



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-001

March 10, 2016

Michael J. Adam, Chairman  
Jefferson County Board of Election Commissioners  
101 West Barraque Street  
Pine Bluff, AR 71601

Dear Mr. Adam:

This is my opinion on your questions about a proposed special school millage election:

- 1) May a school millage election under § 6-14-102(b) be held on the same date as a regularly scheduled preferential primary election?
- 2) If the answer to question 1 is "yes," does § 6-14-102(a)(2) require the millage to be included as a single issue on a separate ballot apart from the party primary ballots and the nonpartisan ballot required by Ark. Code Ann. § 7-7-306(b)?
- 3) Does the special election code (Ark. Code Ann. §§ 7-11-101 through -303) apply in whole or in part (for instance, setting the date of the election or including the millage on the party primary and general election ballots under 7-11-205), to school millage elections that are not held on the September/November regular school election dates, in light of the language in § 7-11-201 ("except for special school elections") and Attorney General Opinion 2002-300, which states that millage questions cannot be submitted at a special election?

## RESPONSE

In my opinion, the answers to your first two questions are “yes” and the answer to your third question is “yes, in part.”

## DISCUSSION

### ***Question 1 – May a school millage election under § 6-14-102(b) be held on the same date as a regularly scheduled preferential primary election?***

At one time, the state constitution did not permit a school millage election on any day other than the day of the annual school election.<sup>1</sup> In 1996, however, the voters approved Amendment 74, which provides that a school board may submit the proposed local millage rate to voters “at the annual school election or at such other time as may be provided by law.”<sup>2</sup>

Another time is, in fact, provided by law. As your request notes, a statute permits a school millage election on a day other than the annual school election date if three conditions are met.<sup>3</sup>

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<sup>1</sup> See, e.g., *Sims v. Hazen Sch. Dist. No. 2*, 215 Ark. 536, 221 S.W.2d 401 (1949).

<sup>2</sup> Ark. Const. art. 14, § 3(c)(1). Your request refers to Op. Att’y Gen. 2002-300, which cited *Sims*, *supra* note 1, another pre-Amendment 74 case, and pre-Amendment 74 opinions of the Attorney General, and concluded without further explanation or analysis that “state law prohibits the consideration of school millage questions at a special election.” The author appears to have neglected to note the change in constitutional law made by Amendment 74, and the legislative implementation of this aspect of Amendment 74 by Act 1120 of 1997. Accordingly, the opinion appears to have been incorrect on this point. A 2003 opinion, without referring to the 2002 opinion, stated that “the law currently authorizes special elections to address debt service . . .” Op. Att’y Gen. 2003-031.

<sup>3</sup> The statute provides in relevant part:

- (b) The board of directors of any school district shall have the authority to hold a school election concerning the tax rate or debt issues on a date other than that fixed by law provided that:
  - (1) All constitutional and statutory requirements for the annual school election are met, notwithstanding [the requirement that the annual school election be held on one of two specified dates];
  - (2) The election is held before the date of the annual school election; and
  - (3) The Commissioner of Education approves the date of the election.

Your question refers specifically to holding a special school millage election on the day of a regularly-scheduled preferential primary election. One of the conditions to holding a special school millage election is that it be held before the date of the annual school election. The preferential primary election, held in March, is obviously earlier in the year than the dates in September and November specified by law for the annual school election.<sup>4</sup>

It is my opinion, then, that a special school millage election may be held on the day of the preferential primary election, provided the statute's other two conditions (compliance with annual school election requirements other than date, and Commissioner of Education approval) are met.

***Question 2 – If the answer to question 1 is “yes,” does § 6-14-102(a)(2) require the millage to be included as a single issue on a separate ballot apart from the party primary ballots and the nonpartisan ballot required by Ark. Code Ann. § 7-7-306(b)?***

The first section you cite is in title 6, which addresses education. The section provides that “[t]he annual school election shall only concern issues authorized to be on the ballot by the Arkansas Constitution or by statute, and *no other issues shall appear on the ballot.*”<sup>5</sup> In my opinion, this rule does apply to a special school millage election by virtue of the provision requiring that special school millage elections meet “[a]ll constitutional and statutory requirements for the annual school election,”<sup>6</sup> and does require a separate ballot.

The second section you cite<sup>7</sup> is contained in Title 7 of the Arkansas Code, which concerns elections generally, rather than in Title 6, which concerns education specifically. It requires, for each party primary and nonpartisan general election,

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<sup>4</sup> The preferential primary election is held on the Tuesday three weeks before the general primary election. *See* Ark. Code Ann. § 7-7-203(b) (Supp. 2015). The general primary election is held on the fourth Tuesday in March before the general election. *See* Ark. Code Ann. § 7-7-203(a). The annual school election is held on the third Tuesday in September or the first Tuesday following the first Monday of November. *See* Ark. Code Ann. § 6-14-102(a)(1).

<sup>5</sup> Ark. Code Ann. § 6-14-102(a)(2) (emphasis added).

<sup>6</sup> Ark. Code Ann. § 6-14-102(b)(1).

<sup>7</sup> Ark. Code Ann. § 7-7-306 (Supp. 2015).

that there be a separate ballot for each political party containing (1) the name of each person seeking that party's nomination, (2) the name of each candidate for a nonpartisan office, and (3) "[a]ll measures and questions, if any, to be decided by the voters."<sup>8</sup> It also requires, for nonpartisan voters, another ballot containing only the items designated (2) and (3) in the previous sentence.<sup>9</sup> A school district's local millage rate obviously is a question to be decided by the voters. The election law statute you cite therefore seems to require that the millage rate question appear on the party ballots and the nonpartisan ballot, rather than on an entirely separate ballot as required by the school election law statute discussed in the previous paragraph of this opinion.<sup>10</sup>

In my opinion, a court would hold that the requirement of school election law (in title 6) that no other issues appear on the ballot (and thus a separate ballot is required) supersedes the requirement of general election law (in title 7) that all questions appear on the party and nonpartisan ballots. When conflicting statutes deal with the same subject matter, the more specific prevails over the more general.<sup>11</sup>

***Question 3 – Does the special election code (Ark. Code Ann. §§ 7-11-101 through 303) apply in whole or in part (for instance, setting the date of the election or including the millage on the party primary and general election ballots under 7-11-205), to school millage elections that are not held on the September/November regular school election dates, in light of the language in § 7-11-201 (“except for special school elections”) and Attorney General Opinion 2002-300, which states that millage questions cannot be submitted at a special election?***<sup>[12]</sup>

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<sup>8</sup> Ark. Code Ann. § 7-7-306(a).

<sup>9</sup> Ark. Code Ann. § 7-7-306(b).

<sup>10</sup> Ark. Code Ann. § 6-14-102(a)(2).

<sup>11</sup> See, e.g., *Kelly v. Martin ex rel. State*, 2014 Ark. 217, 433 S.W.3d 896.

<sup>12</sup> See *supra* note 2 regarding Op. Att'y Gen. 2002-300.

Arkansas Code title 7, chapter 11, subchapter 1,<sup>13</sup> establishes rules for special elections *to fill vacancies in office*. It accordingly does not, in my view, apply to special school millage elections.

As to subchapter 2, it is my opinion that special school millage elections are exempted from at least the first four sections of subchapter 2,<sup>14</sup> and from subsection (b) of the last section of subchapter 2<sup>15</sup> – *all having to do with the document calling the election* – by virtue of the statute quoted in your question. That statute provides that, “[e]xcept for special school elections,” all special elections on measures or questions are to be called by the issuance of one of several specified documents.<sup>16</sup>

It is not clear whether a court would hold subsection (a) of the last section of subchapter 2<sup>17</sup> to apply to a special school millage election. But even if the subsection applies, the special school millage election described in your request – *i.e.*, one to be held on the day of the preferential primary – would satisfy the subsection’s requirement that a special election to be held during the same month as a preferential primary be held on the same day as the preferential primary.<sup>18</sup>

The same subsection also requires that the ballot for a special election held on the day of a preferential primary include “the issues or issues to be voted upon at the special election.”<sup>19</sup> In my view, however, the specific requirements of school election law that a school election “only concern issues authorized to be on the ballot by the Arkansas Constitution or by statute,” and that “no other issues . . . appear on the ballot”<sup>20</sup> would be held to supersede this more general requirement of general election law.<sup>21</sup>

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<sup>13</sup> Ark. Code Ann. §§ 7-11-101 to -107 (Repl. 2011, Supp. 2015).

<sup>14</sup> Ark. Code Ann. §§ 7-11-201 to -204 (Repl. 2011).

<sup>15</sup> Ark. Code Ann. § 7-11-205 (Repl. 2011).

<sup>16</sup> Ark. Code Ann. § 7-11-201.

<sup>17</sup> Ark. Code Ann. § 7-11-205.

<sup>18</sup> See Ark. Code Ann. § 7-11-205(a)(1)(A) (Repl. 2011).

<sup>19</sup> Ark. Code Ann. § 7-11-205(a)(2)(A).

<sup>20</sup> See Ark. Code Ann. § 6-14-102(b)(1) and (a)(2).

As to subchapter 3, it is my opinion that the first section<sup>22</sup> – providing that the laws governing general and primary elections apply to questions arising in connection with special elections that are not answered by the laws governing special elections – does apply to a special school millage election but that the section may have little real effect due to a similar provision in the laws governing school elections.<sup>23</sup>

In my opinion, the second section<sup>24</sup> – *having to do with filling vacancies in office* – does not apply.

Finally, it is my opinion that the third section<sup>25</sup> – providing that certain publication requirements of general elections law apply to special elections – does not apply to a special school millage election due to a provision of school elections law that requires publication of notices of school elections and provides that its publication requirement “shall be the sole requirement for publication of the notice.”<sup>26</sup>

Sincerely,



LESLIE RUTLEDGE  
Attorney General

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<sup>21</sup> See *supra* note 11 and accompanying text.

<sup>22</sup> Ark. Code Ann. § 7-11-301 (Repl. 2011).

<sup>23</sup> See Ark. Code Ann. § 6-14-101 (Repl. 2013).

<sup>24</sup> Ark. Code Ann. § 7-11-302 (Repl. 2011).

<sup>25</sup> Ark. Code Ann. § 7-11-303.

<sup>26</sup> Ark. Code Ann. § 6-14-109(c) (Repl. 2013); see *supra* note 11 and accompanying text.