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SPRINGFIELD

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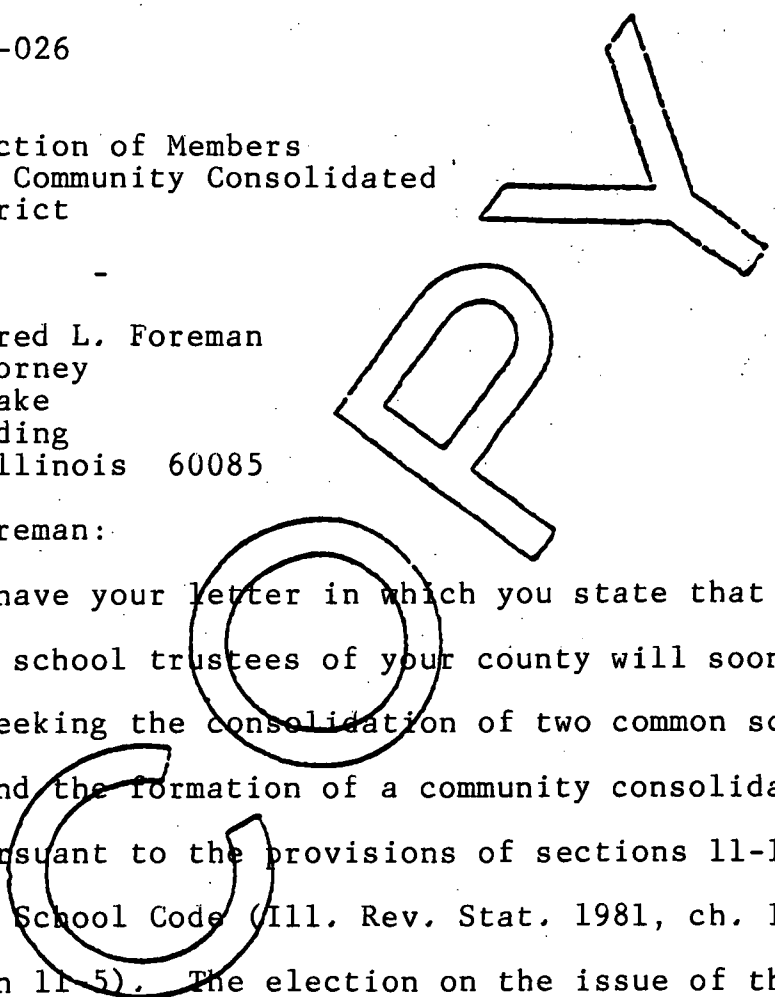
FILE NO. 82-026

ELECTIONS:
Date of Election of Members
of Board of Community Consolidated
School District

Honorable Fred L. Foreman
State's Attorney
County of Lake
County Building
Waukegan, Illinois 60085

Dear Mr. Foreman:

I have your letter in which you state that the regional board of school trustees of your county will soon receive petitions seeking the consolidation of two common school districts and the formation of a community consolidated school district pursuant to the provisions of sections 11-1 through 11-5 of The School Code (Ill. Rev. Stat. 1981, ch. 122, pars. 11-1 through 11-5). The election on the issue of the establishment of a community consolidated school district is to be held on November 2, 1982. You have inquired concerning the



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date for election of school board members should there be a favorable vote for the establishment of the community consolidated school district, and concerning the applicable dates by which nominating petitions must be filed for election to the office of school board member should subsection 2A-1.2(f) of The Election Code (Ill. Rev. Stat. 1981, ch. 46, par. 2A-1.2(f)) be applicable.

In response to your first question, it is my opinion that, if there is a favorable vote for the establishment of a community consolidated school district, an election for school board members is required to be held on the next regular school election date. Section 11-4 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 11-4) provides in pertinent part:

"If a majority of the electors voting at such election held within the territory of the proposed community consolidated school district vote in favor of the establishment of such community consolidated school district, the proposition shall be deemed to have passed and the regional superintendent of schools shall order an election to be held on the next regular school election date for the purpose of electing a board of education to consist of 7 members, * * *,"
(Emphasis added.)

The above-quoted statute is clear and needs no construction. There is no provision authorizing a school board election at the time of the referendum on the issue of the establishment of the community consolidated school district, nor is there a provision for a special election. The right to hold an election

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is not inherent, but must be conferred by constitutional or statutory provision. Bergeson v. Mullinix (1948), 399 Ill. 470, 476.

The date of the next regular school election is determined by the general election law (Ill. Rev. Stat. 1981, ch. 122, par. 11-3). Subsection 2A-1.2(e)(1) of The Election Code (Ill. Rev Stat. 1981, ch. 46, par. 2A-1.2(e)(1)) provides in pertinent part:

"(e) At the nonpartisan election in each odd-numbered year the following offices shall be filled in nonpartisan elections:

(1) Elected members of school boards, * * * ."

Subsection 2A-1.1(c) of The Election Code (Ill. Rev. Stat. 1981, ch. 46, par. 2A-1.1(c)) provides that the nonpartisan election "shall be held on the first Tuesday after the first Monday in November" in odd-numbered years. Therefore, the date for the election of school board members for a community consolidated school district, pursuant to section 11-4 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 11-4), would be the first Tuesday after the first Monday in November 1983.

Secondly, in the event that it is my opinion that subsection 2A-1.2(f) of The Election Code controls, you ask the applicable dates by which nominating petitions must be filed for election to the office of school board member. Subsection

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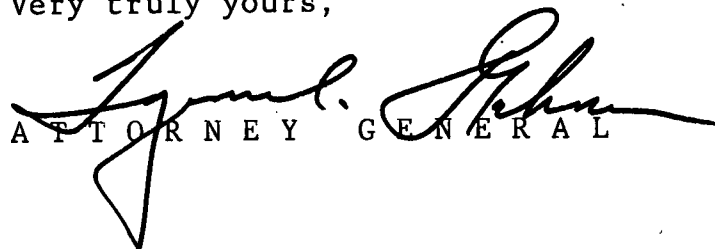
2A-1.2(f) of The Election Code requires the initial officers of a newly created political subdivision to be elected at the time of the referendum, if some other statute requires such an election. Subsection 2A-1.2(f) provides in pertinent part:

" * * *

Notwithstanding the regular dates for election of officers established in this Article, whenever a referendum is held for the establishment of a political subdivision whose officers are to be elected, the initial officers shall be elected at the election at which such referendum is held if otherwise so provided by law. In such cases, the election of the initial officers shall be subject to the referendum." (Emphasis added.)

Therefore, the initial officers of a newly created political subdivision are to be elected at the time of the referendum, if some other statute, such as the statute authorizing the referendum, so provides. There is, however, no statute which requires the initial school board members of a community consolidated school district to be elected at the time of the referendum on the issue of the establishment of such a school district. Therefore, subsection 2A-1.2(f) of The Election Code (Ill. Rev. Stat. 1981, ch. 46, par. 2A-1.2(f)) is not applicable.

Very truly yours,


ATTORNEY GENERAL