



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-033

May 19, 2015

Major General Mark H. Berry
The Adjutant General
Camp Joseph T. Robinson, Bldg. 6000
North Little Rock, Arkansas 72199-9600

Dear General Berry:

This is in response to your request for my opinion concerning the continuing validity of an opinion previously issued by this office involving the harvesting and sale of timber located on Camp Robinson. Your questions are:

1. Is the opinion provided in the Attorney General's opinion dated August 24, 1979, still valid under current Arkansas law?
2. Is the Arkansas Military Department required to market any harvested timber through the Marketing and Distribution Office of the Department of Finance and Administration?

RESPONSE

In my opinion, Op. Att'y Gen. 79-114 remains valid to the extent it concludes that the Adjutant General is the custodian of the property at Camp Robinson and may sell timber harvested there. But as explained in response to your second question, the Military Department must now go through the Marketing and Redistribution Section (M&R) of the Office of State Procurement for such sales unless the Department obtains a specific written exemption from the State Procurement director. Accordingly, the answer to your second question is "yes," in my opinion.

DISCUSSION

Question 1: Is the opinion provided in the Attorney General's opinion dated August 24, 1979, still valid under current Arkansas law?

In the opinion to which you refer, it was determined that the Adjutant General had the authority to sell timber harvested from the Camp Robinson reservation.¹ Two statutes formed the basis for this opinion. One was the law that makes the Adjutant General custodian over all military property and reservations belonging to the State of Arkansas.² The other states that the Adjutant General “shall have the authority to lease or sublease such property or portions thereto for such rentals...as he shall deem to be in the best interest of the National Guard.”³

While the cited statutes at the time dealt with the Adjutant General's authority to lease or sell real property and improvements at the camp, it was—and still is—reasonable to opine that this authority extended to selling severed timber. Where I must now depart from that opinion because of subsequent changes in the law is the procedure the Adjutant General is to follow for the sale of such timber. This leads me to your second question.

Question 2: Is the Arkansas Military Department required to market any harvested timber through the Marketing and Distribution Office of the Department of Finance and Administration?

Yes. Section 25-8-106(b)(2)(A) of the Arkansas Code requires state agencies to use the services of M&R to dispose of surplus personal property, unless specifically exempted in writing by the director of the Office of State Procurement. This requirement represents a significant change in the law from what it was in 1979.

At the time of the 1979 opinion, the use of M&R by state agencies was optional.⁴ In fact, that opinion made no mention of the Adjutant General using M&R to

¹ See Op. Att'y Gen. 79-114.

² See Ark. Code Ann. § 12-63-402 (Repl. 2003) (formerly Ark. Stat. Ann. § 11-1802 (Repl. 1976)).

³ Ark. Code Ann. § 12-63-403(a) (Repl. 2003) (formerly Ark. Stat. Ann. § 11-1802 (Repl. 1976)).

⁴ See Ark. Stat. Ann. § 5-813 (Repl. 1976) (“All State Agencies ... are authorized to utilize the services of the Marketing and Redistribution Section of the Department of Finance & Administration.”). This permissive authorization was changed to a requirement with the enactment of Act 589 of 2001.

handle timber sales from Camp Robinson. The opinion instead stated that “no procedure has been approved per se by the [L]egislature for the sale of such timber,”⁵ and directed the Adjutant General to use the procedures outlined in what is now Ark. Code Ann. § 12-63-305 (Repl. 2003)⁶ regarding the disposal of surplus military *real* property. But timber severed from real property becomes *personal* property, and Ark. Code Ann. § 25-8-106 (Repl. 2014) now requires that all state surplus personal property sales go through M&R.

It is therefore my opinion that the answer to your second question is “yes.” The Military Department must utilize the services of M&R for its severed timber sales in accordance with Ark. Code Ann. § 25-8-106 and in line with the rules promulgated by the Office of State Procurement and the Department of Finance and Administration. If any federal laws or regulations apply or approvals are needed, the Military Department must be mindful of them as well. Finally, all funds received by the Military Department from such sales must be used for the maintenance, operations, improvements, and personnel costs of Camp Robinson.⁷

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

Sincerely,



LESLIE RUTLEDGE
Attorney General

LR/RP:cyh

⁵ Op. Att’y Gen. 79-114 (underline in original).

⁶ Formerly Ark. Stat. Ann. § 11-802 (Repl. 1976).

⁷ Ark. Code Ann. § 12-63-403(d) (Repl. 2003).