



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

February 5, 1990

J. Kennedy DuBose, Jr., Esq.  
Kershaw County Attorney  
P. O. Drawer 39  
Camden, S.C. 29020

Dear Mr. DuBose:

This refers to the change in the method of filling school board vacancies and the advisory referendum procedures for the Kershaw County School District in Kershaw County, South Carolina, 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 submission on January 12, 1990.

We have given careful consideration to the information provided in your submission as well as information received from other sources. In view of the fact that the runoff portion of the advisory referendum is scheduled for February 6, 1990, and that litigation has now been instituted challenging this referendum as being in violation of Section 5 of the Voting Rights Act, we have accelerated our review of your submission.

We note that under current law, the County Council is directed to fill vacancies on the Kershaw County School District by appointment without the need for any referendum, advisory or mandatory. We also understand that on all previous occasions, appointments have been made promptly without resort to any referenda. On this occasion, however, the county has departed from longstanding practice, first by delaying the appointment for a considerable time, and then deciding that the vacancy should be filled after the voters of the county have an opportunity to indicate their preference in a county-wide referendum. The council further decided that the preference of county voters be determined by who among the candidates for the position received a majority of the votes cast.

We understand that one of the leading candidates for appointment to fill this vacancy is black and that this person finished first in the initial referendum, but failed to obtain a majority of the votes cast. We have received allegations that the county council adopted this advisory referendum procedure to avoid appointing this person to the vacancy, trusting that the at-large election procedure and majority vote requirement would have the effect of defeating this candidate. We are aware that this system, when employed in regular school district elections, has failed to result in black representation on the school board commensurate with their voting strength in the county. The information in your submission does not address this allegation and provides little information that would explain why the county council adopted the unusual and time consuming procedure it has chosen.

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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). 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 submitted changes.

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 this change has 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 51.45 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 submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Kershaw County School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Please note that by separate letter of this date, the Attorney General interposed no objection to the procedures for conducting the February 6, 1990, bond election in the Kershaw County School District. Nothing herein should be construed to affect the validity of those procedures under Section 5. In view of the pending litigation, we are providing a copy of this letter to the court.

Sincerely,

A handwritten signature in cursive script that reads "James P. Turner". The signature is written in dark ink and is positioned above the typed name.

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division