



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-063

June 24, 2015

The Honorable Bob Ballinger
State Representative
1757 Madison 7150
Hindsville, AR 72738-9558

Dear Representative Ballinger:

You have requested my opinion on the following question:

Where water released from a dam during high rain events causes significant flooding to land below the dam in excess of the established easement and which results in a physical and financial loss of use of the land, is this considered an illegal taking?

RESPONSE

I regret that I am unable to provide an opinion on the question posed, which suggests the possibility of a constitutionally-recognized “taking” of property.¹ I am neither authorized nor equipped to address the fact-intensive question of whether such a taking has occurred. An inquiry of that sort requires a case-by-case determination. As such, it is beyond the scope of an official Attorney General opinion. I am charged by statute with providing opinions to state officials on various matters of state law.² I am not empowered or equipped, however, to act as a factfinder when issuing formal opinions.

¹ See U.S. Const. amend. 5 and Ark. Const. art. 2, § 22 (prohibiting a government’s “taking” of property without just compensation).

² Ark. Code Ann. § 25-16-706 (Repl. 2014).

In addition, I am prohibited by statute from engaging in the private practice of law.³ I therefore cannot offer legal advice to private parties concerning their rights and remedies as parties to a dispute. Interested parties should instead consult legal counsel of their choosing to investigate the applicable law and facts and determine whether to pursue any available judicial remedies.

I regret that I cannot be of assistance in this matter. Please do not hesitate to contact me if I may be of future assistance in some other respect.

Deputy Attorney General Elisabeth A. Walker prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LR', is written over the printed name of Leslie Rutledge.

LESLIE RUTLEDGE
Attorney General

LR/EAW:cyh

³ Ark. Code Ann. § 25-19-701 (Repl. 2014).