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September 23, 2015

Mr. Michael McCreery  
United Counties Council of Illinois  
217 East Adams Street, Suite 101  
Springfield, IL 62701

RE: Section 11-2 of the Election Code

Dear Mike:

You have asked for clarification of Section 11-2 of the Election Code, as you intend to combine small precincts to save costs connected with election judges, voting machines and rental of voting facilities.

### Division of Precincts

A county board is required to divide its election precincts that contain more than "800 voters" into election precincts of roughly equal size, with the goal that each of these precincts have approximately 500 voters, but in no case more than 800. If a county has more than "600 registered voters" in an election precinct, the division of the election precinct into smaller precincts is authorized but not mandated. In counties other than Cook, this division is to take place at the June county board meeting, or the July meeting if adjourned, following the November election, while in Cook County, the division shall take place in January.

If for some reason the county board fails to divide or redivide the election precincts at the June meeting, the county board should wait until the following June board meeting to effect such division of precincts.

If practicable, the precincts shall be within a single congressional, legislative and representative district and in not more than one county board district and one municipal ward. In order to keep the precincts within a single district, after each decennial census and the completion of congressional and legislative redistricting, the county board shall change the boundaries of the election precincts.

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The initial threshold that must be reached is the “800 voters”. Section 11-2 refers to “voters”, “registered voters” and at one point “number of votes”. In an informal opinion issued in 1989<sup>1</sup>, the Illinois Attorney General reviewed whether the threshold described in Section 11-2 is measured by the people who actually vote or registered voters. Referring to provisions in Sections 11-3<sup>2</sup> and 11-5<sup>3</sup>, the Attorney General concluded that there must be 800 votes cast before the county board is required to redistrict.

If 800 votes were cast at the previous November election in a city with a population of less than 500,000, the county board is to divide the election precincts into multiple precincts at the board meeting the following June. If the county board fails to effectuate this division at the June meeting, and if it is determined that more than 800 votes were cast at the last two general November elections, an elector of the election precinct can request that the state’s attorney petition the circuit court to compel the county board to divide the district as required by law. In a city with a population of 500,000 or more where more than 600 votes were cast at the last two general November elections for State officers, an elector of the election precinct can request that the state’s attorney petition the circuit court to compel the county board to divide the district.<sup>4</sup>

Be advised that each election authority is required to maintain permanent records of the boundaries of all political subdivisions located partially or wholly within its jurisdiction. Within five days after any redistricting, annexation, disconnection or adoption of any governmental boundary change, the local election official must provide the election authority with jurisdiction over the affected areas of any changes with notice of the changes, as well as provide a description of any boundary changes.<sup>5</sup>

As for consequences or liability of the county board for not dividing or redividing the election precincts at the June meeting as required, the courts, as well as the Attorney General, have determined that if there is no indication that the results of the election following the county board’s failure to divide or redivide the election precincts would have been different or that no qualified voters were denied the right to vote, then the statute requiring the county board to divide or redivide the election precincts will be construed as directory rather than mandatory.<sup>6</sup>

#### Clustering/Consolidating Precincts for Elections

Section 11-7 of the Election Code permits an election authority to cluster up to four contiguous precincts in a “clustered voting zone” when conducting a consolidated election, a consolidated primary election, a special municipal primary election or an emergency referendum.<sup>7</sup> Section 24-6 of the

<sup>1</sup> Ill Atty. Gen. Op. I-89-050, September 13, 1989

<sup>2</sup> Section 11-3 requires redistricting when the votes cast in any precinct, at any election, equal 800. 10 ILCS 5/11-3

<sup>3</sup> Section 110- provides that after two consecutive general elections in which an election district casts more than 800 votes per election, the state’s attorney, upon the request of an elector in the district, may seek to have the Circuit Court compel the appropriate board to redistrict. 10 ILCS 5/11-5

<sup>4</sup> 10 ILCS 5/11-5

<sup>5</sup> 10 ILCS 5/5-28.1

<sup>6</sup> Ill. Atty. Gen. Op. S-660, November 15, 1973. See also *Stroud v. McCallen*, 386 Ill. 103.

<sup>7</sup> 10 ILCS 5/11-7. Municipalities with more than 1,000,000 may not employ clustered voting zones.

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Election Code authorizes election authorities to consolidate or combine up to four contiguous election precincts into a "Consolidated Area" so that each voting machine will be utilized by as close to 500 voters as possible in order to effect the most efficient and economical use of the machines.<sup>8</sup>

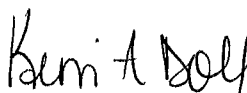
One election judge shall be appointed from each of the precincts unless the election authority specifies a larger number. The judges must represent both political parties. The judges appointed shall share authority over the clustered voting zone or consolidated area except that in cases of disputes as to entitlement to vote, challenges, counting of ballots or other matters pertaining directly to voting, the judge or judges appointed from the precinct in which the affected voter resides shall decide the matter.

Should you have additional questions regarding this matter, please contact us.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.

  
Herman G. Bodewes

  
Kerri A. Doll

HGB/KAD/mlm

**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

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<sup>8</sup> 10 ILCS 5/24-6