U.S. Department of Justice

Civil Rights Division

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

April 28, 1986

Bradfield M. Shealy, Esq.
City Attorney
910 North Court Street
Quitman, Georgia 31643

Dear Mr. Shealy:

This refers to House Bill No. 605 (1985) which provides for the districting plan, a polling place change, a change in the method of election from at large with a plurality vote requirement to two multimember districts with numbered positions and a chairman elected at large with a majority vote requirement for all positions, a referendum election, the decrease in the current commissioners' length of terms, the decrease in the chairman's term from three to two years, the increase in the commissioners' terms from three to four years, and the one-year residency requirement for candidates; to the procedures for conducting the February 18, 1986, special election and the annexation of 19.35 acres to the City of Quitman in Brooks 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 submission of House Bill No. 605 (1985) and the proposed annexation on February 25, 1986, as well as your initial submission of the February 18, 1986, special election procedures.

We have considered carefully the information you have provided, relevant 1980 Census data, information in our Section 5 files concerning related changes submitted by the city, as well as comments and information from other sources. With respect to the February 18, 1986, special election procedures and the annexation, the Attorney General does not interpose any objection. 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 proposed method of election, districting plan and other related changes occasioned by House Bill No. 605 (1985), however, we are unable to reach a similiar conclusion. In order to obtain preclearance pursuant to Section 5 of the Voting Rights Act, the city has the burden of showing that the submitted voting procedures are nondiscriminatory in both purpose and effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In reviewing this matter, we note that blacks constitute more than 55 percent of the city's population (a percentage which is likely to decline somewhat with the instant annexation), that presently the five-member city commission is elected at large by plurality vote, that several blacks have been elected to the city commission under that system, and that, in fact, two black members serve on the city commission at the present time.

The proposed districting plan creates two districts, both of which would elect two members to the commission, with a fifth member, the chairman, being elected at large, all by majority vote. District 1 is about 70 percent black in population; District 2 is about 61 percent white in population. Thus, the proposed districting plan effectively would assure to blacks a fair opportunity to elect candidates of their choice to two of the five commission positions. However, we note that had the plan retained a plurality-win feature for the at-large seat, black voters would have had a more realistic opportunity for electing a candidate of their choice to a third position on the commission. On the contrary, by retaining an at-large seat and imposing a majority vote requirement for election to that position, the proposed plan, in the context of what appears to be racially polarized voting in the City of Quitman, augmented by the new annexation, effectively limits blacks' participation to the election of the two members from District 1. In the face of such an unnecessary restriction on black voting strength, I cannot conclude that the city has carried its burden of showing that the plan is free of the proscribed purpose and effect.

The transcripts of the public hearings show that such limitation on black voting strength was recognized. Other logical alternatives, such as Plans C, E, or F, or even the proposed plan using the existing plurality-win feature for the at-large seat, likely would easily pass Section 5 scrutiny and were readily available. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and 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 changes occasioned by House Bill No. 605 (1985) 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 Quitman plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney/Reviewer in our Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division