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FILE NO. 83-007

SCHOOLS AND SCHOOL DISTRICTS:  
Application of Section 11-8 of  
The School Code

Honorable Norbert J. Goetten  
State's Attorney, Greene County  
Courthouse  
Carrollton, Illinois 62016

Dear Mr. Goetten:

I have your letter wherein you inquire whether section 11-8 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 11-8) applies to the election of members of the board of education of North Greene Unit School District No. 3, Greene and Scott Counties, Illinois [hereinafter North Greene District No. 3]. Section 11-8 establishes limits on the number of members of a board of education who may be elected from the

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same congressional township in certain districts which encompass more than one township or exceed specified territorial criteria. For the reasons hereinafter stated, it is my opinion that, because North Greene District No. 3 was created pursuant to article 7 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 7-1 et seq.; see also Ill. Rev. Stat. 1961, ch. 122, par. 7-1 et seq.), rather than pursuant to article 11 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 11-1 et seq.; see also Ill. Rev. Stat. 1961, ch. 122, par. 11-1 et seq.), it is not a community unit school district and thus, its board of education is not subject to the restrictions contained in section 11-8 of The School Code.

The establishment of North Greene District No. 3 was initiated by the submission of a petition from four existing school districts to the board of school trustees of Greene County, requesting the creation of a new district encompassing the territory served by the petitioning districts. At the time of the filing of the petition, section 7-2 of The School Code (Ill. Rev. Stat. 1961, ch. 122, par. 7-2) provided in pertinent part:

"New school districts lying within two or more counties may be created \* \* \* by the concurrent action of the county board of school trustees of (a) the county in which the county superintendent of schools has supervision over the district from which the petition seeks to have territory detached or if territory is proposed to be detached from a district or districts lying in more than

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one county, then the county board of school trustees in which the county superintendent has supervision over the greatest portion of such territory and (b) the county board of school trustees of the county in which the county superintendent of schools has supervision over the district to which the territory is proposed to be annexed or the proposed new district or consolidated district. The petition may be by the boards of each district affected. \* \* \*

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It appears that the board of school trustees of Greene County was the appropriate body to take action under both (a) and (b) of section 7-2.

On May 8, 1963, a public hearing on the petition was conducted pursuant to section 7-6 of The School Code (Ill. Rev. Stat. 1961, ch. 122, par. 7-6). The board of school trustees granted the petition to form a new district and entered its order so providing. Pursuant to section 7-13 of The School Code (Ill. Rev. Stat. 1961, ch. 122, par. 7-13), the county superintendent of schools thereafter called an election for the purpose of electing a school board for the newly-formed North Greene District No. 3. Since the establishment of community unit school districts is effectuated pursuant to section 11-6 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 11-6; see also Ill. Rev. Stat. 1961, ch. 122, par. 11-6) and requires referendum approval, it is clear that North Greene District No. 3 is not such a district.

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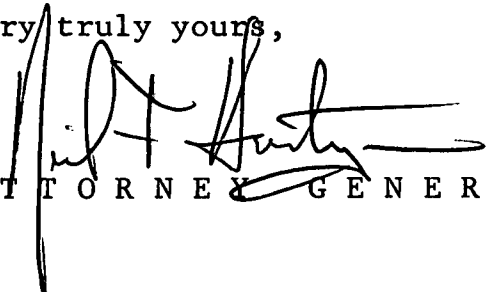
Section 11-8 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 11-8; see also Ill. Rev. Stat. 1961, ch. 122, par. 11-8) provides as follows:

"Holding of election. If a majority of the votes cast, as determined in the manner provided in Section 11-7, is in favor of the establishment of a community unit school district, the regional superintendent of schools shall forthwith order an election to be held on the next regular school election date, for the purpose of selecting a board of education for such district, to consist of 7 members which shall have the terms and the powers and duties of boards of education as defined in Article 10 of this Act, except as provided in Section 11-9 for members of the first elected board. However, for districts formed before January 1, 1975, if the territory of such district is greater than two congressional townships or 72 square miles, then not more than 3 board members may be selected from any congressional township, but congressional townships of less than 100 inhabitants shall not be considered for the purpose of such mandatory board representation, and in any such community unit school district where at least 75% but not more than 90% of the population is in one congressional township 4 board members shall be selected therefrom and 3 board members shall be selected from the rest of the district but in any such community unit school district where more than 90% of the population is in one congressional township all board members may be selected from one or more congressional townships. Whenever the territory of any community unit school district shall consist of not more than 2 congressional townships or 72 square miles, but shall consist of more than 1 congressional township, or 36 square miles, outside of the corporate limits of any city, village or incorporated town within the school district, not more than 5 board members shall be selected from any city, village or incorporated town in such school district."

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The language of section 11-8 clearly relates only to the election of boards of education of community unit school districts established by referendum pursuant to section 11-6 of The School Code, not to districts, such as North Greene District No. 3, which were established without referendum pursuant to article 7 of The School Code. Further, nothing in article 9 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 9-1 et seq.), which pertains to school elections, requires that the provisions of section 11-8 of The School Code apply to the election of members of a board of education established under article 7 of The School Code. To the contrary, section 9-12 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 9-12) provides alternate ballot forms for use in the election of school boards where the membership of the board is restricted as to area, and where the board is elected at large. Therefore, for the reasons hereinabove stated, it is my opinion that the provisions of section 11-8 of The School Code do not apply to the election of the board of education of North Greene Unit School District No. 3, of Greene and Scott Counties.

Very truly yours,



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