

Opinion No. 2013-151

December 17, 2013

The Honorable Jake Files
State Senator
300 Free Ferry Landing
Fort Smith, Arkansas 72903

Dear Senator Files:

This is my opinion on your question about a quorum court's authority over the county treasurer's commission fund.¹ The law provides that money in the fund "shall be used by the treasurer to offset administrative costs."²

You state as background:

A Quorum Court voted to transfer money from the Treasurer's Commission fund to the County Information Department (IT). The Treasurer's office is not tied to the IT Dept and does not use their services.

Your question is:

Can a Quorum Court take money out of the Treasurer's Commission fund without the Treasurer's permission and without services being rendered for the Treasurer's department?

I note initially that your request arises from an actual dispute among county officials. You and others provided me documents and citations to news accounts

¹ With some exceptions, county treasurers "collect, as a treasurer's commission, two percent (2%) on all funds coming into their hands as treasurers," which money is "paid into the county treasury to the credit of the county treasurer's commission fund." A.C.A. § 21-6-302(a), (b) (Supp. 2013).

² A.C.A. § 21-6-302(c).

that indicate that the relevant facts may be considerably more complicated than those stated as background in your opinion request and recited above. Some of the relevant facts may be in dispute. In particular, it appears that the money at issue is proposed to be paid under a county contract which the treasurer and other county officials recommended to the quorum court for funding and implementation and under which the treasurer's office was or is to receive services. And some parties apparently maintain that the treasurer does in fact receive services from the IT Department funded under the contract.

Whether a quorum court's appropriation of money from a treasurer's commission fund is for "administrative costs" of the treasurer's office is a fact-intensive question whose answer will vary depending on all the relevant facts and circumstances. I have neither the resources nor the statutory charge or authority to act as a finder of fact in connection with rendering written opinions. Because the question actually underlying your opinion request is so fact-intensive, and because the facts are unclear and apparently in dispute, I cannot render an opinion answering the question.

I note finally that one news account quotes a county official as saying she may commence litigation over the issue. My office has a long-standing policy against issuing opinions on questions that are the subject of current or impending litigation.³ The policy recognizes the judiciary's independent constitutional role. Any opinion from my office on the underlying legal issues in this instance would amount to executive comment on matters that may well come before a court.

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

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

³ See, e.g., Op. Att'y Gen. 2013-019, 2007-243.