

The State of South Carolina



Office of the Attorney General

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August 23, 1988

The Honorable George H. Bailey
Member, House of Representatives
District No. 97, Dorchester County
100 Metts Street
St. George, South Carolina 29477

Dear Representative Bailey:

You have requested an opinion of this Office as to the effect of the disapproval by the Justice Department of Section 1 of Act 269 of 1987 and the approval of Section 2 of that Act. Specifically you have inquired who will appoint the school board members of District 4 in Dorchester County after October 31, 1988.

In 1986 Act 536 was enacted and subsequently approved by the Justice Department. This Act provided for the consolidation of Dorchester School Districts No. 1 and No. 3 into a single school district, District No. 4. Until a plan was put in place for single member districts, the two boards were to function as a combined board governed by an executive committee of seven who would be appointed by the Dorchester County Board of Education. In 1987 Act 269 was enacted. Section 1 of that Act provided a plan for five single member districts, two additional members to be appointed, for Dorchester School District No. 4. Section 2 of the Act abolished the Dorchester County Board of Education and devolved the county board's powers on the boards of trustees. The Justice Department approved the abolishment of the county board of education but disapproved Section 1 which set out the districts from which the elected board members would be elected. The effect is that you have a county board that was functioning

The Honorable George H. Bailey
August 23, 1988
Page Two

to appoint members of the executive committee and to fill vacancies on that committee being abolished as of October 31 without a Justice Department approved procedure for independently electing the governing body for District No. 4.

The result of the Justice Department's disapproval of only the district plan and the approval of the abolishment of the county board on the school district is difficult to clarify. A new plan can, of course, not be put in place before the General Assembly returns in January which is months after the county board is supposed to be abolished.

There is little guidance in the law for such a situation. However, it would appear that even though the abolishment of the board has been approved, it cannot be implemented due to impossibility. This would be true due to two reasons. First, Section 2 of the Act states

[t]he Board of Education of Dorchester County is abolished, and the duties and responsibilities of the board are devolved upon the elected board of trustees of the respective school districts in Dorchester County.

(emphasis added)

Section 2 specifies that the county board's duties will devolve upon an elected board of trustees. Without a plan being approved for School District No. 4, that board will not be made up of elected members. Even if the remaining board, District No. 2, is comprised of elected members both boards will not be thereby making it impossible to devolve the board's duties on an elected board. See Act and Joint Resolutions, 1972 (57) 2128.

Secondly, Section 2 abolishing the county board would appear to be unenforceable due to general laws of statutory construction. In 82 CJS Statutes, §326, it is stated that

[a] construction which will cause objectionable results should be avoided and the court will, if possible, place on the statute a construction which will not result in injustice, and in accordance with the decisions constituting statutes, a construction which will result in oppression,

The Honorable George H. Bailey
August 23, 1988
Page Three

hardship, or inconvenience will also be avoided, as will a construction which will prejudice public interest, or construction resulting in unreasonableness, as well as a construction which will result in absurd consequences.

See Tedars v. Savannah River Veneer Co., 202 SC 363, 255 S.E.2d 235 (1943); Bruner v. Smith, 188 SC 751 1985 SE 184 (1938).

It could not be deemed to be the legislative intent that the provisions take effect if a portion of the Act it depended upon falls upon failure to obtain Voting Rights Act preclearance. See in general, 82 CJS, Statutes §321, et seq. Act 269 of 1987 must be read in *pari materia* with Act 536 of 1986. When read together it is clear the abolishment of the county board was part of a larger plan of changing the Dorchester School District and its method of representation that cannot now be fully implemented in light of the Justice Department's objection to portions of Act 268.

There is very little guidance as to the effect of Voting Rights disapproval of only portions of a statute and the subsequent effect on the remainder of the statute or statutes. In general, the portions once approved are the law. The effect of those approved laws it would seem would then be governed by the general laws of statutory construction.

Although only a court of competent jurisdiction could definitely rule on this issue, it would appear that the county board would not be abolished as of October 31 as there are not two elected boards to devolve the powers of the county board upon; and, that, therefore, they would continue to possess the power to make appointments to the District 4 Board. It should also be noted that if it is deemed that the county board, by operation of statutory construction, will not be abolished as of October 31, 1988, the continuation of the county board may also

The Honorable George H. Bailey
August 23, 1988
Page Four

be considered a voting rights change that should be submitted and
precleared prior to October 31.

Sincerely yours,



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TGA:bvc

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