



U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

Robert M. Brinson
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P. O. Box 5513
Rome, Georgia 30161

AUG 11 1987

Dear Mr. Brinson:

This refers to Act No. 240, H.B. No. 621 (1987), which imposes staggered terms (3-4); increases the number of board members from six to seven; provides an implementation schedule; and changes the date of the regular school board election from the first Tuesday in December to the first Tuesday in November for the city board of education for the City of Rome in Floyd 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 your initial submission on June 2, 1987; supplemental information was received on June 29 and July 28, 1987.

This also refers to six annexations (Ordinance Nos. 012 through 017-87A) and four annexations (Ordinance Nos. 018 through 021-87A) to the city submitted to the Attorney General pursuant to Section 5. We received your submissions on June 29 and July 28, 1987.

We have considered carefully the information you have provided, as well as Census data and comments and information from other sources and interested parties. Regarding the submitted annexations, the Attorney General does not interpose any objections to the changes in question. 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. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See Sections 51.41 and 51.43 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to the changes proposed under Act No. 240 (1987), however, we are unable to reach the same conclusion. At the outset, we note that the United States District Court for the District of Columbia and the United States Supreme Court previously have found that the change to staggered terms for the city school board effects a retrogression in the position of minority voters within the electoral system. See City of Rome v. United States, 472 F. Supp. 221 (D.D.C. 1979), aff'd, 446 U.S. 156 (1980). See also Beer v. United States, 425 U.S. 130, 141 (1976). The information you have provided does not establish a basis on which we can determine that such a conclusion is now inappropriate. Indeed, analysis of election returns since the decisions cited above indicates that black voters appear to prefer black candidates, to the extent that a significant number of black voters will vote only for black candidates in multi-seat contests. Nevertheless, black candidates have had limited success in seeking seats on both the city school board and the city board of commissioners. This appears to be based in part on a prevailing pattern of racial bloc voting in city elections.

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 Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of Act No. 240 (1987) to the extent that it imposes staggered terms for the City of Rome board of education and provides an implementation schedule to effect the staggering of terms. To the extent that the provisions of Act No. 240 are severable under state law, the Attorney General does not interpose any objections to the increase in the number of board members and the change in the school board's election date. As described above, 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 these changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine the increase in number of board members and election date change if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See Sections 51.41 and 51.43 (52 Fed. Reg. 496 (1987)).

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 51.46 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 implementation of staggered terms for the city school board legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

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 Rome plans to take with respect to this matter. If you have any questions, feel free to call Lora L. Tredway (202-724-8290), Attorney-Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division