

Opinion No. 2014-019

March 18, 2014

The Honorable John Cooper  
State Senator  
62 CR 396  
Jonesboro, Arkansas 72401

Dear Senator Cooper:

This is my opinion on your questions about dividing county road tax revenues between Craighead County and the City of Jonesboro, and between Craighead County and the City of Monette.

The law provides that county road tax money collected on property within city limits is divided equally between the county and the city unless a special act dictates some other division.<sup>1</sup>

You included with your request copies of Act 8 of 1925 and Act 431 of 1921, which provide for Jonesboro and Monette, respectively, to receive three-fifths of in-city collections.<sup>2</sup>

You ask whether Acts 8 and 431 are constitutional and whether Jonesboro and Monette should receive three-fifths, or half.

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<sup>1</sup> A.C.A. § 26-79-104 (Repl. 2008).

<sup>2</sup> Both Acts specify the first tax year for which in-city collections will be divided 60/40 but Act 431 goes on to expressly state that the same division will apply in future years. Act 8 contains no such express statement of future applicability. Both Acts, however, state that the specified division applies “whenever” a county road tax is levied and collected. In my view, both Acts were intended to govern the division not only for the specified year but also indefinitely thereafter.

## RESPONSE

In my opinion, neither Act 8 nor Act 431 is unconstitutional local or special legislation, and, assuming the Acts are still in effect, Jonesboro and Monette should receive three-fifths of the county road taxes collected on property within city limits.

You suggest no constitutional grounds on which the Acts might be questioned. But similar acts have been successfully challenged as constitutionally-prohibited local or special legislation<sup>3</sup> and I assume your question is directed to that issue.<sup>4</sup>

When Acts 8 and 431 were enacted in 1925 and 1921, the constitution prohibited only those local and special laws that took a specified action, namely “changing the venue in criminal cases; changing the names of persons, or adopting or legitimating children; granting divorces; vacating roads, streets or alleys;”<sup>5</sup> or

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<sup>3</sup> See, e.g., *City of Little Rock v. Campbell, Cnty. Judge*, 223 Ark. 746, 268 S.W.2d 386 (1954); *Street Improvement Dist. Nos. 481 & 485 v. Hadfield*, 184 Ark. 598, 43 S.W.2d 62 (1931). A more recent challenge, however, was not successful, at least to the extent described in reported decisions. *City of Siloam Springs v. Benton Cnty.*, 350 Ark. 152, 85 S.W.3d 504 (2002), *appeal after remand Benton Cnty. v. City of Bentonville*, 373 Ark. 356, 284 S.W.3d 52 (2008).

<sup>4</sup> One might make an equal protection argument based on any law that results in people being treated differently. In this case, the Acts might be said to result in different treatment of residents of Jonesboro or Monette, on the one hand, and of cities that receive only half the county road tax amount, on the other.

The equal protection doctrine prohibits certain types of “classifications” that result in the disparate treatment of those who are similarly situated. Classifications in and of themselves do not violate the equal protection doctrine. In order to establish an equal protection violation arising out of a classification that does not affect a suspect class or a fundamental right, it is necessary to show that the disparity is arbitrary – that is, that the disparity has no conceivable rational basis or rational relation to a legitimate end. In reviewing the constitutionality of a classification that does not affect a suspect class or a fundamental right, the courts must not only presume the constitutionality of the challenged classification; they must further uphold the classification even without requiring a showing of an actual rational basis, so long as any conceivable rational basis for the scheme can be adduced – even a hypothetical one.

Op. Att’y Gen. 2011-097 (quoting Op. Att’y Gen. 2011-047) (citations omitted). I perceive no suspect class or fundamental right involved here. It seems likely that one could adduce a hypothetical rational basis for a special division of county road taxes.

<sup>5</sup> Ark. Const. art. 5, § 24.

“conferring corporate powers.”<sup>6</sup> In my opinion, the Acts do not take any such action and so are not unconstitutional under either of the quoted provisions.

My opinion is supported by a 1912 Supreme Court case upholding a 1911 act giving Texarkana three-fifths of in-city collections.<sup>7</sup> The Court acknowledged that the act was “in the nature of special legislation” but noted that the constitution did not prohibit all such legislation and deferred to the Legislature’s judgment that a special law was appropriate in the circumstances.<sup>8</sup>

Amendment 14, adopted in 1926, provides: “The General Assembly shall not pass any local or special act. This amendment shall not prohibit the repeal of local or special acts.” The amendment restricts the General Assembly’s power but does not purport to repeal local or special acts on the books in 1926 or require the General Assembly to do so. Under the amendment’s second sentence, the General Assembly has implied discretion to repeal existing local and special acts or to let them stand. Amendment 14’s adoption did not in my opinion affect the constitutionality of Act 8 or 431.

My opinion is supported by a post-Amendment 14 case wherein the county challenged acts favoring cities in the division of county road taxes and the Supreme Court twice noted without criticism the trial court’s dismissal of a city defendant because the act giving it a favorable share predated Amendment 14.<sup>9</sup>

I have concluded that the Acts are not unconstitutional. It is accordingly my opinion, assuming the Acts are still in effect,<sup>10</sup> that Jonesboro and Monette should receive three-fifths of the county road taxes collected on property within city

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<sup>6</sup> Ark. Const. art. 12, § 2.

<sup>7</sup> *Sanderson v. City of Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912).

<sup>8</sup> *Id.* at 536.

<sup>9</sup> *City of Siloam Springs v. Benton Cnty.*, *supra* note 3.

<sup>10</sup> I have found nothing to suggest that either Act has been repealed or is otherwise not in effect. The Arkansas Code Revision Commission’s tables list the Acts as “Spec.” (special or local), not as “Repealed,” “Unconst.” (unconstitutional), or “Superseded.”

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limits. The law otherwise requiring an equal division allows exceptions by “special act,”<sup>11</sup> including, in my view, Acts 8 and 431.

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

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:JMB/cyh

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<sup>11</sup> A.C.A. § 26-79-104(c).