

#44

UO #86-126

May 23, 1986

Honorable Del Roberson
Saline County Judge
Saline County Courthouse
Benton, AR 72015

Dear Judge Roberson:

This is in response to your opinion request wherein you posed the following questions:

1.

DOES THE ENCLOSED ORDINANCE (ATTACHMENT #1) CREATING ADMINISTRATIVE BOARDS UNLAWFULLY USURP ANY AUTHORITY OF THE COUNTY JUDGE?

No. Since the ordinance does not grant such boards any authority whatsoever, it cannot usurp any authority vested in the county judge.

2.

DOES THE ENCLOSED ORDINANCE (ATTACHMENT #2) USURP ANY OF THE COUNTY JUDGE'S AUTHORITY TO DETERMINE WHAT PROPERTY IS "SURPLUS" SO THAT IT MAY BE SOLD BY PUBLIC AUCTION.

No. Of course, the quorum court cannot adopt and enforce an ordinance which usurps the authority granted the county judge by the legislature. Ark. Stat. Ann. §17-322 grants the county judge sole authority to determine what property is "surplus" so that it may be sold at public auction as follows:

Any personal property owned by a county may, if determined by the county judge to be surplus, be sold at public auction to the highest bidder. Notice of the public auction shall be published at least once a week for two [2] consecutive weeks in a newspaper having general circulation in the county. The notice shall specify the description of the property to be sold and the time and place of the public auction.

Although the enclosed ordinance (Attachment #2) prescribes a procedure whereby other county boards and departments may claim a need for such property, it does not encroach upon the county judge's exclusive authority to determine what property is surplus to be hsl'd at public auction.

3.

IS A SITTING COMMISSIONER OF A FIRE IMPROVEMENT DISTRICT REQUIRED TO RESIGN IF ANNEXATION CAUSES HIS RESIDENCE TO BE REMOVED FROM THE DISTRICT?

Unfortunately, the Protection District Act, Ark. Stat. Ann. §20-901 et. seq. provides no express guidance on this question. Ark. Stat. Ann. §20-903 (Repl. 1968) does not require original commissioners to be resident property holders. However, §20-903 does require successive appointees for commissioner to be "resident property holders" as follows:

In case of a vacancy . . . the county court shall appoint some resident property owner as his successor . . .

It appears the commissioner you referred to may retain his office until his term expires because presumably he was qualified upon assuming his office and nothing in the Act expressly disqualifies him from that office.

4.

CAN A COUNTY APPROPRIATE MONEY TO BE SPENT ON AN ADVERTISING CAMPAIGN TO RAISE ITS SLAES TAX?

No. The promotion of one side of an issue in a county election is not a "county purpose" or a "public purpose" for

which the county is authorized to make appropriations to support. Art. 7, §28 of the Constitution of the State of Arkansas. See also Johnson v. Donham, 191 Ark. 193, 84 S.W.2d 374.

The Attorney General is authorized to render formal opinions to officers and departments of the State Government only. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Sincerely,

STEVE CLARK
Attorney General

BY:

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SC/DSM/ljm