

Opinion No. 2007-205

July 13, 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 my opinion on the following question:

Can economic development funds generated from a local sales tax be used to pay for moving a city street, electrical poles and power lines to allow for the construction of a new feed plant in Foreman, Arkansas?

It is unclear from your recitation of background facts whether the referenced feed plant is the same as the one referenced in the second question I addressed in Ark. Op. Att'y Gen. No. 2007-198, which I am issuing simultaneously herewith. However, my response to your current request must be the same: the question of whether subsection 3(a) of levying Ordinance No. 241 would authorize expending a portion of tax proceeds to relocate a street and utility lines in order to promote an industrial development is ultimately one of fact best addressed by local counsel fully acquainted with the attendant circumstances. Again, the focus of counsel's review must be whether the proposed use of tax revenues accords with the specific uses, if any, approved by the voters -- a requirement expressly imposed by Ark. Const. art. 16, § 11.

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As I did in my previous opinion, I will again point out that subsection 3(a) of levying Ordinance No. 241 expressly authorizes expending one-half of tax proceeds to "equipping of water, sewer and other utilities for industrial sites." Although the question is one of fact that I cannot resolve, I believe a reviewing court might well conclude that this authorization is consistent with the uses contemplated in your question.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM/JHD:cyh