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FILE NO. S-476

**SCHOOLS AND SCHOOL DISTRICTS:
Validity of Petitions for Forming
Community Unit School Districts**

Honorable Joe Harrison
State's Attorney of Wayne County
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Dear Mr. Harrison:

I have your letters of April 21, 1972, and April 28, 1972, in which you raise certain questions concerning petitions for establishing community unit school districts. In your letter of April 21, you ask:

"Albert L. Miller, Superintendent of Educational Service Region, Wayne County, Illinois, has requested that I obtain an opinion from you concerning questions pertaining to a petition for the formation of unit school districts:

1. After the petition has been filed with the Superintendent, can the petition be withdrawn?

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- a. If so, what are acceptable procedures for the withdrawal of the petition?
2. After the Petition has been filed, is it permissible for names to be added to or withdrawn from the petition?
3. After a petition has been filed, can the committee of ten make changes in the petition which alter the boundaries specified in the petition?
4. Can the Superintendent of Educational Service Region approve the petition, but eliminate some of the territory included in the petition as long as the petition, as approved, is comprised of contiguous territory?"

In your letter of April 28, you further ask:

"On April 21, 1972, I wrote to you and requested an opinion concerning certain questions pertaining to a petition for the formation of Unit School Districts. Since that time, our Superintendent of Educational Service Region, Wayne County, Illinois, has requested that I obtain your opinion on the following matter.

After a petition for formation of a Unit School District has been filed with the Superintendent and only two of the persons designated as a committee of ten have actually signed the petition (the remaining eight persons designated as the committee of ten have not signed the petition), is the committee of ten so designated legally capable of functioning as a committee of ten?

If the committee of ten is not capable of legally functioning as a committee of ten, what procedure

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must be followed in order to have a valid committee of ten?"

Section 11-6 of The School Code, which provides for the establishment of community unit school districts, provides in relevant part as follows:

"A petition shall be filed with the regional superintendent of the region containing the greater percent of the assessed valuation of the proposed district than is contained in any other region in which assessed valuation of the proposed district is situated, signed by 200 or more voters residing within the territory and giving their respective addresses and the school district in which they reside. The petition shall: (1) request the calling of an election for the purpose of voting for or against the establishment of a community unit school district in the territory; (2) describe the territory comprising the proposed district; * * * (4) contain signatures of legal voters from at least 3/4 of the school districts or parts of districts in the territory included in the petition; (5) designate a committee of 10 of the petitioners as attorney in fact for all petitioners, any 7 of whom may make binding stipulations on behalf of all petitioners as to any question with respect to the petition or hearing and the regional superintendent may accept such stipulation instead of evidence or proof of the matter stipulated, which committee of petitioners may stipulate to accountings or waiver thereof between school districts; however, the regional superintendent may refuse to accept such stipulation; * * *."

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With respect to questions 1 and 2 in your April 21 letter, the case of People ex. rel. Bodecker v. Kramer, 397 Ill. 592 (1947), is controlling. In that case, our Supreme Court stated:

"The law is well stated that voluntary subscribers to a petition, such as the one on which the organization of this district was initiated, have the right to withdraw their names from such petition at any time before the petition is finally acted upon. (Citing cases)." 397 Ill. 592, 595.

Thus, where withdrawal of signatures from the petition causes the total number of signatures to fall below the statutory minimum, the petition will be considered to have been withdrawn and will have no effect. See Heppe v. Mooberry, 350 Ill. 641.

As to question 3, it is clear that the committee of ten selected to represent the petitioners may not alter the boundaries of the proposed community unit school district after the petition has been filed. In People ex. rel. Fry v. Graham, 303 Ill. 303, the Court held that a petition which had, on its face, been altered, was valid only when the evidence clearly showed that the alteration in the territory to be included in

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the district was made before any signatures had been placed on the petition. By implication, any change in the area to be included in the district would be invalid as the district would not then contain the areas which the petitioners, by their signatures, showed a desire to have included.

Question 4 requires much the same answer as question 3. Section 11-6 of the School Code, supra, does not give authority to the regional superintendent to alter the petition, only to pass on its sufficiency and approve or disapprove it after hearing. In Board of Education, Etc. v. County Board of School Trustees, 13 Ill. App. 2d 561 (1957), the Court said, in connection with an annexation proceeding, "In passing upon petitions for annexation or detachment of a territory, the County Board of School Trustees can either allow or deny the petition before it, but cannot modify." (13 Ill. App. 2d 561, 567). The same rule is applicable to the Superintendent of an Education Service Region.

With respect to the question raised in your letter of April 28, I must first point out that the provisions concerning the procedures to be followed in establishing a community unit

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school district are mandatory. People v. Newman Community Unit School Dist. No. 303, 1 Ill. 2d 370. The statute requires that the petition "designate a committee of 10 of the petitioners as attorney in fact for all petitioners." A petition signed by only two of the persons designated as members of the committee would therefore be invalid as it fails to comply with the mandatory requirements of the statute.

Very truly yours,

ATTORNEY GENERAL