

The State of South Carolina



Office of the Attorney General

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September 23, 1986

The Honorable George H. Bailey
Member, House of Representatives
100 Metts Street
St. George, South Carolina 29477

Dear Representative Bailey:

By your letter of September 19, 1986, you have asked whether the Dorchester County School Board is required by Act No. 536, 1986 Acts and Joint Resolutions, to appoint the executive committee required by the Act before receiving notice from the United States Department of Justice that the Act has received preclearance under the Voting Rights Act of 1965, as amended. For the reasons following, we are of the opinion that the executive committee should not be appointed prior to receiving notice of the required preclearance.

Act No. 536 of 1986 provides for the consolidation of school district numbers 1 and 3 into a single district to be known as Dorchester County School District No. 4, effective upon approval by the Department of Justice. The governing body of the new district is provided for in Section 3 of the Act, which provides in part:

Upon approval of this Part by the United States Department of Justice pursuant to the Voting Rights Act, the Dorchester County Board Education shall select from the fourteen-member board a seven-member executive committee...
[Emphasis added.]

Where, as here, the terms of a statute are clear and unambiguous, they must be construed literally. Green v. Zimmerman, 269 S.C. 535, 238 S.E. 2d 323 (1977). The emphasized portion of the statute thus requires that appointment of the executive committee be made only upon the approval of the Department of Justice. Thus, appointment prior to preclearance would be a departure from the literal language of the statute.

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We would also advise that the Voting Rights Act itself precludes implementation of changes in voting practices and procedures until the change has received approval either from the United States Attorney General (Department of Justice) or by way of a declaratory judgment action in the United States District Court for the District of Columbia. See 42 U.S.C. §1973c. Implementation of such a change prior to obtaining approval by one of the permissible mechanisms would be ineffective. N.A.A.C.P. v. Hampton County Election Commission, ___ U.S. ___, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985) ("Generally, statutes that are subject to §5 [of the Voting Rights Act] are ineffective as laws until they have been cleared by federal authorities." 105 S.Ct. at 1134, fn.19).

Because the literal language requires it and further because the statute is not effective and may not be implemented until preclearance is received from the Department of Justice, it is the opinion of this Office that appointment of the executive committee by the Dorchester County Board of Education should not be accomplished until notice of preclearance by the Department of Justice has been received.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions