



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-101

November 12, 2015

The Honorable Sue Scott
State Representative
1412 Hilltop Farms Lane
Rogers, AR 72756

Dear Representative Scott:

I am writing in response to your request for an opinion concerning the publication of city ordinances. Your question relates to the following language under Ark. Code Ann. § 14-55-206(a)(1)(A) (Supp. 2015):

All bylaws or ordinances of a general or permanent nature and all those imposing any fine, penalty, or forfeiture shall be published in some newspaper published in the municipality.¹

The question posed concerns what “publishing” an Ordinance means in actual application. Correspondence attached to your request for my opinion explains that when lengthy or voluminous changes are proposed to a city’s code of ordinances, often the city will draft an “Ordinance,” and will incorporate and adopt by reference as an “Exhibit” the lengthy attachment containing the new code section. With this background in mind, you ask:

Assuming that “notice” to the public is the goal [of the publication requirement] and, considering the type of activities allowed in Ark. Code Ann. § 14-55-206(b) (allowing publication by reference to voluminous codes), is it sufficient to publish just the one, or two,

¹ Subsection 14-55-206(a)(1)(B) (Supp. 2015) allows municipalities where no newspapers are published to post written or printed notices of such ordinances in five of the most public places in the city as designated by the city’s governing body.

page “Ordinance” and not have to incur the considerable expense of publishing lengthy “attachments” and “exhibits?”

RESPONSE

In my opinion, the answer is “no,” unless the lengthy attachments and exhibits referenced in the question fall within the class of rules, regulations, or technical codes permitted to be adopted by reference under Ark. Code Ann. § 14-55-206(b) or § 14-55-207.

DISCUSSION

The General Assembly has established procedures regarding the adoption of city ordinances.² These procedures include publishing or posting requirements.³ The Arkansas Supreme Court has consistently applied a strict-compliance standard with respect to these procedural requirements.⁴ In *City of Fort Smith v. O.K. Foods, Inc.*,⁵ the court specifically noted that the procedural requirements for the adoption of ordinances are mandatory and must be complied with in order for the ordinance in question to be valid.⁶

The publication requirements for proposed city ordinances, as noted in your request for my opinion, are found in Ark. Code Ann. § 14-55-206:

All bylaws or ordinances of a general or permanent nature and all those imposing any fine, penalty, or forfeiture shall be published in some newspaper published in the municipality.⁷

² See Ark. Code Ann. § 14-55-201 *et seq.* (Repl. 1998 and Supp. 2015).

³ See Ark. Code Ann. § 14-55-206 (Supp. 2015).

⁴ See, e.g., *Phillips v. City of Eureka Springs*, 312 Ark. 57, 847 S.W.2d 21 (1993) (finding city ordinance invalid when ordinance’s publication was handled by a private citizen rather than by the city); *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W.2d 259 (1992) (reversing summary judgment in favor of city upon a finding of a genuine issue of material fact as to whether a zoning ordinance was invalid because notice to public did not strictly comply with state requirements).

⁵ 293 Ark. 379, 738 S.W.2d 96 (1987).

⁶ *Id.* at 384, 738 S.W.2d at 99.

⁷ Ark. Code Ann. § 14-55-206(a)(1)(A).

However, that statute permits cities to incorporate and adopt by reference certain types of pre-published codes or regulations without needing to publish them at length, as long as certain other requirements are met:

As to ordinances establishing rules and regulations for zoning, construction of buildings, the installation of plumbing, the installation of electric wiring, or other similar work, *where such rules and regulations have been printed as a code in book form*, the code or provisions thereof may be published by the municipality by reference to title of the code without further publication or posting thereof. However, no fewer than three (3) copies of the code shall be filed for use and examination by the public in the office of the clerk or recorder of the municipality after the adoption thereof if there is no electronic form of the code available for examination by the public.⁸

Cities may similarly adopt certain technical codes by reference, under Ark. Code Ann. § 14-55-207. That section states:

(a) Every municipality in the State of Arkansas is authorized by the passage of a municipal ordinance to adopt by reference technical codes, regulations, or standards, without setting forth the provisions of the code or parts thereof, if three (3) copies of the code, or the pertinent parts thereof, and any related documents are filed either electronically or by hard copy in the office of the clerk of the municipality for inspection and view by the public before the passage of the ordinance.

(b) The term “technical codes” shall include any building, zoning, health, electrical, or plumbing codes, and the term “regulations” shall include any criminal code of the State of Arkansas.

(c) It is the duty of the municipality to give a notice to the public, by publication in a paper of general circulation within the municipality, stating that copies of the code, or the pertinent parts thereof, and the related documents are open to public examination either electronically or by hard copy before the passage of the ordinance adopting the code.⁹

⁸ *Id.* at § 14-55-206(b) (emphasis added).

⁹ Ark. Code Ann. § 14-55-207 (Supp. 2015).

These types of codes, rules, regulations, or standards are all that state law allows cities to incorporate and adopt by reference. I understand that some changes to city codes can be “lengthy or voluminous,” according to the background information you have provided, and that publication of these ordinances in full can impose significant costs upon a city. But state law is clear on this point. Thus, in my opinion, cities must continue to publish in a local newspaper all such ordinances, with any attached exhibits, unless the exhibits are among the types of codes, rules, regulations, or standards specified in Ark. Code Ann. § 14-55-206(b) or § 14-55-207.

Sincerely,



LESLIE RUTLEDGE
Attorney General