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FILE NO. S-660

**ELECTIONS:**  
**Division of Precincts**

Honorable Jack Hoogasian  
State's Attorney  
County of Lake  
County Building  
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your recent letter wherein you state:

"Ch. 46, Sec. 11-2, Illinois Revised Statutes, describes the time and method a county board is to fix precincts and places of election which, among other things, states that the county board 'shall at its regular meeting in June, divide its election precincts which contain more than 800 voters, into election districts so that each district shall contain, as near as may be practicable, 500 voters, and not more in any case than 800.'

At its June meeting the county board adjourned the question until July, at which time they unanimously redrew precinct lines and established new precincts, in many instances containing more than 800 voters. In some precincts where the registered voters totaled in excess of 800, no change was affected.

Seventy-eight precincts having an excess of 800 voters were not affected by any boundary change. Ten precincts were reduced in number of registered voters but still remain in excess of 800 voters in the adjusted boundary precinct change. Nine precincts had a boundary change from in excess of 800 voters to less than 800 voters. Four precincts with less than 800 voters were increased from a lower figure and still remain less than 800 voters in the adopted precinct boundary change. Attached is a copy of a list indicating the precincts with an increase or decrease number of voters resulting in the precinct boundary change. The total number of precincts in Lake County totals 234. This figure is predicated on the number of precincts prior to the purported change.

Your opinion as to whether the county board acted legally and properly is appreciated. If per chance the action of the Board is improper, what are the consequences.

In Stroud v. McCallen (1944) 386 Ill. 104, the Supreme Court discussed the re-districting of a precinct but, since there is time and if the County Board did act wrongfully, must the County Board revert back to the old boundary lines or must the County Board set aside and amend its act of July, 1973.

Your opinion in this matter will be appreciated."

The controlling statutory provision is section 11-2 of "The Election Code", (Ill. Rev. Stat., 1971, ch. 46, par. 11-2) which provides as follows:

"The County Board in each county, except in counties having a population of 3,000,000 inhabitants or over, shall, at its regular meeting in June, divide its election precincts which contain more than 800 voters,

into election districts so that each district shall contain, as near as may be practicable, 500 voters, and not more in any case than 800. Whenever the County Board ascertains that any election precinct contains more than 600 registered voters, it may divide such precinct, at its regular meeting in June, into election precincts so that each precinct shall contain, as nearly as may be practicable, 500 voters. In determining whether a division of precincts should be made, the county board may anticipate increased voter registration in any precinct in which there is in progress new construction of dwelling units which will be occupied by voters more than 30 days before the next election. Each district shall be composed of contiguous territory in as compact form as can be for the convenience of the electors voting therein. The several County Boards in establishing districts shall describe them by metes and bounds and number them. And so often thereafter as it shall appear by the number of votes cast at the general election held in November of any year, that any election district or undivided election precinct contains more than 800 voters, the County Board of the county in which the district or precinct may be, shall at its regular meeting in June, or an adjourned meeting in July next, after such November election, redivide or readjust such election district or election precinct, so that no district or election precinct shall contain more than the number of votes above specified. If for any reason the County Board fails in any year to redivide or readjust the election districts or election precinct, then the districts or precincts as then existing shall continue until the next regular June meeting of the County Board; at which regular June meeting or an adjourned meeting in July the County Board shall redivide or readjust the election districts or election precincts in manner as herein required. \* \* \* \*

It can be observed that the statute provides that the county board (in counties less than 3,000,000) is required to

divide precincts containing more than 800 at its regular meeting in June. It further provides that if the votes cast at the general election in November shows that any precinct contains more than 800 voters, then the county board is required to redivide the precinct at its regular June meeting or adjourned meeting in July. It is clear that the intention of the statute is that precincts should not contain more than 800 voters and that the division or re-division be accomplished at its regular June meeting or adjourned meeting in July. According to the facts in your letter, it is apparent that the county board did not redivide or readjust precincts in strict conformity with the statute. Many precincts still contain in excess of 800 voters and it does not appear that an effort was made to have each election district contain as nearly as practicable, 500 voters. Much of the action of the board was, therefore, improper. You have asked what are the consequences of the action taken by the board. As you have indicated in your letter, the leading case on this subject is Stroud v. McCallen, 386 Ill. 103. In this case it was held that where there is nothing to indicate that if the provisions of a statute requiring redistricting

of voting precincts had been strictly followed the result of an election would have been different, or that any qualified voter was deprived of his right to vote or that anyone voted who was not entitled to vote, the statute as to the particulars required in redistricting will be construed as directory and not as mandatory. The court, in effect, upheld the action of the county board even though the statute was not strictly followed.

You have specifically asked if part of the action taken by the county board was improper, whether or not the county board must revert back to the old boundary lines or whether the county board should set aside and amend its act of July, 1973. In this connection, it should be noted that the statute states that if the county board fails in any year to redivide or readjust its election district or precinct, then the districts or precincts then existing shall continue until the next regular June meeting at which time or at an adjourned meeting in July the county board shall redivide or readjust the election districts or precincts. It appears from this language of the statute that the legislature intended that the redivision or readjustment only occur at a regular June meeting or at an adjourned meeting in July. Consequently, I am of the opinion

that action by your county board should not be taken until your next regular June meeting or at an adjourned July meeting. The legislature stated that if there was no redivision or re-adjustment in one year that the districts existing continue. Certainly if this is a fact it would also be the intention of the legislature to have the redivided or readjusted districts or precincts continue until the next regular June meeting or adjourned meeting in July at which time the county board should redivide or readjust the election districts or precincts. To ascertain the meaning of the statute, it is necessary to find the intention of the General Assembly in the words used in the statute. (New National Coal Corp. v. Industrial Commission, 373 Ill. 468.) In seeking to give effect to the intention of the General Assembly, the courts are not controlled by the literal meaning of the language used in the statute, but they must consider the spirit of the enactment and, if possible, construe the statute in accordance therewith. (People ex rel. Jackson & Morris v. Smuczynski, 345 Ill. App. 63; Forest Preserve District of Cook County v. Jesse, 275 Ill. App. 397.) The meaning of the words used in a statute may be enlarged or restricted

according to their real intent. Petterson v. City of Naperville, 9 Ill. 2d 233; Kloss v. Suburban Cook County Tuberculosis Sanitarium District, 404 Ill. 87.

Furthermore, a county board can exercise only such powers as are expressly given by law or such as arise by necessary implication from the powers granted or are indispensable to carry into effect the object and purpose of its creation. Abbott v. Adams County, 214 Ill. App. 201; Dahnke v. People, 168 Ill. 102.

Nevertheless, your attention is called to the provisions of section 11-5 of "The Election Code", (Ill. Rev. Stat. 1971, ch. 46, par. 11-5) which provides as follows:

"If any election district subject to the jurisdiction of a county board casts more than 800 votes each at two consecutive general November elections for State officers or if, at such elections, any election precinct subject to the jurisdiction of a board of election commissioners casts more than 600 votes at each such election, the state's attorney, upon the request of an elector in any such district or precinct, shall apply to the Circuit Court for a writ of mandamus to compel the appropriate board to divide such district or precinct as required by law. Any writ so granted shall not apply to any election occurring within 60 days thereafter."

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If the aforesaid section of "The Election Code" is applicable, the state's attorney, upon the request of any elector in the district or precinct, shall apply to the circuit court for a writ of mandamus to compel the appropriate board to divide such district or precinct as required by law.

In conclusion, unless section 11-5 of "The Election Code" is applicable, I am of the opinion that even though much of the action of the board was improper, the redivided or readjusted election districts or precincts should continue to exist until the next regular June meeting of the county board or until the adjourned July meeting at which time the county board should redivide or readjust the election districts or precincts pursuant to the statute.

Very truly yours,

A T T O R N E Y G E N E R A L