

1976 WL 30510 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 2, 1976

*1 Mr. O. Eugene Powell
County Attorney
P. O. Box 266
Union, South Carolina 29379

Dear Mr. Powell:

In a recent letter to this Office you requested that we advise you concerning the conducting on August 31, 1976, of a primary election for the nomination, from six single member districts, of candidates for election to Union County's new governing body. The specific questions which you have asked and our response to each follow:

(1) Is Union County required to conduct a special primary election pursuant to R755, S808 (approved June 18, 1976) notwithstanding the fact that Justice Department approval and review by the United States District Court for the District of South Carolina would not be completed until well after the primary date set by the Act?

We, of course, recognize that, because of the Voting Rights Act of 1965, [42 U.S.C. § 1973c](#), the newly enacted statute may not validly be enforced unless and until that act has been given either interim or permanent clearance. Cf., Morris, et al. v. Gressette, et al., Civil Action No. 75-1998 (D.S.C., Slip Op., filed March 12, 1976). To date it has received neither. Our advice to others, however, has been that preparations for the primary should now be undertaken because that is the more rational course to follow. If the Act is approved by the Justice Department, as we anticipate that it will be, the primary can be conducted without any difficulty; if, on the other hand, it is not approved, no major harm has been done.

Regarding the approval by the United States District Court for the District of South Carolina of the new election method and districts, that should not prove difficult, particularly if action is taken immediately to get such approval. You should, therefore, draft the necessary pleadings and transmit them to us for our review. We will, as we have indicated to you earlier, assist you in seeking relief from the Court.

(2) Is it permissible for the Union County Democratic Party to nominate candidates for the six single-member election districts established for the governing body of Union County pursuant to Section 14-3701, Code of Laws of South Carolina, 1962, by county convention, notwithstanding the fact that all previous nominations for political office have been by primary election?

In our view, it would not be permissible. Section 23-264, as amended, of the Code provides in part as follows:

. . . No convention shall make nominations for one or more offices at the convention and order primaries for other offices to be filled during the same election year. . . .

Since the Union County Democratic Party has employed this election year the primary method of nomination, it cannot now nominate by the convention method candidates for election to the county governing body.

(3) If a county convention is permissible for the foregoing purpose, would this constitute such a change in election methods as would require review under the Voting Rights Act of 1965?

*2 Our answer to Question No. 2 renders moot any response to this question.

(4) Has the Act R755, S808 been submitted to the Justice Department for approval and, if so, when and by whom?

The act in question was submitted on June 25, 1976, by Assistant Attorney General Treva G. Ashworth.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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