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SPRINGFIELD

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FILE NO. S-1438

COUNTIES:
Filling of a County
Board Vacancy

Honorable Patrick M. Walsh
State's Attorney, Macon County
307 County Building
Decatur, Illinois 62523

Dear Mr. Walsh:

I have your letter relating to the filling of a vacancy on the county board of Macon County. The vacancy in question occurred on September 29, 1978, and was filled by appointment on November 14, 1978, subsequent to the 1978 general election. It is my understanding that the county board determined in December of 1978 that the appointment was illegal and has since denied the appointee his seat on the county board.

In light of the facts presented, you inquire whether the appointment in question was made in accordance with the provisions of section 25-11 of The Election Code.

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(Ill. Rev. Stat. 1977, ch. 46, par. 25-11.) You also inquire whether, since the county board found the appointment in question "illegal", the board must recognize the validity of the appointment. For the reasons hereinafter stated, it is my opinion that the appointment made on November 14, 1978, was made in accordance with section 25-11. It is also my opinion that the appointee has been legally a member of the board since the day of his appointment and that nothing in the law authorizes the board to deny the appointee his position as board member.

Section 25-11 of The Election Code provides in pertinent part as follows:

"When a vacancy occurs in the office of County Commissioner or county board member in any county with a population of less than 3,000,000 inhabitants, the vacancy shall be filled within 60 days by appointment of the chairman of the county board with the advice and consent of the county board. The appointee shall be a member of the same political party as the person he succeeds was at the time of his election and shall be otherwise eligible to serve as County Commissioner or county board member. The appointee shall serve until the next election of County Commissioners or county board members in the county. In the case of a vacancy in a seat on a county board which has been divided into districts under 'AN ACT relating to the composition of an election of county boards in certain counties', approved October 2, 1969, as amended, the appointee must also be a resident of the county board district.

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Because the appointment in question was made within 60 days of the occurrence of the vacancy by the chairman of the county board with the advice and consent of the county board, it was clearly made in accordance with the above provision.

I understand that the reason the appointment made on November 14, 1978 has been questioned is that the vacancy occurred prior to the 1978 election but was filled after that election. The county board clearly has 60 days in which to act upon a vacancy. The appointee chosen is to serve until the next election of county board members in the county. It is apparent from the language of section 25-11 that what is the next election is not determined at the time the vacancy occurs but at the time the appointment is made.

Had the appointment in the present situation been made prior to the 1978 election, the appointee would have served only until that election. Because the appointment was not made until after the 1978 election, the appointee will serve until the next election of county board members.

The board acted properly in the making of the appointment on November 14, 1978. It certainly could have acted prior to the 1978 election had it chosen to do so, but

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it did not. The failure of the board to act prior to the election does not in any way affect the validity of the action taken by the board.

Very truly yours,

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