

Opinion No. 2012-120

November 20, 2012

The Honorable Uvalde Lindsey
State Representative
2257 East Gentle Oaks Lane
Fayetteville, Arkansas 72703-6142

Dear Representative Lindsey:

This is my opinion on your questions:

1. May a County, at the direction of the County Judge, provide County Judge staff to assist a Solid Waste District of which it is a member? Either on an ad hoc basis or long term basis?
2. I would ask the same question as to a Rural Development Authority created by the County?
3. Must the County be reimbursed for the provision of any such services?

You state that “[t]hese services would include administrative services and legal services.”

RESPONSE

In my opinion, a county may provide staff assistance to a regional solid waste management district or board, or a rural development authority, without provision for reimbursement or other consideration.

“A county acting through its Quorum Court may exercise local legislative authority not denied by the Constitution or by law.”¹ A county’s local legislative authority includes power to “[a]ppropriate public funds for the expenses of the county,” “[p]rovide for any service or performance of any function relating to county affairs,” and “[e]xercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions.”²

Further, “[a] county may, for any public purpose, contract, cooperate, or join with . . . any political subdivisions of the State”³ And a county, acting through the quorum court, may provide for any service or function not expressly prohibited by the constitution or by law including, among other things, agricultural services, community and rural development services, and solid waste services.⁴

A regional solid waste management board is “the governmental entity primarily responsible for providing a solid waste management system for the [regional solid waste management] district.”⁵ A county retains responsibility only for that portion, if any, of the solid waste management system that relates to the services the county continues to provide.⁶ “In performing those retained responsibilities or *assisting the [regional solid waste management] board in performing its responsibilities*, counties . . . shall retain all present legal powers and authority related to those responsibilities. . . .”⁷

¹ Ark. Const. amend. 55, § 1(a); *see also* A.C.A. § 14-14-801(a) (Repl. 1998).

² A.C.A. § 14-14-801(b)(2), (10), (13).

³ Ark. Const. amend. 55, § 1(c); *see also* A.C.A. § 14-14-801(b)(4).

⁴ *See* A.C.A. § 14-14-802(b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(F) (Repl. 1998).

⁵ A.C.A. § 8-6-710(a)(1) (Repl. 2011).

⁶ *See* A.C.A. § 8-6-710(b).

⁷ *Id.* (emphasis added).

“In each county of the state there is created a public body corporate and politic to be known as the rural development authority.”⁸ A rural development authority exercises “public and essential governmental functions”⁹ and is authorized to acquire and operate “development projects,”¹⁰ which may be, among other things, agricultural in nature or otherwise related to rural economic development.¹¹

“Economic development of rural areas of Arkansas is a public use and purpose for which public moneys may be spent. . . .”¹² “It is a proper public purpose for any state public body^[13] to aid . . . any rural development authority operating within its boundaries . . . , as the state public body derives immediate benefits and advantages from such an authority. . . .”¹⁴ A county, in order to help a rural development authority with a development project, may convey property to or enter into agreements with the rural development authority and do anything “necessary or convenient to aid and cooperate” in the development project, all with or without consideration.¹⁵ And “[f]or such legal services as it may require,” a rural development authority “may call upon the chief law officer of the county. . . .”¹⁶

The foregoing, in my view, constitutes adequate constitutional and statutory authority for a county to provide one or more county employees to assist a regional solid waste management board or district, or a rural development

⁸ A.C.A. § 14-188-104(a)(1) (Repl. 1998).

⁹ A.C.A. § 14-188-109 (Repl. 1998).

¹⁰ A.C.A. § 14-188-109(3)(A).

¹¹ *See* A.C.A. § 14-188-103(7) (Repl. 1998).

¹² A.C.A. § 14-188-102(2) (Repl. 1998).

¹³ “State public body” includes a county. *See* A.C.A. § 14-188-103(3).

¹⁴ A.C.A. § 14-188-102(3).

¹⁵ A.C.A. § 14-188-120 (Repl. 1998).

¹⁶ A.C.A. § 14-188-105(b)(2)(B) (Repl. 1998).

authority. But a course of action that is authorized by a constitutional provision or a statute still must not contravene some applicable constitutional principle, two of which come to mind here.

First, “[n]o principle of constitutional law is more fundamental or more firmly established than the rule that the [government] cannot, within the limits of due process, appropriate public funds to a private purpose.”¹⁷ But “[w]hat constitutes a public purpose is for the General Assembly to determine” and the courts afford that determination “great weight.”¹⁸ The statutes cited above seem to me to evidence clear legislative determinations that regional solid waste management boards and districts, and rural development authorities, serve public purposes, as do county efforts to assist those entities.

Second, the constitution provides that “[n]o county . . . shall . . . appropriate money for . . . any corporation, association, institution or individual.”¹⁹ But a county-formed public facilities board has been held not to be the kind of corporation, association, or institution contemplated by this prohibition but rather an agency created by the county to carry out county activities.²⁰ Recent opinions of this office have concluded that county donations to other public bodies probably do not contravene this constitutional provision.²¹ It is therefore unlikely, in my

¹⁷ *Chandler v. Board of Tr.*, 236 Ark. 256, 258, 365 S.W.2d 447 (1963).

¹⁸ *Turner v. Woodruff*, 286 Ark. 66, 72, 689 S.W.2d 527 (1985).

¹⁹ Ark. Const. art. 12, § 5. Citing earlier opinions to the effect that this provision prohibits appropriations – or donations – of tangible property as well as money, I recently stated that the provision probably applies to governmental donations of labor or anything else of value. *See* Op. Att’y Gen. 2012-066; *see also* *Chapman v. Bevilacqua*, 344 Ark. 262, 42 S.W.3d 378 (2001) (plaintiff had standing to bring illegal exaction claim regarding use of city general fund money to pay salaries of city employees who participated in federally-funded program alleged to contravene Ark. Const. art. 12, § 5).

²⁰ *See McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

²¹ *See, e.g.*, Op. Att’y Gen. 2012-066 (county donations to cities and towns within county), 2012-021 (county donation to conservation district). Note that the recipients in these opinions were not formed by the county. *See also* *Chapman*, 328 Ark. at 273 (use of city general fund money to pay salaries of city employees who participated in federally-funded housing redevelopment program did not contravene Ark. Const. art. 12, § 5, as “statutes allow the City to do exactly what it did in furtherance of this legitimate public purpose”).

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view, that a county's provision of the services of a county employee to a regional solid waste management board or district, or a rural development authority, would contravene this constitutional prohibition.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh