

Opinion No. 2014-008

April 28, 2014

The Honorable Kelley Linck  
State Representative  
13823 Highway 14 S  
Yellville, Arkansas 72687-7848

Dear Representative Linck:

I am writing in response to your request for my opinion on the following questions:

1. To what extent, if any, does the passage of Act 1507 of 2013 impact the discussion and conclusions reached in Op. Att’y Gen. No. 1999-417?
2. To what extent, if any, does the Arkansas Supreme Court’s decision in *Kimbrell v. McCleskey*, 2012 Ark. 443 (Nov. 29, 2013), impact the discussion and conclusions reached in Op. 1999-417?
3. Does the *Kimbrell* decision render art. 14, sec. 2 of the Arkansas Constitution moot in school districts where the revenue from the twenty-five mills exceeds the state per student funding because all such funds are local?
4. Would a school district’s use of funds gained from a millage over and above the required twenty five mills for joint use of school facilities pursuant to Act 1507 violate art. 14, sec. 2 of the Arkansas Constitution?
5. Would a school district’s proposed millage with language explicitly stipulating that the funds would be used for joint use of

school facilities pursuant to Act 1507 violate the Arkansas Constitution?

6. To what extent, if any, does the passage of Amend. 74 of 1996 render moot the discussion and conclusions reached in Op. 1999-417 regarding art. 14, sec. 3 of the Arkansas Constitution?
7. For the purposes of art. 14, secs. 2 and 3, and art. 16, sec. 3, is the constitutionality of the provisions of Act 1507 dependent upon whether the origin of the funds spent are local or state?

## **RESPONSE**

With respect to your first question, my predecessor in Opinion 1999-417 concluded that school property may be used for “community purposes” only to the extent permitted by statute and only then under restrictions imposed by constitutional mandate. In my opinion, Act 1507 cannot properly be read as affording school districts an unrestricted right to allow the uncompensated use of school district property for non-district purposes. Rather, in order to harmonize the statute with constitutional mandates, it must be read as affording districts discretion to allow use of its property for purely “community purposes” only when such use neither conflicts with district educational activities nor results in an uncompensated depletion of district resources. Thus read, in my estimation, the statute does not conflict with Opinion 1999-417.

With respect to your second question, under *Kimbrell v. McCleskey*, a school district may “retain any URT [uniform-rate-of-tax] revenues in excess of the foundation-funding amount” generated from property taxation. Given the general focus of your request, I take your particular question to be whether a school district may devote such revenues to “community purposes” of a sort other than those described in Opinion 1999-417 as falling within constitutional and permissible statutory restrictions. In my opinion, the answer to this question is “no.”

I will paraphrase your third question as follows: Once the *state* has met its obligation to provide foundation funding sufficient to afford a district’s K-12 students a “general, suitable and efficient system of free public schools,” is the district free to expend what you term “*local*” URT revenues realized above the foundation-funding amount on some purpose other than the M&O expenditures

and debt service prescribed in Article 14? In my opinion, the answer to this question is “no.”

With respect to your fourth question, Act 1507 focuses only upon a type of “joint use” agreement that would allow any of the listed entities, in exchange for a negotiated payment, to use school facilities not needed for immediate and exclusive educational use. The monetary consideration involved in such an arrangement would flow *to* the school district, not *from* it. Act 1507 thus does not address a direct district expenditure from millage revenues of the sort described in your question. Any joint-use agreement falling outside the scope of Act 1507 that indeed involved an expenditure of district funds would need to serve a proper educational purpose and be supported by adequate consideration.

With respect to your fifth question, only a finder of fact acquainted with the ballot title and attendant circumstances could determine the propriety of a “proposed millage” of this sort. I will repeat, however, that Act 1507 does not address a joint-use agreement that would involve a direct expenditure of district millage revenues.

The answer to your sixth question is “none.” The answer to your seventh question is “no.”

***Question 1: To what extent, if any, does the passage of Act 1507 of 2013 impact the discussion and conclusions reached in Op. Att’y Gen. No. 1999-417?***

This question is very broadly phrased and hence difficult to interpret. I can opine, however, that the essential conclusions set forth in my predecessor’s opinion continue to apply in the wake of Act 1507’s enactment. The opinion simply declares that a school district may devote its property to “community purposes” only to the extent permitted by statute and, ultimately, by certain constitutional restrictions on the use of school resources. This declaration is without question correct. Act 1507 does not conflict with these conclusions so long as its grant of school-board discretion is narrowly read to accord with the constitutional restrictions discussed below.

For reasons that should become apparent in the ensuing discussion, I will here reproduce Act 1507 in its entirety, showing the marked amendments of prior law as indicated in the act itself:

**For An Act to Be Entitled**

AN ACT TO AMEND THE ARKANSAS CODE CONCERNING THE USE OF PUBLIC SCHOOL FACILITIES FOR COMMUNITY ACTIVITIES; TO PROMOTE THE PUBLIC HEALTH AND WELL-BEING OF SCHOOL COMMUNITIES; AND FOR OTHER PURPOSES.

**Subtitle**

TO AMEND THE ARKANSAS CODE CONCERNING THE USE OF PUBLIC SCHOOL FACILITIES FOR COMMUNITY ACTIVITIES; AND TO PROMOTE THE PUBLIC HEALTH AND WELL-BEING OF SCHOOL COMMUNITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-21-101 is amended to read as follows:

6-21-101. Authority to permit use of public school buildings for community purposes.

(a) The General Assembly finds that the use of a public school facility under this section:

(1) Promotes the education, health, and well-being of the communities where schools are located; and

(2) Is an intended purpose for the use of school property under Arkansas Constitution, Article 14, § 2.

(b)(1) The board of directors of any a school district may permit the use of the public schoolhouse for social, civic, and recreational purposes or any other community purpose, including any lawful meetings of its citizens, provided such meetings do not interfere with the regular school work, and the directors may make a charge therefor if they deem it proper to do so members of the community

to use land or public school facilities owned or operated by the school district for a community purpose, including without limitation:

(A) A social event;

(B) A civic event;

(C) Recreation;

(D) Health and wellness activities; and

(E) A lawful meeting of the citizens of the community.

(2) Community activities permitted at school facilities or on school land shall not interfere with an instructional day at the school where the community activities are held.

(c) To offset the cost of community use of school land or a public school facility, a school district may:

(1) Charge a fee;

(2) Accept gifts, grants, and donations from private sources, from municipal and county governments, from the state, and from the federal government; or

(3) Enter into a joint use agreement with a public agency, public entity, private entity, or nonprofit organization, for shared use and responsibility of the school land or public school facility.

This legislation is noteworthy for purposes of my discussion in the following respects:

1. It authorizes a school district to use its real property for general “community purposes” without expressly requiring that those community activities themselves directly benefit a district’s K-12 pupils.

2. It broadens the scope of school facilities that may be used for “community purposes” from “the public schoolhouse” to “land or public school facilities owned or operated by the school district.”<sup>1</sup>
3. It declares that using school property for “community purposes” not only promotes the general “education, health, and well-being of the communities where schools are located” but further fulfills a specifically “intended purpose for the use of school property under Arkansas Constitution, Article 14, § 2.”
4. In order “to offset the cost” of such “community use,” it authorizes any school district to enter into a “joint use agreement” with any “public agency, public entity, private entity, or nonprofit corporation.”
5. With the possible exception of usage associated with a “joint use agreement,” it leaves to the discretion of the school board whether to charge for allowing school property to be used for a “community purpose.”

You have asked whether legislation having these effects in any sense qualifies the opinions set forth in Op. Att’y Gen. No. 1999-417, which addressed, *inter alia*, the restrictions on the use of school property imposed by Ark. Const. art. 14, § 2.

Specifically bearing upon your current request, my predecessor addressed the following question:

To what extent does Article 14, § 2 of the Arkansas Constitution apply to organizations that wish to avail themselves of school property, such as classrooms, the cafeteria, the gymnasiums, and various ball fields? Would a charge equivalent to fair rental use satisfy the constitutional provision?

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<sup>1</sup> Although the caption of A.C.A. § 6-21-101 as amended remains “Authority to permit use of public school *buildings* for community purposes” (emphasis added), the legislation’s substantive provisions unequivocally extend to land.

Article 14, § 2 provides that “[n]o money or property belonging to the public school fund, or to this State for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.” My predecessor initially established in his discussion that the standard controlling the use of district resources under this provision is the same as that applicable under Article 14, § 3, which mandates, *inter alia*, that taxes levied for maintenance and operation of the schools (“M&O”) be used exclusively for that purpose.<sup>2</sup> Accordingly, he concluded:

It is my opinion that whether or not Article 14, § 2 applies, ***a school board can allow non-school organizations to use school property such as classrooms, the cafeteria, the gymnasiums, and various ball fields, if, in the judgment of the school board, that organization’s use of the property is lawful and is consistent with the efficient operation of the school. In this regard, I must note that the board will be constrained by constitutional requirements such as the prohibition against illegal exactions.*** See Ark. Const., Art. 16, § 13.<sup>[3]</sup> For this reason, it may be appropriate, depending upon the circumstances, for the board to impose a charge for the use of school property. It would be advisable for the school board to develop and implement a facilities use policy.

(Emphasis added.)

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<sup>2</sup> The Arkansas Supreme Court has subsequently confirmed as follows that the standard under these two subdivisions is the same:

Although this court has not previously interpreted the current version of art. 14, § 3, we hold that it requires nothing more than article 14, § 2. Under section 2, an expenditure must be “immediately and directly connected with the establishment and maintenance of a common school system.” *Little River County Bd. of Educ.*, 156 Ark. [549, 556, 247 S.W. 70 (1923)]. Clearly, any expenditure that meets this requirement will be one that is “for maintenance and operation of the schools.” Ark. Const. art. 14, § 3 (as amended by Ark. Const. amend. 74) . . . .

*Gray v. Mitchell*, 373 Ark. 560, 569, 285 S.W.3d 222 (2008). The upshot of both provisions is that school resources must be primarily devoted to school purposes.

<sup>3</sup> Article 16, § 13 authorizes suits “against the enforcement of any illegal exactions whatever.” The use of tax proceeds for an unauthorized purpose in derogation of Article 16, § 11 would constitute an “illegal exaction” warranting the filing of such a suit. As my predecessor clearly acknowledged, this constitutional limitation qualifies the scope of what he called “the explicit statutory authority to allow school property to be used for community purposes” under A.C.A. § 6-21-101.

In concluding that the use of school facilities must be “lawful” and “consistent with the efficient operation of the school,” my predecessor was merely acknowledging that statutory and constitutional provisions will serve as a check on the nevertheless considerable discretion available to a school board in the exercise of its responsibilities.<sup>4</sup> I fully agree with my predecessor’s statement of the law, which acknowledges both the general constitutional condition that “no money arising from a tax levied for any purpose . . . be used for any other purpose”<sup>5</sup> and the statutory mandate, which implements Article 14, restricting a school board’s actions to ones “necessary and lawful for the conduct of efficient free public schools in the district.”<sup>6</sup>

With respect to statutory restrictions, my predecessor based his conclusions in part upon the pre-Act 1507 version of A.C.A. § 6-21-101(b), which read as follows:

The directors of any school district may permit the use of the public schoolhouse for social, civic, and recreation purposes or any other

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<sup>4</sup> One of my predecessors summarized the scope of this discretion as follows:

The Arkansas courts have long interpreted this statute [A.C.A. § 6-13-620, which defines a school district board’s powers] as allowing school boards wide latitude in governing their districts. *See, e.g., Safferstone v. Tucker*, 235 Ark. 70, 72, 357 S.W.2d 3, 4 (1962); *Isgrig v. Srygley*, 210 Ark. 580, 197 S.W.2d 39 (1946). *See also Springdale Board of Education v. Bowman*, 294 Ark. 66, 69, 740 S.W.2d 909, 910 (1987); *Leola School District v. McMahan*, 289 Ark. 496, 498, 712 S.W.2d 903, 905 (1986). The courts have further held that they will not substitute their judgment for that of a school board with regard to policy matters, unless the school board, in enacting the policy in question, abused its discretion or acted arbitrarily, capriciously, or contrary to law. *Id.* The court in *Leola, supra*, explained “arbitrary and capricious” action by a school board as being action that is not supportable “on any rational basis.” *Leola*, 289 Ark. at 498, 712 S.W.2d at 905. It should be noted that the party challenging the school board’s policy has the burden of proving the board’s abuse of discretion by clear and convincing evidence. *Springdale*, 294 Ark. at 69, 740 S.W.2d at 910.

Ark. Op. Att’y Gen. No. 2000-270, most recently quoted in Ops. Att’y Gen. No. 2013-124 and 2012-060.

<sup>5</sup> Ark. Const. art. 16, § 11.

<sup>6</sup> A.C.A. § 6-13-620(a)(12) (Supp. 2011). This statute accords with the constitutional directive that “the State shall ever maintain a general, suitable and efficient system of free public schools.” Ark. Const. art. 14, § 1. For a discussion of what may be deemed “necessary,” in constitutional terms, in a system of “efficient free public schools,” *see* Op. Att’y Gen. No. 2013-124.

community purpose, including any lawful meetings of its citizens, provided such meetings do not interfere with the regular school work, and the directors may make a charge therefor if they deem it proper to do so.

Act 1507 expands this statute in part by itemizing illustrative uses that a school board might approve for “community purposes.” This change, however, marks only an elaboration of the standard applicable prior to the amendment. In both its pre- and post-amendment forms, the statute grants a school board the discretion to approve the use of school property for a “community purpose.” The amendment further does not substantively alter the provision that any approved community activity not interfere with “the regular school work” (pre-amendment version) or “an instructional day” (post-amendment version). Given this consistency in the statute before and after its amendment, I see no need to offer any material qualification of my predecessor’s conclusions. Now, as before the enactment of Act 1507, the statute leaves it to a school board’s discretion, which will necessarily be bounded by constitutional imperatives, to determine whether to charge for use of school resources for “community purposes.”<sup>7</sup>

With respect to the issue of school-board discretion, any unqualified suggestion that school property might be used for “community purposes” appears inconsistent with the constitutional directive that such property be used primarily to benefit the district’s students. In my opinion, it would be clearly impermissible, for instance, simply to dedicate school property to an exclusively “community purpose.” As suggested by my predecessor, it would further be impermissible for a school board to exercise its discretion by allowing any gratuitous use of school property that

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<sup>7</sup> Having offered this opinion, I must remark on one provision of Act 1507 that I find problematic. As noted above, Act 1507 declares that using school district realty and resources to serve “community purposes” is an “intended purpose for the use of school property under Arkansas Constitution, Article 14, § 2.” This provision strikes me as questionable on several accounts. First, as my predecessor pointed out, Article 14, § 2 is concerned with the “school fund” – a resource that he concluded might not include district-owned realty of the sort at issue in A.C.A. § 6-21-101. It is thus difficult to understand how Article 14, § 2 could be interpreted as bearing directly on the appropriate uses of such property. For purposes of your question, however, what matters is only that a district’s use of its resources, including its realty obtained for school purposes, remains subject to the other provisions of Article 14, which clearly define education as the mission of the schools. Secondly, there is something startling in the declaration that what is commonly recognized as the specific “education article” has the “intended purpose” of serving general “community purposes” unrelated to education. Although a court might conclude that such is indeed the case, a legislative declaration to this effect cannot in itself make it so. It is consequently unclear what the legislature intended to accomplish in including this provision.

results in appreciable deterioration of resources financed on the express representation that they would be used for school purposes. This consideration doubtless prompted my predecessor to remark that a school board's discretion remains bounded by constitutional considerations that may indeed require the board to "charge for the use of school property." It may further have prompted the legislature itself to provide for various means to "offset the cost" of community use – a provision that only complements the legislature's insistence that "community activities" never "interfere with an instructional day at the school where the community activities are held."

In summary, I believe my predecessor correctly concluded that community use of school property, while not in itself constitutionally offensive, can neither be permitted to interfere with the normal functioning of district educational activities nor be made available without recouping any appreciable cost the district might incur as a result of such use.<sup>8</sup> Under Act 1507, it lies within the discretion of a school board to determine both when a community use is constitutionally permissible and when a community user must pay for such use. Having ventured this opinion, I note that no court has yet directly addressed this issue.

***Question 2: To what extent, if any, does the Arkansas Supreme Court's decision in *Kimbrell v. McCleskey*, 2012 Ark. 443 (Nov. 29, 2013), impact the discussion and conclusions reached in Op. 1999-417?***

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<sup>8</sup> In my opinion, this principle qualifies the following statute, which contemplates that, subject to monitoring by the State Board of Education, a school district might devote its facilities to "recreation purposes" apparently benefitting non-students:

(a) The facilities of any school district operating a recreation program pursuant to the provisions of this subchapter shall be used primarily for the purpose of conducting the regular school curriculum and related activities, and the use of school facilities for recreation purposes authorized by this subchapter shall be secondary.

(b) In all cases where school property is utilized for programs under this subchapter, the State Board of Education shall prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry out the provisions of this subchapter.

A.C.A. § 14-54-1307 (Repl. 1998). *See* Op. Att'y Gen. No. 2013-124 (citing this statute as illustrating that "the 'absolutely necessary' standard set forth [in *Gray*, *see supra*, note 3 and accompanying text] does not categorically foreclose an expenditure that incidentally benefits parties other than the district itself"). To the extent that an arrangement of the sort contemplated is in fact undertaken, I believe any expenses to the district incurred thereby must be reimbursed.

*Kimbrell v. McCleskey* stands primarily for the proposition that a school district may “retain any URT revenues in excess of the foundation-funding amount” generated from property-tax revenues.<sup>9</sup> Your rather obscure question appears to be whether a school district’s retention of such excess revenues empowers it to devote those revenues to “community purposes” – including, presumably, community use of real property bought with such revenues – without being subject to the statutory and constitutional restrictions discussed in Opinion 1999-417.

In my opinion, the answer to this question is “no.” The fact that a school district controls its excess property-tax revenues does not in any sense enlarge its discretion regarding the permissible uses of those revenues. As the court noted in *Kimbrell* regarding property-tax variations that lead to excess revenues in some districts:

[V]ariations were clearly contemplated and are explicitly permitted under the plain language of art. 14, § 3, Const. art. 14, § 3(a) (“It is recognized that, in providing such a system, some funding variations may be necessary. ***The primary reason for allowing such variations is to allow a school district, to the extent permissible, to raise additional funds to enhance the education system within the school district.***”)<sup>10</sup>

As reflected in the highlighted portion of this parenthetical, as a matter of constitutional law, even excess revenues held by a school district must be devoted to the task of educating the district’s students. Although such expenditures may incidentally benefit parties other than the district’s students, in my opinion, the primary purpose of *all* excess amounts realized in a district is the same as the foundation funding amount – namely, to benefit the district’s pupils. I am only reinforced in this conclusion by the fact that both excess URT revenues and additional mills levied pursuant to Amendment 74 are expressly pledged to district

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<sup>9</sup> 212 Ark. 443, \*13. The “URT” referenced in the quoted passage is the 25-mil uniform rate of tax for maintenance and operation of the schools, as required under Ark. Const. amend. 74. The referenced “foundation-funding amount” is the amount of per-pupil funding set by legislative mandate to be provided each district on an annual basis in order to fulfill the state’s constitutional obligation under Article 14 to “maintain a general, suitable and efficient system of free public schools.” See A.C.A. § 6-20-2305 (Repl. 2013) (setting as that amount \$6,393 per pupil until July 1, 2014).

<sup>10</sup> 2012 Ark. 443, \*13 (emphasis added).

operations,<sup>11</sup> meaning that their diversion to other purposes would be subject to challenge as an illegal exaction in contravention of Ark. Const. art. 16, §§ 11 and 13.

In recognition of this fact, my predecessor opined that, notwithstanding statutory language that suggests otherwise, a school district may lack the discretion to devote its resources, including ones funded by excess revenues, to advancing “community purposes” without charging a fee for such use. I fully agree with this conclusion.

***Question 3: Does the Kimbrell decision render art. 14, sec. 2 of the Arkansas Constitution moot in school districts where the revenue from the twenty-five mills exceeds the state per student funding because all such funds are local?***

This question is likewise cryptic to a point that renders it hard to paraphrase.<sup>12</sup> I will again assume that your reference to “art. 14, sec. 2” is to the general standard restricting the use of district resources under Article 14. Starting from this assumption, for purposes of discussion, I will reword what I take to be your question as follows: Once the *state* has met its obligation to provide foundation funding sufficient to afford a district’s students a “general, suitable and efficient system of free public schools,” is the district free to expend what you term “*local*” URT revenues realized above the foundation-funding amount on some purpose other than the M&O and debt service expenditures prescribed in Article 14? In my opinion, the answer to this question is “no.”

Although it does not bear on my conclusions, I must initially question your suggestion that district revenues arising from the 25-mill URT in excess of foundation funding are “local.” The majority in *Kimbrell* rejected as follows the proposition that the URT is either a “state” tax or a “local” county tax:

Clearly, the URT is not a county tax, but further absent is any suggestion whatsoever that it is a state tax. To the contrary, both the

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<sup>11</sup> Specifically, Article 14, § 3(b)(1) mandates that URT revenues be devoted to M&O. Subsection 3(c)(1) mandates that excess mills be devoted to M&O and debt service.

<sup>12</sup> I cannot presume to understand, for instance, the suggestion that a judicial opinion interpreting a constitutional provision might “render” that provision “moot.”

General Assembly and this court seem to have recognized school taxes as a breed of their own that are neither state nor local.<sup>13</sup>

For purposes of your question, however, I consider it immaterial whether one characterizes excess revenues as either “state,” “local” or, as the *Kimbrell* majority phrased it, “a breed of their own.”<sup>14</sup> Regardless of how they are characterized, URT revenues are expressly and exclusively pledged to maintenance and operation of the schools. Article 14 is unequivocal on this point:

There is established a uniform rate of ad valorem property tax of twenty-five (25) mills to be levied on the assessed value of all taxable real, personal, and utility property in the state *to be used solely for maintenance and operation of the schools.*<sup>15</sup>

*Kimbrell* at no point supports a suggestion that this constitutional mandate is restricted to URT revenues devoted to foundation funding. The opinion addresses only whether excess URT revenues generated in a particular district may be used *for M&O* exclusively in the generating district or, alternatively, whether the state may divert the excess to another district in order to meet its foundation-funding target *for M&O* in that district. In the face of trenchant (and, to my mind, persuasive) dissents, the majority ruled that no such diversion by the state is legally permissible. This holding in no way calls into question the dedication under Article 14 of *all* URT revenues, regardless of how they are classified and including revenues above the foundation-funding amount, to M&O.

***Question 4: Would a school district’s use of funds gained from a millage over and above the required twenty five mills for joint use of school facilities pursuant to Act 1507 violate art. 14, sec. 2 of the Arkansas Constitution?***

As in my response to your previous questions, I will assume that your reference to “art. 14, sec. 2” is to the general standard restricting the use of district resources under Article 14.

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<sup>13</sup> 2012 Ark. 443, \*20-21.

<sup>14</sup> *Id.* at \*21. One dissenter in *Kimbrell* caustically suggested that the majority had classified such excess revenues as “neither fish nor fowl.” *Id.* at \*31 (Brown, J., dissenting).

<sup>15</sup> Ark. Const. art. 14, § 3(b)(1).

As noted in my response to your first question, Act 1507 amended A.C.A. § 6-21-101 to add subsection (c), which authorizes a school district “[t]o offset the cost of community use of school land or a public school facility” by entering into “a joint use agreement with a public agency, public entity, private entity, or nonprofit organization, for shared use and responsibility of the school land or public school facility.” In my opinion, subsection (c) in no way contemplates a school district’s directly expending funds from revenues realized from a millage “over and above” the URT. On the contrary, on its face, this subsection deals exclusively with the permissible uses of existing district *realty*, not with the disposition of *millage funds* collected in excess of the URT.<sup>16</sup> With respect to “joint use” agreements, then, Act 1507 appears to do no more than expressly recognize a school district’s authority to enter into a contractual agreement pursuant to which the entities might use school facilities, presumably when not needed for educational use, in exchange for a negotiated payment. The monetary consideration in such an instance would flow *to* the school district, not *from* it. In my opinion, then, Act 1507 simply does not address an expenditure of the sort you describe.

I do not mean to suggest in the foregoing that a school district is necessarily foreclosed from committing to expenditures in connection with a joint-facilities enterprise undertaken with entities of the sort referenced in the statute. This office has recently entertained this possibility, for instance, in addressing the constitutionality of a proposed agreement whereby the Russellville School District would commit to finance certain improvements to a municipal park in consideration of the city’s agreeing to the District’s conducting athletic competitions in the park.<sup>17</sup> In that opinion, I concluded that a school board, in the exercise of its considerable discretion, could incur such an expenditure if it qualified as “necessary” in the constitutional sense of “convenient, useful, appropriate, suitable, proper or conducive to the proper maintenance of the schools.”<sup>18</sup> I believe the same standard would apply in reviewing any expenditure from Article 14 mills “over and above” the URT, subject only to the qualifier that

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<sup>16</sup> The use of such excess funds, moreover, is constitutionally restricted only to “the maintenance and operation of schools and the retirement of indebtedness.” Ark. Const. art. 14, § 3(c)(1).

<sup>17</sup> Op. Att’y Gen. No. 2013-124.

<sup>18</sup> With respect to the use of excess-mill revenues, this standard should be read in conjunction with the constitutional restriction on uses of such funds to “the maintenance and operation of schools and the retirement of indebtedness.” Ark. Const. art. 14, § 3(c)(1).

Article 14, § 3(c)(1) expressly authorizes using millage funds in excess of the URT for *both* M&O and debt service.

***Question 5: Would a school district’s proposed millage with language explicitly stipulating that the funds would be used for joint use of school facilities pursuant to Act 1507 violate the Arkansas Constitution?***

Determining whether a “proposed millage” of the sort referenced in your question accords with constitutional restrictions would in each instance entail reviewing the text of the ballot and all the attendant circumstances. Not being a finder of fact, I am neither situated nor authorized to conduct any such inquiry. Furthermore, I must repeat that Act 1507 does not contemplate a joint-use agreement by a school district that would involve expending district funds raised by a millage. With respect to the appropriate “joint use” of school-district tax revenues, *see* my response to your previous question.

***Question 6: To what extent, if any, does the passage of Amend. 74 of 1996 render moot the discussion and conclusions reached in Op. 1999-417 regarding art. 14, sec. 3 of the Arkansas Constitution?***

To no extent. Opinion 1999-417 was issued well after, and with full awareness of, the passage of Amendment 74, which is incorporated into the provisions of Article 14 discussed above. I fully concur with my predecessor’s conclusions.

***Question 7: For the purposes of art. 14, secs. 2 and 3, and art. 16, sec. 3, is the constitutionality of the provisions of Act 1507 dependent upon whether the origin of the funds spent are local or state?***

As an initial matter, I must note that it is unclear what you intend by your reference to Ark. Const. art. 16, § 3, which bars state officials from diverting or “making a profit out of public moneys.”<sup>19</sup> I will assume you intended to refer to Ark. Const. art. 16, § 13, which bars illegal exactions.<sup>20</sup>

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<sup>19</sup> Article 16, § 3 provides in its entirety:

The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any officer of the State, or member or officer of the General Assembly, shall be punishable as may be provided by law, but part of such punishment shall be disqualification to hold office in this State for a period of five years.

Subject to the assumption just stated, in my opinion, the answer to your question is “no.” As discussed above, for purposes of determining how funds subject to Article 14 might be used, it is immaterial whether one characterizes the funds as “local,” “state” or “a breed of their own.” In my opinion, all such funds are subject to the restrictions discussed above.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM/JHD:cyh

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<sup>20</sup> Article 16, § 13 provides in its entirety:

Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.