



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-096

November 30, 2015

The Honorable Alan Clark
State Senator
P. O. Box 211
Lonsdale, AR 72087

Dear Senator Clark:

I am writing in response to your request for an opinion regarding the disposition of a building acquired using funds generated by a one-percent (1%) sales tax. You relate the following background information for your particular question:

In 1990, the Hot Spring County Quorum Court passed Ordinance 9025 authorizing an election to pass a one-percent (1%) sales tax primarily to fund the cost of operating and maintaining the Hot Spring County Solid Waste Authority ["SWA"]. The electors of Hot Spring County approved the one-percent (1%) sales tax, which remains in effect. The Hot Spring County Solid Waste Authority Board ("Board") purchased a building¹ with funds generated by the tax. The Hot Spring County Solid Waste Authority will be moving to another building and would like to donate the former building, which is currently valued at \$70,000.

Against these background facts, you ask:

Can the Board donate the former building to another entity, for example, the Hot Spring County Election Commission?

¹ It is my understanding that the building at issue is an administration building for the SWA.

RESPONSE

I cannot definitively answer your question as it relates broadly to “another entity” without considering the specific factual context underpinning your question.² Nor can I answer your question with respect to the named entity in your request, the Hot Spring County Election Commission, as it requires factual determinations that I am not authorized to make. But as a general matter, it is my opinion that the SWA has the statutory authority to take such actions, including disposal of its property, that are necessary, convenient, or desirable to carry out the SWA’s statutory purpose.

DISCUSSION

The state statute under which the Hot Spring County Solid Waste Authority (SWA) was created, the Joint County and Municipal Solid Waste Disposal Act, Ark. Code Ann. § 14-233-101 *et seq.*, expressly grants such solid waste districts certain powers. It is well established in Arkansas law that political subdivisions of the state—like a joint county and municipal solid waste district, an improvement district, or other similar entity—are creatures of the legislature and have only the powers bestowed upon them by statute.³ A statute is construed just as it reads, giving the words their ordinary and usually accepted meaning in common language.⁴ Each section of a statute is to be read in the light of every other section.⁵ If the statute is ambiguous, resort may be had to the object to be accomplished and the purpose to be served to aid in interpreting the statute.⁶

² The factual context to which I refer may trigger some specific prohibiting provisions, such as Article 12, section 5 of the Arkansas Constitution, the constitutional prohibition on donations to private entities.

³ See, e.g., *Stilley v. Henson*, 342 Ark. 346, 28 S.W.3d 274 (2000); *Quapaw Central Business Impr. Dist. v. Bond-Kinman, Inc.*, 315 Ark. 703, 870 S.W.2d 390 (1994); *Page v. Highway 10, Water Pipe Line Impr. Dist. No. 1*, 201 Ark. 512, 145 S.W.2d 344 (1940).

⁴ *Edwards v. State*, 347 Ark. 364, 64 S.W.3d 706 (2002).

⁵ *Chism v. Phelps*, 228 Ark. 936, 311 S.W.2d 297 (1958) (citing *Berry v. Sale*, 184 Ark. 655, 43 S.W.2d 225 (1931)).

⁶ See generally *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

Sanitation authorities, as they are referred to in the Act,⁷ may be composed of counties, cities, and suburban improvement districts,⁸ representatives of which comprise the authority's board of directors.⁹ The General Assembly has granted a sanitation authority broad powers as a public body politic to accomplish the statute's purposes. Among those powers are to "maintain an office at such places as it may determine;"¹⁰ to "make and execute contracts and other instruments necessary or convenient in the exercise of the ... authority" of the Act;¹¹ and to do "any and all other acts ... necessary, convenient, or desirable" to carry out the statutory purpose.¹²

With respect to issues of property, the primary power such a district has is to "own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or *otherwise deal in or dispose of*¹³ a project."¹⁴ The Act defines a "project" as:

[A]ny real property, personal property, or mixed property of any kind that *can be used or will be useful* in:

(i) Controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste, including without limitation, property that can be used or that will be useful in extracting, converting to steam, including the

⁷ Ark Code Ann. § 14-233-102(12) (Supp. 2015).

⁸ *Id.* at § 14-233-104 (Supp. 2015).

⁹ *Id.* at § 14-233-108 (Supp. 2015).

¹⁰ *Id.* at § 14-233-107(3) (Supp. 2015).

¹¹ *Id.* at § 14-233-107(5).

¹² *Id.* at § 14-233-107(12). The Act also states that its provisions are to be liberally construed "to effect the [statutory] purposes...." Ark. Code Ann. § 14-233-103(c) (Repl. 1998).

¹³ While the Act does not define "dispose of," the term's standard definition is "get rid of by throwing away or giving or selling to someone else." *New Oxford American Dictionary* 502 (3d ed. 2010).

¹⁴ Ark Code Ann. § 14-233-104(b)(1) (emphasis added).

acquisition, handling, storage, and utilization of coal, lignite, or other fuel of any kind, or water that can be used or will be useful in converting solid waste to steam, and distributing the steam to users thereof, or otherwise separating and preparing solid waste for reuse, or that can be used or will be useful in generating electric energy by the use of solid waste as a source of generating power and distributing the electric energy to purchasers or users thereof in accordance with the general laws of the state; or

(ii) Collecting, pumping, disposing of, treating, or otherwise dealing in wastewater, sludge, or treated effluent.¹⁵

An office building used for the SWA's administration is not specifically listed among those things that constitute a "project" under the Act. But, it is not a stretch to see that such a facility "can be used" or would "be useful in" achieving the SWA's purpose. Considering a sanitation authority's broad powers under the Act, I believe it reasonably follows that the Board can decide how to dispose of its own property as long as the disposition comports with the overall statutory purpose.

The question then arises whether donating a building, even for an ostensible public purpose such as the county's Election Commission, is an act "necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to" the SWA by the Act. I am unable to answer this question, as it would require me to make determinations of fact that I am neither authorized nor equipped to undertake.

You stated in your request letter that the building is valued at \$70,000. On the one hand, one would think that the proceeds from a fair-market sale or lease of the building would be beneficial to the SWA. On the other hand, it may be that the SWA would have to incur substantial costs before the building could be sold or let, or that retaining the building would otherwise constitute a continuing financial

¹⁵ Ark. Code Ann. § 14-233-102(11)(A) (emphasis added). The only other reference to the disposition of property in the Act is the requirement that all funds and other property be vested in all or any number of the member counties and municipalities if the joint solid waste district should dissolve. *Id.* at § 14-233-121(b) (Repl. 1998).

drain on the SWA. These determinations and decisions should be made by the Board, ideally with the advice of local counsel, who will be in a better position to evaluate the proposed donation.

Sincerely,



LESLIE RUTLEDGE
Attorney General