



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-040

August 25, 2016

The Honorable Charles W. Eick, Chair
Lonoke County Election Commission
171 Country CV
Cabot, AR 72023

Dear Mr. Eick:

You have requested my opinion regarding compensation for county election commissioners for performing election-related tasks during primary elections. As background for your questions, you note that the law provides that commissioners are compensated on a per-meeting basis¹ but does not provide that county election commissioners can be compensated for election-related duties performed outside meetings.

Against this background, you ask:

Can election commissioners be compensated for these tasks on an hourly or salary basis by the county (and the county be reimbursed for these expenses by the state)? Or, are election commissions that choose to fulfill responsibilities themselves, rather than by hiring outsiders, limited to doing such work in the context of a meeting and being compensated only by the per-meeting rate set by the county?

RESPONSE

In my opinion, counties can receive reimbursement from the State of Arkansas for payments disbursed to county election commissioners on a per-public-meeting basis only, in accordance with Ark. Code Ann. § 7-4-111(b) and the Rules for

¹ Ark. Code Ann. § 7-4-111(b) (Repl. 2011).

Reimbursement adopted by the State Board of Election Commissioners (“SBEC”). To the extent your question is focused on reimbursement by the State, therefore, I believe it is clear that reimbursement is limited to payments made to counties in reimbursement of county payments to county election commissioners for participating in meetings.

Your question also appears to ask whether a county can pay county election commissioners on an hourly or salary basis for performing various election-related tasks outside a public meeting context, notwithstanding that there will be no reimbursement from the State. In my opinion, the answer to this question is “yes” with respect to commissioners’ performance of tasks that are necessary to the conduct of the election and are impossible or impracticable to perform within the context of a public meeting.

DISCUSSION

Pursuant to Ark. Code Ann. § 7-4-111(b), “[e]ach member of the county board of election commissioners shall receive for services the sum of not less than twenty-five dollars (\$25.00) per public meeting when official business is conducted.” Counties are eligible to receive reimbursement from the State for this expense up to certain maximums set by the SBEC. The SBEC’s authority derives from Ark. Code Ann. § 7-4-101(f)(11) (Supp. 2015), which vests the SBEC with the power to “[a]dminister reimbursement of election expenses to counties in accordance with § 7-7-201(a) for primary elections, statewide special elections, and nonpartisan general elections.”²

The SBEC has published the “Rules for Reimbursement of Expenses for State-Funded Elections” (“Rules for Reimbursement” or “Rules”), which outline the rules for the reimbursement of funds from the State to the counties for election-related expenses during state-funded elections.³ Under the Rules, counties are

² Section 7-7-201(a) (Repl. 2011) states: “The cost of political party primaries shall be borne by the State of Arkansas and shall be paid from an appropriation made to the [SBEC] for that purpose.”

³ See Arkansas State Board of Election Commissioners, *Rules for Reimbursement of Expenses for State-Funded Elections* (2015 edition), https://static.ark.org/eeuploads/elections/FINAL_Rules_For_Reimbursement_of_Election_Expenses_for_State_Funded_Elections_20151215.pdf. (Last visited July 6, 2016).

“eligible to receive funding for election commissioners pay of not less than \$25 nor more than \$100 per public meeting attended when official business is conducted, up to a maximum of ten (10) public meetings per commissioner per state-funded election.”⁴ The Rules for Reimbursement explicitly state that the SBEC “will not compensate a county election commissioner for election-related duties, except as provided by law for public meetings.”⁵

Thus, under the Rules, the State’s reimbursement to counties for election commissioners’ compensation is limited to the per-meeting pay outlined in section 7-4-111(b). I believe this is consistent with the governing statutes and a proper exercise of the SBEC’s authority to administer reimbursement of election expenses. Neither section 7-4-111(b) nor any other statute requires or expressly allows compensation for county election commissioners on any basis other than per meeting.⁶

In response to your particular question, therefore, counties will not receive reimbursement from the State for any compensation paid to election commissioners for tasks performed outside the context of a public meeting.⁷ I take

⁴ The Rules for Reimbursement, *id.* at § 506 (E). The Rules provide that “public meetings” include “drawing of ballot position, certification of ballots, selection or alteration of location or boundaries of precincts or polling sites, designation of election officials, correction of errors or omissions of ballots, canvassing and certification of election results, canvassing and certification of a recount, and election day.” *Id.*

⁵ *Id.* at § 507 (D).

⁶ I have considered Ark. Code Ann. § 7-4-112(a) (Repl. 2011), which requires that “election officials ... holding an election” receive the “prevailing minimum wage.” In my opinion, this requirement does not apply to members of the CBEC. While the general definition of “election officials” includes CBEC members (Ark. Code Ann. § 7-1-101(11) (Supp. 2015)), this general definition is not controlling for purposes of § 7-4-112(a)’s minimum wage requirement. It is well established that statutes must be read in context. *Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d 493, 496 (1999) (internal citations omitted). When § 7-4-112(a) is read in light of other statutes which govern the holding of elections, I believe it becomes clear that the members of the CBEC appoint the “election officials” who hold the election, and § 7-4-112(a) therefore cannot apply to CBEC members.

⁷ Under Ark. Code Ann. § 7-4-105(b) (Supp. 2015) (“[a]ny meeting of two (2) or more commissioners when official business is conducted shall be public and held pursuant to the Freedom of Information Act of 1967, § 25-19-101 *et seq.*”).

your question as also asking, however, whether a county can compensate election commissioners for tasks performed outside of public meetings, notwithstanding the fact that there will be no reimbursement from the State.

In this regard, the Arkansas Supreme Court has held that a county board of election commissioners (“CBEC”) is an agency of the county government that performs specified functions imposed by law.⁸ The CBEC is specifically charged with conducting political party primary elections.⁹ Specified CBEC functions include but are not limited to allocating a sufficient number of ballot boxes, appointing the appropriate number of election officials, and certifying the per diem and mileage of election officials on election days.¹⁰

Neither quorum courts nor county judges have a choice in determining whether or not money shall be allocated for holding elections.¹¹ But counties are provided ample discretion with respect to the *amount* allowed for necessary county expenses, including those pertaining to elections.¹² The only limitation on this amount is that it must be reasonable.¹³ There is no prohibition in law on counties providing reasonable compensation to election commissioners for their performance outside a meeting of tasks that cannot, or cannot practicably, be

⁸ *Union County*, 274 Ark. at 291, 623 S.W.2d at 830. Additionally, a statute provides that CBEC members are “county officials.” Ark. Code Ann. § 7-4-102(d) (Repl. 2011).

⁹ Ark. Code Ann. § 7-7-201(b)(1) (Repl. 2011).

¹⁰ *See* Ark. Code Ann. § 7-4-107 (Supp. 2015).

¹¹ *Union County*, 274 Ark. at 289, 623 S.W. 2d at 829.

¹² *Id* at 289-90, 829 (maintaining that the county does not have control or discretion over necessary county expenses such as the “holding of elections, printing ballots, poll-books, tally sheets and other election supplies ...” but does have discretion over the amount allowed with regard to these services) (internal citation omitted).

¹³ *Id* at 291, 830 (allowing a county quorum court to set the amount allowed for voting machine preparation, because that amount was not fixed by state law, and there was no explicit prohibition to curtail the quorum court’s power to exercise discretion in setting the amount to be allowed, as long as it was reasonable).

accomplished within a public meeting.¹⁴ In my opinion, therefore, counties may do so.

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹⁴ Nothing in this opinion should be interpreted as suggesting that a commissioner or any combination of commissioners may perform or be paid for performing any task outside a public meeting if such task is practicably susceptible of performance within a meeting.