U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 28, 1999

John H. White, Jr., Esq.
City Attorney
P.O. Box 667
McComb, Mississippi 39648-0667

Dear Mr. White:

This refers to the 1997 redistricting plan, the creation of three additional voting precincts (Voting Precincts 2A, 4B and 5B) and the polling places designated therefor, and two polling place changes to the Harrell Temple Church (District 3) and Martin Luther King Center (District 5) for the City of McComb in Pike County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent responses to our January 27, 1998, request for additional information (and our July 10 and October 23, 1998, follow-up letters) on April 29, June 16 and 25, 1999.

The Attorney General does not interpose any objection to the 1997 redistricting plan, the creation of Voting Precincts 4B and 5B, and the polling places designated therefor, and the polling place changes to the Harrell Temple Church and the Martin Luther King Center. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin enforcement of the change. See the Procedures for the Administration of Section 5, 28 C.F.R. 51.41.

We cannot reach the same conclusion, however, regarding the polling place designated for Voting Precinct 2A at the American Legion Hut. The 1997 redistricting plan altered the configuration of Districts 2 and 3 by removing some concentrations of minority voters in the northwestern portion of District 3 and assigning those voters to District 2. In the past, these voters voted at the Martin Luther King Center (the old polling place for District 3), which was in close proximity and easily within walking distance of their homes. The available

information indicates that there are as many as 600 minority persons who reside in this area, which is located east of the railroad tracks that run in a north/south direction through the length of the city, dividing it practically in half. In addition, a number of minority persons were added to District 2 from an area recently annexed into the city who also live to the east of the railroad tracks, just north of the concentration of approximately 600 minority persons referenced above.

The city now proposes that all of these voters vote at the American Legion Hut, which is located on the west side of the railroad tracks, on the south side of the lake. In order for minority residents who reside to the east of the railroad tracks to reach the proposed new polling place, they will have to travel north into the City of Summit, turn west and then head southward back down into the City of McComb, a distance of approximately four miles, or they will have to travel south to a point where they may safely cross the railroad tracks in the City of McComb, then head north past the lake to the proposed polling place. This represents a distance of at least one and a quarter miles.

It appears that many of the minority voters who reside in new District 2, east of the railroad tracks do not have access to a private vehicle and our investigation indicates that there is no readily available public transportation in the city that would assist these voters in getting to their new polling place location. The available information also indicates that these concerns were raised with the city during deliberations on the new polling place locations; no effort was made, however, to consider alternative locations that would address the problems almost 700 minority persons in new District 2 will face in getting to their new polling place location in order to vote, despite the fact that most of these voters in the past walked to their polling place location on the east side of the railroad tracks at the Martin Luther King Center.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. 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 that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the designation of the American Legion Hut as a polling place location.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the use of the American Legion Hut as the polling place location for District 2 voters continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

With regard to the creation of Voting Precinct 2A, the Attorney General will make no determination to this change at this time because it is directly related to the objected-to American Legion Hut polling place location designated therefor. See 28 C.F.R. 51.22(b) and 51.35.

Your letter of June 25, 1999, acknowledges the difficulty that many of the minority persons who now reside in District 2, but live east of the railroad tracks will have getting to the American Legion Hut to vote. Furthermore, you indicate your willingness to bring this situation to the city's attention in the near future and to try to find an alternate voting location for the affected voters. We look forward to hearing from the City of McComb regarding this matter to enable us to meet our responsibility to enforce the Voting Rights Act. If you have any questions, you should call Zita Johnson-Betts (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division