



**STATE OF ARKANSAS**  
**THE ATTORNEY GENERAL**  
**DUSTIN MCDANIEL**

Opinion No. 2014-130

January 5, 2015

The Honorable Warwick Sabin  
State Representative  
Post Office Box 250508  
Little Rock, Arkansas 72225-0508

Dear Representative Sabin:

You have requested my opinion on the following questions concerning the Central Arkansas Library System ("CALs"):

1. Because CALS was created pursuant to Ark. Code Ann. § 25-20-201 *et seq.*, as a public body corporate and politic, is it required to request appropriation of the Pulaski County Quorum Court (and all other participating public agencies) in order to receive tax funds that were levied by the taxing agencies in support of CALS?
2. If so, does the Agreement for Joint Cooperative Action between the participating public agencies, which dedicated the library taxes levied by the agencies to CALS, negate the requirement of a yearly appropriation such that these funds can be distributed directly to CALS by the Pulaski County Treasurer?
3. If CALS is required to request an appropriation from the various agencies who are party to the Agreement, would this requirement run afoul of Ark. Code Ann. § 25-20-203(b), which states that once created, CALS is not subject to any further supervision or regulation of the participating public agency, nor

does it require any further approval or consent of the participating public agency?

## RESPONSE

Funds derived from a library millage levied under Ark. Const. amend. 38, as amended, and held in the county treasury must be appropriated, in my opinion, in view of Ark. Const. art. 16, § 12. For the reasons explained below, I doubt whether a city library tax levied under Ark. Const. amend. 30 to support CALS must be appropriated. Legislative clarification would be beneficial, however, to definitively resolve the matter.<sup>1</sup>

In response to your specific questions, however, I must emphasize that while the quorum court is the appropriating body for a county library millage, it plainly has no fiscal discretion or financial management authority over a millage levied in support of CALS. Accordingly, it is my opinion in response to your first question that an appropriation is required in this regard, but the appropriation is purely ministerial. The quorum court may exercise no discretion in appropriating funds derived from a library millage levied in support of CALS.

The answer to your second and third question is “no,” in my opinion.

## DISCUSSION

***Question 1 - Because CALS was created pursuant to Ark. Code Ann. § 25-20-201 et seq., as a public body corporate and politic, is it required to request appropriation of the Pulaski County Quorum Court (and all other participating public agencies) in order to receive tax funds that were levied by the taxing agencies in support of CALS?***

The body of law you have cited was enacted in 1995<sup>2</sup> to amend Arkansas Code Title 25, Chapter 20, to add a subchapter authorizing political subdivisions and other “public agencies”<sup>3</sup> to “create a public body corporate and politic as a

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<sup>1</sup> Amendments 30 and 38 to the Arkansas Constitution, as amended by Amendments 72 and 89, provide for the levy of an annual tax on real and personal property to support, respectively, a public city library and a public county library or library service or system.

<sup>2</sup> Acts 1995, No. 813.

<sup>3</sup> For the definition of “public agency,” see A.C.A. § 25-20-103 (Supp. 2013).

separate legal entity for the purpose of constructing, operating, and maintaining a public library system.”<sup>4</sup> You explain that CALS was created in 1999 pursuant to this legislation by the Cities of Little Rock, Jacksonville, Maumelle and Sherwood, together with Pulaski and Perry Counties (the “participating public agencies.”).<sup>5</sup>

You correctly note that having been created under the 1995 legislation – apparently with no limitations of power – CALS is an “independent legal entity”<sup>6</sup> with broad powers, including plenary authority over its own budget,<sup>7</sup> the power to receive taxes from any source – including constitutional levies<sup>8</sup> – and the power of eminent domain.<sup>9</sup> It is also exempt from general laws dealing with public facilities.<sup>10</sup> You report that CALS receives no general operating revenue from either Pulaski County or Perry County; and that all income reflected in its budget, other than private donations, comes from millages passed by voters specifically in support of CALS – the proceeds of which cannot legally be appropriated or used by the participating public agencies for any other purpose.

CALS is of the view, based on its broad powers, that no further action of the participating public agencies should be required for the library taxes collected on its behalf to be remitted to it. CALS maintains that it should be treated like other separate legal entities – such as schools and cities – which receive tax proceeds directly from the county treasurer.

CALS unquestionably is a legal entity separate from and independent of the public agencies that participated in its creation. More specific to your question, CALS undoubtedly is not subject to any authority a participating public agency might

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<sup>4</sup> A.C.A. § 25-20-201(a) (Repl. 2002).

<sup>5</sup> Under a separate Interlocal Agreement approved by this office, the participating public agencies agreed to cooperate in connection with the construction, operation, and maintenance of a public library system under the auspices of CALS, with CALS to be funded through city and county voter-approved library millages. *See Op. Att’y Gen. 99-239.*

<sup>6</sup> A.C.A. § 25-20-203(b) (Repl. 2002).

<sup>7</sup> A.C.A. § 25-20-202(b) (Repl. 2002).

<sup>8</sup> A.C.A. § 25-20-203(a)(8).

<sup>9</sup> *Id.* at (9).

<sup>10</sup> A.C.A. § 25-20-206 (Repl. 2002).

otherwise exercise with respect to the budgeting of funds derived from a library millage levied pursuant to either Arkansas Constitution Amendment 30 or Amendment 38, as amended.<sup>11</sup> As you note, CALS's budget is reviewed and approved by the CALS board of directors.<sup>12</sup> And this budgeting process plainly falls outside the scope of any participating public agency's authority:

A public body corporate and politic created as provided by this subchapter shall constitute an independent legal entity, and, notwithstanding any other provision of state law or any ordinance, resolution, or other action of any participating public agency to the contrary, none of the powers granted to a public body under the provisions of this subchapter or in its application for incorporation shall be subject to the further supervision or regulation or require the further approval or consent of any participating public agency.<sup>13</sup>

But your question also demands consideration of a constitutional appropriation requirement:

No money shall be paid out of the treasury until the same shall have been appropriated by law; and then only in accordance with said appropriation.<sup>14</sup>

This constitutional provision applies to counties.<sup>15</sup> The controlling principle that applies to your question, then, is that moneys contained in the county treasury

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<sup>11</sup> Compare Op. Att'y Gen. Nos. 2001-012 (addressing several questions involving the Crawford County Library Board's budget and opining that final approval of that library's budget must be granted by the full quorum court); 90-319 (opining that segregated tax proceeds in the custody of the county treasurer must be appropriated in whole or in part by the quorum court in order to create a library system's annual budget).

<sup>12</sup> A.C.A. § 25-20-202(b) (“(1) The board of directors shall appoint a paid executive director, who shall be in charge of the daily operations of the public body and shall be responsible for submitting a budget to the board of directors for approval and the hiring, dismissal, and compensation of other staff. (2) The board of directors shall have final approval of all budgets.”).

<sup>13</sup> A.C.A. § 25-20-203(b).

<sup>14</sup> Ark. Const. art. 16, § 12.

<sup>15</sup> *Mackey v. McDonald*, 255 Ark. 978, 986, 504 S.W.2d 726 (1974); *Nevada County v. News Printing Co.*, 139 Ark. 502, 206 S.W. 899 (1918).

must be appropriated. In my opinion, this includes county treasury funds derived from a millage levied under Ark. Const. amend. 38 in support of CALS.<sup>16</sup> I recognize CALS's unusual independent status and authority under sections 25-20-201 *et seq.* But I do not interpret these Code sections to create an exemption from the above appropriation requirement. Indeed, any effort to exempt such funds from the requirement of an appropriation would likely be unconstitutional, in my opinion.<sup>17</sup>

However, an important caveat attends this principle. Although the quorum court is the body authorized by law to appropriate public funds for the expenses of the county,<sup>18</sup> the appropriation of library tax revenues to CALS is a purely ministerial act. This necessarily follows, in my opinion, from the body of law discussed above, which plainly 1) authorizes CALS to receive library taxes levied under Ark. Const. amend. 38; 2) requires no further supervision or approval of any participating public agency for CALS to exercise its powers; and 2) vests CALS with plenary power over its budget, effectively exempting CALS from the quorum court's normal budgeting authority.<sup>19</sup>

In sum, the quorum court has no discretion in appropriating funds derived from a library millage levied in support of CALS. If it fails to appropriate the funds, I believe mandamus will lie to compel the appropriation.<sup>20</sup>

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<sup>16</sup> Pursuant to Section 2 of Amendment 38, the proceeds of a county library millage "shall be held in the custody of the County Treasurer."

<sup>17</sup> I have considered the possibility that the Interlocal Agreement regarding CALS might be an appropriation, thus satisfying the constitutional requirement. The County Code defines "appropriation ordinance" as "a measure by which the county quorum court designates a particular fund, or sets apart a specific portion of county revenue in the treasury, to be applied to some general object of expenditure or to some individual purchase or expense of the county." A.C.A. § 14-14-907(a)(1) (Repl. 2013). The Agreement identifies CALS's various funding sources as the then-current library millages, state-aid funds, fines and fees, and endowment revenues. This might be seen as a designation or setting apart of funds of sorts. In my opinion, however, this provision more likely simply acknowledges these funding sources and their agreed-upon use and application. My first impression that the Agreement does not constitute an appropriation is reinforced, moreover, by the County Code's requirement that an appropriation ordinance must be expressly designated as such. *Id.* at (c). The Interlocal Agreement plainly is not designated as an "appropriation ordinance."

<sup>18</sup> See A.C.A. § 14-14-801(b)(1) (Repl. 2013).

<sup>19</sup> See Op. Att'y Gen. 2002-232 for a discussion of the quorum court's general authority over the appropriation function.

<sup>20</sup> Compare Mackey, *supra*, 255 Ark. at 990 (observing that the quorum court can be compelled by mandamus to make appropriations for obligations fixed by law). I should add that "the county is required

The analysis differs with respect to a city public library tax levied under Amendment 30. While it seems the general rule under the statutes is that moneys held by a city should not be disbursed without first being appropriated,<sup>21</sup> there is no authority establishing that this requirement emanates from Article 16, section 12 to the Arkansas Constitution.<sup>22</sup> Accordingly, questions concerning the need to appropriate Amendment 30 tax proceeds are probably not constitutional in dimension. I believe the inquiry likely focuses instead on statutory provisions regarding municipal appropriations.

As noted generally in this respect, various statutes contemplate the budgetary appropriation of funds under the management and control of the city governing body.<sup>23</sup> Given CALS's independent status, however, I believe it is clear that this general appropriation authority does not extend to funds derived from a city library millage levied in support of CALS.

Consideration must also be given, however, to the following appropriation requirement for a city that supports a city library or library system:

A city which supports a city public library or library system with a city library tax under Arkansas Constitution, Amendment 30, shall by ordinance of the governing body of the municipality appropriate all tax revenues raised by the millage approved by the voters on all taxable property within the city to be used for the support, operation, and maintenance of the public library or public library system located in the city or for library services from within a library system in which the city participates.<sup>24</sup>

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to pay obligations imposed upon it by law which have not been the subject of an appropriation." *Id.* at 986. In light of A.C.A. § 25-20-201 *et seq.*, I believe this means the county is obliged to remit to CALS the library taxes collected on its behalf, notwithstanding the absence of an appropriation.

<sup>21</sup> See Op. Att'y Gen. Nos. 2001-337; 91-416.

<sup>22</sup> See Op. 91-416 (observing that Ark. Const. art. 16, § 12 "apparently has not yet been found applicable to municipalities.") Having found no recent authority on this score, I believe this observation still stands.

<sup>23</sup> See *again* Op. 2001-337 (and statutes cited therein).

<sup>24</sup> A.C.A. § 13-2-501(d)(1) (Supp. 2012).

The term “library system” is undefined. CALS is a “public library system”<sup>25</sup> in which several cities participate. If one were to examine only this provision, then, one might conclude that the General Assembly intends for a levy in support of CALS to be appropriated.

A more thorough examination, however, indicates that this provision is likely of more limited applicability. It was enacted in 1997<sup>26</sup> as an amendment to part of a subchapter of the Code addressed to the establishment of city libraries and library services and systems in which cities participate.<sup>27</sup> Under this subchapter, a “city public library” may be established by the governing body of the city.<sup>28</sup> And the city library’s board of trustees may – with the consent of the city’s governing body – agree to be part of a joint city-county library or a regional library system.<sup>29</sup> Any such library or library system is specifically identified as “a public city library” for purposes of Amendment 30.<sup>30</sup> And all moneys received for such library purposes – including tax funds – are under the “exclusive control” of the library board created under the subchapter.<sup>31</sup>

When the above appropriation requirement is read as part of the wider statutory scheme,<sup>32</sup> I believe it is probably properly interpreted to refer to a tax that supports a public city library or a library system established under subchapter 5 of Title 13, Chapter 2. CALS obviously was not created under that subchapter. And the subchapter under which CALS was created contains no similar appropriation

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<sup>25</sup> A.C.A. § 25-20-201(a).

<sup>26</sup> Acts 1997, No. 402, § 7.

<sup>27</sup> Ark. Code Title 13, Chapter 2, Subchapter 5.

<sup>28</sup> A.C.A. §§ 13-2-501(a) (Supp. 2013) and -502 (Repl. 2003).

<sup>29</sup> A.C.A. § 13-2-508 (Repl. 2003). *See also* A.C.A. § 13-2-901–907 (Repl. 2003) (the “Regional Library System Law,” also enacted under Act 402 of 1997, regarding the organization of city and county libraries into regional library systems).

<sup>30</sup> A.C.A. § 13-2-508(e).

<sup>31</sup> A.C.A. § 13-2-503(b)(1) (Supp. 2013).

<sup>32</sup> In determining the meaning of an enactment, courts give effect to the intent of the legislature by examining the *entirety* of the statute or act. *See, e.g., Thomas v. Cornell*, 316 Ark. 366, 872 S.W.2d 370 (1994). Particular statutory provisions are to be construed but with reference to the whole, and not in isolation. *See, e.g., Flowers v. Norman Oaks Constr. Co.*, 341 Ark. 474, 17 S.W.3d 472 (2000); *Fiser v. Clayton*, 221 Ark. 528, 254 S.W.2d 315 (1953).

language. Given the apparent absence of a constitutional appropriation requirement in this context, I doubt a city library tax levied under Amendment 30 to support CALS must be appropriated. Legislative clarification would be beneficial, however, to definitively resolve the matter.

***Question 2 - If so, does the Agreement for Joint Cooperative Action between the participating public agencies, which dedicated the library taxes levied by the agencies to CALS, negate the requirement of a yearly appropriation such that these funds can be distributed directly to CALS by the Pulaski County Treasurer?***

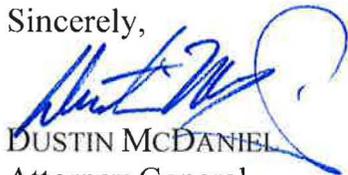
No. See discussion above.

***Question 3 - If CALS is required to request an appropriation from the various agencies who are party to the Agreement, would this requirement run afoul of Ark. Code Ann. § 25-20-203(b), which states that once created, CALS is not subject to any further supervision or regulation of the participating public agency, nor does it require any further approval or consent of the participating public agency?***

No. If there is a conflict between a statute and the constitution, the statute must yield under general preemption principles. I see no conflict, however, between A.C.A. § 25-20-203(b) and the constitutional county appropriation requirement. As explained above, the appropriation in this case is a ministerial act that entails no supervision by the quorum court or consent from CALS.

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

Sincerely,



DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh