**STATE OF ARKANSAS**
**THE ATTORNEY GENERAL**
**LESLIE RUTLEDGE**

Opinion No. 2015-020

April 9, 2015

The Honorable Josh Miller
State Representative
Post Office Box 814
Heber Springs, Arkansas 72543-0814

Dear Representative Miller:

This is in response to your request for an opinion on several questions concerning a particular ordinance passed by the Cleburne County Quorum Court. As background for your questions, you state:

> The Quorum Court passed Ordinance No. 2014-037 which requires the County Judge to seek the prior approval of the Quorum Court before buying a vehicle with a gross vehicle weight rating of 14,000 pounds and at a purchase price greater than twenty thousand dollars ($20,000.00). This ordinance, which is attached, does not address the County Judge's line item appropriations, which are more than sufficient at seventy five thousand dollars ($75,000.00) to cover any purchases in this category This ordinance does not address state procurement statutes which are very specific regarding lawful purchasing procedures for vehicles, which have been followed.

With this background in mind, you ask the following questions:

> (1) Is this ordinance an unlawful encroachment by the legislative branch into the discretion granted an official of the executive branch under the separation of powers doctrine?
>
> (2) Does the Cleburne County Quorum Court have the authority to impose more restrictive vehicle purchasing requirements, such as Ordinance 2014-037, than currently set out in state law?

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(3) Does the Cleburne County Quorum Court have the power to direct that the County only purchase vehicles through the State Procurement Bid?

## RESPONSE

The answer to Question 1 is "yes," in my opinion. The ordinance constitutes an impermissible legislative encroachment on the executive branch because a county quorum court cannot constitutionally require the county judge to obtain the quorum court's approval before making specific purchases with funds that have been properly appropriated. I am unable for the reasons explained below to provide a definitive answer to Question 2. It is my opinion that the answer to Question 3 is "no."

## DISCUSSION

***Question 1: Is this ordinance an unlawful encroachment by the legislative branch into the discretion granted an official of the executive branch under the separation of powers doctrine?***

Similar to the state government,[1] county government in Arkansas is comprised of separate branches in order to provide a system of checks and balances.[2] Under the classic division of the powers, the legislative branch makes the laws and appropriates public revenues, the executive branch administers the laws and expends the appropriations, and the judicial branch interprets the laws.[3]

While the power of the legislative branch of government to appropriate is therefore beyond question, it does not follow that a legislative body retains the right to administer a previously approved appropriation.[4] To the contrary, section 3 of Amendment 55 to the Arkansas Constitution provides that the county judge, not the quorum court, will "authorize and approve disbursement of appropriated

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[1] *See* Ark. Const. art. 4, §§ 1 and 2.

[2] *See* Ark. Const. amend. 55; A.C.A. § 14-14-502 (Repl. 2013); *Walker v. Washington Co.*, 263 Ark. 317, 564 S.W.2d 513 (1978).

[3] *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

[4] *See Chaffin v. Arkansas Game and Fish Comm'n,* 296 Ark. 431, 757 S.W.2d 950 (1988).

county funds." Consistent with this constitutional imperative, the County Code vests the county judge with the authority to "enter into necessary contracts or other agreements to obligate county funds and to approve expenditure of county funds appropriated therefor in the manner provided by law."[5]

Because the county judge has been granted authority and responsibility to enter into contracts and approve expenditures, it would constitute a violation of the principle of separation of powers for the quorum court to dictate to the county judge the details of such authority and responsibility. More specific to your question, once a quorum court has made a proper appropriation, it normally cannot regulate an executive official's expenditure of the appropriated amount.[6]

With regard, therefore, to the Cleburne County ordinance at issue, this ordinance plainly purports to condition the purchase of used vehicles costing more than $20,000 upon the prior approval of the Quorum Court. Presuming, as was stated in the above background information, that the Quorum Court has appropriated monies for such items and that there are sufficient funds in the appropriation to cover such a purchase, it is my opinion that a reviewing court likely would see this as an impermissible breach of the separation of powers between the county's legislative and executive branches.

***Question 2: Does the Cleburne County Quorum Court have the authority to impose more restrictive vehicle purchasing requirements, such as Ordinance 2014-037, than currently set out in state law?***

I cannot provide a definitive answer to this question. I am uncertain what is meant by the phrase "more restrictive vehicle purchasing requirements," particularly in reference to the county ordinance that is the subject of your request for my opinion. Determining the meaning of that phrase in connection with the ordinance would require me to attempt to construe a local ordinance. This office is not authorized or equipped to construe local ordinances when rendering official

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[5] A.C.A. § 14-14-1102(b)(2)(C)(ii) (Repl. 2013). *Accord Smith and Buechley v. Hempstead County,* 180 Ark. 272, 275, 21 S.W.2d 178 (1929) ("[T]he Legislature did not vest in the quorum court the power to make contracts for the expenditure of money appropriated by it.")

[6] *See* Op. Att'y Gen. Nos. 2001-305 (opining that a quorum court might appropriate funds for a software system but could not dictate which system the county collector should purchase); 2000-262 (opining that a quorum court could not mandate by ordinance that it approve a sheriff's expenditures of appropriated funds); and 89-206 ("[A]n effort to permit expenditures of appropriations only upon approval of the Quorum Court violates the separation of powers doctrine.").

opinions.[7] Please note, however, that my response to Question 3 may provide some guidance.

***Question 3: Does the Cleburne County Quorum Court have the power to direct that the County only purchase vehicles through the State Procurement Bid?***

At the outset, let me state that I understand this question to refer only to new vehicle purchases because the "State Procurement Bid" only applies in the purchasing of new vehicles. I understand the term "State Procurement Bid" to refer to the state vehicle contract solicited and issued by the Office of State Procurement, which is mandatory for state agencies in purchasing new vehicles.[8] This contract is awarded to only a limited number of vendors.

With this understanding in mind, in my opinion, the quorum court may not direct the county executive to purchase vehicles only from the state contract. State law governing county purchasing requires county officials to use formal bidding procedures for any purchase costing $20,000 or more.[9] But the law also provides a list of exempt purchases that county officials are free to make without soliciting bids.[10] These exemptions include one for "[n]ew motor vehicles purchased from a licensed automobile dealership located in Arkansas for an amount not to exceed the fleet price awarded by the Office of State Procurement…."[11]

The scenario posed in Question 3 purports to direct the county executive to take a specific action with respect to an appropriation, that is, to only buy vehicles from the state contract. As noted above, the power to appropriate rests exclusively with the quorum court, and the authority and responsibility to enter into contracts and approve expenditures subject to such appropriations lies with the county judge. Moreover, state law in this instance gives the county executive the flexibility to make new motor vehicle purchases from licensed Arkansas dealers. In my

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[7] *See* Op. Att'y Gen. 2012-025 (and opinions cited therein).

[8] *See* A.C.A. § 19-11-223 (Repl. 2007).

[9] *See* A.C.A. §§ 14-22-102, -104 (Repl. 2013). "Formal bidding" is defined in A.C.A. § 14-22-101(2) (Repl. 2013), which also sets out the procedure for soliciting and receiving sealed bids.

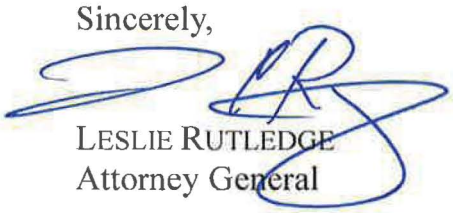
[10] *See* A.C.A. § 14-22-106 (Repl. 2013).

[11] A.C.A. § 14-22-106(17) (Repl. 2013). This exemption also allows counties to include vehicle options so that new vehicle purchases costing up to $600 more than the state contract fleet price for a particular vehicle are exempt from the bidding requirements.

opinion, an effort by the quorum court to limit the county executive to making vehicle purchases only from the limited vendors awarded the state contract would be both an improper breach of the separation of powers doctrine and contrary to A.C.A. § 14-22-106.[12]

Assistant Attorney General Ray Pierce prepared this opinion, which I hereby approve.

Sincerely,



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[12] *See* A.C.A. § 14-14-805(13) (Repl. 2013) (listing among the powers denied to quorum courts is "[a]ny legislative act that is contrary to the general laws of the state.").