



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-048

September 4, 2015

The Honorable Andrea Lea
State Auditor
500 Woodlane Street, Suite 230
Little Rock, Arkansas 72201

Dear Auditor Lea:

This is my response to your request for an opinion on the following questions about a constitutional officer's power to contractually bind his or her successor in office:

1. Is there any legal limitation on a constitutional officer's ability to contractually bind his successors? For example, during the last year of his last term, a constitutional officer enters into a five year contract with a service provider or vendor. Is his immediate successor bound by that contract for the full duration of his first term?
2. If his successor is bound by the contract, are there any legal limitations on the length of time a constitutional officer may contract for?

RESPONSE

Your questions are general and do not fully describe any contract or the facts and circumstances of its execution and performance. As briefly set forth below, each such contract's validity generally depends on the prevailing facts and circumstances. As a result, I am unable to give an opinion of universal applicability on your questions. I will, however, briefly set forth governing law in general.

DISCUSSION

A legal encyclopedia describes applicable law in general:

A public officer can make only such contracts or agreements as are expressly or impliedly authorized. Persons contracting with a public officer must take notice of the extent of his authority.

Ordinarily, the power to make a contract is limited in time to the term of the officer who makes it. Where, however, the extent of an officer's power is not expressly limited, the facts and circumstances of each case must be considered in determining whether the officer may make a contract extending beyond his term.

Where the contract in question is a unitary one for the doing of a particular and specified act, but its performance may extend beyond the term of the officer making it, if it appears that the contract was made in good faith and in the public interest, it is not void because it will not be completed during the term of the officer. On the other hand, if the contract is for the performance of personal or professional services for the employing officer, his successor must be allowed to choose for himself those persons on whose honesty, skill, and ability he must rely so that such a contract, extending beyond the term of the officer making it, is *ultra vires*.¹

Arkansas law is generally consistent with the foregoing to the extent the issues have been addressed by the Arkansas Supreme Court.²

Unless entering into a particular contract is beyond an officer's express or implied authority, its validity will depend on all the relevant facts and circumstances. I thus cannot give an opinion in response to your general questions. Even were I to receive a request for an opinion that stated relevant facts and circumstances, I still would be unable to render an opinion on that contract. Not being a finder of fact in

¹ 67 C.J.S. *Officers* § 225 (footnotes omitted).

² See, e.g., *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988) (officer cannot bind government beyond actual authority); *McConnell v. Arkansas Brick & Mfg. Co.*, 70 Ark. 568, 69 S.W. 559 (1902) (contract extending beyond officers' terms not *per se* invalid but may be invalid in given case depending on facts and circumstances); see also *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955) (citing *McConnell* in upholding long-term contract).

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connection with giving opinions, there could be no assurance that I would be completely informed of all relevant facts and circumstances.

I regret I cannot be of more assistance in this matter. The foregoing should, however, offer some general guidance on the questions you have posed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LR', is written over the printed name 'LESLIE RUTLEDGE'.

LESLIE RUTLEDGE
Attorney General