Opinion No. 2011-154

January 6, 2012

The Honorable Robert S. Moore, Jr.
State Representative and Speaker of the House
Post Office Box 446
Arkansas City, Arkansas 71630-0446

Dear Mr. Speaker:

You have asked for my opinion on the following matter concerning Act 1242 of 2011, which is codified at A.C.A. §§ 7-2-102–105 (Supp. 2011), and which is entitled "AN ACT TO AMEND ARKANSAS LAW CONCERNING THE ESTABLISHMENT OF THE FOUR CONGRESSIONAL DISTRICTS":

> If a county recognizes a precinct whose population is a subset of a voting district and recognized within the voting district in the data provided by the United States Census Bureau ("Bureau") and the precinct's population is counted in the official information received from the Bureau as provided in the Topologically Integrated Geographic Encoding and Referencing ("Tiger") files for the purposes of reapportioning congressional districts in Arkansas, and it has been determined by the Bureau that no population within the state has been omitted in Act 1242 of 2011…, based upon canons of statutory construction and legislative intent, does a county need to administratively recognize the voting districts as referenced by the Bureau and incorporated into Arkansas Code A.C.A. § 7-2-101 *et seq*., or is corrective legislation necessary to provide assistance to the counties?

RESPONSE

In my opinion, a precinct such as you have described is included in the corresponding "voting district" under Act 1242 of 2011, i.e., the voting district

that, according to the Census data, includes the precinct's population. Accordingly, I see no need for corrective legislation. Rather, the provisions of Act 1242 must simply be followed. As explained further below, I believe this conclusion is dictated by the language of Act 1242, when viewed in light of the act's purpose to redistrict Arkansas's congressional districts based on the decennial census.

DISCUSSION

Some explanation of redistricting will be helpful before explaining the basis for this conclusion. Arkansas is divided into four (4) congressional districts pursuant to A.C.A. § 7-2-101 (Repl. 2007). The boundaries of the four districts are defined by A.C.A. §§ 7-2-102 through -105. Section 7-2-101 further states that "[i]t is the intention of this subchapter to provide for congressional districts of substantially equal population in order to comply with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States."[1] Act 1242 of 2011 amends Sections 7-2-101–105 to define more specifically the boundaries of each district, consistent with this expressed intent.

The decennial census is critical to this effort.[2] To assist the states in meeting the constitutional requirement, Congress in 1975 required the U.S. Census Bureau to provide state officials with detailed population data, within one year after the census date, for use in redistricting.[3] Population figures are released for electoral subdivisions that the Bureau calls "voting districts," which is a generic name for the geographic areas– such as precincts, wards, and election districts–established

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[1] The states have the primary duty and responsibility to redraw their congressional districts in compliance with the United States Constitution. *See Growe v. Emison*, 507 U.S. 25, 34 (1993).

[2] The U.S. Constitution requires that a decennial census be taken for reapportionment of seats in the U.S. House of Representatives. The Fourteenth Amendment provides that the "[r]epresentatives … shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." U.S. Const. amend. XIV § 2. "The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct." U.S. Const. art. I, § 2, cl. 3. This requires a census or headcount of the U.S. population to be taken every ten years. Barry Edmonston, *Using U.S. Census Data to Study Population Composition*, 77 N.D. L. Rev. 711, 712 (2001).

[3] Act of Dec. 23, 1975, Pub. L. No. 94-171 (codified as amended at 13 U.S.C. § 141(c) (2009)).

by state governments for the purpose of conducting elections.[4] The states then draw their district maps using that data, commonly known (after the public law authorizing its release) as PL 94-171 data.[5]

The purpose of redistricting, therefore, is to conform to the decennial census to ensure that congressional districts are constitutionally drawn. With this background in mind, we must now consider the language of Act 1242 of 2011 in order to address the issue you have raised. The following provisions of Act 1242 regarding the First Congressional District are illustrative of the language that is relevant to your question:

> (a) The First Congressional District shall be composed of: …
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> (2) The following *voting districts* of Jefferson County as they existed on January 1, 2011:
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> (A) 19 (Dunnington) *voting district*;
>
> (B) P15 (Dudley Lake) *voting district*;
>
> (C) 25 (Old River) *voting district*;
>
> (D) 57 (Villemont) *voting district*;
>
> (E) P91 (Roberts) *voting district*;
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> (F) P851 (Humphrey) *voting district*; and
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> (G) P862 (Humphrey) *voting district*; and

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[4] *See* 2010 Census Redistricting Data (Public Law 94-171) Summary File (January 2011). The PL 94-171 data can be found at http://www.census.gov/rdo/data/2010_census_redistricting_data_pl_94-171_summary_files.html.

[5] Note, *Race, Rights, and Remedies: Census Sampling and the Voting Rights Act*, 114 Harv. L. Rev. 2502, 2504 (June, 2001).

> (3) The *voting districts and voting precincts* of Searcy County as they existed on January 1, 2011, *that are not listed* under § 7-2-104(4).
>
> (b) The qualified electors residing in the counties and portion of Jefferson County and Searcy County listed under subsection (a) of this section shall elect one (1) member of the House of Representatives of the United States.[6]

As you can see, in the case of the First Congressional District, Act 1242 identifies seven "voting districts" of Jefferson County as included within the District. This does not account for all of Jefferson County. The remainder is in the Fourth Congressional District pursuant to A.C.A. § 7-2-105, which states in pertinent part that "[t]he Fourth Congressional District shall be composed of … [t]he *voting districts and voting precincts of Jefferson County* as they existed on January 1, 2011, *that are not listed* under § 7-2-102(2)."[7] Pursuant to subsection 7-2-102(a)(3) above, the First Congressional District is also composed of "[t]he *voting districts and voting precincts of Searcy County* as they existed on January 1, 2011, *that are not listed* under § 7-2-104(4)." (Emphasis added).

Although you have not said as much, I assume your question is prompted by the above-emphasized references to "voting districts and voting precincts … that are not listed [under another subsection]."[8] As you can see, no "voting precincts" are listed, and this is true of Act 1242's other provisions amending A.C.A. §§ 7-2-102–105. It therefore appears that the answer to your question concerning a precinct that is a subset of a voting district turns on the meaning of "voting district" and "voting districts and voting precincts … that are not listed," as referenced in Act 1242. It is apparent from the illustrative language of A.C.A. § 7-2-102 set out above that the meaning of these terms and phrases will determine which Congressional District includes the precinct at issue.

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[6] A.C.A. § 7-2-102 (Supp. 2011) (emphasis added). Similar language with respect to the Third and Fourth Congressional Districts, respectively, is found at A.C.A. §§ 7-2-104(a)(2)-(5) and -105(a)(2)-(5). The First, Third, and Fourth Districts are also composed, in part, of several counties in their entirety. A.C.A. 7-2-102(a)(1), -103(a)(1), -104(a)(1), and -105(a)(1). The Second District is composed of entire counties only. A.C.A. § 7-2-103.

[7] A.C.A. § 7-2-105(a)(3) (emphasis added).

[8] This language also appears in the sections governing the Third and Fourth Congressional Districts. A.C.A. §§ 7-2-104(a)(2), (5) and -105(a)(3),(4) (Supp. 2011).

The terms "voting district" and "voting precinct" are not defined by Act 1242. Where a term is not defined, however, the Arkansas Supreme Court applies the rules of statutory construction to determine its meaning:

> The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Raley v. Wagner*, 346 Ark. 234, 57 S.W.3d 683 (2001); *Dunklin v. Ramsay*, 328 Ark. 263, 944 S.W.2d 76 (1997). When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Stephens v. Arkansas Sch. for the Blind*, 341 Ark. 939, 20 S.W.3d 397 (2000); *Burcham v. City of Van Buren*, 330 Ark. 451, 954 S.W.2d 266 (1997). Where the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Stephens v. Arkansas Sch. for the Blind*, *supra* (citing *State v. McLeod*, 318 Ark. 781, 888 S.W.2d 639 (1994)).[9]

The ultimate rule of statutory construction is to give effect to the intent of the General Assembly.[10] Other appropriate means of ascertaining the legislature's intent when the meaning of a statute is unclear include an examination of the contemporaneous conditions at the time of the statute's enactment, the consequences of interpretations, and all other matters of common knowledge within the court's jurisdiction.[11]

Other related rules of statutory construction provide that in construing any statute, courts will place it beside other statutes relevant to the subject and ascribe meaning and effect to be derived from the whole.[12] The court has sometimes

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[9] *K.N. v. State*, 360 Ark. 579, 584-85, 203 S.W.3d 103 (2005) (quoting *Weiss v. American Honda Finance Corp*., 360 Ark. 208, 200 S.W.3d 381 (2004).

[10] *Ford v. Keith*, 338 Ark. 487, 996 S.W.2d 20 (1999); *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

[11] *Southwestern Bell Tel. Co. v. Arkansas Pub. Service Comm'n*, 68 Ark. App. 148, 5 S.W.3d 484 (1999).

[12] *State v. Sola*, 354 Ark. 76, 118 S.W.3d 95 (2003).

resorted, moreover, to dictionary definitions in order to determine the meaning of a word or phrase,[13] or to "legal" dictionary definitions.[14]

The term "voting district" is not defined elsewhere in Arkansas law, nor is there any applicable dictionary definition. The term "election district" is a subentry under "district" in *Black's Law Dictionary*.[15] But this does not clearly embrace the term "voting district." It thus seems that "voting district" does not have an "ordinary and usually accepted meaning in common usage," or a fixed legal significance, and is therefore ambiguous.

In these circumstances, insight into the meaning or scope of the term may be gained from "the object to be accomplished [and] the purpose to be served…."[16] Evidence to this effect can be gleaned, in my opinion, from Act 1242's purpose to conform to the decennial census, as discussed above. As noted, the term "voting district" is the generic word the Census Bureau uses for the election areas for which states receive the population data they need to redraw congressional districts. It reasonably follows, in my opinion, that the term "voting district" in Act 1242 is used with reference to these election areas.

The term "voting precinct," on the other hand, does have a fixed legal significance under Arkansas law. County boards of election commissioners are required under the Election Code to "[e]stablish election precincts;"[17] and the boards "may alter the boundaries of existing election precincts and establish new ones."[18] A "precinct" is defined as "the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes[.]"[19] In my opinion, the term "voting precinct" as used in Act 1242, when viewed in light of these other

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[13] *E.g. Arkansas Tobacco Control Board v. Santa Fe Natural Tobacco Company*, 360 Ark. 32, 39, 199 S.W.3d 656 (2004).

[14] *Harold Ives Trucking Company v. Pickens*, 355 Ark. 407, 411 139 S.W.3d 471(2003).

[15] *Black's Law Dictionary* 509 (Bryan A. Garner ed., 8th ed., West 2004) ("[E]lection district. A subdivision of a state, county, or city that is established to facilitate an election or to elect governmental representatives for that subdivision.")

[16] *See Weiss, supra* at n. 8.

[17] A.C.A. § 7-5-101(a)(1)(A) (Supp. 2011).

[18] *Id.* at (b)(1).

[19] A.C.A. § 7-1-101(23) (Supp. 2011).

statutes, can be interpreted to mean election precincts as established under the Election Code.

Having established the general meaning of "voting district" and "voting precinct," we must turn our inquiry to the meaning of the phrase "voting districts and voting precincts … that are not listed [under Act 1242]." As illustrated by the provisions set out above regarding the First Congressional District, Act 1242 provides that the First, Third and Fourth Districts shall be composed, in part, of "voting districts" that are specifically listed by name or number and "voting districts and voting precincts … that are not listed…." I will refer to the latter as "unlisted voting districts" and "unlisted voting precincts." Act 1242's reference to unlisted *voting districts* is understandable, given that the census files that formed the basis for redrawing the Congressional Districts provided data for more voting districts in the counties than those listed in the act.[20] In order for all election areas to be included, it was necessary to incorporate the other, unlisted voting districts into the redistricting plan. In my opinion, therefore, "voting districts … that are not listed" means voting districts that are not named in Act 1242 but that are shown in the Census files.

The reference to unlisted "*voting precincts*" is less clear, however. Read in isolation, "voting precincts" can be construed as county election precincts drawn by county boards of election commissioners, as discussed above. We cannot view these words in isolation, however. Instead, we must read Act 1242 as a whole, giving precedence to the intent reflected by the act as a whole over any intent reflected by isolated words or sections.[21] Uncertainty arises regarding the meaning of "voting precincts … that are not listed [under Act 1242]" when the act is considered as a whole, taking into account the meaning of "voting districts." The use of the term "voting districts" shows that the General Assembly relied upon Census data to redraw the Congressional Districts. The language at issue under your question refers, however, to both unlisted voting districts and unlisted voting precincts. It is therefore unclear why "voting precincts" would be referenced. To resolve the ambiguity, it is appropriate under established rules of

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[20] *See* PL 94-171 data file at n. 5, *supra*.

[21] *See generally Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325 (8th Cir. 1985); *Elizabeth Arden Sales Corp. v. Gus Blass Co.*, 150 F.2d 988 (8th Cir. 1945), cert. denied 326 U.S. 773 (1945).

statutory construction to consider the act's object and purpose, bearing in mind the conditions surrounding the act's passage.[22]

In this regard, it is common knowledge that the Congressional Districts were redrawn based on census population tabulations for the "voting districts," i.e., the election areas that are shown in the Census files. They were not redrawn based on a separate inquiry regarding county precinct boundaries. With this in mind, I believe "voting precincts … that are not listed" can reasonably be construed to mean precincts that are not listed in Act 1242, but that are nevertheless included within unlisted voting districts, that is, voting districts that are not listed in Act 1242 but are shown in the Census data. The act thereby ensures that all election areas are recognized and included in a congressional district. This is true because the Census Bureau reportedly has determined that no population in the state was omitted in Act 1242.

Turning to your specific question, you describe a county voting precinct "whose population is a subset of a voting district and recognized within the voting district in the [Census] data and … counted in the … [Census] files for the purposes of reapportioning congressional districts in Arkansas…." You have not stated whether the voting district is listed or unlisted under Act 1242. But I assume the concern is that regardless of whether a precinct's population is within a voting district that is listed in Act 1242, the precinct constitutes one that is "not listed under [Act 1242]" because it is not named in the act. This would mean that the precinct is not part of the Congressional District that is composed, in part, of the listed voting district, but instead is assigned to another Congressional District by virtue of Act 1242's reference to "voting precincts of [another county] … that are not listed…."

In my opinion, this concern is unfounded. Based upon the above analysis, it is my opinion that as long as the precinct's population is recognized in the Census data as within a voting district that is *listed*, i.e., identified by name or number, in Act 1242, it cannot be considered unlisted. More specifically, in my opinion, such a precinct does not fall within Act 1242's reference to "voting precincts … that are not listed." Rather, it is included in the corresponding "voting district" under Act 1242 of 2011, i.e., the voting district that, according to the Census data, includes the precinct's population.

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[22] *See generally Chism v. Phelps*, 228 Ark. 936, 311 S.W.2d 297 (1958).

If, on the other hand, the Census data shows that the precinct's population is a subset of a voting district that is *not listed* in Act 1242, then based upon the above interpretation of Act 1242's reference to "voting precincts … that are not listed," it is my opinion that the precinct is within the unlisted voting district.

In my opinion, this is the proper way to determine which Congressional District includes the precinct at issue. Because this determination can be made based on the language of Act 1242, with a view to the Census data, I see no need for corrective legislation. The provisions of Act 1242 must simply be followed, as discussed above.

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh