

Opinion No. 2009-048

April 24, 2009

The Honorable Steve Breedlove  
State Representative  
Post Office Box 893  
Greenwood, Arkansas 72936

Dear Representative Breedlove:

I am writing in response to your request for an opinion on several questions concerning the authority of the mayor and other city officers to remove signs that have been placed in the public right-of-way in violation of city ordinances.

Although your questions are asked generally, without reference to any particular factual scenario, they appear to relate directly to a misdemeanor citation that was recently successfully prosecuted in the Greenwood District Court. I consequently must respectfully decline to issue an opinion on the matters at issue. Although I have a statutory duty to render my opinion to members of the legislature and various state officials on various matters of state law (*see* A.C.A. § 25-16-706 (Repl. 2002)), my office adheres to the long-standing policy against issuing opinions on matters that are in litigation. *See, e.g.*, Op. Att’y Gen. Nos. 2007-188 and 2007-039 (and opinions cited therein). This policy, which is compelled primarily by the separation of powers doctrine (Ark. Const., art. 4, §§ 1 and 2), extends to questions that may arise concerning the propriety of judicial actions that have been taken in relation to particular matters. *See, e.g.*, Op. Att’y Gen. 98-221 (and opinions cited therein). As explained by my predecessor:

Where questions exist surrounding the propriety of judicial actions that have been taken in relation to particular matters, I believe that the remedies available within the judicial forum are more appropriate than the issuance of an opinion from my office. Such an opinion would, under the circumstances, constitute little more than an executive comment on matters appropriately within the judicial

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branch. [Opinion citation omitted.] Nothing short of a final decision by the proper court can resolve such matters.

Op. 98-221 at 2.

Pursuant to these principles, I must respectfully decline to opine on the questions you have raised. The suggested course of action would be an appeal of any unfavorable judgment rendered by the court.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:EAW/cyh