



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-054

July 1, 2015

The Honorable Mickey Gates
State Representative
377 North Highway 7
Hot Springs, Arkansas 71901

Dear Representative Gates,

You have asked for my opinion on the following question:

If a county, municipality, or other political subdivision of the state—prior to Act 137 of 2015 going into effect—adopts an ordinance, resolution, rule or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law, does Act 137 prohibit the county, municipality, or other political subdivision from enforcing it?

RESPONSE

For the sake of clarity, I want to highlight the question I have been asked to address here. The question is not about what is meant by the phrases “protected classification” or “on a basis not contained in state law.” Nor is the question about whether any particular rule or ordinance of a political subdivision conflicts with Act 137 of 2015. Rather, the question is whether a local ordinance or rule can be enforced when (1) it was enacted before Act 137 and (2) it conflicts with Act 137.

The answer to this question is “no.”

Section 1 of Act 137 prohibits the enforcement of a conflicting local rule or law: “A county, municipality, or other political subdivision of the state **shall not...enforce** an ordinance, resolution, rule, or policy that creates a protected

classification or prohibits discrimination on a basis not contained in state law.” (Emphasis added.) When a state and a local law conflict, the latter yields.¹ Therefore, if a political subdivision enacted an ordinance, rule, or resolution that conflicted with Act 137, then the local law could not be enforced.

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LR', with a large, stylized flourish extending to the right.

Leslie Rutledge
Attorney General

LR/RO:cyh

¹ See generally Ark. Const, art. 12, § 4. Municipalities are creatures of the legislature and, as such, have only the power bestowed upon them by statute or the Arkansas Constitution. *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987). *City of Fort Smith v. Housing Authority of the City of Fort Smith*, 256 Ark. 254, 506 S.W.2d 534 (1974); *Nahlen v. Woods*, 255 Ark. 974, 504 S.W.2d 749 (1974); 5 McQuillin Mun. Corp. § 15:19 (3d ed.).