



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-079

November 10, 2016

The Honorable Robin Lundstrum
State Representative
1327 Elm Springs Road
Springdale, AR 72262-9119

Dear Representative Lundstrum:

This is in response to your request for my opinion on the following questions:

1. Does [Ark. Code Ann. § 14-42-107(a)(2)] apply to board members in the city administrator form of government?
2. When public records have reached the end of a retention period that conforms to state/federal statutes and city policies, must these records be copied prior to the original records being destroyed?

You note in your first question that a member of a city board of directors (I presume in a city with a city administrator form of municipal government) was not considered for the position of fire chief based on section 14-42-107(a)(2).

RESPONSE

I take it from the background information for your first question that the recited statute was used as the basis for denying the city director the fire chief's position. In my opinion, that statute likely does not apply under the facts you have provided. But another statute—Ark. Code Ann. § 14-48-110(a)(3)—is directly applicable and prohibits a city director in a city with the city administrator form of government from serving the city “in any other capacity.”

With respect to your second question and under state law, the answer is “no,” in my opinion. But federal laws or local ordinances governing a particular record should also be consulted.

DISCUSSION

Question 1: Does [Ark. Code Ann. § 14-42-107(a)(2)] apply to board members in the city administrator form of government?

The first rule of statutory interpretation is to construe a statute just as it reads, giving the words their ordinary and usually accepted meaning in common language.¹ Section 14-42-107(a)(2), in the Arkansas Code chapter titled “Government of Municipalities Generally,” states that “[n]o *alderman or council member* shall be appointed to any municipal office, except in cases provided for in this subtitle, during the time for which he or she may have been elected” (emphasis added). Under a plain-meaning analysis, this statute would only apply in the aldermanic (mayor-council) form of city government. While it might be argued that the term “council member” under this general statute should be broad enough to encompass a member of a city board of directors (as both are members of their respective cities’ governing bodies), the plain-meaning rule would suggest otherwise.

Bolstering this view is the fact that the Legislature has amended section 14-42-107(a) no fewer than three times since it authorized the city administrator form of municipal government in 1967.² Had the General Assembly meant to apply this statute to the governing bodies of other forms of city government, it has had opportunity to clarify the statute to do so.

But irrespective of whether section 14-42-107(a)(2) applies under the facts as you have presented them, another section of the Arkansas Code is directly applicable. Section 14-48-110—found in Code Chapter 48 concerning the city administrator form of municipal government—clearly states that a city director, unless expressly permitted by Chapter 48, “may not serve the city in any other capacity.”³

¹ *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

² See Acts 1981, No. 485; Acts 2003, No. 1299; Acts 2009, No. 403.

³ Ark. Code Ann. § 14-48-110(a)(3) (Repl. 2013).

Presuming for the purposes of this opinion that the fire chief's position is one that would "serve the city," then section 14-48-110 would prevent the city director you mention from simultaneously serving as a director and the fire chief, thus achieving the same result as in the facts you have presented.

Question 2: When public records have reached the end of a retention period that conforms to state/federal statutes and city policies, must these records be copied prior to the original records being destroyed?

Your question appears to be asking about record retention issues in the context of municipal records. Furthermore, your question suggests that the municipal records you are asking about are ones that have a defined, term-of-years retention period, and are not ones that must be permanently kept. It is from these perspectives that I address your question.

My research has not disclosed any general state statute that requires a city to reproduce and continue to keep records that have reached the end of the records' retention period.⁴ Arkansas law does permit local government officials to make reproductions of paper documents prior to their destruction so long as the reproductions are properly authenticated and accurately reproduced.⁵ And federal law and local ordinances may have to be analyzed to determine whether they contain any such requirements with respect to a particular record. Finally, a particular document may be subject to a litigation-hold notice or otherwise relevant to anticipated litigation. In such circumstances, it must be retained.

In the absence of any relevant federal statute, local ordinance, or litigation-related issue, however, the answer to this question is "no," in my opinion.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁴ Such old records, however, may need to be turned over to the Arkansas History Commission if the Commission determines that the records have historical value. *See* Ark. Code Ann. § 13-3-107(b)(2) (Repl. 2015) (requiring state and local officials to give the Arkansas History Commission written notice of their intentions to destroy or discard "outdated records, other than ephemeral materials...," and requiring such officials give records to the Commission if it determines that they have historical value).

⁵ *See* Ark. Code Ann. §§ 14-2-201 through -204 (Repl. 2013).