



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-010

May 18, 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 a potential real estate purchase by Drew County. As background for your questions, you state:

Drew County, Arkansas has received a proposal from University Center, Inc., to sell real estate to the county. Two county officials—one a quorum court member and the other the county treasurer—are part owners in University Center, which is the seller corporation.

In light of the foregoing background information, you pose the following questions:

1. Generally, under Arkansas law, can a county purchase real estate from a quorum court member or other elected county official?
2. Under Arkansas law, can the county purchase the real estate in this situation?
3. Assuming a licensed appraiser appraised the property, a fair market value is established, and a county resolution is voted on by the quorum court with the parties involved abstaining from the vote, is it legal for the county to purchase the real estate?

4. Is the waiver provision in Ark. Code Ann. § 14-14-1201(c)(2) applicable to county purchases of real estate?

## RESPONSE

Although your questions ask what the *county* may do, the relevant statute (cited in your fourth question) is directed toward the action(s) of *county officers and employees*. Addressed from that perspective, it is my opinion that the answer to Questions 1 and 2 is “no.” A quorum court member or other elected county official cannot lawfully enter into such a purchase contract. Furthermore, the protocol suggested in Question 3 and the materially similar waiver provision found in Ark. Code Ann. § 14-14-1202(c)(2) would be unavailing, as the statutory waiver provision only applies to county purchases of *goods or services*, not real property.

## DISCUSSION

***Question 1: Generally, under Arkansas law, can a county purchase real estate from a quorum court member or other elected county official?***

***Question 2: Under Arkansas law, can the county purchase the real estate in this situation?***

While you have asked these questions in terms of what may the *county* do, in my opinion the more relevant issue concerns what the county *officials* involved may do. It is from this perspective that I address these questions.

The county government officers and employees ethics code, Ark. Code Ann. § 14-14-1202, begins by stating: “The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of officers and employees of county government.”<sup>1</sup> Furthermore, the statute states, as a general matter:

[A county] officer or employee may not use his or her office, the influence created by his or her official position, or information gained by virtue of his or her position to advance his or her individual personal economic interest or that of an immediate

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<sup>1</sup> Ark. Code Ann. § 14-14-1202(a)(1) (Repl. 2013).

member of his or her family or an associate, other than advancing strictly incidental benefits as may accrue to any of them from the enactment or administration of law affecting the public generally.<sup>2</sup>

To this end, the ethics code provides certain rules of conduct for county government officers and employees. Those rules state, in pertinent part, that an officer or employee of county government shall not:

Be interested, either directly or indirectly, in any contract or transaction made, authorized, or entered into on behalf of the county or an entity created by the county, or accept or receive any property, money, or other valuable thing for his or her use or benefit on account of, connected with, or growing out of any contract or transaction of a county.<sup>3</sup>

Violation of the rules of conduct is considered a misdemeanor, and is punishable by a fine of up to \$1,000 and removal from office.<sup>4</sup>

The first rule in statutory construction is to read a statute just as it is, giving the words their ordinary and usually accepted meaning in common language. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction.<sup>5</sup> In my view, the prohibited conduct under section 14-14-1202 is plain and unambiguous.

According to the facts provided, Drew County and a corporation called University Center, Inc., are considering entering into an agreement for University Center to sell real property to the county. You further state that the county treasurer and a Quorum Court member are “part owners” of University Center. It seems clear that these ownership positions would make these county officials “interested,” either directly or indirectly, in a transaction between the county and the company. It

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<sup>2</sup> *Id.* at §14-14-1202(a)(3).

<sup>3</sup> *Id.* at § 14-14-1202(c)(1)(A)(i). This prohibition, however, can be waived under certain circumstances, pursuant to Ark. Code Ann. § 14-14-1202(c)(2). This portion of the statute is discussed more fully *infra*.

<sup>4</sup> *Id.* at § 14-14-1202(d)(3).

<sup>5</sup> See *MacSteel Div. of Quanax v. Arkansas Okla. Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878, 882-83 (2005).

necessarily follows that section 14-14-1202 prohibits these officials from entering into such an agreement under these facts.

***Question 3: Assuming a licensed appraiser appraised the property, a fair market value is established, and a county resolution is voted on by the quorum court with the parties involved abstaining from the vote, is it legal for the county to purchase the real estate?***

***Question 4: Is the waiver provision in Ark. Code Ann. § 14-14-1201(c)(2) applicable to county purchases of real estate?***

The protocol described in your third question resembles, in material respects, the “waiver provision” provided by statute and referenced in your fourth question. I will therefore address these questions together. The so-called waiver provision found in Ark. Code Ann. § 14-14-1202(c)(2) is clear in applying only to county purchases of *goods or services*:<sup>6</sup>

(i) If the quorum court determines that it is in the best interest of the county, the quorum court *may by ordinance permit the county to purchase goods or services* directly or indirectly from quorum court members, county officers, or county employees due to unusual circumstances.

(ii) The ordinance permitting the purchases must specifically define the unusual circumstances under which the purchases are allowed and the limitations of the authority.<sup>7</sup>

One rule of statutory construction holds that, absent indications to the contrary, the express designation of one thing in a statute may properly be construed to mean

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<sup>6</sup> “Goods” are generally defined as “[t]angible or movable personal property other than money.” BLACK’S LAW DICTIONARY 808 (10th ed. 2014). “Service” denotes an intangible commodity in the form of human effort, such as labor, skill, or advice. *Id.* at 1576.

<sup>7</sup> Ark. Code Ann. § 14-14-1202(c)(2)(A) (emphasis added). *See also* Ark. Code Ann. §§ 14-14-1202(c)(2)(B) (“Any quorum court member having any interest in the *goods or services* being considered under these procedures shall not be entitled to vote upon the approval of the *goods or services*.”) and 14-14-1202(c)(2)(C) (“If *goods or services* are purchased under these procedures, the county judge must file an affidavit....”) (emphases added).

the exclusion of another (*expressio unius est exclusio alterius*).<sup>8</sup> And as the italicized portion of the statute above makes plain, this waiver provision applies only to the expressly designated purchases of goods or services, not to real property.<sup>9</sup>

Sincerely,



LESLIE RUTLEDGE  
Attorney General

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<sup>8</sup> See *Chem-Ash, Inc. v. Arkansas Power & Light Co.*, 296 Ark. 83, 751 S.W.2d 353 (1988); *Venhaus v. Hale*, 281 Ark. 390, 663 S.W.2d 930 (1946).

<sup>9</sup> Nor, in my opinion, could a county enact a more stringent and transparent set of procedures for itself to grant a waiver to county officials allowing a transaction that state law clearly does not permit the officials to enter into. See Ark. Code Ann. § 14-14-805(13) (Repl. 2013) (“Each county quorum court in the State of Arkansas exercising local legislative authority is prohibited the exercise of ... [a]ny legislative act contrary to the general laws of the state.”).