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DLN:JPT:swh
DJ 166-012-3

June 30, 1972

Honorable Daniel R. McLeod
Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

Dear General McLeod:

This is in reference to your submission of Acts 1204 and 1205 to the Attorney General pursuant to the provisions of Section 5 of the Voting Rights Act of 1965. Act 1205 provides for a new reapportionment plan for the State Senate and extends the numbered post requirement to all multi-member districts in the House of Representatives. Act 1204 provides for the use of numbered posts in all multi-member bodies in the state. Because some of the provisions are similar and you have sought expedited consideration of both submissions to meet election schedules, this letter deals with both statutes.

Senate Plan

Act 1205 was adopted on May 5, 1972 after the three-judge district court in Twiggs, et al. v. West, et al. (D.C., S.C., Nos. 71-1106, 71-1123, 71-1211) ruled that a prior senate reapportionment (Act 932) deviated from the one-man, one-vote principle and contained an impermissible residency requirement. In one of the cases consolidated in that proceeding, plaintiffs also invoked the court's jurisdiction under the Fifteenth Amendment, claiming that multi-member senate districts and the numbered seat requirement illegally diluted minority voting strength. In its opinion of April 7, 1972, the court considered and rejected these contentions. As you are also aware, on March 6, 1972, prior to

the above opinion, we entered an objection to Act 932 which you had submitted under Section 5 of the Voting Rights Act. The view expressed in our letter was that under existing precedents we were unable to conclude that the combination of multi-member districts, numbered posts and majority run-off would not dilute and abridge the voting strength of racial minorities. Senate reapportionment Plan A of Act 1205 was considered and approved by the three-judge court on May 23, 1972 with the court finding specifically that Plan A "complies with the requirements of the Constitution of the United States, and it is therefore approved."

Our only function under Section 5 of the Voting Rights Act is to review submitted acts for Fifteenth Amendment compliance as nearly as possible in the same manner that the District Court for the District of Columbia would had the act been presented there as the subject of a declaratory judgment action. Under this standard, we feel constrained to defer to the above determination of the three-judge District Court. The District Court unquestionably had jurisdiction to consider the issues presented to it under both the Fourteenth and Fifteenth Amendments, and it has specifically found Plan A to be constitutional. Parties who feel aggrieved by its decision have full right to seek appellate review. It would in our view not be appropriate to read the Voting Rights Act as requiring or permitting the Attorney General to review a determination made by a United States District Court in the proper exercise of its statutory jurisdiction. For this reason, we enter no objection to the implementation of Plan A of Act 1205.

Numbered Seats

Section 3 of Act 1205 and Act 1204 extend the requirement of running for numbered posts to all multi-member boards, commissions and other elective

offices in the state, including the House of Representatives. In Johnson v. West (No. 72-680), the same three-judge court was requested to enjoin implementation of these acts until they had been submitted under Section 5 of the Voting Rights Act. On June 14, 1972, the court entered such an order and specifically found that these provisions had never been ruled upon by the court. Unlike the situation with respect to the Senate reapportionment plan, we review these acts without any prior judicial determination of constitutional validity or invalidity and with the burden of proof being on the submitting authority to show that the acts do not have the proscribed racial effect.

We have previously reviewed with you the various legal precedents indicating that the use of numbered seats and majority run-off requirements in multi-member electoral jurisdictions may impermissibly dilute the voting strength of cognizable racial minorities. (See our letter of March 6, 1972.) The question is whether we can certify that South Carolina's extension of the numbered seat requirement to virtually every multi-member office in the state does not have the dilutive effect described in those authorities.

According to information you furnished in connection with this submission, in addition to the House of Representatives, these requirements would apply to most of the state's school boards, county councils and municipal governing bodies. Many of these electorates contain cognizable racial minorities and we are unable to conclude that the racially dilutive effect some courts have described would not be occasioned by the numbered seat requirement.

For the above reasons, we must enter an objection on behalf of the Attorney General to the implementation of Act 1204 and Section 3 of Act 1205.

As the Voting Rights Act provides, you may seek approval of these statutes in the District Court for the District of Columbia notwithstanding this objection.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division