



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-078

September 10, 2015

The Honorable Mike Holcomb
State Representative
9108 Sulphur Springs Road
Pine Bluff, AR 71603-0904

Dear Representative Holcomb:

This is in response to your request for an opinion on the use of county sales tax revenues, and on the county treasurer's commission on an economic development sales tax.

Your request states:

A county passed a .25% sales tax for the purpose of operating and maintaining detention facilities and facilities related to or in support of a detention facility. That county subsequently enacted an ordinance which states "Detention Facilities" shall include any and all types of facilities, both real and person [sic], for the detention and confinement of any criminal, accused defendants, suspected, juvenile detainees or other persons held in lawful custody, and facilities related thereto or in support thereof." Later the county built a new district court, which included holding cells. Since that time, the county has used funds from the aforementioned sales tax to fund district court.

You pose this question relating to the foregoing:

1. Where a county has passed a .25% sales tax for the purpose of operating and maintaining detention facilities and facilities related to or in support of a detention facility, may monies raised from that sales tax be used for district court, where that building includes holding cells?

With your request, you included a letter from the county treasurer stating that the county adopted an economic development sales tax, and that the Department of Finance and Administration remits proceeds of the tax to the county, rather than directly to the economic development corporation that ultimately receives the tax proceeds. The letter describes a disagreement with respect to whether the treasurer may or must collect a commission on the tax proceeds.

You pose this question relating to such tax proceeds:

2. Concerning pass-through money received from the Department of Finance and Administration, may this money be charged a percentage for treasurer's commission? If so, may the county decide whether to charge a percentage for treasurer's commission?

RESPONSE

For the reasons given below, I must decline to give an opinion on the first question. With respect to the second question, it is my opinion that a county treasurer may not collect a commission on proceeds of a sales tax dedicated to economic development that are to be paid over to an economic development corporation.

DISCUSSION

Question 1: Where a county has passed a .25% sales tax for the purpose of operating and maintaining detention facilities and facilities related to or in support of a detention facility, may monies raised from that sales tax be used for district court, where that building includes holding cells?

Answering this question would require me to interpret a local ordinance with reference to all the relevant facts and circumstances relating to the ordinance, its adoption, the characteristics and uses of the facility at issue, and perhaps other matters. Because I am not equipped or authorized to act as a finder of fact in connection with giving written opinions, I must respectfully decline – as has been the Attorney General's longstanding practice¹ – to state an opinion on this question because it involves fact-intensive interpretation of a local ordinance. I will, however, briefly state the applicable law.

¹ See, e.g., Op. Att'y Gen. 2015-005, 94-260.

Generally speaking, it is the responsibility of the local governing body to determine legislatively whether a particular expenditure is within the ballot-designated purpose(s) of a local sales tax, and a court will not disturb its finding unless it is found to be “demonstrably arbitrary and unwarranted.”²

Question 2: Concerning pass-through money received from the Department of Finance and Administration, may this money be charged a percentage for treasurer’s commission? If so, may the county decide whether to charge a percentage for treasurer’s commission?

In my opinion, a county treasurer may not collect a commission on proceeds of a sales tax dedicated to economic development that are to be paid over to an economic development corporation.

Arkansas Code § 21-6-302(a) provides – with exceptions not relevant here – that county treasurers “shall be required to collect, as a treasurer's commission, two percent (2%) on all funds coming into their hands as treasurers and to be paid out of the respective funds.”³

Arkansas Code § 14-174-109 provides, however, that economic development sales taxes “may be used for the *sole use and benefit*” of an economic development corporation and that “[o]n receipt from the Director of the Department of Finance and Administration of the net proceeds of [an economic development] sales and use tax . . . , the local government shall deliver *all* of the proceeds to the corporation to use in carrying out its functions.”⁴

When statutes conflict, effect is given to the more specific statute rather than the more general one, and to the one enacted later in time. Here, the statute providing for the treasurer’s commission was enacted in 1941⁵ and the one addressing economic development corporations’ use of economic development sales tax

² *McAdams v. Henley*, 169 Ark. 97, 114, 273 S.W. 355 (1925).

³ Ark. Code Ann. § 21-6-302(a) (Supp. 2013).

⁴ Ark. Code Ann. § 14-174-109(a), (b) (Supp. 2013) (emphases added).

⁵ See Act 78 of 1941.

proceeds was enacted in 2005.⁶ The latter is also clearly the more specific of the two in this context.

Accordingly, in my opinion, § 14-174-109 controls, and a county treasurer may not collect a commission on proceeds of a sales tax dedicated to economic development that are to be paid over to an economic development corporation.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁶ See Act 1372 of 2005.