



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-037

July 15, 2016

Michael J. Adam, Chairman
Jefferson County Board of Election Comm'rs
123 Main Street
P. O. Box 5292
Pine Bluff, AR 71601-5292

Dear Mr. Adam:

This is in response to your opinion request, as follows:

We request clarification of your response to Question 3 in Attorney General Opinion No. 2016-001.

Specifically, may a school district millage question be asked of voters in any election other than the September regular school election?

RESPONSE

I take your question to be, "May a special school millage election be held on any day whatsoever – other than the third Tuesday in September¹ – on which some other election is also held?" In my opinion, the answer to that specific question, so understood, is "no." There are at least some days, for example the second (or third) Tuesday in December, on which a special school millage election may not be held even though another type of election could lawfully occur.

¹ The annual school election, if held in September, is held on the third Tuesday. *See* Ark. Code Ann. § 6-14-102(a)(1) (Supp. 2015). Alternatively, the annual school election may be held in November, on the first Tuesday following the first Monday. *See id.*

DISCUSSION

In Opinion 2016-001, I addressed three questions about special school millage elections. Question 3 was:

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?

The Code chapter referred to in the question above as the “special election code”² addresses special elections and is part of title 7 of the Code, which concerns elections in general, not school elections in particular.

In response to question 3 in Opinion 2016-001, I stated my opinion that most of the Code chapter inquired about does not apply to a special school millage election. But I explained that one subsection of the chapter, namely Ark. Code Ann. § 7-11-205(a) (Repl. 2011), which specifies the days on which special elections on measures or questions may be held, might apply to a special school millage election.³ Because the request that prompted Opinion 2016-001, viewed as a whole, focused on the permissibility of holding a special school millage election on the day of a preferential primary election in particular,⁴ I also noted in response

² Ark. Code Ann. §§ 7-11-101 to -303 (Repl. 2011, Supp. 2015).

³ I also stated my opinion that a section of the chapter, providing that special elections are subject to laws governing other elections, applies to special school millage elections but is probably of little or no practical effect because of a similar provision contained in the law governing school elections in particular. *See* Ark. Code Ann. §§ 7-11-301 (Repl. 2011), 6-14-101 (Repl. 2013).

⁴ Opinion 2016-001 also addressed these questions:

- 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)?

In answer to Question 1, I stated my opinion that Ark. Code Ann. § 6-14-102(b) permits holding a special school millage election on any day with respect to which the three conditions stated in that subsection are satisfied. I concluded that holding a special school millage election on the day of a preferential primary

to question 3 that Ark. Code Ann. § 7-11-205(a) permits holding a special school millage election on the day of a preferential primary election.

As stated above, I take the current question to be, “May a special school millage election be held on any day whatsoever – other than the third Tuesday in September – on which some other election is also held?”

Arkansas Code Ann. § 7-11-205(a) – the subsection of the special-elections Code chapter I deemed in my response to question 3 in Opinion 2016-001 to be possibly applicable to a special school millage election – provides in relevant part:

- (A) Except as provided in subdivision (a)(1)(B) of this section, all special elections on measures or questions shall be held on the second Tuesday of *any* month, except special elections held under this section in a month in which a preferential primary election or general election is scheduled to occur shall be held on the date of the preferential primary election or general election.
- (B)(i) Special elections scheduled to occur in a month in which the second Tuesday is a legal holiday shall be held on the third Tuesday of the month.
- (ii) A special election called in June of an even-numbered year shall be held on the fourth Tuesday of the month.⁵

The foregoing expressly permits holding a special election on a measure or question in *any* month, albeit only on a specified day of that month. But, as stated in response to question 1 in Opinion 2016-001, a special school millage election must satisfy the three requirements of Ark. Code Ann. § 6-14-102(b), the statute that permits special school millage elections to be held at all. Those requirements are:

- (1) All constitutional and statutory requirements for the annual school election are met, notwithstanding [the requirement that the annual school election be held on a specified day in September or November];

election clearly satisfies one of the conditions and that the subsection therefore permits holding a special school millage election on the day of a preferential primary election, provided its other two conditions are met.

In answer to Question 2, I stated my opinion that Ark. Code Ann. § 6-14-102(a)(2) requires a separate ballot for a special school millage election held on the day of a preferential primary election.

⁵ Ark. Code Ann. § 7-11-205(a)(1) (emphasis added).

- (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.⁶

It is clear that a special election on a measure or question held on the second Tuesday of December (or the third Tuesday were the second Tuesday a legal holiday) would comply with Ark. Code Ann. § 7-11-205(a). But, under Ark. Code Ann. § 6-14-102(b), a special school millage election must be held *before* the annual school election. Any day in December is necessarily *after* the annual school election, which must be held in September or November.⁷ It follows that a school district may not hold a special school millage election in December. Because some *other* special election on a measure or question might be held in December in compliance with Ark. Code Ann. § 7-11-205(a), it also follows that there are certain days of the year on which some other election may be held but on which a special school millage election may not be held. As I understand the specific question posed, the answer is “no.”

While not necessary to answer that narrow question, I also note that no law of which I am aware requires a special school millage election to be held on the same day as some other election. To the contrary, it is my view that a special school millage election clearly may be held on any day (1) with respect to which the three conditions of Ark. Code Ann. § 6-14-102(b) are met, and (2) on which Ark. Code Ann. § 7-11-205(a) permits a special election on a measure or question to be held. Of course, this also means that there will be a number of days on which (1) a special school millage election could be held, and (2) another election could also be held at the same time. But the holding of the other election is not a prerequisite for holding a special school millage election.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁶ Ark. Code Ann. § 6-14-102(b) (emphasis added).

⁷ See *supra* note 1.