



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-146

February 17, 2016

The Honorable Eddie Cheatham
State Senator
2814 Ashley 239
Crossett, AR 71635-8824

Dear Senator Cheatham:

This is in response to your request for my opinion concerning certain contracts entered into by several Arkansas school districts. As background for your questions, you state:

Several school districts in south Arkansas entered into contracts with Nexus Systems, Inc. It is my understanding all the contracts contain the same wording and only the financial agreements are different for each school district.

You have provided a copy of the contract between Star City Public School District and Nexus Systems, Inc., and you have posed the following questions:

- 1) Is the contract between Nexus Systems, Inc. and Star City Public School District a valid contract?
- 2) As mentioned above, since all the contracts have the same wording, are the contracts between Nexus Systems, Inc. and the Dermott, Dumas, Hamburg, Junction City and McGehee School Districts valid?
- 3) Can the Arkansas Department of Information Systems force all school districts to break their existing contract with Nexus?

RESPONSE

I am not authorized to answer your first two questions, since doing so will entail a factual inquiry into the precise terms of the contracts at issue. Nor do I have the resources to conduct such an inquiry. By statute, my advisory function is limited to counseling various public servants and entities on the construction and application of Arkansas constitutional and statutory law.¹ The construction of a contract is thus generally beyond the scope of an Attorney General opinion.²

I must therefore suggest that the school districts involved consult local counsel to whom they usually look for advice in order to address the terms of the specific contracts referenced in your first two questions. Local counsel is particularly well-situated to assess the relevant facts and law and render judgments on the validity of contracts entered by school districts.

With respect to your third question, I am unable to respond to this question as worded because of my uncertainty as to its underlying premise. The question seems to suggest the Department of Information Systems (DIS) is forcing the districts to break a contract with an internet service provider. If that is the premise of the question, I must note it is mistaken.

According to my understanding, the concerns surrounding the school district contract(s) in question involve the districts' eligibility for funding under a subsidy program known as the "E-Rate" program.³ E-Rate is a federal program administered under the direction of the Federal Communications Commission (FCC). The program provides discounts to qualifying schools and libraries on eligible telecommunication or internet services by paying a percentage of the fee for such services.⁴ Participation in E-Rate involves a highly regulated application process that requires selection of the most cost-effective contractor's bid and

¹ Ark. Code Ann. § 25-16-706 (Repl. 2014).

² With the exception of the Interlocal Cooperation Act (Ark. Code Ann. §§ 25-20-101—108 (Repl. 2014)) and the agreements for joint or cooperative action between or among public agencies the Act describes, my office has no authority or mandate to review contracts of political subdivisions.

³ See 47 U.S.C. § 254(h)(1)(B) (creating E-Rate).

⁴ See *U.S. v. Curtis*, 769 F.3d 271, 272-73 (5th Cir. 2014) *cert. denied* 135 S. Ct. 691 (2014).

approval by the Universal Service Administrative Company (USAC), the entity appointed by the FCC to administer E-Rate.⁵

In response to your third question, therefore, DIS does not administer the federal program that may be impacting the contracts that are referenced in your questions. Nor does DIS dictate related contracts entered by school districts.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁵ 47 C.F.R. § 54.701(a); see *City of Springfield v. Ostrander*, 329 F.3d 204, 206-07 (1st Cir. 2003) (describing certain portions of the USAC structure in conjunction with the E-Rate program). Additional information regarding E-Rate is available on the FCC website: <https://www.fcc.gov/general/e-rate-schools-libraries-usf-program>.