STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-077

October 9, 2014

The Honorable Bruce Cozart
State Representative
420 Rock Creek Road
Hot Springs, Arkansas 71913-9261

Dear Representative Cozart:

This is my opinion on your questions about local sales taxes and county obligations to fund district courts.

Question 1 – Is a resolution adopted by a city council prior to the adoption of a general sales tax for a city purporting to affix the manner of future appropriation of the general sales tax a legal means of binding a subsequent city council on the appropriation of the funds derived by a city from a general city sales tax? If so, how long would the resolution bind future city councils?

In my opinion, the answer is "no." A city may use general sales tax revenues for "any purpose for which the city's general funds may be used."[1] City general funds may be used for any proper municipal purpose.[2]

The law contemplates that cities operate on annual budgets.[3] Budget approval functions as an appropriation of city funds[4] that the council may change from time

[1] A.C.A. § 26-75-217(a)(1) (Supp. 2013); *see also* A.C.A. § 26-75-301(c)(2) (Repl. 2008) (same in substance).

[2] *See, e.g.*, Op. Att'y Gen. 2005-044.

[3] *See* Ark. Const. art. 12, § 4; A.C.A. §§ 14-58-201 (Repl. 1998), -202 (Supp. 2013).

[4] *See* A.C.A. § 14-58-203(a) (Repl. 1998).

to time.[5] The law's practical effect is that each council appropriates the city's general funds as it sees fit, subject to valid contractual obligations.[6]

Voters may designate – and thereby restrict – the use of theretofore undesignated general municipal sales tax revenues.[7] By negative implication, the council lacks power, in my opinion, to unilaterally restrict the use of such revenues beyond its appropriations for the current fiscal year.[8]

Question 2 - Is a resolution adopted by a county quorum court prior to the adoption of a general sales tax purporting to affix the manner of future expenditure of the general countywide sales tax a legal means of binding a subsequent quorum court on the appropriation of the county's proportionate share of funds derived from a general countywide sales tax? If so, how long would the resolution bind future quorum courts?

In my opinion, the answer is "no." A county may use general sales tax revenues for "any purpose for which the general funds of [the] county may be used . . . ."[9] County general funds may be used for any proper county purpose.[10]

The law contemplates that counties operate on annual appropriations[11] that the quorum court may change from time to time.[12] The law's practical effect is that

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[5] *See* A.C.A. § 14-58-203(b).

[6] A city may validly enter into a long-term contract to pay money provided the obligation does not contravene an applicable statute or constitutional provision, including without limitation Ark. Const. art. 12, § 4, which states that a city may not "enter into any contract or make any allowance . . . in excess of the revenue for such city . . . for the current fiscal year . . . ." *See, e.g.,* Op. Att'y Gen. 2012-101, 2008-161.

[7] *See* A.C.A. §§ 26-75-208(c), -308(e) (Supp. 2013).

[8] *Cf. Maddox v. City of Fort Smith,* 346 Ark. 209, 218, 56 S.W.3d 375 (2001) (city council resolution purporting to restrict uses of city's share of countywide sales tax was "electioneering effort," not "law imposing [the] tax" within the meaning of Ark. Const. art. 16, § 11, and did not bind later council).

[9] A.C.A. §§ 26-74-201(c)(2), -301(c)(2) (Repl. 2008).

[10] *See, e.g.,* Op. Att'y Gen. 97-102.

[11] *See* Ark. Const. art. 12, § 4; A.C.A. § 14-14-904(b)(1) (Supp. 2013).

[12] *See* A.C.A. § 14-14-904(b)(2).

each quorum court appropriates the county's general funds as it sees fit, subject to contractual obligations.[13]

The voters may designate – and thereby restrict – the use of theretofore undesignated general county sales tax revenues.[14] By negative implication, the quorum court lacks power, in my opinion, to unilaterally restrict the use of such revenues beyond its appropriations for the current fiscal year.[15]

Question 3 – Will a resolution adopted by a city or a county constitute a binding agreement or interlocal agreement (for a period exceeding one year or past the current fiscal or calendar year) for funding the operations of the district court? If so, how long will a city council or quorum court be bound under a resolution over future funding appropriations?

In my opinion, the answer is "no." A resolution does not constitute an agreement. A resolution is a "main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)."[16] It is a unilateral act. An agreement, by contrast, is a "mutual understanding between two or more persons . . . ."[17]

Question 4 – In the absence of a valid and binding agreement between a city and a county over funding (for a period exceeding one year or past the current fiscal or calendar year), what is the default legal obligation of a county for funding the operations of a district court? A state pilot district court?

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[13] *See supra* note 6. Counties are subject to restrictions imposed by Ark. Const. art. 12, § 4, substantially identical to those described there with respect to cities.

[14] *See* A.C.A. §§ 26-74-208(c), -308(c) (Supp. 2013).

[15] *See supra* note 8.

[16] *Black's Law Dictionary* 1504 (10th ed. 2014).

[17] *Id.* at 81.

Generally, the county pays half the salaries of a local district court's judge and chief clerk.[18] Any of several exceptions to the general rule may affect a county's responsibility.[19]

The state pays a state district court judge's salary and benefits[20] but the local governments where the court is located must reimburse the state for half the judge's 2009 salary.[21] There being no provisions of law concerning other salaries or operational expenses of state district courts, such salaries and expenses are to be paid, in my opinion, in the same manner and by the same parties as those of local district courts.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

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[18] *See* A.C.A. § 16-17-115(a) (Repl. 2010). The city or town in which the court is located pays the other half of those salaries, and all other operating expenses. *See* A.C.A. § 16-17-115(b)(1)(A); *see also, e.g.,* Op. Att'y Gen. 2010-154 and 2006-055 (construing earlier version of cited statute as described in this note and accompanying text).

[19] *See, e.g.,* A.C.A. §§ 16-17-115(b)(1)(A)(ii) (agreement between local governments supporting district court may provide for division of costs other than that specified by general rule; *see, e.g., Lonoke County v. City of Lonoke,* 2013 Ark. 465, 430 S.W.3d 669); -115(c), (d) (cities and towns have special responsibility for judge's salaries and, absent agreement with other local governments supporting district court, for clerk salaries and operating expenses of district court divisions that were city courts at end of 2011); -115(e) (absent agreement with other local governments supporting district court, county is responsible for all salaries and operating expenses of district court "operated solely by the county . . . ."); -108 (Supp. 2013) (statute establishing salary ranges for district court personnel in some cases alters general rule on salary (*see, e.g.,* -108(a)(32) (Grant County pays 73% and City of Sheridan pays 27% of judge and clerk salaries) and -108(a)(86) (Sevier County and City of DeQueen share "salaries, expenses, and operating costs" equally)); -119 (Repl. 2010) (with exceptions, cities and towns pay all salaries and operating expenses of district courts located in counties with 250,000 or more inhabitants); and -1203 (Supp. 2013) (requiring cost-sharing agreement among city or town with police department but no district court and local governments supporting nearest district court in same county).

[20] *See* A.C.A. §§ 16-17-1104, -1106(a) (Supp. 2013).

[21] *See* A.C.A. § 16-17-1106(b). The statute specifies a means of determining each local government's share of the reimbursement due the state but permits the local governments to agree to a different allocation. *See* A.C.A. § 16-17-1106(b)(2).