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SPRINGFIELD

February 2, 1972

FILE NO. S-395,

ELECTIONS:
County Board Districts - Primary

Honorable Jack A. Alfeld
State's Attorney
Greene County
Courthouse
Carrollton, Illinois 62016

Dear Mr. Alfeld:

I have your recent letter wherein you state:

"Your opinion is requested concerning the construction of Illinois Revised Statutes 1969, Chapter 46, Section 7-5, which states in part:

'No primary shall be held where the name of not more than one person of each political party is entitled to be printed on the primary ballot as a candidate for the nomination for each office to be filled at an election at which no other offices are to be voted on.'

"I have read your Attorney General Opinions, numbered UP-832 and UP-634 of January 29, 1963 and June 13, 1962 respectively, which bear on the issue, but are factually at variance as to the offices to be filled and as to the scope of the voting area.

"The County Board of Greene County has previously provided, by Resolution, that the size of the County Board be reduced from 13 to 7 members. The County Board did not authorize nomination of candidates by Party Caucus.

"The last date for filing petitions of nomination was November 8, 1971. Six Democratic and five Republican Candidates have filed for the seven vacancies which are to be filled at large county wide.

"The normal primary election dates for these candidates, is February 8, 1972, with the General Election to be held April 4, 1972.

"The County Clerk has contacted me to determine:

1. If it is necessary to hold a Primary Election under the above facts, where fewer candidates than the required number of vacancies to be filled have filed as nominees;
2. May the County Clerk certify the names of the candidates who have filed as nominees at large for County Board positions and dispense with the February 8, 1972 Primary and hold only the April 4, 1972 General Election. The County will thereby be saved with the expense of such Primary Election."

Section 7-1 of "An Act concerning elections" (1970

Supplement to the Ill. Rev. Stats. 1969, ch. 46, par. 7-1) states as follows:

"Except as herein otherwise provided, the nomination of all candidates for all elective State, congressional, county (including county board

members in counties not providing for nominations by caucus under Section 7-1.01), * * * shall be made in the manner provided in this Article 7, and not otherwise. * * *

Section 7-5 of "An Act concerning elections" (Ill. Rev. Stats. 1969, ch. 46, par. 7-5) provides:

* * * *

"No primary shall be held where the name of not more than one person of each political party is entitled to be printed on the primary ballot as a candidate for the nomination for each office to be filled at an election at which no other offices are to be voted on.

* * * *

Section 7-12 of "An Act concerning elections" (Ill. Rev. Stats. 1969, ch. 46, par. 7-12) states"

* * * *

"In any case where the name of not more than one person of each political party is entitled to be printed on the primary ballot as a candidate for the nomination for any office to be filled at an election at which no other offices are to be voted on the city clerk, county clerk or State Electoral Board as the case may be shall certify the name of such person as the nominee for such office and no primary shall be held."

The facts in your letter indicate that the size of your county board will be seven members, but that there are

Honorable Jack A. Alfeld

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only six Democratic and five Republican candidates for the seven vacancies. Since there are seven offices to be filled there is not more than one name on the ballot for each office. The spirit or intention of the law prevails over the letter thereof, U. S. Industrial Alcohol Co. v. Nudelman, 375 Ill.

342. I am therefore of the opinion that it is not necessary to hold a primary election where fewer candidates than the required number of vacancies to be filled have filed as nominees for the county board. Consequently, your county clerk may certify the names of the candidates who have filed as nominees at large for county board offices.

Very truly yours,

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