

Opinion No. 2013-154

February 26, 2014

Claire Bailey, Director
Arkansas Department of Information Systems
One Capitol Mall
Post Office Box 3155
Little Rock, Arkansas 72203-3155

Dear Ms. Bailey:

You have asked for my opinion on whether the Arkansas Department of Information Systems (DIS) is authorized to provide information technology services to the Arkansas Municipal League. I have paraphrased your background information and question as follows:

Arkansas Code section 25-4-105(a) states that DIS has the power and duty to provide “information technology services to state agencies, other governmental entities, nongovernmental first responder entities, and other quasi-governmental entities.” The statutes do not define the term “other quasi-governmental entities.” Does the Arkansas Municipal League qualify as a “quasi-governmental entity” such that, under section 25-4-105(a), DIS is authorized to provide the League with information technology services?

RESPONSE

The absence of any statutory or judicial definition of the term “quasi-governmental entity” prevents me from definitively answering your question. Nevertheless, I believe that a court faced with your question would probably hold that, at least for purposes of section 25-4-105, the Arkansas Municipal League qualifies as a “quasi-governmental entity” because, though it is clearly not itself a

governmental entity, the League shares with governmental entities a common purpose, funding source, and leadership.

DISCUSSION

DIS's powers and duties, which are codified at A.C.A. § 25-4-105, include the following: "Providing information technology services to state agencies, other governmental entities, nongovernmental first responder entities, and other quasi-governmental entities." The Arkansas Municipal league is not a state agency, governmental entity, or a nongovernmental first responder.¹ Thus, DIS can only provide information technology services to the League if it qualifies as a "quasi-governmental entity."

But no statute or case defines the term "quasi-governmental entity." Further, because the term is never used again in DIS's statutory scheme, we cannot attempt to discern the term's meaning by examining how the General Assembly used it in context. Thus, in the absence of either a technical, statutory, or a judicial definition of the term, we are restricted to considering its common meaning.

The prefix "quasi-" means "seemingly, apparently but not really."² The difficulty here is that the statute does not make clear the degree to which the nongovernmental entity must resemble or share attributes with a governmental entity. In other words, it is difficult to determine the number and type of attributes that should be possessed by a nongovernmental organization in order for it to be considered "quasi-governmental" for purposes of section 25-4-105(a)(2)(B).

Nevertheless, we can identify at least three attributes that are both essential to governmental organizations and possessed by the League.

¹ The term "nongovernmental first responder" is defined in section 25-4-103(10) as "state and law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and other emergencies."

² *New Oxford American Dictionary* 1429 (Oxford Univ. Press, 2010).

First, the two entities are funded with tax dollars. It is my understanding that most of the League's operating funds are provided by municipalities who pay annual fees and service charges from tax dollars.³

Second, the two entities have a public purpose. The League's self-stated "central purpose" is "to advance the interest and welfare of the people residing in the cities and towns of Arkansas."⁴

Third, the two entities are led by elected officials or their appointees/designees. It is my understanding that whoever serves as the President of the League is (and has always been) a sitting, elected municipal official. Further, the League is governed by an "Executive Committee" that serves as its chief policy-making body and supervises the League's Executive Director who, in turn, hires and supervises the League's staff. In short, elected municipal officials, who are acting in their official capacities, serve as a kind of board of directors for the League.

In addition to sharing the foregoing core attributes, the League's employees are defined as "municipal employees" for purposes of the Arkansas Public Employees' Retirement System.⁵

Therefore, I believe a court faced with your question would probably hold that, at least for purposes of section 25-4-105(a)(2)(B), the Arkansas Municipal League qualifies as a "quasi-governmental entity" because, though it is clearly not itself a governmental entity, the League shares with governmental entities a common purpose, funding source, and leadership.

³ *Arkansas Municipal League*, "Policies and Goals, 2013–2014," adopted at the 79th Annual Convention (June 21, 2013), p. 4.

⁴ *Id.*

⁵ A.C.A. § 24-4-101(24)(A) (Supp. 2013) ("Municipal employees' means all employees whose compensations are payable, either directly or indirectly, by participating municipal public employers **and includes employees of the Arkansas Municipal League**, employees of the water and sewer system of any city divided by a state line, and employees of the Arkansas Local Police and Fire Retirement System.") (emphasis added).

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

Sincerely,

DUSTIN MCDANIEL
Attorney General

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