



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-032

September 23, 2016

The Honorable Dan Sullivan  
State Representative  
P. O. Box 19406  
Jonesboro, AR 72403-2406

Dear Representative Sullivan:

This is in response to your request for my opinion on the following questions regarding Craighead County and its division into separate judicial districts:

1. Was Arkansas Act 61 of 1883, Section 15, amended by Arkansas Act 667 of 2003? If so, in what manner?
2. Did Arkansas Act 667 of 2003 repeal any provision of Arkansas Act 61 of 1883? If so, what specific provisions were repealed?
3. Has any section or provision of any section of Arkansas Act 61 of 1883 been repealed or superseded by other legislation? If so, what sections or parts thereto and by what act or code section?
4. Are budgets included in financial affairs as stated in section 19 of Act 61 of 1883?
5. Should each district of Craighead County have its own budget determined by each clerk with the Craighead County Circuit Clerk having oversight to the final draft to be sent to the Quorum Court for final approval?
6. Can the Eastern District Deputy Court Clerk and [her] deputies continue to legally perform the duties of Circuit Clerk, County Clerk, Tax Assessor and Tax Collector for delinquent personal

taxes and Eastern District real estate only? If not, in what manner could that be done?

## RESPONSE

In 1883, the General Assembly passed Act 61, dividing Craighead County into two judicial districts, the Jonesboro District and the Lake City District (later denominated as the Western and Eastern districts, respectively). This piece of uncodified legislation was similar to other enactments of the period that split certain counties—such as Desha, Clay, Carroll, and Prairie,<sup>1</sup> to name a few—into separate judicial districts for circuit court. The apparent purpose behind these statutes was to give these counties’ residents a second courthouse to handle their county affairs—such as paying taxes or recording deeds—or to tend to judicial matters. This was at a time when geographic obstacles in certain places and the then-current state of transportation often made it impractical and overly burdensome for residents in isolated areas to get to the county seat.

Section 15 of Act 61 (“Section 15”) established that the Craighead County sheriff and clerk (as well as the treasurer and probate judge) would hold their respective offices and exercise their powers and duties over both the Jonesboro and Lake City Districts, that is, countywide. But Section 15 also required that the sheriff, clerk, and treasurer each appoint a deputy, to be approved by the county judge.

Specifically with regard to the elected officials and their respective appointed deputies, Section 15 implemented two rules. *First*, it stipulated that each elected official/deputy pair had to reside in different districts. For example, if the elected Sheriff resided in the Jonesboro (or Western) District, his appointed deputy had to reside in the Lake City (or Eastern) District. And if the elected clerk resided in the Eastern District, his appointed deputy had to reside in the Western one. I will refer to this stipulation as “the Opposite District Rule.”

*Second*, Section 15 required that whichever officials—whether the elected ones or their deputies—resided in the Eastern District had to reside in the town of Lake City. I will refer to this requirement as the “Lake City Rule.”

Over time, as I understand it, it became the custom in Craighead County to include on the county ballots names of candidates for the positions of deputy clerk and

---

<sup>1</sup> See Acts 1881, Nos. 5 and 14; Acts 1883, No. 74; Acts 1885, No. 133, respectively.

deputy sheriff to serve the Eastern District. This practice continued for some time until, in 2002, the Craighead County Election Commission requested an Attorney General's opinion questioning the propriety of putting the names of the "deputy candidates" on the county's ballots. That opinion determined, among other points, that the long-standing practice in Craighead County of "electing" a deputy sheriff and deputy circuit clerk for the Eastern District lacked any authority under Arkansas law.<sup>2</sup>

Faced with that opinion, the legislature passed Act 667 of 2003, probably to give the county's custom the patina of legislative authority that my predecessor said was lacking. This similarly uncodified legislation requires that every preferential primary and general election ballot in Craighead County contain the names of candidates for the positions of deputy sheriff and deputy circuit clerk.<sup>3</sup> This Act states that the "results of the balloting ... shall be advisory to the elected sheriff and elected circuit clerk of Craighead County."

The 2003 Act does not mention the 1883 Act, and does not expressly refer to any portion of the earlier Act, including Section 15's Opposite District Rule or Lake City Rule. But the 2003 Act requires that the candidates (for deputy sheriff and deputy circuit clerk) for the advisory election "reside in the Eastern District and maintain offices in the district."<sup>4</sup>

With this history in mind, I now turn to your questions.

## DISCUSSION

***Question 1: Was Arkansas Act 61 of 1883, Section 15, amended by Arkansas Act 667 of 2003? If so, in what manner?***

***Question 2: Did Arkansas Act 667 of 2003 repeal any provision of Arkansas Act 61 of 1883? If so, what specific provisions were repealed?***

Act 667 of 2003 did not reference Act 61 of 1883 at all, nor did it contain a general repealer (which legislative drafters in Arkansas have disfavored since

---

<sup>2</sup> See Op. Att'y Gen. 2002-088.

<sup>3</sup> Acts 2003, No. 667, § 1(a)(1).

<sup>4</sup> *Id.* at § 1(a)(2).

2001<sup>5</sup>). So it did not expressly amend or repeal Section 15 or any other provision of Act 61. But the more difficult question is whether a portion of Act 667 impliedly amended part of Act 61.<sup>6</sup>

### A. Rules of Statutory Interpretation

The Arkansas Supreme Court has clearly set forth the rules of statutory construction it applies:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.<sup>7</sup>

The Arkansas Supreme Court has maintained that repeal or amendment of a law by implication is disfavored “except where there is such an invincible repugnancy between the former and later provisions that both cannot stand together.”<sup>8</sup> In such

---

<sup>5</sup> See Bureau of Legislative Research, “Legislative Drafting Manual,” part 5.5(e) (2010), found at <http://www.arkleg.state.ar.us/bureau/legal/Publications/2010%20Legislative%20Drafting%20Manual.pdf> (last accessed June 23, 2016).

<sup>6</sup> Your question presumes the constitutionality of Act 667 of 2003. *But see* Ark. Const. amend 14 (“The General Assembly shall not pass any local or special act. This amendment shall not prohibit the repeal of any local or special act.”), which voters adopted in 1926, years after the enactment of Act 61. Because you have not asked about the constitutionality of Act 667, I have not performed an in-depth analysis of this question.

<sup>7</sup> *MacSteel Div. of Quanex v. Arkansas Okla. Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878, 882-83 (2005) (internal citations omitted).

<sup>8</sup> *Donoho v. Donoho*, 318 Ark. 637, 639, 887 S.W.2d 290, 291 (1994). *See also* *Pruitt v. Sebastian Cty. Coal & Mining Co.*, 215 Ark. 673, 685, 222 S.W.2d 50, 57 (1949) (“Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases. The legislature will not be held to have changed a law it did not have under consideration while enacting a later law, unless the terms of the subsequent act are so inconsistent with the

a case, the provisions of an act adopted later in time repeal any irreconcilable provisions of an earlier act.<sup>9</sup> But legislative enactments that are alleged to be in conflict must be reconciled, read together in a harmonious fashion, and each given effect, if possible.<sup>10</sup>

### **B. The Opposite District Rule**

Act 667 of 2003 requires that candidates for deputy sheriff and deputy clerk (in an admittedly advisory election) “reside in the Eastern District and maintain offices in the district.” Because there is no express repeal of Act 61—which created the Opposite District Rule—the courts will read the two statutes harmoniously if they can. I believe the statutes can be read harmoniously. Doing so would mean that the elected sheriff and circuit clerk would always have to reside in, or at least change their residences to, the Western District and the deputy sheriff and deputy clerk would always have to reside in, or at least change their residences to, the Eastern District.

To the extent there is ambiguity in the statute, I believe the history of the elections for deputy sheriff and deputy clerk in Craighead County support my reading of the statute. These elections were for the deputy sheriff and county clerk for the Eastern District. If the General Assembly in passing Act 667 was merely trying to confirm the legal ability to hold these elections, it would make sense that they elevated into law the custom of the deputy sheriff and deputy clerk residing in and maintaining offices in the Eastern District. Moreover, given the relative population density of each District, it would make sense to have the principal elected official in the Western District and the deputy in the Eastern District.

### **C. The Lake City Rule**

It is my understanding that the prevailing view in Craighead County is that the 2003 act impliedly repealed the requirement in Section 15 that the official residing in the Eastern District must reside in the town of Lake City. The view is that the

---

provisions of the prior law that they cannot stand together.” (quoting Sutherland on Statutory Construction, 3d ed.)).

<sup>9</sup> See *Daniels v. City of Fort Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

<sup>10</sup> See *Gritts v. State*, 315 Ark. 1, 864 S.W.2d 859 (1993); *City of Fort Smith v. Tate*, 311 Ark. 405, 844 S.W.2d 356 (1993).

2003 act opened the Eastern District residency requirement to anywhere within the district.

That may well be a fair reading of the 2003 act. An alternative reasonable reading, however, is that while the *candidates* for the advisory election of deputy positions must reside somewhere in the Eastern District, the ultimate appointees must still reside in or move to Lake City.

Another reasonable view is that because Lake City is within the Eastern District, Act 61's requirement does not directly conflict with Act 667's requirement. That is, since (1) all Act 667 requires is residence and offices within the Eastern District, and (2) that can be accomplished by meeting Act 61's more stringent requirements of residing in Lake City, then Act 61's more stringent requirement controls.

In my opinion, the best and most sensible reading of Act 667 is that it impliedly repealed Act 61's Lake City Rule. But I want to make clear that I cannot predict with any reasonable degree of confidence how the Arkansas Supreme Court would resolve this question. The fact that the 2003 act never mentioned Act 61 or Section 15 or referenced the Lake City Rule in any way raises considerable uncertainty as to whether the 2003 act intended to repeal the Lake City Rule. I am unable to satisfactorily determine the General Assembly's intent in this instance. Perhaps the General Assembly intended to change, *sub-silentio*, the 120-year-old Lake City Rule, but perhaps it was merely concentrating on providing the legal foundation for an advisory election and not intending to address this far more technical Lake City Rule.

***Question 3: Has any section or provision of any section of Arkansas Act 61 of 1883 been repealed or superseded by other legislation? If so, what sections or parts thereto and by what act or code section?***

As mentioned above, this 133-year-old act was never codified. Consequently, identifying any and all amendments or repealers is impractical in the limited context of an Attorney General's opinion.

While the Arkansas Code Annotated of 1987 provides us with no helpful information,<sup>11</sup> the tables volume of the superseded Arkansas Statutes Annotated of

---

<sup>11</sup> Standard legal research such as this typically starts by going to the Tables volumes of the Arkansas Code Annotated, locating the act number in question, and noting any changes to the act

1947 does state that section 10 of Act 61—concerning the Craighead County probate court—was repealed by Act 140 of 1949, which was a revision of the Probate Code as it then existed.<sup>12</sup> The Special and Local Index of the Arkansas Statutes Annotated of 1947 also listed two acts that amended section 2 of Act 61.<sup>13</sup> These acts merely redefined the boundary line between the Western and Eastern Districts. In addition, I found subsequent legislation that merely referred to the Jonesboro and Lake City Districts, without referencing Act 61, as the Western and Eastern Districts, respectively.<sup>14</sup>

Beyond that, however, I have been unable to identify any legislation that addresses the issues raised in your first two questions. Neither has my research found anything to suggest that Act 61 has been repealed or superseded wholesale.

***Question 4: Are budgets included in financial affairs as stated in section 19 of Act 61 of 1883?***

“Yes,” in my opinion. Section 19 of Act 61 requires the Craighead County clerk to keep two financial records, one for the “financial affairs” of the Western District and another for the Eastern District. “The financial affairs of each District shall be kept as separate and distinct as though the two Districts were separate and distinct counties.”<sup>15</sup>

Act 61 does not define the term “financial affairs;” nor does it use the word “budget.” But in looking at those terms in their usually accepted meanings in common language,<sup>16</sup> it seems clear that budgets would be considered a subset of

---

listed by the Arkansas Code Revision Commission. Regrettably, the Commission’s tables only list Act 61 as “Spec.” (meaning special or local legislation), and “Repealed in part.” It gives no reference to what part was repealed or by what subsequent act, or any other information.

<sup>12</sup> The distinct courts of equity known as “probate courts” have since been legislatively abolished following the merger of circuit and chancery courts pursuant to Amendment 80 to the Arkansas Constitution. *Compare* Ark. Code Ann. § 16-14-101 *et seq.* (Repl. 1999 (superseded 2010)) *with* Acts 2003, No. 1185, § 99.

<sup>13</sup> Acts 1885, No. 71; Acts 1887, No. 49.

<sup>14</sup> *See, e.g.*, Acts 1923, No. 102; Acts 1981, No. 224.

<sup>15</sup> Acts 1883, No. 61, § 19.

<sup>16</sup> *See* text accompanying note 7 *supra*.

an organization's overall financial affairs. A "budget" is generally defined as a statement of revenue and expenses for a specified period.<sup>17</sup> "Financial" is defined as having to do with monetary resources generally.<sup>18</sup>

This view is buttressed by the fact that state statutes often use these terms in connection with one another.<sup>19</sup> Thus it is not difficult to conclude that budgets would be considered within the scope of financial affairs.

***Question 5: Should each district of Craighead County have its own budget determined by each clerk with the Craighead County Circuit Clerk having oversight to the final draft to be sent to the Quorum Court for final approval?***

I must decline to answer this question as it involves matters within the prerogatives of county governments and so is beyond the scope of an Attorney General's opinion.<sup>20</sup> Among the powers state law provides county government, acting through its quorum court, is the power to "[a]ppropriate public funds for the expenses of the county *in a manner prescribed by ordinance.*"<sup>21</sup> As long as the county's financial management system is in accordance with the comprehensive financial management system devised by the Legislative Auditor,<sup>22</sup> this question

---

<sup>17</sup> BLACK'S LAW DICTIONARY 234 (10th ed. 2014).

<sup>18</sup> THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 659 (5th ed. 2011).

<sup>19</sup> See, e.g., Ark. Code Ann. §§ 19-4-203 ("The General Assembly and the Joint Budget Committee shall ... [c]onsider the current programs and *financial plan* included in the *budget requests* and the proposed resources for financing recommended by the Governor or Governor-elect including proposed goals and policies, recommended budgets, revenue proposals, and long-range programs..."); 14-54-203 ("Every agreement or contract entered into by a municipality of this state ... shall specify ... [t]he manner of *financing* the joint or cooperative undertaking and of establishing and maintaining a *budget* therefor); 20-76-102 ("State agencies required ... to work with the Department of Workforce Services in providing transitional employment assistance services to recipients shall make every effort to use *financial* resources in their respective *budgets*....") (all emphases added).

<sup>20</sup> See Ark. Code Ann. § 25-16-706 (Repl. 2014) (directing the Attorney General to render formal opinions on questions of state law submitted by specified officials).

<sup>21</sup> Ark. Code Ann. § 14-14-801 (Repl. 2013) (emphasis added). See also Ark. Code Ann. § 14-14-904(b)(1)(A)(ii) (Supp. 2015) (stating that "the quorum court shall make appropriations for the expenses of county government....").

<sup>22</sup> See Ark. Code Ann. § 14-21-101 (Repl. 2013).

would be a matter for the Craighead County Quorum Court to address by ordinance.

***Question 6: Can the Eastern District Deputy Court Clerk and [her] deputies continue to legally perform the duties of Circuit Clerk, County Clerk, Tax Assessor and Tax Collector for delinquent personal taxes and Eastern District real estate only? If not, in what manner could that be done?***

I take this question to be asking whether the appointed deputy circuit clerk, working in Lake City for the Eastern District, and others working in the Lake City courthouse, may perform services not only for the elected Craighead County circuit clerk—for whom the deputy is appointed to serve—but also for the independent offices of county clerk, assessor, and collector. I cannot provide a definitive answer to this question, as I have been provided insufficient facts as to precisely what is happening at the Lake City courthouse or pointed to any authority or arrangements that would be offered to explain what is actually happening there. Based on my limited understanding, however, your question may raise a constitutional “dual-office holding” issue.

The Arkansas Supreme Court has indicated that there are three possible types of legal prohibitions to the concurrent holding of two offices: constitutional prohibitions, statutory prohibitions, and the common-law prohibition known as the “doctrine of incompatibility.”<sup>23</sup> I do not see any statutory prohibitions implicated here.

With respect to the incompatibility doctrine, the Court has described it as applying in situations in which “the discharge of the duties of the one [position] conflict[s] with the duties of the other, to the detriment of the public good.”<sup>24</sup> The Court has further expounded upon the doctrine, stating:

The inconsistency, which at common law makes offices incompatible ... lies rather in the conflict of interest, as where one is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one office has the power to remove the incumbent of the other or to audit

---

<sup>23</sup> See *Byrd v. State*, 240 Ark. 743, 402 S.W.2d 121 (1966).

<sup>24</sup> *State ex rel. Murphy v. Townsend*, 72 Ark. 180, 79 S.W. 782 (1904).

the accounts of the other.<sup>25</sup>

The Court went on to state that “incompatibility exists where there is a conflict of interests, which includes, *inter alia*, where one office is subordinate to the other.”<sup>26</sup> Because the offices of circuit clerk, county clerk, county assessor, and county collector are independent offices, none subordinate to the other, I do not see a common-law incompatibility issue here. This leaves us with the constitutional question.

Article 19, section 6 of the Arkansas Constitution states that “[n]o person shall hold or perform the duties of more than one office in the same department of the government at the same time, except as expressly directed or permitted by this Constitution.”<sup>27</sup> The Arkansas Supreme Court, in *Marshall v. Holland*,<sup>28</sup> applied this constitutional prohibition to several county offices embraced in Article 7, section 46 of the constitution.<sup>29</sup>

Your question seems to acknowledge that neither the Deputy Clerk nor any member of her staff holds two “offices” for purposes of the Arkansas Constitution. Your question seems to suggest, however, that the Deputy Clerk and her staff are “performing the duties of more than one office” at the same time—specifically the duties of the Circuit Clerk, County Clerk, Tax Assessor, and Tax Collector at the same time.

Whether or not the Deputy Clerk and her staff are “performing the duties of more than one office” at the same time is a factual question. I am not authorized to act as a fact-finder in an Attorney General opinion. I will note, however, that it is highly unlikely the Deputy Clerk and staff are “perform[ing] the duties of more

---

<sup>25</sup> *Thompson v. Roberts*, 333 Ark. 544, 549, 970 S.W.2d 239, 241 (1998) (quoting *Tappan v. Helena Fed. Sav. & Loan Ass’n*, 193 Ark. 1023, 104 S.W.2d 458 (1937)).

<sup>26</sup> *Id.* (citing *Byrd*, note 23 *supra*).

<sup>27</sup> Ark. Const. art. 19, § 6 (emphasis added).

<sup>28</sup> 168 Ark. 449, 270 S.W. 609 (1925).

<sup>29</sup> Article 7, section 46 requires the election of a sheriff, assessor, coroner, treasurer, and surveyor for each county. The Court in *Marshall* observed that while Article 19, section 6 “does not undertake to define what shall constitute the different departments of government[,]” Article 7, section 46 “necessarily groups [the named county officers] as officers in the same department.” *Marshall*, 168 Ark. at 454, 270 S.W. at 612.

than one office” as that phrase is used in Article 19, section 6. In Article 19, section 6, “perform[ing] the duties” of an “office” is generally not meant to address staff who, under the direction of an officeholder, work, carry out directives, or are even delegated a program to run. Rather, for purposes of Article 19, section 6, a person “perform[s] the duties” of an “office” if he is acting as the officeholder (*e.g.*, perhaps due to a vacancy in the office or a prolonged absence of the actual officeholder), or if the law specifically provides that the person has all the powers and duties of the principal office-holder.

It does not appear, based on the facts before me, that the Deputy Clerk and her staff are performing the duties of more than one office as contemplated by Article 19, section 6. But if there are other material facts of which I am not aware, corresponding modification of this opinion may be necessary.

Sincerely,



LESLIE RUTLEDGE  
Attorney General