STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-082

September 29, 2014

The Honorable David L. Branscum
State Representative
Post Office Box 370
Marshall, Arkansas 72650-0370

Dear Representative Branscum:

You have requested my opinion on the following questions concerning 911 services:

> 1. Where a county sheriff has control of the county's 911 and dispatch, under what circumstances may a county judge transfer control to the office of county judge?
>
> 2. Does the county sheriff need to have concurrence to relinquish control of the county's 911 and dispatch?
>
> 3. Where the county judge has the duty and authorization to oversee the county's 911 and dispatch, would it be permissible to utilize the local chiefs of police to check ACIC?
>
> 4. In county government, who may oversee the county's 911 and dispatch? What are the requirements for transferring that duty? Who may request and effect the transfer?

RESPONSE

Although you have provided no specific background information for evaluating these questions, it seems clear I am to assume they pertain to a 911 system that is currently operated by the county sheriff. In response to Questions 1, 2 and 4, the agencies that may operate county 911 communications center systems are limited

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to offices of emergency services, fire departments, and law enforcement agencies. The governing statutes do not speak directly to the authority to divest a 911 operating agency from its duties or the circumstances under which such a divestiture might occur. As a general proposition, I believe the authority to designate the operating agency also includes the authority to determine whether such agency shall remain designated. In the case of a county 911 system, the general authority to determine whether an operating agency shall remain designated resides in the county judge and most likely does not require the concurrence of the head of the operating agency, i.e., the sheriff in the scenario you present. As a practical matter, however, the exercise of this authority will likely depend upon various considerations, including staffing requirements and the costs associated with re-designating an operating agency, as well as any existing agreements or commitments concerning the provision of 911 services. Your third question is somewhat unclear. Strictly speaking, a county judge may not access the Arkansas Crime Information Center [ACIC] system or "utilize" anyone to "check ACIC." Moreover, as certified law enforcement officers, local chiefs of police have access to the ACIC system. However, a 911 center has access to ACIC in order to serve the informational needs of law enforcement; and generally speaking, a local police department can be designated to operate a 911 center. Your question may somehow relate to this designation, but I am unable to address any issues in this regard without clarification of the precise question.

DISCUSSION

Question 1 - Where a county sheriff has control of the county's 911 and dispatch, under what circumstances may a county judge transfer control to the office of county judge?

Question 2 - Does the county sheriff need to have concurrence to relinquish control of the county's 911 and dispatch?

Question 4 - In county government, who may oversee the county's 911 and dispatch? What are the requirements for transferring that duty? Who may request and effect the transfer?

I address these questions together because each plainly relates to the management of 911 services. When you say the sheriff has "control" of the county's 911 and dispatch, I assume you mean the sheriff's office is the "operating agency" for the county's "911 public safety communication center." Some explanation of these terms is necessary.

The Arkansas Public Safety Communications Act of 1985 ("911 Act" or "the Act," A.C.A. §§ 12-10-301 – 324) provides for the establishment and operation of "911 public safety communications centers," which are defined as follows:

> "911 public safety communications center" means the communications center operated on a twenty-four (24) hour basis by one (1) of the *operating agencies defined by this subchapter and as designated by the chief executive of the political subdivision* which includes the [PSAP] and dispatches one (1) or more public safety agencies.[1]

"Operating agency" is defined under the Act as "the public safety agency *authorized and designated by the chief executive of the political subdivision* to operate a 911 public safety communications center."[2]

The "chief executive" of the political subdivision is thus given the authority to designate the agency which is to operate a 911 communications center. The chief executive of a county is the county judge.[3] "Operating agencies" are limited to "offices of emergency services, fire departments, and law enforcement agencies of the political subdivisions."[4] If the county sheriff's office is to be designated to operate a county 911 center, the concurrence of the county sheriff is required.[5]

With regard to a transfer of 911 operations, the statutes offer no specific guidance on the matter. My immediate predecessor concluded, however, that the authority to designate also includes determining whether such designation shall remain in effect:

> Although the statutes do not speak directly to the authority to *divest* an operating agency from its duties, it is reasonable to conclude that the power of the county judge to designate the operating agency also

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[1] A.C.A. § 12-10-303(13) (Supp. 2013) (emphasis added).

[2] A.C.A. § 12-10-303(16)(A) (Supp. 2013) (emphasis added).

[3] *Id.* at (5). *See also* Ark. Const. amend. 55, § 3.

[4] *Id.* at (16)(B).

[5] A.C.A. § 12-10-302(e)(2) (Repl. 2009) ("It is found and declared necessary to ... authorize the chief executive to ... designate the location of a 911 public safety communications center and agency which is to operate the center. As both are elected positions, a county judge must obtain concurrence of the county sheriff."). *See* Op. Att'y Gen. 2000-321.

> includes the power to determine whether a current operating agency shall remain designated.[6]

I agree with this general conclusion. In my opinion, the authority to designate generally reasonably extends to determining that a current delegation should be withdrawn. As I have previously noted, the county judge has some degree of authority over county 911 operations.[7] While the Act does not elaborate upon this authority, I have previously observed that "presumably it includes ensuring that the 911 system is properly established and operating, and that any specific requirements of the Act are met."[8] It may well be that in exercising this oversight authority, the county judge has occasion to determine that a current operating agency should not remain designated. In the absence of some language in the Act suggesting that the operating agency must concur in that determination, it is my conclusion that the agency's concurrence is not required. This conclusion extends to the county sheriff's office. As noted above, the authority to determine the center's location and its operating agency plainly resides in the county judge.[9] The required concurrence of the elected county sheriff if his agency is to be designated is understandable, given the sheriff's administrative authority over his office. But in my opinion, it does not follow that the sheriff must concur if his office is to be divested of its operating agency duties.

I should nevertheless again point out that the governing statutes do not speak directly to the authority to divest a 911 operating agency from its duties, or the circumstances under which such a divestiture might occur. Various factual considerations will conceivably come into play when addressing the possible exercise of this authority. As a practical matter, re-designating an operating agency will probably depend upon a number of factors, including staffing requirements,[10] expenditure and accounting analyses regarding current 911

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[6] Op. Att'y Gen. 2004-242 (emphasis original).

[7] Op. Att'y Gen. 2013-147 (quoting A.C.A. § 12-10-306(a)(4), which provides that "[t]he staff and supervisors of the 911 public safety communications center and systems shall be ... [s]ubject to the authority of the chief executive [county judge] through their agency.").

[8] *Id.*

[9] *Supra* n. 5.

[10] 911 system staff and supervisors must receive all training necessary to operate the system equipment and other aspects of the system. A.C.A. § 12-10-306(a)(3). The Act also recommends that staffing plans be based on "the level of service, population of the service area, and other duties of the center." *Id.* at (b)(1).

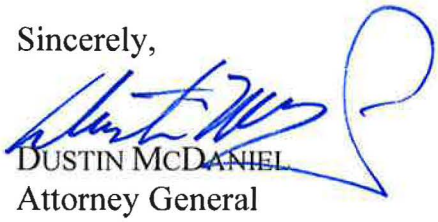
operations,[11] and current agreements or commitments concerning the provision of 911 services. Consultation with local counsel is therefore advisable when considering any such transfer of duties.

Question 3 - Where the county judge has the duty and authorization to oversee the county's 911 and dispatch, would it be permissible to utilize the local chiefs of police to check ACIC?

I am uncertain regarding the actions contemplated by this question. Access to data available through the ACIC system is strictly limited under the ACIC statutes (A.C.A. § 12-12-201 *et seq.*): "The use of the system is restricted to serving the informational needs of governmental criminal justice agencies and others specifically authorized...."[12] As a general matter, therefore, a county judge may not access the ACIC system or "utilize" anyone to "check ACIC." I also note that as certified law enforcement officers, local chiefs of police generally have access to the ACIC system.[13] It may bear noting that a 911 center has access to ACIC in order to serve the informational needs of law enforcement.[14] And generally speaking, a local police department can be designated to operate a 911 center.[15] Your question may somehow relate to this designation, but I am unable to address any issues in this regard without clarification of the precise question.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,



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[11] *See* A.C.A. §§ 12-10-318; -319; -321 – 323 (Repl. 2009 and Supp. 2013).

[12] A.C.A. § 12-12-207(a) (Repl. 2009).

[13] *See* A.C.A. § 12-12-211(Repl. 2009).

[14] A.C.A. § 12-10-316(b) (Repl. 2009); Op. Att'y Gen. 94-100. *See also* ACIC System Regulations (Jan. 10, 2005), available at http://acic.org/resources/Documents/System_Regulations_1_7_2005.pdf (last visited August 15, 2-14).

[15] A.C.A. § 12-10-303(16) and (19).