U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

March 28, 1986

Robert B. Smith, Esq.
City Attorney
P. O. Box 977
Jesup, Georgia 31545

Dear Mr. Smith:

This refers to Act No. 206 (1985) which provides for the election of commissioners by single-member districts, a districting plan, the election of District 2 commissioners by numbered positions and all commissioners for four-year terms, a candidate residency requirement, and changes the municipal general election date; to the May 7, 1985, city ordinance which provides for three additional polling places and voting precincts for municipal elections; to Act No. 1090, H.B. No. 1390 (1968), which provided for numbered positions and a majority vote requirement, altered polling hours, changed the method of voter registration, and provided for the deannexation and four annexations to the City of Jesup in Wayne County, Georgia, 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 submissions on January 27, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources. With the exception of the 1968 adoption of numbered positions and the majority vote requirement, and the 1985 change in the method of election and the districting plan, the Attorney General does not interpose any objections to the other submitted changes. 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 regard to the other changes, we note at the outset that, according to the 1980 Census, Jesup had a total population of 9,418 persons, of whom 2,885 (30.6%) are black, and that the black population has doubled from 1970 to 1980 with an indication of continued growth. We note further that the system of election in effect prior to the 1968 change provided for the election of six commissioners at large by plurality vote to staggered terms. Thus, in the context of the racial bloc voting that appears to exist in the city, the addition of numbered posts and a majority vote requirement eliminates the ability of black voters to single-shot vote for candidates of their choice and, therefore, is retrogressive, thereby having the prohibited racial effect. See Beer v. United States, 425 U.S. 130, 141 (1976).

With regard to the districting plan we note that one district would elect a single commissioner and is 90 percent black in population; the other district would elect three members and is about 10 percent black in population; a fifth member would be elected at large. The proposed three-member district is geographically large and essentially retains features of the at-large election system. This is significant because most of the county's black population is overconcentrated in the single-member district. While nothing said herein should be construed as precluding the use of multimember districts, the material submitted concerning the county commissioners' deliberations shows that they were well aware of these limiting aspects of the submitted plan and supports an inference that the plan was designed and intended to limit the number of commissioners black voters would be able to elect. Such a purpose is proscribed by the Voting Rights Act.

In order to obtain preclearance pursuant to Section 5 of the Voting Rights Act, the city must demonstrate that the submitted voting procedures are nondiscriminatory in both effect and purpose. See Georgia v. United States, 411 U.S. 526 (1973)); see 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 city has sustained its burden of showing that the submitted changes were not motivated, at least in part, by a discriminatory purpose and that they have no discriminatory effect. Therefore, on behalf of the Attorney General, I must object to the submitted 1968 and 1985 changes in the election method and the districting plan.

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 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 use of the numbered post and majority vote requirements in the at large system and the 1985 districting plan for the City of Jesup 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 City of Jesup 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