

Opinion No. 2007-191

July 20, 2007

The Honorable Barbara Horn
State Senator
Post Office Box 64
Foreman, AR 71836-0064

Dear Senator Horn:

I am writing in response to your request for an opinion on the following:

May I ask your opinion on behalf of Mayor Yvonne Dockery of Garland City, Arkansas in seating a member of the Council?

According to Mayor Dockery, no one filed as a candidate for the seat on the council in the November, 2006 election. Mayor Dockery contacted Don Zimmerman, President of the Arkansas Municipal League, and the Election Commission and was advised if no one ran in that position that whomever was previously in that position carries over unless a letter of resignation was given. No letter of resignation was ever given by the former councilmember.

Please provide your legal opinion as to the proper person to fill the seat on the Garland City Council. I am enclosing a copy of the request from Mayor Dockery to assist in understanding the situation.

RESPONSE

I must respectfully decline to issue an opinion on this matter in light of this Office's long-standing policy against rendering opinions on topics that are the subject of pending litigation. Specifically, the case of *Dockery v. Nash, et al.*, CV-2007-256-3, filed on June 28, 2007, in the Circuit Court of Miller County.

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Although I have a statutory duty to render my opinion to members of the legislature and various state officials regarding certain matters of state law, *see* A.C.A. § 25-16-706 (Repl. 2002), my office adheres to a long-standing policy against issuing opinions concerning matters that are the subject of pending or impending litigation. In recognition of the judiciary's independent constitutional role, it has long been the policy Attorney General, as an office in the executive branch of government, to refrain from rendering opinions on matter that are pending before the courts for determination. *See, e.g.*, Op. Att'y Gen. Nos. 2006-204; 2006-198; 2003-182; 2002-302; 1999-389; 97-329; 95-179; 92-257; 90-114; *and* 86-181. Any opinion issued from my office would constitute executive comment on matters that are properly before a judicial body. Accordingly, I must respectfully decline to address your questions at this time.

Assistant Attorney General Joel DiPippa prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMD/cyh