



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-023

April 29, 2015

The Honorable Uvalde Lindsey
State Senator
2257 East Gentle Oaks Lane
Fayetteville, Arkansas 72703-6142

Dear Senator Lindsey:

This is my opinion on your question about the impact of Act 985 of 2013 on a quorum court's committee of the whole.

Before 2013, state law did not limit the size of quorum court committees, and some counties used committees of the whole (*i.e.*, committees on which all quorum court members serve).¹ Act 985 included a prohibition on regular or special committees larger than a simple majority of the whole quorum court membership, absent the county's judge's consent.²

Your request states that the "Washington County Quorum Court had a Committee of the Whole, all 15 Justices of the Peace, on Finance and Budget in 2013"³ and that "[t]he County Judge, based on Act 985 of 2013, has refused to consent to a Committee of the Whole beginning with the Court as sworn in for 2015."

¹ See, e.g., Op. Att'y Gen. 2001-012. The presiding officer – usually the county judge – appoints committee members but the quorum court may specify which committees will exist and (before Act 985) their sizes. See A.C.A. § 14-14-904(d)(2)(A) (Repl. 2013) (presiding officer "shall appoint all regular and special committees of a quorum court"), as interpreted in Op. Att'y Gen. 2003-180.

² The act provides: "[A] regular committee or special committee of the quorum court shall not consist of more than a quorum of the whole body without the consent of the county judge." Act 985 of 2013, § 2, codified at A.C.A. § 14-14-904(d)(2)(B) (Repl. 2013). A majority of the whole membership is a quorum. See A.C.A. § 14-14-904(f).

³ Washington County ordinance 2013-12 establishes five committees and provides that the Finance and Budget Committee will be a committee of the whole.

You ask whether Act 985 applies to committees already in existence when Act 985 came into effect.

RESPONSE

In my opinion, the answer to your question is “yes.” A county ordinance is of no effect to the extent it conflicts with state law, regardless of the order in which the two were enacted.

DISCUSSION

Counties are created by and subordinate to the state.⁴ “A county . . . may exercise local legislative authority not denied by the Constitution or by law”⁵ but may not “exercise . . . any power in any manner inconsistent with state law”⁶

Enforcing a county ordinance requiring a committee of the whole without the county judge’s consent would amount to the exercise of county authority in a “manner inconsistent” with the state law prohibiting committees of the whole absent that consent.

The inconsistency would exist regardless of the order in which the county and state laws were enacted. I know of no basis on which to argue that county legislative action preempts conflicting state legislative action when the former is first in time.⁷

⁴ See Ark. Const. art. 13, § 1 (acknowledging – while limiting – state’s inherent power to create and abolish counties); see also *Eagle v. Beard*, 33 Ark. 497 (1878) (“health of the body politic requires that the Legislature should have a power over [counties] analogous to that of the individual over his own limbs and vitals”); Op. Att’y Gen. 97-027 (county authority “remains subordinate to the state” notwithstanding adoption of Amendment 55, which does not prohibit General Assembly from “enacting laws regulating [county] affairs”).

⁵ Ark. Const. amend. 55, § 1(a).

⁶ A.C.A. § 14-14-808(a) (Repl. 2013); see also A.C.A. § 14-14-805(13) (Repl. 2013) (quorum court may not take “[a]ny legislative act contrary to the general laws of the state”).

⁷ Cf. *Bragg v. Adams*, 180 Ark. 582, 21 S.W.2d 950 (1929) (General Assembly may divest local government of previously-held legislative authority).

It follows that the ordinance is of no effect to the extent it purports to require – irrespective of the county judge’s consent – a committee of a size not permitted under applicable state law without that consent.⁸

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

Sincerely,



LESLIE RUTLEDGE
Attorney General

LR/JMB:cyh

⁸ *See, e.g.*, Op. Att’y Gen. 97-043 (county ordinance invalid when contrary to general laws of the state). It appears likely that the ordinance’s committee-of-the-whole provision would be held to be severable from the remainder of the ordinance, which – having no stated expiration date – will continue in effect until repealed. *See, e.g.*, Op. Att’y Gen. 2009-149.