

Opinion No. 2012-044

April 3, 2012

The Honorable Jim Nickels  
State Representative  
Post Office Box 6564  
Sherwood, Arkansas 72124-6564

Dear Representative Nickels:

You recently submitted a request, on behalf of a local official, for an opinion concerning the proceeds of certain bonds that were issued to finance public improvements. The questions pertain specifically to ownership and treatment of the balance of the proceeds from the underwriter's purchase.

Please be advised that I am unable to address these questions, which necessarily entail the construction and application of bond instruments and a related lease agreement in order to ascertain the relative rights of the parties involved. Such matters fall outside the ordinary scope of an opinion from this office. Although I am statutorily obliged to render my opinion to members of the legislature and various state officials regarding matters of state law,<sup>1</sup> I am not positioned to interpret the specific terms of contracts and other agreements. Such terms are generally adopted for the parties and construing their meanings often involves factual issues that are beyond the authority of this office to determine.<sup>2</sup> Questions

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<sup>1</sup> See A.C.A. § 25-16-706 (Repl. 2002).

<sup>2</sup> This was best explained by one of my predecessors as follows:

It is not the appropriate role of the Attorney General to construe the provisions of contracts or other agreements in the context of an Attorney General's opinion, or to interpret the meaning of terms in such contracts or agreements in that context. This type of review often involves factual questions, such as intent, which the Opinions Division of the Attorney General's office is not equipped or empowered by law to investigate and

of this nature must be decided with advice of local counsel based upon all of the surrounding facts and circumstances.

I regret that I cannot be of assistance in this matter. Please feel free to contact me if I can be of assistance in some other respect.

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

Sincerely,

DUSTIN MCDANIEL  
Attorney General

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evaluate. The interpretation of the terms of contracts and agreements is a matter that must be handled by the counsel for the interested parties. Any dispute concerning the meanings of contractual terms must ultimately be resolved by the judiciary, which is in a position to consider all appropriate matters that are relevant to construction of the contract and to hear the views of all interested parties.