



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-018

April 29, 2015

The Honorable Eddie Cheatham
State Senator
2814 Ashley 239
Crossett, Arkansas 71635-8824

Dear Senator Cheatham:

I am writing in response to your request for my opinion concerning a vacancy in a district court judgeship. The background information submitted with your request indicates that the issue involves the current Desha County District Court, McGehee Department, judgeship and the newly created Twenty-Seventh District judgeship that will become effective January 1, 2017. The following questions have been posed in light of the new Twenty-Seventh District:

1. Can a person accept the governor's appointment to serve the remainder of the local [Desha County District Court] judgeship and still be eligible to run for the state [Twenty-Seventh] district court position?
2. Would the state district court position be considered a completely new and different position, meaning the Amendment 29 prohibition would not prevent the person from being eligible to run for the state district court position after accepting an appointment to the local district court position?

RESPONSE

The answer to both of these questions is "yes," in my opinion. Some explanation of the relevant district court system will be helpful before expanding upon this response.

As reflected by your questions, the Desha County District Court is a “local” district court, having been established pursuant to Act 1727 of 2003. This act created new district court judicial districts following the adoption of Amendment 80 to the Arkansas Constitution in November, 2000.¹ The Desha County District Court has two departments, one in Dumas and one in McGehee.² Each department has one judge who is elected countywide, and the court has countywide jurisdiction.³

Beginning January 1, 2017, Desha County will be combined with Chicot County to form a judicial district known as the Twenty-Seventh District.⁴ This “newly constructed judicial district”⁵ will have five departments, located in Dermott, Eudora, Lake Village, Dumas, and McGehee.⁶ This redistricting occurred under Act 1219 of 2011,⁷ which created “state district courts” and designated geographic areas for the courts. Pursuant to this 2011 legislation, the Twenty-Seventh District will be served by one “state district court judge” who will be elected district-wide in the 2016 nonpartisan judicial election.⁸ The court will have district-wide jurisdiction.⁹

¹ Amendment 80 restructured the judiciary in Arkansas and created “District Courts” to assume, on January 1, 2005, the jurisdiction previously exercised by the municipal courts, corporation courts, police courts, justice of the peace courts, and courts of common pleas. Ark. Const. amend. 80 § 19(B)(2). Act 1727 of 2003, codified at A.C.A. § 16-17-901 *et seq.* (Repl. 2010), established district court districts and departments effective January 1, 2005, and fixed the number of district judges to serve those courts.

² A.C.A. § 16-17-911 (Repl. 2010).

³ *Id.* The “department” is the physical location where court is held. *Id.* See also A.C.A. § 16-17-1102(1) (Supp. 2013). A “department” of a district court is a “local district court.” *Id.* at (4).

⁴ A.C.A. § 16-17-1112(a)(4)(A) (Supp. 2013).

⁵ *Id.* at (a)(2).

⁶ *Id.* at (a)(4)(B). Currently, the Chicot County District Court has three departments, located in Dermot, Eudora, and Lake Village, with one judge each elected countywide. A.C.A. § 16-17-910(a) and (b) (Repl. 2010). This local district court, like the Desha County District Court, has countywide jurisdiction. *Id.* at (c).

⁷ A.C.A. §§ 16-17-1101-1112 (Supp. 2013).

⁸ A.C.A. § 16-17-1112(a)(2) and (4)(C) and (D).

⁹ *Id.* at (a)(4)(E).

Your questions anticipate a vacancy in the Desha County District Court, McGehee Department judgeship.¹⁰ Such a vacancy will be filled by the Governor pursuant to Section 1 of Amendment 29 to the Arkansas Constitution.¹¹ As you note in your correspondence, Amendment 29 states that “[n]o person appointed under Section 1 shall be eligible to succeed himself.”¹² The question to be resolved is whether the person appointed to the Desha County District Court judgeship would be “succeeding himself” if elected to the new Twenty-Seventh District judgeship, such that he or she is precluded from running for the latter judgeship by operation of Amendment 29.

The answer to that question is “no,” in my opinion, because the person appointed to the local district court judgeship will not be running for the position to which he or she was appointed. I believe support for this conclusion is found in *Brewer v. Fergus*,¹³ where the Arkansas Supreme Court addressed a challenge to two candidates’ eligibility to run for circuit judgeships in certain divisions of a circuit after each had served by appointment as circuit judge in other divisions of the same circuit. The Court simply applied the literal terms of Amendment 29, § 2 and concluded that a candidate could not be deemed to be running to “succeed himself” if he were running for a division judgeship previously held by another individual:

The sentence at issue [last sentence of Ark. Const. amend. 29, § 2] is clear and easily understood. No person appointed to fill a vacancy in an elective office may succeed himself *into that same elective office* when the election takes place to fill that office....[N]either Fergus nor Smith is succeeding himself in the position to which he was

¹⁰ The background information supplied with your request frames the issue as “whether a person could accept a Governor’s appointment....” I take this to mean that an appointment has not, as of yet, been made.

¹¹ Amendment 29 applies to the position of district court judge through Amendment 80 to the Arkansas Constitution. See A.C.A. § 16-17-132(c) (Repl. 2010) (“A vacancy in a district court judgeship shall be filled in the same manner and subject to the same restrictions as for vacancies under Arkansas Constitution Amendment 29.”); Ark. Const. amend. 80, § 17(B) (“Vacancies in these [circuit and district judge] offices shall be filled as provided by this Constitution.”); Op. Att’y Gen. 2001-259 (explaining why Amendment 29 is the applicable constitutional provision referenced by Section 17(B) of Amendment 80).

¹² Ark. Const. amend. 29, § 2 (last sentence; emphasis added).

¹³ 348 Ark. 577, 79 S.W.3d 831 (2002).

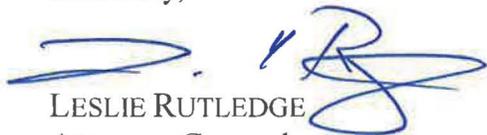
appointed in 2001, because *neither is running for the division in which they were appointed to serve.*¹⁴

Under the Court's reasoning in *Brewer*, a person who runs in 2016 as a candidate for state district court judge in the Twenty-Seventh District after serving to fill a vacancy in the McGehee Department of the Desha County District Court will not be "succeeding himself" into the same office. The Twenty-Seventh District judgeship will not yet exist during the Desha County District Court appointee's term of office.¹⁵ By running as a candidate for the newly created Twenty-Seventh District judgeship, the local district court judge will not be succeeding himself or herself, according to the plain language of Amendment 29, but will instead be running for a new and distinct office from the one to which the judge was appointed.

It is therefore my opinion that that there would be no violation of Amendment 29, § 2, under the circumstances you describe. In response to your specific questions, it is my opinion that the person in this case could accept the Governor's appointment to serve the remainder of the local judgeship and still be eligible to run for the state district court position. In my opinion, the state district court position will be a new and different position, meaning that the Amendment 29 prohibition will not prevent the person from being eligible to run for the state district court position after accepting an appointment to the local district court position.

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

Sincerely,


LESLIE RUTLEDGE
Attorney General

LR/EAW:cyh

¹⁴ *Id.* at 583-84 (emphasis added). *Accord Daniels v. Dennis*, 365 Ark. 338, 341, 229 S.W.3d 880 (2006) ("[A]s we stated in *Brewer v. Fergus*, 348 Ark. 577, 79 S.W.3d 831 (2002), Amendment 29 prevents a person from succeeding himself or herself *in the specific position to which he or she was appointed.*") (Emphasis added).

¹⁵ *See* A.C.A. § 16-17-1112(a)(2) ("*The new state district court judgeships created by this section shall become effective January 1, 2017, and shall be placed on the ballot to be elected in the 2016 nonpartisan judicial election....*") (Emphasis added).