



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-027

June 22, 2016

The Honorable Dwight Tosh
State Representative
4513 Butler Road
Jonesboro, AR 72404-8829

Dear Representative Tosh:

This is in response to your request for my opinion regarding Ark. Code Ann. § 12-11-110 (Supp. 2015). This statute, found in a chapter of the Arkansas Code entitled "Prevention of Public Offenses," states in its entirety: "A law enforcement officer shall arrest a drunken, insane, or disorderly person whom he or she finds at large and not in the care of a competent person."

You pose the following questions in this regard:

1. Is Ark. Code Ann. § 12-11-110 (Drunken, Insane, or Disorderly Persons) constitutional?
2. May a district court judge assess fines or court costs under Ark. Code Ann. § 12-11-110 as either a criminal offense or a violation?
3. May a district court judge assess fines or court costs under Ark. Code Ann. § 12-11-110 against a person with mental illness who has not committed a crime or violation and is not accused of committing a crime?
4. If fines or court costs under Ark. Code Ann. § 12-11-110 are illegal, what is the legal remedy involving fines and costs that have been assessed and collected?

5. If fines and court costs under Ark. Code Ann. § 12-11-110 are illegal, is it permissible for an individual, who has been assessed fines and court costs under Ark. Code Ann. § 12-11-110, to be arrested and/or fined for nonpayment of those fines and court costs assessed illegally under Ark. Code Ann. § 12-11-110? .

RESPONSE

I must respectfully decline to answer your questions because of pending litigation.¹ It is the long-standing policy of the Attorney General's office, as a member of the executive branch, to decline to issue opinions on matters that are pending before the courts for resolution.²

I regret that I cannot be of more assistance in this matter. Please do not hesitate to contact me if I may be of future assistance in some other respect.

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹ See *Burcham v. Craighead Cty.*, No. CV-16-401 (Craighead Cir., Western Dist., Civ. Div., June 10, 2016).

² See Ops. Att'y Gen. 2015-140, 2015-005 (and opinions cited therein). While your first question, concerning the statute's constitutionality, is not directly implicated in the litigation, I cannot address that question without interpreting the statute; and the statute's interpretation *is* in litigation. I will nevertheless note that the United States Supreme Court, in addressing a similar statute in a sister state, made clear a state's interest and authority in this area:

The state has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable because of emotional disorders to care for themselves; the state also has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill.

Addington v. Texas, 441 U.S. 418, 426, 99 S. Ct. 1804, 1809 (1979).