

Opinion No. 2013-009

April 23, 2013

The Honorable David Wyatt
State Senator
159 Wyatt Lane
Batesville, Arkansas 72501

Dear Senator Wyatt:

You have asked for my opinion on several questions related to a tax approved by the voters of Independence County. As background for your three questions, you explain the following:

On November 6, 2012, the voters of Independence County approved a “special purpose sales and use tax for improved fire protection in Independence County.” It is anticipated [that] the county fire departments will start receiving the proceeds from the tax about mid-year 2013.

Because of the wording of the ballot title, there are different interpretations about how the tax may be used.... [You proceed to explain the two different interpretations and how their proponents attempt to ground their respective views in different parts of the ballot title.]

You then ask three questions:

1. Consequently, may a fire department use the funds to purchase equipment for combating wild land fires? The proper equipment for this purpose would come under the phrase [in the ballot title] “improved fire protection.”

2. In addition to providing fire protection and prevention services, many departments also provide emergency medical services in the form of Basic Life Support (BLS). Nowhere in the ballot is there any mention about any type of emergency medical services. Can the tax funds be used to provide this BLS?
3. As the tax funds are received, they will be placed in an interest bearing bank account until the fire departments are ready to spend them. Will the interest earned from the tax funds have the same spending restrictions as the tax funds?

RESPONSE

Questions 1 and 2

The answer to your first two questions depends on what the voters intended in approving the ballot measure. Determining this intent is critical because of the fundamental constitutional precept that tax revenues levied for one purpose cannot be diverted to another. Ark. Const. art. 16, § 11. The Arkansas Supreme Court has held that, when one seeks to determine a tax's specific purpose, one should look at two documents: (1) "the title of the [levying] ordinance;" and (2) "the ballot title that the electors had the right to look to ascertain what they were asked to approve...."¹

Thus, the sales tax's purpose, as it is stated in the levying ordinance and the ballot title, will limit how the tax proceeds may be spent. According the Arkansas Supreme Court, "[t]he ballot title is the final word of information and warning to which the electors had the right to look as to just what authority they were asked to confer...."² But the court has also noted that "[t]he ballot is the final word to the voters only in the sense that it is the last source of information, not in the sense that it is conclusive of the measure's effects. It must be read in conjunction with the levying ordinance."³

¹ E.g., *Daniel v. Jones*, 332 Ark. 489, 501, 966 S.W.2d 226, 232 (1998) (internal quotes omitted).

² *Id.*

³ *Maas v. City of Mountain Home*, 338 Ark. 202, 208, 992 S.W.2d 105, 108 (1999).

My predecessor noted the fact-intensive nature of this inquiry into the tax's purpose:

It becomes apparent that only a finder of fact could determine whether using the sales tax revenues for the proposed projects referenced in your request would be consistent with the uses authorized by the voters. The language of the ordinance and the ballot title must be reviewed to determine whether the purpose of the tax is stated so as to encompass these projects. Consideration of extrinsic factors may also be necessary in case of ambiguity. The questions are local in nature and must be answered on the local level, perhaps with the assistance of local counsel.⁴

I have been provided with a copy of the ballot title but not the levying ordinance. Because I am not a finder of fact, and because I lack the essential documents needed to assess the purpose of the tax, I am unable to respond to Questions 1 and 2, which both ask me to resolve a dispute about the tax's purpose.

Question 3

Your third question asks whether, when tax proceeds are deposited into an interest-bearing account and generate interest, that interest is subject to the same spending restrictions as the underlying tax proceeds. The answer to this question is that, unless a statute specifically provides otherwise, interest on tax proceeds is considered part of the principal and is subject to the same spending restrictions thereof.⁵ Because I have not found any statute altering this general rule for

⁴ Op. Att'y Gen. No. 2004-121, p. 2.

⁵ See *Miles v. Gordon*, 234 Ark. 525, 528–29, 353 S.W.2d 157, 159–60 (1962) (agreeing with another court that held “interest is accretion or increment to the principal fund earning it, and becomes a part thereof.”), *overruled on another point of law by*, *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986); *Hartwick v. Thorne*, 300 Ark. 502, 508, 780 S.W.2d 531, 534 (1989) (“[I]nterest on funds, unless lawfully separated therefrom [by statute], was a part of the principle.”); *Mears v. LRSD*, 268 Ark. 30, 593 S.W.2d 42 (1980); see also Op. Att'y Gen. Nos. 91-113, 91-005; *Indep. Sch. Dist. No. 1 of Tulsa County v. Bd. of County Com'rs of Tulsa County*, 674 P.2d 547, 550 (Okla. 1983) (“Further, the rule of law that interest is an accretion or increment to the principal fund earning it absent legislation, indicates this result—for Okla. Const. Art. 10, § 19, provides that no tax levied and collected for one purpose shall ever be devoted to another purpose. For like resolution of similar issue, see *Mears v. Little Rock School Dist.*, *supra*, n. 3.”).

purposes of county all sales tax proceeds, I believe the answer to your question is “yes.”

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

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