, in this instance, however, ask that the results of the 1973 municipal elections be overturned. However, we feel a responsibility to inform you that all future elections held under the procedures to which we object featuring numbered posts and staggered councilmanic terms will be unlawful. Of course, the Attorney General's interposed objections do not foreclose to East Dublin the alternative of instituting an action for a declaratory judgment that the objected to changes are non-discriminatory and may, in the future, be enforced.

The Attorney General is charged under the Voting Rights Act of 1965 with the responsibility for taking necessary legal action to insure compliance with the Act; and he therefore requests that you advise this Department within 30 days of the date of this letter as to the steps you intend to take with respect to the features of your submission objected to in this letter.

If you have any questions about the subject matter of this letter, please do not hesitate to contact us.

Sincerely,

J. STANLEY POTTEGER
Assistant Attorney General
Civil Rights Division