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FILE NO. S-1069

ELECTIONS:  
Rules Regarding the  
Conduct of a Special  
Primary.

Honorable Michael M. Mihm  
State's Attorney  
Peoria County  
Peoria, Illinois 61602

Dear Mr. Mihm:

I have received your letter wherein you state that a vacancy has arisen in the office of sheriff of Peoria County and that a special primary election will be held on August 31 to nominate candidates to fill that vacancy. The first question you raise is whether it is possible to consolidate precincts for such an election.

Section 11-2 of The Election Code (Ill. Rev. Stat. 1975, ch. 46, par. 11-2) deals with the power of county

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boards to establish precinct boundaries. It provides in relevant part:

"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. \* \* \* "

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It is evident from the language of the legislature that precinct and district boundaries are to be determined in a manner consistent with the population limits provided in the statute. Nowhere in section 11-2 is there any indication of an intent on the part of the General Assembly that county boards be given the power to consolidate election precincts or districts.

With regard to the actual establishment of polling places, section 11-2 provides that:

" \* \* \* The County Board in every case shall fix and establish the places for holding elections in its respective county and all general and special elections, town meeting elections or town elections, shall be held at the places so fixed. The polling places shall in all cases be upon the ground floor in the front room, the entrance to which is in a highway or public street which is at least 40 feet wide, and is as near the center of the voting population of the district or precinct as is practicable, and for the convenience of the greatest number of electors to vote thereat; provided, however, where the County Board is unable to secure a suitable polling place within the boundaries of a precinct, it may select a polling place at the most conveniently located suitable place outside the precinct; but in no case shall an election be held in any room used or occupied as a saloon, dramshop, bowling alley or as a place of resort for idlers and disreputable persons, billiard hall or in any room connected therewith by doors or hallways. \* \* \* "

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I do not interpret this passage as an implied grant of power to consolidate precincts by establishing centralized polling places. In speaking of a "suitable polling place" the legislature clearly was referring to those buildings which fit the statutory description provided in section 11-2 itself. The plain meaning of the quoted language is that the power of county boards to establish polling places outside precinct boundaries is limited to those instances when a board is "unable" to locate such a building.

Sections 11-3 and 11-4 of The Election Code (Ill. Rev. Stat. 1975, ch. 46, pars. 11-3 and 11-4) apply to those sections of the county which may be subject to a board of election commissioners elected pursuant to Article VI of The Election Code (Ill. Rev. Stat. 1975, ch. 46, pars. 6-1 et seq.) The provisions of those sections are, for purposes of your question, identical to those of section 11-2.

It is therefore my opinion that neither county boards nor boards of election commissioners have the power to consolidate precincts under the circumstances you describe.

Your second question deals with the filing of nominating petitions and that portion of section 7-12 of The

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Election Code (Ill. Rev. Stat. 1975, ch. 46, par. 7-12)

which states that:

" \* \* \*  
Where the nomination is to be made for a county office or trustee of a sanitary district then such petition shall be filed in the office of the county clerk not more than 99 nor less than 92 days prior to the date of the primary.

\* \* \*

Applying the formula provided in section 7-12, the last day to file nominating petitions will be, as you point out, Monday, May 31, which is a holiday. You ask whether the period for filing nominating petitions can lawfully be extended through regular business hours on Tuesday, June 1 or whether it must end at the close of business hours on Friday, May 28.

Section 1.11 of "AN ACT to revise the law in relation to the construction of statutes (Ill. Rev. Stat. 1975, ch. 131, par. 1.11) states:

"The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday,

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Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded."

The courts of Illinois have applied section 1.11 on numerous occasions, but none of these cases involved a statute such as section 7-12 of The Election Code, which requires counting back from a fixed future date in order to establish a minimum and maximum time for the doing of an act.

As you note in your letter, in counting back from the scheduled date of the special primary the last day of the computation period is May 31, a holiday, and section 1.11 would therefore seem to require that it be "excluded." However, since section 7-12 requires counting backward rather than forward, the next business day in the series is Friday, May 28, not Tuesday, June 1.

This result is in line with a series of cases holding that where a statute requires the filing of a petition "not less than" a given number of days before the election, the fact that the last day falls on a weekend or holiday does not permit the filing to be made on the next business day following. Annot., 98 A.L.R. 2d 1331, 1357, (1964).

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One example of that series of cases is State v. Batchelor, 130 P. 2d 72 (Wash. 1942). The statutes there are in all material aspects identical to sections 1.11 and 7-12. The Court points out that the primary purpose behind a statute which requires that nominating petitions be filed a certain period of time before an election is to give notice for that period of time to election officials and the public of a candidate's identity. The opinion goes on to say that such provisions are generally held to be mandatory and that as a result the time for filing may not be extended.

Much the same reasoning is evident in the decision of the California Supreme Court in Steele v. Bartlett, 116 P. 2d 780 (Cal. 1941). Once again the statutes involved are, for the purpose of your question, identical to those of this State. The court in the Steele case declares that to extend the time for the doing of an act that must be performed "not less than" a given number of days before a designated time would be to nullify the manifest intent of the legislature.

It is therefore my opinion that the provisions of section 1.11 do not permit the extension of the time

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for filing a nominating petition beyond the 92nd day pre-  
ceeding the election as provided for in section 7-12 of The  
Election Code, despite the fact that the 92nd day falls on  
a holiday. The period for filing such petitions with regard  
to the special primary you describe therefore ends at the  
close of business hours on Friday, May 28.

Very truly yours,

A T T O R N E Y   G E N E R A L