

Equality in Municipal Services in Mullins, South Carolina

January 1979



A report of the South Carolina Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the South Carolina Advisory Committee.

Equality in Municipal Services in Mullins, South Carolina

—A report prepared by the South Carolina Advisory
Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the South Carolina Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and Congress.

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Letter of Transmittal

SOUTH CAROLINA ADVISORY COMMITTEE TO
THE U.S. COMMISSION ON CIVIL RIGHTS
January 1979

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Sirs and Madam:

The South Carolina Advisory Committee submits this report, *Equality in Municipal Services in Mullins, South Carolina*, as part of its responsibility to advise the Commission about civil rights developments within this State.

This report deals with the extent to which selected public services in Mullins, South Carolina, are provided on an equitable basis. The condition and provision of roads, storm drainage, water and sewer services, and sidewalks were reviewed. In three out of these five major services, we found disparities between the black and white households served. Blacks were often served by poorly paved roads, inadequate drainage systems, smaller water pipes, and fewer sidewalks than were whites.

For the most part, the Advisory Committee concludes that the disparities in services are the lingering result of the segregation of and discrimination against blacks that has historically existed in the South. Despite some recent improvements and the fact that such disparities were created in the past, the city of Mullins is not relieved of its responsibility to eradicate the disparities. This is particularly true because Federal monies are available and, as warranted, mandated to be used for the purpose of equalizing services. In every municipal service studied, public money—Federal, State, local, or combinations thereof—has been used at some time to build or expand the services in question. On occasion, property owners paid part of the cost.

While the South Carolina Advisory Committee does call upon the officials of Mullins, in cooperation with minority residents, to achieve parity in the provision of crucial services, the implications of this Advisory Committee study extend beyond Mullins. Equity in public services is a vital issue to other residents of South Carolina where 78 percent of the population lives in towns of 10,000 or less. Indeed, throughout the South, hundreds of thousands of Americans live in small towns where the legacy of racism still exists in the form of inadequate public services. For this reason, the Advisory Committee urges the Commission to undertake a national study of public services in rural and other nonmetropolitan areas. The focus of the national study should be Federal programs and policies that affect the provision of services. In particular, the need for legislation designed to require amelioration of *all* discriminatory provision of services as a condition of receiving revenue sharing funds should be considered.

The Advisory Committee also believes that the Office of Revenue Sharing, under

the existing authority of the State and Local Fiscal Assistance Act, as amended, should improve its efforts in implementing the nondiscrimination and public involvement requirements of the law. Accordingly, the Advisory Committee urges the Commission to recommend to the Secretary, U.S. Department of the Treasury, the following actions: The Office of Revenue Sharing should issue regulations that clearly *require*, rather than *encourage*, recipient governments to overcome service disparities due to past discrimination in any programs or activities funded in whole or in part with revenue sharing funds. In addition, guidelines by which cities and other recipients can determine if inequities exist should be developed. The guidelines would serve as a measuring stick of equality and as such would aid cities as well as Federal agencies in their efforts to assure equal treatment for all. In addition, guidelines for making the required public hearing a *meaningful* opportunity for citizen involvement should be developed.

We hope that the Commission will concur in the findings and recommendations of this report of the South Carolina Advisory Committee and will promote the achievement of equality in public services not only in Mullins, South Carolina, but throughout the country.

Sincerely,

Keller H. Bumgardner, *Chairperson*
South Carolina Advisory Committee

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THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

ACKNOWLEDGMENTS

The South Carolina Advisory Committee wishes to thank the staff of the Commission's Southern Regional Office in Atlanta for coordinating the study of and preparing this report on municipal services in Mullins.

The study was the principal staff assignment of Courtney Siceloff, equal opportunity specialist. The report was written by Katie Harris, research specialist, with legal review and contributions by Mark Schneider, regional attorney. Portia Raby, Joan Harper, and Emma Allen provided support throughout the study. All worked under the supervision of Bobby Doctor, Director, and Idalia Morales, Deputy Director, of the Southern Regional Office.

The staff of the Publication Support Center, Office of Management was responsible for final preparation of the document for publication.

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Chapter 1

Introduction

Approximately 70 percent of the almost 2,600,000 people who live in South Carolina live outside the urbanized areas of Augusta, Charleston, Columbia, and Greenville. A full 78 percent, or approximately 2,000,000, live in towns with less than 10,000 residents.¹ The South Carolina Advisory Committee to the U.S. Commission on Civil Rights decided to conduct a project that would have implications for the majority of South Carolina's citizen—a project which deals with the quality of life in small towns: equity in municipal services for black and white residents.

Mullins, South Carolina, was chosen for the Advisory Committee study after a careful review of approximately 18 other towns of similar size. Considered in the selection of Mullins were its large percentage of black residents and the deficiencies in municipal services that were noted in the 1970 Census. Forty-eight percent of Mullins' 6,000 residents are black. Over half of the black families live below the poverty level; one-fourth of all Mullins' families do likewise. The median income for blacks is \$3,493 compared to \$6,177 for all Mullins residents;² therefore, it is reasonable to assume that virtually all of Mullins poorest residents are black. The 1970 Census also revealed that there were significant disparities in water and sewer services to black and white households.³ Mullins has received a significant amount of Federal money since 1970 to correct some deficiencies in those services. However, a visit to Mullins by members of the Advisory Committee and staff of the Commission's Southern Regional Office showed clearly that there were still unpaved streets

and open ditches within the original 1-mile square city limits. Minority residents pointed out to the Advisory Committee that they felt blacks were discriminated against in the provision of municipal services and that they would welcome a study of conditions in Mullins.

The Advisory Committee's review of municipal services in Mullins included a street-by-street survey of conditions and a determination of the race of occupants who lived on each street. Interviews were conducted with residents of Mullins as well as city and State officials; various city documents and maps were reviewed. In addition, a registered professional engineer with expertise in sanitary and municipal engineering was retained by the U.S. Commission on Civil Rights to make an onsite survey and review technical documents and maps related to the city's water, sewer, and storm drainage systems. The provision of sidewalks, storm drainage, water, sanitary sewer, and paved streets in black and in white neighborhoods was examined. The methods of financing city services and neighborhood improvements were analyzed by the Advisory Committee and Commission staff. These analyses were critical to determine if tax money of all the people has been used to benefit some and at the same time to exclude others. If the race of the persons denied equal services differs from that of persons receiving adequate services then racial discrimination does indeed exist in the provision of municipal services.

Equity in the provision of municipal services is not only a worthy goal, it is a constitutional imperative.⁴

¹ U.S., Department of Commerce, Bureau of the Census, *General Social and Economic Characteristics*, 1970 Census of Population, no. PC(1)-C42, p. 129.

² *Ibid.*, pp. 247, 254, and 295.

³ U.S., Department of Commerce, Bureau of the Census, *Detailed Housing Characteristics*, 1970 Census of Housing, HC(1)-B42, p. 113.

⁴ See *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971) *aff'd en banc*, 461 F.2d 1171 (1972).

Note that in *Hawkins* the court's finding of 14th amendment equal

protection violation was based on the racially disparate impact of services to black residents of Shaw. The U.S. Supreme Court, in a factually unrelated case, subsequently ruled that a racial discrimination challenge under the 14th amendment must include proof of *intent* to discriminate as well as a racially disparate impact. *Washington v. Davis*, 426 U.S. 229 (1976). The *Davis* decision may mean that future public services equalization suits under the 14th amendment will require proof of intent to discriminate as well as a demonstration of service disparities.

The 14th amendment to the U.S. Constitution as well as the Federal law⁵ that provides for the sharing of Federal revenue with municipalities forbid discrimination against any racial or ethnic group in the provision of municipal services.

The Advisory Committee wishes to thank Mayor J.L. Hardwick, Jr. and other city officials and personnel for their cooperation throughout this study.

⁵ The State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. 1221 *et seq.*

Chapter 2

Roads

Conditions Found

Seventeen of Mullins' approximately 136 streets were unpaved as of January 1978. Of the 17 streets, 12 are occupied exclusively by black residents (51 households); 2 are all white (7 households);¹ black and white residents are located on 1 of the unpaved streets (7 black households and 2 white); and two of the streets have no buildings or houses located on them. A total of 58 black owned or occupied houses or businesses are located on unpaved streets compared to 9 white owned or occupied units.²

Four additional streets in Mullins are covered with a loose mixture of soil and cement. Three of those streets serve 25 black households and one street serves 4 white households.³

When members of the South Carolina Advisory Committee and staff of the Commission's Southern Regional Office conducted a windshield survey of Mullins in March 1977, more than 30 streets were unpaved. Substantial amounts of paving have taken place since. In April of 1977 alone, authorization was given by the State highway department for paving eight streets⁴ after the appropriate request was submitted by the city through the Marion County legislative delegation. White occupied homes were located on four of those streets; black occupied homes on the other four.

¹ J.L. Hardwick, Jr., mayor of Mullins, letter to Bobby D. Doctor, Regional Director, Southern Regional Office, USCCR, June 21, 1978 (hereafter cited as Hardwick Letter.) In his comments on the draft report, the mayor said:

Please note that if the necessary right of way could be obtained from the residents that reside on the twelve black streets and on the two white streets, the streets would have been paved.

² The streets are: West Wine, Clark, Davis, Buck, Floyd, Davis Lane, Park Extension, Smith Alley, East Seaboard, Hodge Alley, White Oak Lane, Platt, Bundy Rogers Marion Bridge, Maple, McDaniel, Owens, and West Market. These 17 streets were among the 30 unpaved streets identified by members of the Advisory Committee and Commission staff who participat-

The conditions of the paved roads varies widely. Rendering a judgment as to the conditions of the pavement—good, fair, and poor—was not a goal of the windshield survey. However, persons who conducted the survey agree that pavement in less than good condition was found on black occupied streets more often than on those streets occupied by whites. This opinion appears accurate according to a letter dated April 27, 1976, from City Supervisor William S. Bryan to then State Senator Ralph Gasque, in which Mr. Bryan listed streets in Mullins that needed resurfacing. Of 23 streets listed, all black households were located on 15, all white households on 4, and 4 streets had both black and white households.

Financing and Responsibility for Construction, Improvements, and Maintenance

Mullins streets, with notable exceptions, found within the city limits in black neighborhoods are maintained by the South Carolina Highway Department.⁵ This fact is fundamental to an understanding of the nature and extent of financing and responsibility for construction, improvement, and maintenance of streets in Mullins. Because virtually all Mullins streets are within the jurisdiction of the State

ed in the March 1977 windshield survey. In conversations with City Supervisor William S. Bryan (January 1978), Commission staff member Courtney Siceloff determined that the 17 streets named above were still unpaved.

³ Wine (one block), Gerrald and Smith Alleys, and part of Carolina Ave.

⁴ South Carolina, Department of Highways and Public Transportation, "Summary of Apportionments for Construction of Program C, Mar. 31, 1977, Marion County, Schedule 2—Projects Programmed But Not Yet Let to Contract. Item 22514."

⁵ South Carolina, Department of Highways and Public Transportation, Map of State Highways in the City of Mullins, Mar. 12, 1976.

highway department, State money may be used not only for paving, but also for "sidewalks for pedestrians, gutters, storm drains, and such other structures within the limits of the highway right-of-way as may, in the judgment of the department, be essential for highway services and to preserve and protect the highway investment."⁶

Although construction, improvement, and maintenance of the Mullins streets within the jurisdiction of the State highway department must meet standards required by the department,⁷ and although recommendations on which streets are to be included under the jurisdiction of the department must come through the Marion County legislative delegation,⁸ all "work" on the Mullins streets must be approved by the Mullins City Council.⁹ In practice, therefore, any improvements on the Mullins streets maintained by the highway department originate with a request by the city of Mullins.

The responsibilities of persons and entities for construction and maintenance often overlap and are further complicated by the fact that an informal as well as a formal process exists for designating streets to be paved and otherwise improved. Both processes and the roles of the highway department, the legislative delegation, and the city, as they function today, are discussed in this report. The ultimate responsibility rests with the city. Without its initial requests, the other persons and entities would take no action.

South Carolina Department of Highways and Public Transportation

The South Carolina Code provides that at least 1 2/3 cents of the 9 cents tax collected on each gallon of gasoline is distributed to the State's counties for the construction, improvement, and maintenance of roads and streets under the farm-to-market program, i.e., the State's secondary road system.¹⁰ The farm-

to-market monies are apportioned among the counties based on the ratios of the counties' land area, population, and mileage of rural public roads to those of the entire State.¹¹ As of July 1, 1978, Marion County, in which Mullins is located, had \$536,482 available in farm-to-market funds for additional programing. An additional \$233,908 from the previous year was programmed but unspent.¹²

Responsibility for the construction, improvement, and maintenance of the State highway system including all State highways within municipalities (primary roads and farm-to-market roads) has been under the State highway department since 1951.¹³

City streets are eligible to be included in the State's farm-to-market road system. When the streets are included, all construction, improvements, and maintenance (e.g., paving, sidewalks, curbs, and gutters) of the streets may be paid out of the farm-to-market allocation to the county.¹⁴ In order for city streets that are recommended for the farm-to-market program to be accepted by the State highway department, an adequate right-of-way must be obtained.¹⁵ The adequacy of the right-of-way is generally determined according to the nature and extent of the construction, improvement, and necessary maintenance contemplated on the particular street. The State highway department is responsible for preserving and protecting the highway investment.¹⁶ For example, should any particular right-of-way be insufficient to provide adequate drainage, it may be difficult to preserve the condition of the street. In such cases, the likelihood of the State highway department accepting the street into the farm-to-market program is diminished.

According to State Highway Engineer E.S. Coffey, it is the responsibility of each county's legislative delegation to submit a list of roads to be paved, ranked by priority, to the local district highway commissioner who, in turn, reviews the list and, if

review of a draft of this report, E.S. Coffey, South Carolina State highway engineer, noted that parts of two State roads in Mullins were included in the farm-to-market program in February 1948. Letter, draft report with comments attached, to Bobby D. Doctor, Director, Southern Regional Office, USCCR, June 12, 1978 (hereafter cited as Coffey Letter). A review of the applicable State statutes confirms that existing State highways within municipalities came under the exclusive jurisdiction of the State highway department in 1951 (see S.C. Code §57-5-140). Additions of municipal streets into the farm-to-market program were authorized in 1952 (See Act 2031 (1952) and S.C. Code §55-5-70). Probaby State funds were used to construct and improve portions of State highways within municipalities prior to 1951, but not to the extent as authorized by subsequent legislation as referenced above.

¹⁴ See S.C. Code §12-27-400.

¹⁵ See S.C. Code §57-5-330.

¹⁶ See S.C. Code §57-5-810.

⁶ See S.C. Code §57-5-810.

⁷ See S.C. Code §57-5-720.

⁸ See S.C. Code §12-27-400.

⁹ See S.C. Code §57-5-820 and §57-5-830.

¹⁰ The terms "State secondary" system and "farm-to-market" system are synonymous and are used interchangeably in the S.C. Code; see e.g., §12-27-400 and §57-5-720. The system is most commonly referred to as "farm-to-market" and is referenced as such throughout this report. Under the farm-to-market allocation system (see S.C. Code §12-27-400) the local legislative delegations are given wide discretion in recommending construction and improvement of farm-to-market "roads."

¹¹ S.C. Code §12-27-400.

¹² This information was provided to S.C. Representative Parker Evatt, a member of the South Carolina Advisory Committee to the USCCR by Donald Stratton of the South Carolina Department of Highways and Public Transportation.

¹³ See Act 457 (1951); and see S.C. Code §57-5-10, §57-5-140. In his

everything is in order, forwards it to the State highway department.¹⁷ The State then lets contracts when the schedule permits, provided money is available in the county's allocation and the proposed improvement meets the department's criteria, e.g., adequate right-of-way.¹⁸

Marion County Legislative Delegation

The signatures of a majority of the legislative delegates from Marion County are required on the list submitted to the highway department, according to Mr. Coffey. Yet Senator John Waller of Mullins said that a member of the delegation could alter the list at any point without informing the other members of the delegation.¹⁹ Representative Archie Buchan of Mullins and Representative Wayne Shelley of Marion are the other members of the county delegation.

Sixteen district highway commissioners are elected by the Governor, with the unanimous consent of the legislative delegation, to serve districts that are coterminous with the 16 State judicial districts. Two additional commissioners appointed by the Governor serve at-large. Robert G. Mace of Gresham is the commissioner for highway district 12 that includes Mullins. Senator Waller, who has been a member of the legislature for 10 years, said the district commissioner rarely disagreed with the planned expenditure of funds suggested by the county delegation.²⁰

Senator Waller said the list of roads to be paved or repaired was a compilation of requests (oral and written) made directly to him or the other legislators by citizens as well as local government officials of Marion County.

When interviewed by Commission staff in April 1977, Senator Waller was unaware that Marion County had a large balance of funds in the highway department's farm-to-market program.²¹

City of Mullins

At present, the city performs three functions with regard to the farm-to-market program and has done so since the program's inception in 1951: acquires the needed right-of-way, compiles and forwards to the

legislative delegation the requests for paving of specific roads, and maintains contact with the delegation and/or the State highway department until the work is done.

City Supervisor Bryant said that all property owners must agree to have improvements made and grant the required right-of-way. It is not the city's policy to condemn any person's property so improvements can be made. In Mullins one property owner can prohibit the paving of the street adjoining their property. Mr. Bryant said this was frequently the case in black neighborhoods with paving and other improvements.²² State Senator Waller affirmed the policy as stated by Mr. Bryant.²³

City policy notwithstanding, the city of Mullins has the authority to acquire through condemnation sufficient land and materials to improve city streets.²⁴ This authority is also vested in the State highway department.²⁵ In addition, since 1972, the entire costs of rights-of-way in municipalities are paid for from the State highway fund.²⁶

The minimum width of the right-of-way required for the construction, maintenance, and safe operation of State highways "is fixed by state law at sixty-six feet."²⁷ This same law, however, allows the State highway department, at its discretion, to "accept a lesser width than sixty-six feet within incorporated towns or where existing structures of a permanent nature would necessarily be moved or damaged in order to afford the full minimum width. . . ."

According to State Highway Engineer E.S. Coffey, the State highway department has never set a fixed minimum width of right-of-way for a city street for the purpose of determining eligibility for construction and improvement (e.g., paving) under the farm-to-market program. While the highway department prefers a minimum width of 50 feet,²⁸ the State has on occasion accepted and continues to accept a lesser width. Mr. Coffey explained the department's exercise of discretion in the following manner:

Because some of the residences and other buildings were built without the benefit of restrictions or zoning, the distance between the

¹⁷ Coffey Letter.

¹⁸ Coffey Letter. In addition to the State highway department contracting directly for construction and improvements, the law also provides that the department may contract (S.C. Code §57-5-750) or enter into reimbursement agreements (S.C. Code §57-5-760) with counties for construction and improvement of farm-to-market roads.

¹⁹ S.C. Senator John Waller, interview in Mullins, Apr. 26, 1977 (hereafter cited as Waller Interview).

²⁰ Coffey Letter.

²¹ Ibid.

²² William S. Bryan, interview in Mullins, June 15, 1977.

²³ Waller Interview.

²⁴ See S.C. Code §57-5-370. As to condemnation by municipal authorities generally, see S.C. Code §28-9-10 to §28-9-110.

²⁵ Ibid.; As to condemnation by the State highway department generally, see S.C. Code §57-5-320.

²⁶ Act 3088(1972); codified at S.C. Code §57-5-150.

²⁷ S.C. Code §57-5-330.

²⁸ Coffey Letter.

residences or buildings are sometimes just a trail and not wide enough to construct a street satisfactorily and maintain it. Notwithstanding our specifications, however, pressures such as unsanitary dust conditions and impassable streets during wet periods demand that a street be paved at a particular location. In these cases, the department will "do the best we can under the circumstances." However, these conditions practically nullify the ability for maintenance.²⁹

Minutes of the May 5, 1954, city council meeting showed that a 30-foot minimum width was suggested to the city council by an agent of the State highway department, and the council, by unanimous vote, accepted the suggestion.

A review of the 1952-77 correspondence of the city, the State highway department, and the legislative delegation reveals that roads with rights-of-way ranging from 25-60 feet in width were paved with farm-to-market funds.³⁰

The city's policies prior to 1952 regarding requests for the financing of permanent improvements differed from those now in effect. City council minutes of July 11, 1938, and February 6, 1940, for example, indicate that by presenting a petition signed by two-thirds of the abutting property owners, permanent improvements including paving would be made on

streets adjoining their property. There was no mention that all owners of property adjoining the street had to agree to the request or grant a designated right-of-way. The city's right of eminent domain was exercised if necessary.

In the two major paving projects prior to 1948, taxpayers of Mullins paid for the paving of some streets. A bond issue in 1925 and assessments paid by property owners financed the street paving project.³¹ In 1939 another major paving project was undertaken. Of the 27 streets paved in the 1939 project, along with other improvements, 26 were in white neighborhoods. Property owners were assessed only 50 percent of the city's cost that did not include the labor and materials that were furnished by the Federal Work Projects Administration.³²

City records from 1940 through 1951 cite a variety of methods for financing individual street improvements. Often the property owners were assessed; once they were billed for the work at an hourly rate. On some occasions, reimbursement to the property owner was promised if certain other future improvements were made by the city. In some instances, when paving was ordered there was no mention of who was to bear the cost.³³

²⁹ Ibid.

³⁰ City of Mullins, city council meeting minutes, 1954-77. Commission staff member Courtney Sicheloff and members of the South Carolina Advisory Committee reviewed minutes of council meetings during this 23-year period and noted council action on the paving of streets.

³¹ City of Mullins, city council meeting minutes, Feb. 24, Mar. 13, Apr. 7, June 1, July 3, Oct. 25, 1925; Mar. 27, and May 13, 1926.

³² Ibid.; city council meeting minutes, July 8, 1935 and balance sheet on 1939 paving project, Sept. 20, 1940.

³³ City of Mullins, city council meeting minutes, July 21, 1945; Mar. 14, 1946; June 27, 1947; Sept. 3, 1941; Apr. 8, Aug. 12, Sept. 9, 1948, and July 13, 1951.

Chapter 3

Storm Drainage

Conditions Found

Storm drainage systems are necessary to carry storm water off the land without creating a hazard to persons or property. An ideal drainage system would include curbs, gutters, and storm sewers, while outdated devices like open, noncontoured ditches represent the least desirable means of storm runoff.¹

The city of Mullins has acknowledged that drainage problems exist in the city. The following statement was included in the city's application for Federal funds to correct some of those problems:

The existing storm drainage system in the City of Mullins is inadequate and inefficient. Many areas throughout the City are poorly drained. Open ditches are a primary means of surface drainage. Flat topography, an approximate 44' annual rainfall, and soils characterized by a high water table and flooding, contribute to the drainage problem. These conditions constitute health and safety hazards and create conditions that accelerate the deterioration of housing and property. The greatest needs for storm drainage improvements exist in low income neighborhoods.²

In addition, the Advisory Committee's consultant engineer also found that such ditches are health and safety hazards.³ Preston Davis, the city's part-time health officer, does not agree, however. Mr. Davis, who worked for the South Carolina Department of Public Health for 36 years and is now retired, said that he serves as the city's health officer in name only and really does "not do much over there." The State requires each city to appoint a health officer; Mr.

Davis said City Supervisor Bryant had asked him to serve in that capacity.⁴ Mayor Hardwick said that Mr. Davis is notified of any complaints received and he then "works them."⁵

The storm drainage system in Mullins varies from pipe and inlet networks that are well maintained to ditches and cross drains that are poorly maintained. The white residential areas where curbs are provided have the best drainage. Other white areas where curbs are not provided still have "well maintained contoured ditches with adequate, frequent inlets and cross drains, and continuous drainage systems."⁶

The report of John Foster, engineer, stated that, with the exception of Mullins public housing projects that include black and white residents, black residential areas have poor drainage. In the report, he pointed out:

[W]here curbs are provided [they] are less well maintained and have lesser numbers of catch basins and/or curb inlets per block or equivalent distance when compared to white residential areas. In Black residential areas where curbs are not provided or streets paved, drainage systems are incomplete and poorly maintained. Ditches and culverts in many locations are silted, clogged with debris, and unable to function. In several areas, ditches do not exist except behind the homes and in these cases, the ditches are deep, uncontoured, poorly maintained drainage canals which convey surface water from other areas through these areas so as to disturb as little

¹ John E. Foster, professional engineer, Conset Corporation, "Comparative Analysis of Municipal Water and Wastewater Services Provided Black Residential Areas and White Residential Areas of Mullins, South Carolina," report to the South Carolina Advisory Committee of the U.S. Commission on Civil Rights, July 9, 1977, p. 2 (hereafter cited as "Comparative Analysis of Services in Mullins").

² City of Mullins, preapplication for housing and community development funds, Jan. 3, 1977.

³ "Comparative Analysis of Services in Mullins," p. 7.

⁴ Preston Davis, health officer, Mullins, S.C., telephone interview, May 11, 1977.

⁵ Letter to Bobby D. Doctor, Region Director, Southern Regional Office, USCCR, June 21, 1978 (hereafter cited as Hardwick Letter).

⁶ "Comparative Analysis of Services in Mullins," p. 5.

TABLE 1
Types of Drainage Systems in Houses Occupied by Whites and Blacks

Drainage system	Number and percentage of houses				
	Houses of whites	Percent houses of whites	Houses of blacks	Percent houses of blacks	Total percent houses of blacks
Curbed gutter and sewer	434	42.18	24	3.32	5.24
Storm sewer only	174	16.91	141	19.53	44.76
Open ditch	86	8.36	129	17.87	60.00
Others	335	32.55	428	59.28	56.09
	<u>1,029</u>	<u>100.00</u>	<u>722</u>	<u>100.00</u>	<u>41.23</u>

Note: "Other" represents what the city refers to as "bar ditches." These are depressed areas or low-contoured depressions adjacent to the street, depending on the residential area served.

as possible the natural drainage patterns within the city.⁷

Table 1 illustrates the difference between the quality of services to black and white residential areas.⁸

It should be noted that while black households in Mullins represent 41.23 percent of the total households, only 5.24 percent are served by "the best" drainage system, i.e., curbed gutter and storm sewer, compared to 42.18 percent of the white households. The least desirable system, i.e., open ditches, serves 60 percent of the black households compared to 8.36 percent of the white households.

Members of the Advisory Committees noted during their survey of Mullins that curbs often ended with the last white occupied house on the street.

Curbs, as mentioned earlier, are vital to the "best" drainage system. Several streets, including Church, Dixon, James, and other streets in the northeast and northwest quadrants of the city exemplify a pattern of black occupied households without curbs in front of their homes within a few blocks of white households that have them.

Financing and Responsibility

The policy for financing the building of the best type of drainage system is and has been ambiguous. It appears, however, that the policy prior to 1951, with some exceptions, when the city paid for tile, the city frequently paid for the system⁹ and that since 1951, the property owners have been required to pay for materials, and the city has provided the labor.¹⁰

⁷ Ibid., pp. 5-6.

⁸ Ibid., p. 6.

⁹ City of Mullins, city council meeting minutes, July 3, 1925; Jan. 3, 1927; April 13, 1937; Feb. 2, 1943; Nov. 11, 1948; Jan. 19, Aug. 11, 1950; and Aug. 29, 1951.

¹⁰ Ibid.; city council meeting minutes, Oct. 12, 1967. Minutes of other city council meetings, however, provide examples of instances when the city has furnished drainage tile at no cost to property owners, e.g., Jan. 19, 1954, and Sept. 14, 1961. A letter of Aug. 5, 1974, from the State highway engineer to

As discussed earlier in chapter 2, the sale of municipal bonds in 1925 plus general city revenue financed the paving, curbed gutter, and storm sewers in a major portion of the city's white neighborhoods.¹¹ In 1939 another major paving project was undertaken that also included the building of sidewalks, curbs, gutters, and storm drains on 27 streets. Twenty-six of those streets were in white neighborhoods. Property owners were assessed 50 percent of the city's cost that did not include labor and materials provided through the federally-financed Work Projects Administration. Detailed records of the actual costs of the improvements and citizens' assessments, as well as the city's financial obligations that were available for inspection by the Advisory Committee and Commission staff, showed that no charge was made to citizens for storm drain materials.¹² The expense, then, was borne by all citizens, even those who did not get the improvements.

In 1951, with the advent of the farm-to-market road paving program, curbing, gutters, storm sewers, and sidewalks could be built by the State and financed through the county's farm-to-market alloca-

the city stated that tile would be furnished on one occasion at the expense of the State.

¹¹ City of Mullins, city council meeting minutes, Feb. 24, Mar. 13, June 1, July 3, and Oct. 25, 1925; Mar. 27, and May 13, 1926.

tion, if the city, through its legislative delegation, requested it to be done. The State highway department required a sufficient right-of-way to alleviate drainage problems that may exist, e.g., inadequate space storm sewers. As discussed in chapter 2, both the city and the highway department have the authority to acquire such right-of-way via condemnation if necessary.

Despite the fact that storm drains (and all other improvements mentioned) may be financed entirely out of the county farm-to-market allocation, the actual process of financing has varied. For example, in August 1974 the State highway department agreed to furnish the labor to lay storm drain pipe but only agreed to pay for a portion of the costs of the pipe.¹³ According to Supervisor Bryant, and as reflected in council minutes of October 12, 1967, and again in August 12, 1976, the city will in some instances provide the labor to lay the storm drain pipe but will pass the cost of the pipe on to the property owner. On at least one occasion, according to Mayor J.L. Hardwick, Jr., the State highway department installed storm drainage and sidewalks without any cost to the city.¹⁴

¹² City of Mullins, balance sheet on 1939 paving project, Sept. 20, 1940.

¹³ City of Mullins, city council meeting minutes, Aug. 8, 1974.

¹⁴ Hardwick Letter.

Water and Sewer Services

Water Service Provided

With the exception of two houses, water from the city's water system is available to all households. Of the two houses excluded, one is occupied by white persons and the other by blacks.¹

The principal purposes of a municipal water system are to provide water for domestic use and to fight fires. The quality of service provided to residents is therefore measured according to the system's ability to fulfill its purposes. John Foster, public works engineer with the Conset Corporation, said wherever a municipal water system provides water for fire protection, pipes smaller than 6 inches in diameter should not be used if an adequate water supply is to be ensured in the event of a fire.²

A review by Mr. Foster of the Mullins water system maps (the maps were verified by City Supervisor Bryant) showed that only 44.87 percent of the black occupied households in Mullins are served by water pipes 6 inches or larger while 61.42 percent of the white occupied households are served by pipes 6 inches or larger.

¹ John E. Foster, professional engineer, Conset Corporation, "Comparative Analysis of Municipal Water and Waste Water Services Provided Black Residential Areas and White Residential Areas of Mullins, South Carolina," report to the South Carolina Advisory Committee to the U.S. Commission on Civil Rights, July 9, 1977, p. 2 (hereafter cited as "Comparative Analysis of Services in Mullins").

² Ibid.

³ In his response to a draft of this report, Mayor Hardwick wrote:

John Foster, public works engineer, states, "no pipes smaller than 6 inches in diameter should be used in order to ensure adequate water supply in the event of a fire." In chapter 4, the chart, "Number and Percentage of Houses," shows inaccurate calculation under 12 inch as we have re-counted just that line and find that 88 white houses and 90 black houses are there. This, of course, throws the other figures off and affects those houses which would not be on a line 6 inches or larger. Letter to Bobby D. Doctor, Director, Southern Regional Office, USCCR, June 21, 1978.

⁴ Letter to Courtney Siceloff, USCCR, June 29, 1978.

⁵ Subsequent to receipt of Mayor Hardwick's letter of June 21, 1978, and after further conversation with Mr. Foster, Bobby Doctor, Director, Southern Regional Office, USCCR, wrote to Mayor Hardwick on June 29, 1978. The following excerpt from the letter sets forth the explanation offered for the discrepancy raised by the mayor.

Despite the verification by the city supervisor of the maps used by Mr. Foster in his analysis, Mayor Hardwick subsequently disputed the accuracy of Mr. Foster's data on the number of white and black households served by 12-inch pipe.³ Mr. Foster confirmed, however, that on the basis of the information supplied by the city the data in the following chart is correct.⁴ While recognizing that the facts are in dispute, the Advisory Committee believes that according to the best evidence available,⁵ table 2 illustrates the disparity in the size of water pipes serving black and white households.⁶

Sanitary Sewer Service Provided

For the purposes of this study, sewer service is defined as the provision of a sanitary sewer within 200 feet of a dwelling's property line. In interviews with Advisory Committee members and Commission staff, the Mullins city supervisor said all homes within the city limits are served by the sanitary sewer system and only four homes (by the occupants' own choosing) are not tapped into the system. Discussion

We realize that there are several streets where a 12 inch line parallels another smaller line, but the houses are tapped-in to the smaller line. The 1973 contract which provided, among other things, the construction of some six miles of 12 inch line allowed for only 5 tap-ins. Mr. Foster stated that the parallel smaller lines which include the residential tap-ins may have been inadvertently overlooked by you when you reviewed the location of the 12 inch lines. On the basis of the data furnished to Mr. Foster by Mr. Bryan, this would appear to be the only logical explanation for the discrepancy you noted. If you have any further explanation to offer, we would appreciate a prompt reply since we will forward the report to the printer soon.

William S. Bryan, city supervisor, responded to the above by letter of July 7, 1978, stating:

With reference to your letter of June 29, 1978, to Mayor Hardwick, if it could possibly be arranged, we would very much like to have someone from your office, perhaps Mr. Foster, come to Mullins to check our water lines again.

Because of the additional financial costs involved in fulfilling the request and the likelihood that the facts in dispute could not be resolved to the satisfaction of all concerned in any event, it was determined that further inquiry in the matter was not feasible.

⁶ "Comparative Analysis of Services in Mullins," p. 2.

TABLE 2
Size of Water Pipes in Houses Occupied by Whites and Blacks

Diameter of pipe	Number and percentage of houses			
	Houses of whites	Percent houses of whites	Houses of blacks	Percent houses of blacks
12-inch	29	2.82	14	1.94
10-inch	38	3.69	17	2.35
8-inch	69	6.71	28	3.88
6-inch	496	48.20	265	36.70
2-inch	396	38.48	397	54.99
Unserviced	1	.10	1	.14
	1,029	100.00	722	100.00

Note: Statistical errors of 0.57 percent and 0.82 percent for whites and blacks, respectively.

with residents of the city confirmed the supervisor's statement.

John Foster could not attest to the adequacy of the sewer service in Mullins. Contrary to the statements of the city supervisor and the city's utility director, maps and other documents furnished by the city showed that 171 homes were not served by the city's sanitary sewer.⁷

It appears, however, that all homes have service within 200 feet of their property, and the sewer system maps furnished to Mr. Foster were simply out of date. Without an updated map, this information cannot be conclusively verified.⁸

Financing and Responsibility

Expansion of and improvements to the Mullins water and sanitary sewer systems have been financed primarily by bond issues and Federal grants from the Environmental Protection Agency and the Economic

Development Administration. Major bond issues, totaling approximately \$700,000 were passed in 1947, 1957, 1967, and 1973. The \$350,000 raised in 1973 through the sale of municipal bonds was used as matching money to acquire Federal grants.⁹ Other monies from the Office of Revenue Sharing have been used in recent years to improve and expand the systems. In short, both local and Federal money—the tax money of both black and white citizens—has been used to build the systems.

Currently, all users of water and sanitary sewer services in Mullins pay a fee based on their usage. With some planning involvement by the county, the city is responsible for the building and maintenance of the water and sanitary sewer systems.

The disparity in the size of water pipes raises the issue of equality of fire protection available to those persons served by small water pipes. The costs of fire protection and the water used to fight fires is not met

⁷ Ibid., p. 4.

⁸ Ibid., p. 5.

⁹ William S. Bryan, Mullins city supervisor, interview in Mullins, June 20, 1977.

on an individual assessment basis. Rather, these costs are shared by all residents. To the extent, therefore, that the provision of fire protection is racially disparate, due to inadequate water supply caused by the smaller water pipes, inequality of fire protection services would exist.

Mayor Hardwick stated, however, that, "There is an adequate [water] supply for all people in Mullins on each street in Mullins. [T]here is available within 1,000 feet of each city residence in the city of Mullins a water line of at least 6-inch diameter and a fire hydrant."¹⁰ In other words, according to the mayor, even though water for domestic use in many black households may be provided in pipes too small for adequate fire protection, there are large enough pipes and sufficient hydrants available to the fire department to protect every home in Mullins.

¹⁰ Letter to Bobby D. Doctor, June 21, 1978.

According to Mr. Foster, however, the statements of the mayor do not fully address the issue of adequacy of fire protection. The level of water pressure (an important factor in fire protection) even if the water is fed through a 6-inch pipe, may vary. For example, the amount of water pressure necessary to fight a fire adequately can depend on the manner in which water is supplied to the pipe, i.e., whether it is channeled from only one as opposed to more than one direction.¹¹

Adequacy of water pressure was not studied by the Advisory Committee. The Advisory Committee has no basis, therefore, for determining the extent to which fire protection may be affected by the water system in Mullins.

¹¹ Telephone interview, June 28, 1978.

Chapter 5

Sidewalks

Conditions Found

The areas within the original 1-mile square city limit without sidewalks are occupied primarily by black residents. In the northeast section of Mullins (bounded by Barnes, East End, Front, and Mullins Streets) approximately 200 black households and 26 white households are on streets without sidewalks. In the northwest section (bounded by Marion, Cooper, James, and Cypress Streets) approximately 77 black and 21 white households are on streets without sidewalks. Nowhere else in the city, within the original 1-mile square city limit, is there so large an area without sidewalks. There is no predominately white neighborhood that does not have sidewalks.

Outside of the original 1-mile square city limit, sidewalks are found on streets serving a city park, public housing units, and public schools.

Financing and Responsibility

City records indicate that both property owners and the city shared the cost of building sidewalks as early as 1915 and as recently as 1954.¹ Minutes of council meetings held during the same time period authorized the building of sidewalks but make no reference to who will bear the expense.² It is assumed that because the city council authorized the construction the city was responsible for the cost. A clear record exists to substantiate that the city sometimes paid for sidewalk construction, and, at other times, both the city and the property owner bore the expense.

¹ City of Mullins, city council meeting minutes, Nov. 4, 1915; Mar. 27, 1926; May 23, 1939; May 13, 1941; July 13, 1951; Oct. 11, 1951; and Feb. 16, 1954.

² *Ibid.*; city council meeting minutes, Jan. 29, 1926; May 13, 1926; Feb. 23, 1928; June 4, 1929; Jan. 27, 1941; and June 14, 1951.

The minutes of a July 13, 1951, council meeting also references the sharing of expenses but assigns the full burden of the cost to the property owner unless certain circumstances exist:

. . . [for] residents of Mullins desiring paved sidewalks in front of their houses, it will be necessary for them to bear the full expense. However, when the paving project in that section is put on by the City, one-half the cost of the paving of such sidewalks will be refunded to the property owner in the form of credit to paving assessment at that time providing said sidewalks are put in proper position and meet proper specifications and price is approved by council before the work is done.

The State highway department, acting on requests from the city, has used special school safety program funds to build sidewalks to and from schools. In such cases, 90 percent of the cost is paid by the Federal Government and 10 percent by the State.³ The February 14, 1963, council minutes show that sidewalks in school areas were requested for seven streets, six of which are in predominately black neighborhoods. Four of those streets do have sidewalks today; three are in black neighborhoods.⁴ Farm-to-market funds have been used to build only one sidewalk; it serves the area adjacent to a city park. It appears then that since 1954 only public money has been used to build sidewalks.

³ Ed Shuler, safety engineer, South Carolina Highway Department, interview in Columbia, S.C., Apr. 26, 1977.

⁴ City of Mullins, city council meeting minutes, Sept. 24, 1958; Sept. 12, 1962; Feb. 14, 1963; and Aug. 15, 1966.

Use of Federal Funds

Revenue Sharing

Currently, the largest amount of Federal funds received by Mullins comes from the Office of Revenue Sharing (ORS) of the U.S. Department of the Treasury. As mandated by the State and Local Fiscal Assistance Act of 1972, as amended,¹ revenue sharing funds are dispersed to virtually every State and local government in the country. Use of the funds for projects, programs, and facilities is determined by the recipient government, not the Federal Government. The amount of money received is computed by a formula that considers population, tax effort, per capita income, urban population, and State income tax receipts.² The major requirements relating to the use of these funds and significant to this study are those that prohibit discrimination in the use of the funds³ and those that require citizen involvement in deciding how the funds should be used.⁴

Nondiscrimination Provisions

A government that receives revenue sharing funds is prohibited from discriminating against any person on the basis of race, color, national origin, sex, religion, age, or handicapped status. Persons may not be excluded from participation in, or denied the benefits of any program, activity, or facility funded in whole or in part by revenue sharing money.⁵ In addition, the rules and regulations of the Department of Treasury encourage that the funds *be used to ameliorate the effects of past discrimination*:

Recipient governments are encouraged to take action with entitlement funds to ameliorate an

imbalance in services or facilities provided to any geographic area or specific group in order to overcome the effects of prior discriminatory practice or usage. If a recipient government funds a program or activity which is found to provide an imbalance of services or facilities to persons protected by this subpart, then such imbalance *shall* be ameliorated.⁶ [emphasis added]

As broad as the nondiscrimination provisions are, however, the law excepts recipient governments from the provisions if the recipient government demonstrates "by clear and convincing evidence," that any alleged discriminatory program or activity is not funded in whole or in part with revenue sharing funds.⁷ It is clear from the legislative history that Congress intended this exception to mean that if a program or activity is not directly funded with revenue sharing funds, than that program or activity does not violate the nondiscrimination provision.⁸

The effect of the exception can be to allow recipient governments to ignore the spirit of the law merely by ensuring that no revenue sharing funds are used in a program or activity that causes or perpetuates discrimination. By directing revenue sharing funds away from ameliorating discrimination in other programs or activities, the result is to allow a recipient government to use revenue sharing funds in a manner that perpetuates discrimination.

With regard to any program or activity that is funded to any extent with revenue sharing funds, however, existing authority requires the recipient government to ameliorate the effects of any discrimination that exists.

¹ 31 U.S.C. §1221 *et seq.*

² U.S. Commission on Civil Rights, *Making Civil Rights Sense Out of Revenue Sharing Dollars* (1975), p. 7.

³ 31 U.S.C. §1242.

⁴ 31 U.S.C. §1241.

⁵ 31 U.S.C. §1242(a)(1).

⁶ U.S., Department of Treasury, "Non-discrimination by Recipient Governments Receiving Entitlement Funds," 31 C.F.R. §51.50 *et seq.*, at §51.52(b)(5).

⁷ 31 U.S.C. §1242(a)(2).

⁸ H.R. Rep. No. 1720, 94th Cong., 2d sess. 32 (1976). *reprinted in* [1976] U.S. Code Cong. & Ad. News 5200.

Public Involvement

Prior to the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) effective January 1, 1977, the recipients of revenue sharing funds were not *required* to involve the public in deciding how the funds should be spent. The Office of Revenue Sharing, however, noted that "citizen participation in determining how General Revenue Sharing funds are to be used is implicit in the program. . . ." ⁹ A California county and an Ohio city were cited by ORS for their efforts to involve citizens. One local government called together representatives of community groups as well as local government personnel to suggest uses for the funds; a citizen advisory committee appointed by the local government officials reviewed the suggestions and made recommendations as to which projects should be funded.

In summary, it is clear that before the 1976 amendments to the 1972 act, the Office of Revenue Sharing intended for citizens to be involved in deciding how their tax money would be spent in their community. The 1976 amendments require that "at least one public hearing on the possible uses" of revenue sharing money be held, that notice of the hearing be published in the local papers, and that the notice specify that citizens may provide written and oral comments and suggestions at the hearing. ¹⁰

The city of Mullins published a legal notice of a public hearing held on October 13, 1977, ". . . in the city auditorium for the purposes of gaining public participation in the designation of \$178,857.00 in Federal Revenue Sharing Funds." ¹¹ The legal notice was published on September 29, 1977. The public hearing was held in conjunction with a regular city council meeting on the same evening. The notice of the city council meeting that appeared in the local paper on October 13 made no mention of public participation in the designation of over \$178,000. ¹²

A staff member of the U.S. Commission on Civil Rights was present for the combined city council meeting and revenue sharing public hearing. After the meeting was called to order, the presiding mayor pro tem asked if anyone present wished to comment on the plan for the use of the funds proposed by city

officials. There was no response. The city supervisor's proposal for the use of funds was accepted, and the governing body moved on to the next agenda item. Only city employees, elected officials, and the Commission's staff person were present. Black residents of Mullins with whom the Commission staff person later talked said they did not know that the use of the funds was to be discussed. ¹³ The city of Mullins had complied with the *letter* of the law regarding public involvement and revenue sharing funds.

Use of ORS Funds

Since 1972 when Mullins first received revenue sharing funds, approximately \$1,196,199 has been allocated (as of December 31, 1977) by the city. Of that total amount, approximately 72 percent has been spent. Information provided by the city shows that the largest single portion of the money, 38 percent of the total, has been allocated for environmental protection, primarily as matching money to receive Federal grants for water and waste water improvements and expansions. The proposed purchase of equipment ranging from new pickup trucks to a mini computer accounted for 19 percent of the funds, while 14 percent was set aside for such items as new fire trucks and the salaries of police officers. The renovation of the city hall cost over \$144,000, a full 12 percent of the total allocated in the 5-year period. Only 4 percent of the money was used for street and property improvements. Exhibit 1 illustrates the allocation of the funds in greater detail. ¹⁴

ORS Compliance Review

In June 1976 ORS informed the city of Mullins that a complaint had been made alleging discrimination against minorities in the provision of municipal services and in employment. A black citizens group called "Operation Help" had filed the complaint. An investigator for ORS visited Mullins for a day and a half in January 1977 to conduct a compliance review in response to the complaint.

In a letter to Mullins' Mayor J. L. Hardwick dated April 21, 1977, Kent Peterson, Acting Director of the Office of Revenue Sharing, ruled that Mullins was in violation of the nondiscrimination provisions of the

⁹ U.S., Department of the Treasury, Office of Revenue Sharing, *General Revenue Sharing: Reported Uses 1973-1974* (1975), p. 9.

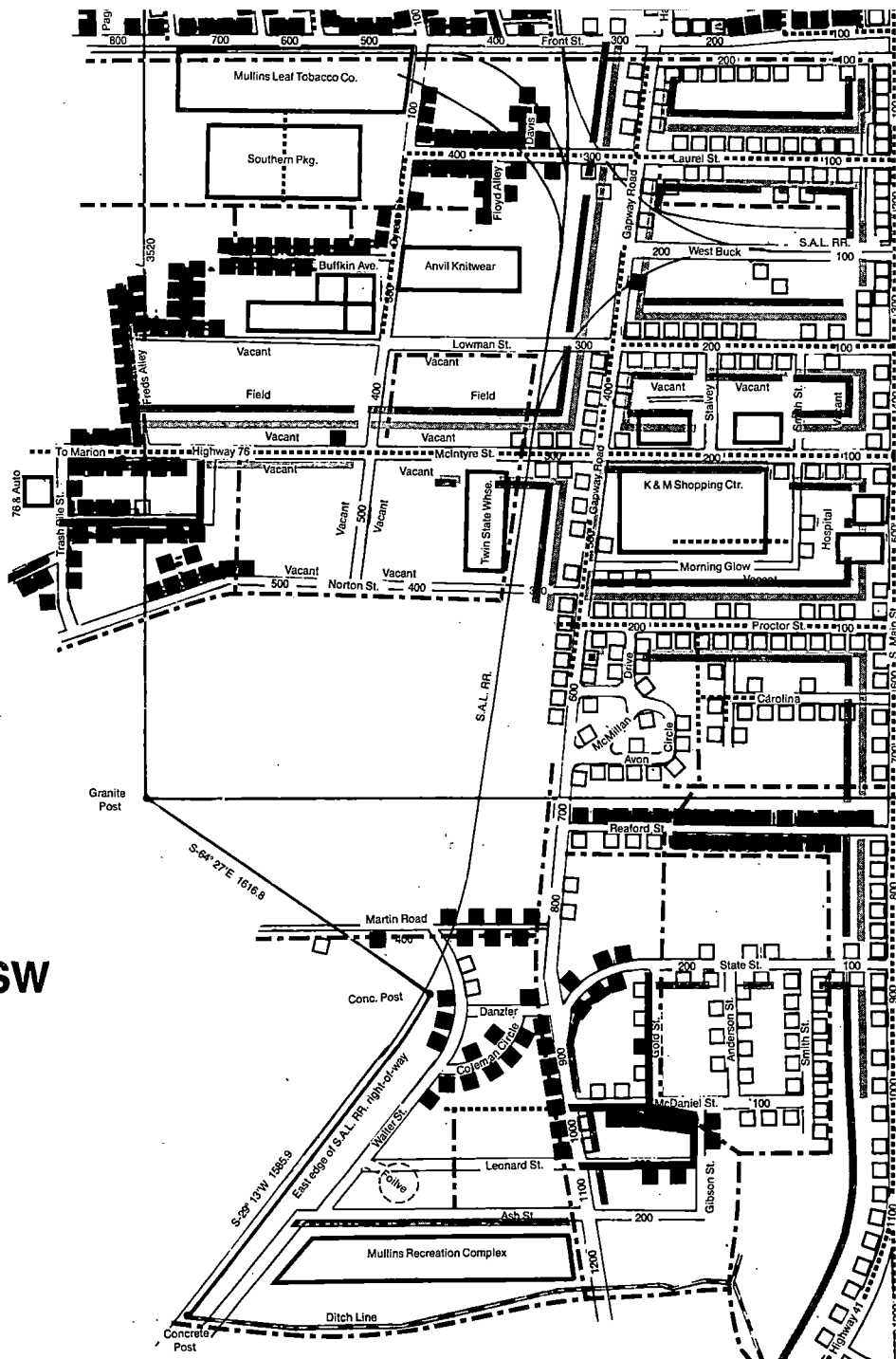
¹⁰ 31 C.F.R. §51.13.

¹¹ *The Enterprise*, Sept. 29, 1977.

¹² *The Enterprise*, Oct. 13, 1977.

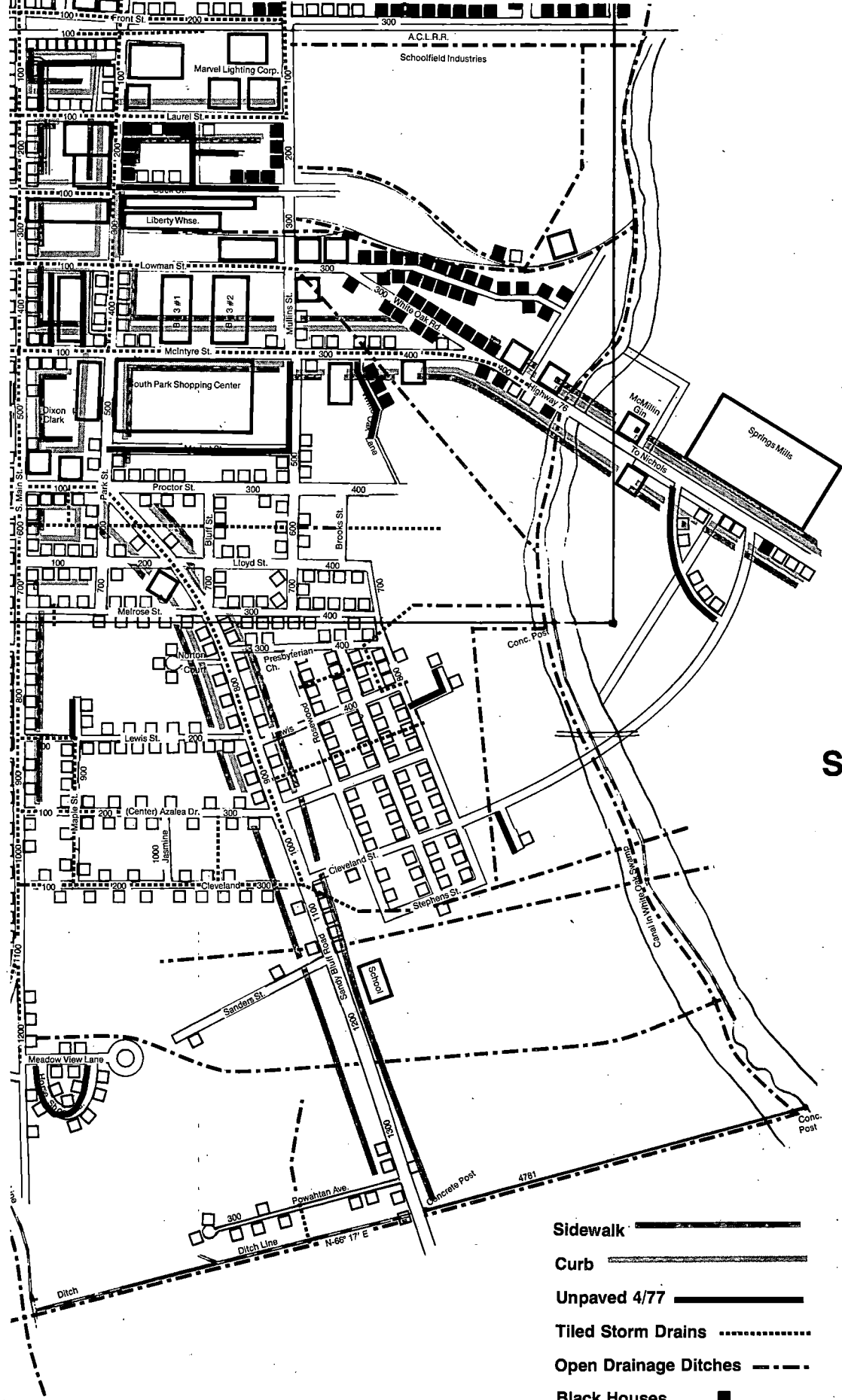
¹³ Courtney Siceloff, equal opportunity specialist, U.S. Commission on Civil Rights, memo to file, re meeting in Mullins, Oct. 13-14, 1977.

¹⁴ City of Mullins, "Revenue Sharing Fund Statement of Actual Expenditures Compared to Allocations from 1972 to September 15, 1977." William S. Bryan, city supervisor, memorandum to Mayor J. L. Hardwick, Jr., and members of city council, "Allocation of \$178,857 in Entitlement Period 9 Revenue Sharing Funds and Re-designation of Funds Previously Allocated and Not Used," Oct. 12, 1977. Brenda Ivey, Mullins city clerk and treasurer, telephone interview, Dec. 12, 1977.



The City of Mullins, South Carolina

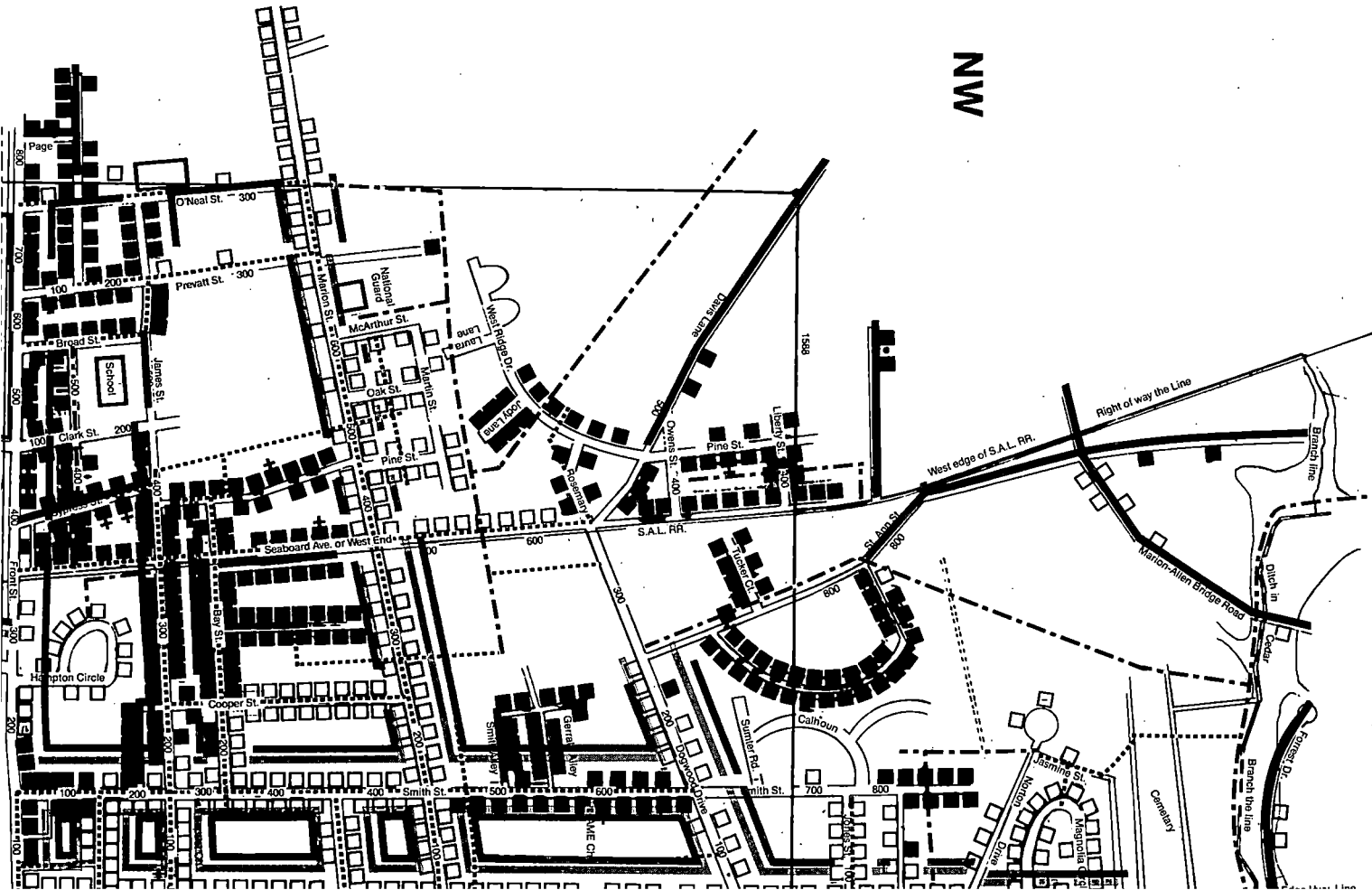
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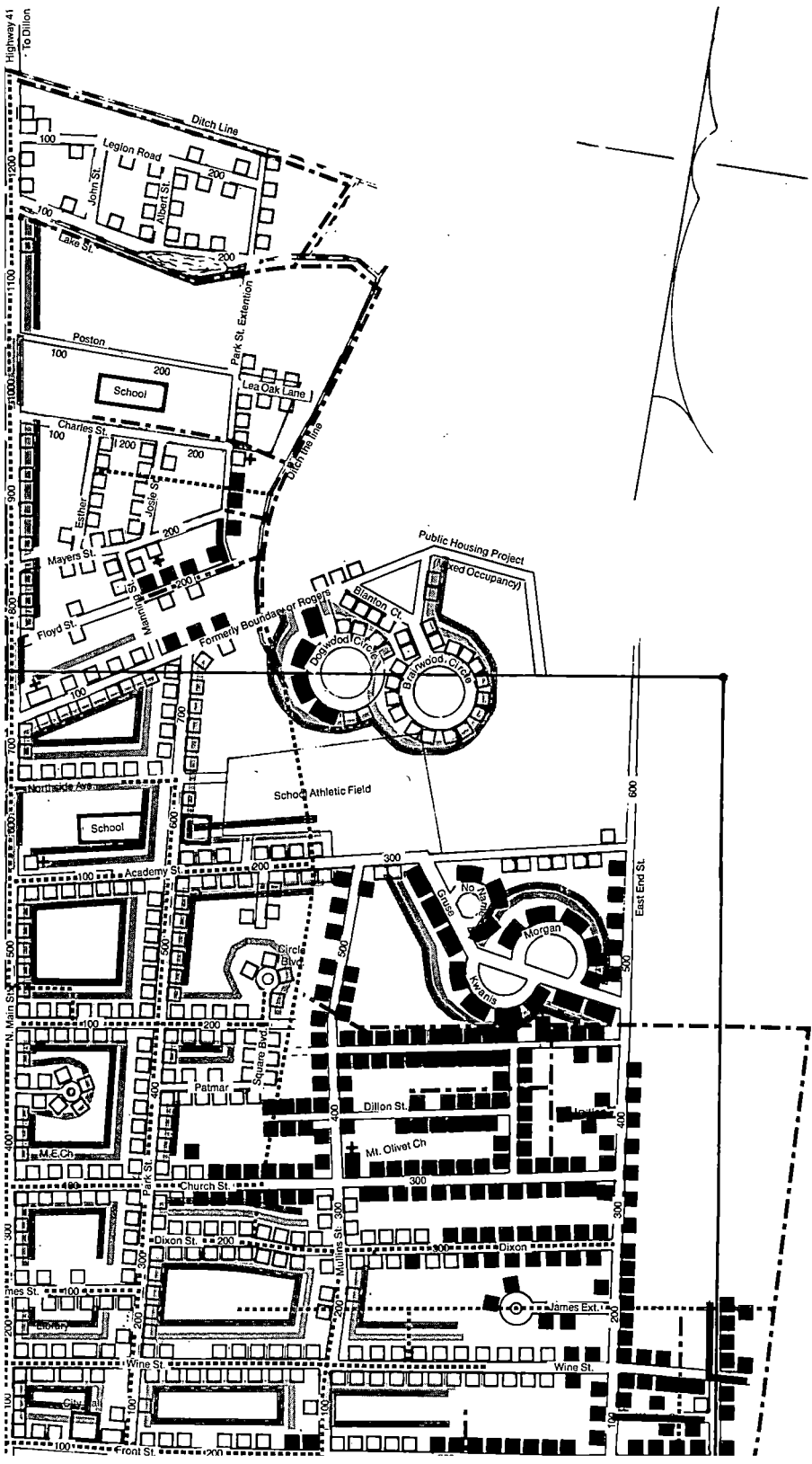


SE

- Sidewalk
- Curb
- Unpaved 4/77
- Tiled Storm Drains
- Open Drainage Ditches
- Black Houses
- White Houses

NW





NE

Highway 41
To Dillon

1200
1100
1000
900
800
700
600
500
400
300
200
100

600
500
400
300

East End St.

EXHIBIT 1

Allocation of Revenue Sharing Funds 1972-77

Environmental protection		
Sewer extension	\$	49,772
Land fill operation		58,500
Water and waste water improvements		107,437
Wine St. storm drain		10,000
Water system (\$201 facilities improvements)		225,000
	Subtotal	450,709
	Percent of total	38
Equipment		
Minicomputer		17,000
Trucks, bulldozer		134,684
Copy machine		1,639
Tractor and attachments		9,802
Dump truck		9,900
Pickup trucks		15,000
Street sweeper		31,109
	Subtotal	22,134
	Percent of total	19
Public safety		
Police salaries		92,014
Street lighting		9,868
Police cars		22,720
Fire truck		48,538
	Subtotal	173,140
	Percent of total	14
City hall renovation		
Paving city hall area		8,847
City hall renovation		135,231
	Subtotal	144,078
	Percent of total	12
Recreation		
Bleachers, paving at basketball, tennis courts, and football field		12,000
Recreation		92,104
	Subtotal	104,104
	Percent of total	09
Other		
Wine St. property		16,700
McDonald property		1,500
C. Carmichael property		2,750
Initial housing and land use plan		10,000
City employees' salaries		56,353
	Subtotal	87,303
	Percent of total	07
Streets		
Streets		4,731
Paving Wine St.		10,000
	Subtotal	14,731
	Percent of total	01
	Total	\$1,196,199

Source: This information was compiled by the U.S. Commission on Civil Rights based on the following documents and interviews: City of Mullins, "Revenue Sharing Fund Statement of Actual Expenditures Compared to Allocations from 1972 to September 15, 1977." William S. Bryan, city supervisor, memo to Mayor J. L. Hardwick and members of city council, "Allocation of \$178,857. In Entitlement Period 9 Revenue Sharing Funds And Re-designation of Funds Previously Allocated and Not Used," Oct. 12, 1977, Brenda Ivey, Mullins city clerk and treasurer, telephone interview, Dec. 12, 1977.

State and Local Fiscal Assistance Act of 1972. Specifically, Mr. Peterson found that the city had discriminated in the provision of street lighting and in employment.

The city policy of providing street lights when requested by citizens had the effect of discriminating, according to ORS, because a lack of publicity about the policy had resulted in fewer requests for lighting from blacks than from whites.

The numbers of women and minorities employed by the city as well as their almost total relegation to low-paying, nonpolicy-influencing jobs was cited by ORS as evidence of employment discrimination.¹⁵ Of 78 full-time employees, 47 are black males, 1 is a black female, 4 are white females, and 26 are white males. Among the 47 black men, 42 are paid the city's lowest annual wage for full-time employment—\$5,512. Primarily, the 42 work as laborers, equipment operators, or truck drivers. Their tenure with the city varies from 1 month to 15 years. The other five black men who work for the city full-time include four police officers and one firefighter. The only black woman employed by the city is a "maid." Other black women who work for the city part time are also "maids."¹⁶

Among part-time employees, it is interesting to note that the department of recreation employs three persons (in addition to the full-time director) whose salaries range from \$30 to \$115 a week. In a town where 48 percent of the population is black and 50 percent or more is female, all of the recreation department's personnel are white males.¹⁷

Mr. Peterson's letter did note observations of the ORS investigator regarding streets, sidewalks, curbs, storm drains, and fire hydrants, although he did not state that Mullins discriminated in the provision of those services or facilities.

Although most streets are paved, Mr. Peterson noted that those that are not paved are in minority neighborhoods and do not meet the State's 40-foot-right-of-way requirement.¹⁸ The city supervisor, W.

S. Bryant, told the ORS investigator that the city intended to pave those streets at the city's expense.

Water and sewer services are available to all homes in the city, and in residential areas' sidewalks, curbs, and storm drains "are provided on a substantially equal basis," according to the ORS. Yet Mr. Peterson's letter also noted, "Drainage is accomplished to a greater degree through the use of underground pipe in white neighborhoods."¹⁹

Mr. Peterson's letter also stated that records of the city were "adequate to establish that in all cases where the city has installed underground pipe, the cost of the pipe was paid by the property owner."²⁰ The records of the city examined by the South Carolina Advisory Committee contradict this statement. (See discussion in chapter 3.)

The ORS review showed also that all homes in white and minority neighborhoods have fire hydrants within 1,000 feet.

In order to come into compliance with the civil rights requirements of ORS, Mr. Peterson requested that the city (1) advertise the policy with regard to street lights and install lights as needed; and (2) file an affirmative action plan, publicize job vacancies, and take other measures to assure equal opportunity for minorities and women who might seek employment with the city. The city was also requested to submit an annual report by June 1 of each year describing their progress toward compliance.

The city did prepare the materials and take action in regard to street lighting and employment as requested by ORS. The city was not required to make any improvements in street paving and storm drains, despite the inequities noted by the ORS investigator.

In July 1977 the city of Mullins submitted an affirmative action plan and other materials that documented their compliance with the ORS request made in Mr. Peterson's letter of April 1977.²¹ On August 2, 1977, the city of Mullins was notified by a letter from the Director of ORS, Bernadine Denning,

however, was reflected in the city's weekly payroll report of February 1978 and was correct at that time. The city's response on this matter did not mention the employment of any women in the recreation department; it is assumed, therefore, that the department is still all male.

¹⁸ Mr. Peterson's reference to a 40 foot right-of-way "requirement" is erroneous. As discussed in chapter 2, State law provides the highway department with broad discretion with regard to minimum widths of rights-of-way in municipalities. A minimum width of 50 feet is preferred but this has and can be reduced by the State highway department.

¹⁹ Peterson Letter, p. 2.

²⁰ Ibid.

²¹ J. L. Hardwick, Jr., letter to Bernadine Denning, Director, Office of Revenue Sharing, U.S. Department of Treasury, July 15, 1977.

¹⁵ Kent Peterson, Acting Director, Office of Revenue Sharing, U.S. Department of Treasury, letter to J. L. Hardwick, Jr., mayor of Mullins, Apr. 21, 1977, p. 3 (hereafter cited as Peterson Letter).

¹⁶ City of Mullins, "Statement of Weekly Payroll, Effective February 9, 1978."

¹⁷ In his comments on the draft report Mayor J.L. Harwick, Jr., said:

[T]he city does employ a white full-time recreation director; however, also employed by CETA in the city of Mullins is a black full-time assistant recreation director. Others, both black and white, are employed part time.

J.L. Hardwick, Jr., mayor of Mullins, letter to Bobby D. Doctor, Regional Director, Southern Regional Office, USCCR, June 21, 1978.

The Advisory Committee is pleased to be informed of these new developments. The employment pattern as stated in the text,

that "Information submitted under cover of your letter is adequate to constitute compliance with the remaining request contained in our letter to you dated April 21, 1977."²² With the exception of receiving an annual report in June 1978, the ORS has completed its investigation and conciliation work in Mullins.

Other Federal Funds

Over the last 10 years the city of Mullins has received approximately \$1.6 million from the Environmental Protection Agency and the Economic Development Administration. The funds were awarded for planning and executing improvements and expansion of the water and sanitary sewer systems in the city.²³ As evidenced by the discussion

²² Bernadine Denning, Aug. 2, 1977.

²³ William S. Bryan, supervisor, city of Mullins, interview in Mullins, Nov. 19, 1976.

of those systems in chapter 4, water and sewer services are provided, though to varying degrees, to virtually every household in the city.

The city has applied, on more than one occasion, for funds from the U.S. Department of Housing and Urban Development (HUD), but to date no grants have been awarded. Funds for a variety of municipal services, including street improvement, storm drainage, recreation, and housing are available from HUD under the Housing and Community Development Act of 1974. The request for funds from HUD that was submitted in 1977 note the "inadequate and inefficient" storm drainage system, the need for paving streets in low-income areas, and "inadequate" recreation facilities.²⁴

²⁴ City of Mullins, Preapplication for Housing and Community Development Funds, Jan. 3, 1977.

Chapter 7

Concerns of the Minority Community

As far back as 1967 black residents were talking with the city council about what they considered discriminatory treatment of blacks by the city. The minutes of the October 12, 1967, city council meeting stated that a petition alleging discrimination against certain neighborhoods was presented to the council. The city council at the November 9, 1967, meeting requested that the signers of the petition come before the council:

. . . in order that these items could be discussed along with our City Engineer as to the improvement that could be improved. The Council also expressed that it was not the desire to discriminate against anyone or the Negro sections as outlined in the Petition.¹

Although those discussions were held, the request for storm sewers, curbs, and street lights was not honored.

A January 1976 letter from the citizens group, "Operation Help," asked the city council to investigate disparities in municipal services. By March the city had not responded to the request and the citizens made the same request through a certified letter to the Governor's Office of Citizens Service.² After receiving no response, the citizens then took their complaints to the Federal Office of Revenue Sharing and the investigation that followed is discussed in chapter 6 of this report.

As the 1967 and 1976 examples illustrate, minority residents of Mullins have taken their complaints about municipal services through proper channels within the city as well as to the county, the State, and, finally, to the Federal Government. Their efforts to alleviate flooding in their yards and

eliminate the hazards of open ditches have produced little, if any, positive results. Improvements have been made on some streets that qualified for farm-to-market funds.

Members of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights and staff of the Commission met with approximately 40 black residents who expressed their opinions about the inequities in municipal services provided to black and white city residents.³ Several residents reported seeing water moccasins and eels in drainage ditches. The most frequent complaints were that the stagnant water in the ditches allows mosquitoes and other insects to breed and gives off foul odors. The safety of children who play near the ditches was a primary concern. One Advisory Committee member noted that she had seen ditches big enough to accommodate an automobile.⁴ The lack of paved streets, poor quality paving, and flooding that made it difficult to get out of the house were also frequently heard complaints.

Citizen after citizen reiterated that they had called city hall about all of these problems. City personnel would refer them to a county official, who would in turn refer them back to city hall. The black residents definitely believed that they "got the run around" from officials at all levels.

Black citizens living west of the Mullins city limits cited their unsuccessful efforts in 1964 to be annexed as another example of the unresponsiveness of city officials.⁵ Minutes of the city council meeting held November 12, 1964, reported that no action was taken when a petition for annexation signed by 55

¹ City of Mullins, city council meeting minutes, Nov. 9, 1967.

² Courtney Sicheloff, equal opportunity specialist, U.S. Commission on Civil Rights, memo to file, re meeting in Mullins, Nov. 19, 1976.

³ Courtney Sicheloff, memo to file, re meeting in Mullins, June 15, 1977 (hereafter cited as Sicheloff Memo, June 15, 1977).

⁴ Septima Clark, member, South Carolina Advisory Committee, U.S. Commission on Civil Rights, memo to Courtney Sicheloff, Mar. 31, 1977.

⁵ Sicheloff Memo, June 15, 1977.

blacks was presented. The area in question is still outside the city limits.

In contrast, white-occupied areas north and south of Mullins appear to have been easily annexed in 1956. When members of the school board appeared before the city council requesting annexation of the area south of the city limits where a school was to be

⁶ City of Mullins, city council meeting minutes, Jan. 17, 20, and Feb. 9, 1956.

built, the city council offered to help in getting the number of signatures required for a referendum. The referendum was held, and less than 1 month later that area was part of the city.⁶ At the March 1, 1956, council meeting the annexation of the area north of Mullins was discussed; a week later a petition was presented and a referendum was held soon after.⁷

⁷ Ibid.; city council meeting minutes, Mar. 3 and 8, 1956.

Findings and Recommendations

The South Carolina Advisory Committee to the U.S. Commission on Civil Rights finds that inequities in provision of services to black residents in Mullins exists in three out of the five major municipal services studied. Many changes made in recent decades in policies governing the distribution of and financial responsibility for municipal services, while seemingly neutral, have adversely affected minority residents of Mullins.

In every municipal service studied, public money—Federal, State, local, or combinations thereof—has been used to build or expand the services in question. At times, property owners paid part of the cost. Nevertheless, the Advisory Committee restates the proposition supported by the U.S. Constitution and Federal law that when public funds of all citizens are used to benefit some while excluding others, and the race of those persons denied benefits differs from persons receiving benefits, then racial discrimination exists. Such is the case in Mullins, South Carolina.

The Advisory Committee is aware that the segregation of and discrimination against blacks which has historically existed in the South led, in large part, to the racial disparities in municipal services between blacks and whites that are found in Mullins today. The fact that such disparities were created in the past, however, neither relieves the local government of its responsibility to eradicate the disparities nor excuses the continuing failure to do so. This is particularly true when Federal monies are available and, as warranted, mandated to be used for the purpose of equalizing services.

Therefore, based on the detailed investigation of municipal services in Mullins, the South Carolina Advisory Committee to the U.S. Commission on Civil Rights submits the following findings and recommendations to the U.S. Commission on Civil

Rights, the South Carolina Legislature, and to the mayor and city council of Mullins. The Advisory Committee offers its support to Mullins officials in any efforts to acquire public monies, in addition to those already available, needed for improvement in services.

Findings: Roads

More households occupied by black residents (83) are served by the 21 poorly paved or unpaved streets than are white occupied households (13). Prior to 1951 the city was solely responsible for the paving of roads. Public money was used, and the city would condemn property if needed although no minimum width was required. Often, property owners paid some of the cost. Since 1952 the city has been responsible for requesting that the State pave local streets using the special public funds—farm-to-market program funds—provided through tax revenue. Approximately \$536,000 was available to Marion County on July 1, 1978. An additional \$233,908 was programmed but unspent. State money from another fund is available for acquiring the property needed for adequate right-of-way.

A minimum width of 66 feet is “required” for paving a street, although the State has the authority to grant exceptions to this requirement and has often done so. The city no longer will condemn property in order to acquire any minimum width needed for paving. Roads now regarded as too narrow to pave were constructed with the city’s approval, and it is only at the initiation of the city that they can be paved. Today, unpaved streets, virtually all of which are in black neighborhoods, exist because the city has not requested that they be paved or has not condemned property needed for adequate rights-of-way so the street can be paved. Even on those streets where existing structures make the acquisition of the most desired rights-of-way impractical, it is clear that

the State highway department can, and likely will, improve the streets to the maximum extent allowable if the city asks to have the job done.

Given these circumstances, the Advisory Committee concludes that the policies now in existence have adversely affected black residents and resulted in disparities in the quality of streets serving blacks and whites. The city has failed to offset the discriminatory results of these policies.

Findings: Storm Drainage

The most inefficient drainage systems, open ditches, that cause health and safety problems, the deterioration of homes, and other property serve 60 percent of the black households compared to 8.36 percent of the white households. Prior to the advent of the farm-to-market program, drainage systems were built with public funds, often in conjunction with paving projects and sometimes strictly at the requests of citizens. Despite the availability of farm-to-market funds, except in some cases when the city paid for tile, since 1951 citizens have been required to pay the cost of materials while public money is still used for construction costs. Presently, drainage construction is often done in conjunction with paving projects, as it was before 1951.

The majority of black households today, therefore, are served by a system inferior to the system provided to the majority of white households despite the fact that much of the superior system was built with public funds. The fact that this disparity still exists 27 years after the city changed its policy from using public funds to assessing improvements aggravates, rather than excuses, the disparity.

Although public funds, specifically those from the Office of Revenue Sharing (ORS) and farm-to-market program, are and have been available and can be used to equalize the obvious and hazardous disparities found in the Mullins storm drainage system, city officials have not chosen to do so. The city applied for but has been denied other public funds to improve the system.

Findings: Sidewalks

Fewer black households have sidewalks than white ones. In Mullins, 277 black households and 47 white households are without sidewalks within the original 1-mile square city limit. Whereas both public and private money paid for sidewalks prior to 1954, only public money (with at least one exception) has been used since then. At its discretion, the city can use farm-to-market funds to pay for State-built sidewalks

when the adjacent street is paved. The city, however, has chosen to do so only in isolated incidences.

Findings: Water and Sewer Services

Based on the best evidence available, it appears that sewer service and water for domestic purposes are provided on an equitable bases to all residents. The Advisory Committee must note, however, that the issue of water for adequate fire fighting remains unresolved.

Maps of the water system, verified by city officials, show that 54.99 percent of Mullins black residents compared to 38.48 percent of the white residents are served by 2-inch diameter water pipes. Yet city officials maintain that all residents are within 1000 feet of a fire hydrant on at least a 6-inch pipe and therefore have adequate amounts of water for fire fighting. This contention could not be verified by the Advisory Committee's consulting engineer with the maps of the water system available. In addition, a fire hydrant on a 6-inch pipe would not necessarily have sufficient water pressure to adequately fight a fire. Given the lack of verification surrounding this issue, the Advisory Committee has serious questions about the city's ability to fight fires at homes served by 2-inch water pipes, the majority of which are occupied by blacks.

The city's policy regarding the financing and building of the water and sewer systems have remained unchanged in recent decades. Public money has always been used.

Findings: Office of Revenue Sharing Compliance Review

The Office of Revenue Sharing, U.S. Department of Treasury, conducted a compliance review in Mullins to determine if the city discriminated in employment and in the provision of municipal services. After a day and a half visit in Mullins, ORS officials ruled that the city discriminates in employment and in the provision of street lighting.

The South Carolina Advisory Committee concurs with ORS's finding of discrimination against women and minorities in employment. Equity in street lighting was not reviewed by the Advisory Committee. The Advisory Committee strongly disagrees with the ORS findings related to other municipal services. In its written report, the ORS referenced unpaved streets in black residential areas and more underground storm drainage pipe in white neighborhoods than in black ones, yet, did not cite the city for discrimination in those areas.

It is the opinion of the Advisory Committee that the ORS compliance review of the complex municipal services and the delivery of those services was inadequate. The ORS cannot fulfill its responsibility to enforce the nondiscrimination provisions of the State and Local Fiscal Assistance Act of 1972, as amended, until adequate guidelines for review of municipal services are promulgated and properly trained and sufficient staff is available to conduct the reviews.

Findings: Use of Revenue Sharing Funds

The officials of the city of Mullins have failed to use its revenue sharing funds to overcome the effects of the discriminatory provision of services. Despite the obvious disparities in municipal services provided to black and white residents, city officials have chosen to use only token amounts of these public funds to ameliorate the imbalance. The majority of the money has been used to renovate the city hall, pay the salaries of city personnel, and purchase several hundred thousand dollars worth of equipment and vehicles. The Advisory Committee realizes that these uses of revenue sharing monies are beneficial to the city as a whole and thus to all its citizens, but priority has not been given to overcoming the disparities in services to racial minorities.

The Advisory Committee finds that the best use of revenue sharing funds is to overcome the effects of any and all discriminatory practices of a recipient government. This fundamental concept of justice should apply regardless whether the program or activity that causes or perpetuates the discrimination is *directly* funded with revenue sharing funds. Any use of revenue sharing funds that fails to address discrimination, in a very real sense, is a use of revenue sharing funds that entrenches, subsidizes, and encourages otherwise illegal discrimination. To the extent that the current law allows such a result, the law should be changed.

Findings: Public Involvement in Determining the Use of ORS Funds

The city of Mullins violated the spirit of the public involvement provisions in determining the use of revenue sharing funds as required by the State and Local Fiscal Assistance Act of 1972 as amended. Although the city did hold a public hearing and publish a notice prior to the hearing, as required, it did not actively solicit citizen comment on use of the funds. Since the city staff had already developed a specific plan for the use of the funds, the Advisory Committee believes that a sincere interest in attain-

ing public comment would have resulted in a wider dissemination of the plan and a more active solicitation of public reaction to it.

Given the total absence of blacks as policymakers among the city staff, only one black elected city official out of seven, and the fact that black residents previously had expressed dissatisfaction with municipal services, the need for genuine public involvement in Mullins was and remains critical.

Having a plan for the use of revenue sharing monies prepared by city staff and perfunctorily approved by the city's elected officials does not, in the opinion of the Advisory Committee, constitute public involvement.

Recommendation: Equalize Services

The city, in cooperation with the county legislature delegation, should develop a plan to pave roads and improve drainage systems in black neighborhoods to the extent that parity will be achieved with similar services provided in white neighborhoods. The plan should be developed after city officials and residents have discussed the needs of black neighborhoods. It should then be widely disseminated for public review and comment prior to official adoption.

Officials and residents should be mindful that road paving and storm drainage are not the only critical services in which inequity exists between black and white neighborhoods. These services, however, should be equalized immediately. The Advisory Committee believes it is fair and reasonable, in view of the racial disparities in services and the city's continuing failure to eradicate such disparities, that black residents not be assessed for equalizing services even though some assessments to property owners were made in the past for roads and drainage.

Specifically, with regard to the plan to equalize the distribution of paved roads and adequate storm drainage, the Advisory Committee makes the following recommendations:

The 13 unpaved and 3 poorly paved roads serving black neighborhoods should be paved. Curbed gutter and storm sewers should be installed so that 42.18 percent of the black households will be served by such systems the same as white households. The narrow streets should have priority in receiving curbs and drainage tile, since using the additional width needed to build contoured ditches would unjustly impinge upon the useful yard space of property owners.

In order to resolve the issue of adequate water supply for fire fighting, the city should test all fire

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hydrants to determine if they have sufficient water pressure for fighting fires. The need to do so is especially critical in those neighborhoods where houses are served by 2-inch water pipes even when nearby hydrants are on 6-inch pipes. The results of the test and the city's plan to correct any deficiencies should be disseminated to the public.

In the future, after equity has been achieved in the distribution of paved roads, adequate storm drainage, and water services city officials and residents should consider developing a plan to equalize the provision of sidewalks. Procedures, as stated earlier, for public involvement in developing the plan should be followed. Any plan developed for sidewalk construction should give priority to achieving parity within the original 1-mile square city limit where 277 black households compared to 47 white households are without sidewalks. Since public monies were the major source for sidewalks and the exclusive source for the water system, the Advisory Committee recommends that black residents not be assessed for the cost of upgrading or testing related to these services.

Recommendation: Assure Nondiscrimination in the Use of Farm-to-Market Funds

The South Carolina Legislature should enact legislation that clearly prohibits discrimination in the use of farm-to-market program funds. Such legislation should explicitly charge the South Carolina Department of Highways and Public Transportation with responsibility for determining whether disparities exist in the conditions of streets or roads and related services serving black and white citizens. Furthermore, overcoming such disparities should be a major criteria in determining which streets and related services will be improved, as requested by local governments through their legislative delegations.

Recommendation: Acquire Property for Improvements

On occasions when the city cannot acquire the approval of two-thirds of the property owners to secure the right-of-way needed to make improvements that are suggested in the plan to equalize services, the right of eminent domain should be exercised. This is the policy used in years past and the Advisory Committee believes no less should be done to bring improvements to black neighborhoods.

Recommendation: Improve ORS Efforts in Ensuring Nondiscrimination and Public Involvement in the Use of Revenue Sharing Funds

The Advisory Committee recommends that the U.S. Commission on Civil Rights urge the Secretary of the U.S. Department of the Treasury to take the following action regarding the Office of Revenue Sharing: The Office of Revenue Sharing should issue regulations which clearly *require* rather than merely "encourage," recipient governments to overcome service inequalities due to past discrimination in any programs or activities funded in whole or in part with revenue sharing funds.

Specific guidelines should be developed by ORS to identify inequities in services. Not only should the current conditions of services be considered but also the effect of policies for financing and acquiring such services. An expert consultant, retained by but independent of the local government, should conduct the evaluation. The cost of the evaluation should be designated a legitimate use of ORS monies.

In addition, the ORS should develop guidelines for making the required public hearing a meaningful opportunity for citizen involvement. Standards for adequate public involvement should include consideration of the characteristics of citizens who are advised of plans for spending ORS money—the race, sex, age, ethnicity, religion, and handicapped status of citizens. Specific notice and opportunity for comment should be given to various community groups including civil rights and women's rights organizations.

Recommendation: Conduct a National Study

The South Carolina Advisory Committee urges the U.S. Commission on Civil Rights to undertake a national study of discrimination in the provision of public services in rural and other nonmetropolitan areas.

The project would examine existing and potential Federal programs and policies for the purpose of arriving at a national policy on equalization of public services. In particular, the need for legislation designed to require amelioration of *all* discriminatory provision of services as a condition of receiving revenue sharing funds should be considered. The roles of Federal, State, and local governments in equalizing public services should be examined and recommendations for appropriate changes in programs and legislation made.

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