



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2017-080

October 18, 2017

Jeff Crow, Director
Arkansas Game & Fish Commission
2 Natural Resources Drive
Little Rock, AR 72205

Dear Director Crow:

I am responding to your request for an opinion regarding the status of the Arkansas Game and Fish Commission under the Uniform Classification and Compensation Act ("UCCA"). Act 365 of 2017 largely exempts the Commission from mandatory compliance with the UCCA.¹ You ask about the Commission's current authority to administer its employee compensation plans and coordinate with the Office of Personnel Management. I have slightly paraphrased your questions as follows:

- 1) May the Commission administer its employee-compensation plan using base salary levels for classified positions (and additional compensation in the form of differentials for acquiring professional certifications, advanced education, hazardous-duty performance, shift assignments, etc.), so long as the Commission does not exceed the maximum pay level established for each employee by the General Assembly?
- 2) May the Commission administer its employee-compensation plan using a merit-based pay system that is consistent with Ark. Code Ann. § 21-5-1101, so long as

¹ See Acts 2017, No. 365, § 9 (amending Ark. Code Ann. § 21-5-204(a)).

the Commission does not exceed the maximum pay level for each employee established by the General Assembly?

- 3) May the Commission administer its employee-compensation plan using salary adjustments, including cost-of-living adjustments, that are consistent with the procedure outlined in Ark. Code Ann. § 21-5-211, so long as the Commission does not exceed the maximum pay level for each employee established by the General Assembly?
- 4) May the Commission continue utilizing the Arkansas Administrative Statewide Information System, in cooperation with the Office of Personnel Management, for purposes of administering its employee-compensation plan?

RESPONSE

While the Commission is largely exempt from the UCCA, I see no reason why it cannot follow the statute voluntarily. The Commission may continue to administer its employee-compensation plan in a manner consistent with the UCCA, so long as the plan satisfies the constitutional and statutory provisions governing the Commission's budgetary authority. I would therefore answer your first three questions in the affirmative. With respect to your fourth question, I believe the Commission can continue to utilize the Arkansas Administrative Statewide Information System ("AASIS") because there is no statute or regulation prohibiting it from doing so. However, there does not appear to be any *requirement* that the Commission have access to AASIS for purposes of administering its employee-compensation plan.

DISCUSSION

Question 1: May the Commission administer its employee-compensation plan using base salary levels for classified positions (and additional compensation in the form of differentials for acquiring professional certifications, advanced education, hazardous-duty performance, shift assignments, etc.), so long as the Commission does not exceed the maximum pay level established for each employee by the General Assembly?

In my opinion, the answer is “yes.” The Commission may administer its employee-compensation plan using base salary levels and additional compensation in the form of differentials, so long as these aspects of the compensation plan are consistent with the Commission’s constitutional and statutory authority. I reach this conclusion for two reasons. First, Act 365 of 2017 (“the Act”) does not prevent the Commission from voluntarily complying with the UCCA. Second, the Commission has discretion to compensate its employees within the bounds of the Arkansas Constitution and the applicable appropriation act.

Because it requires assessing the effect of the Act on the Arkansas Code, your question is essentially one of statutory interpretation. My primary task is to construe the Act “just as it reads” in order to “give effect to the intent of the General Assembly.”² The Act must be “read in a harmonious manner[,] if possible,” with other statutes covering the same subject matter.³ But to the extent the Act “conveys a clear and definite meaning, there is no need to resort to the rules of statutory construction.”⁴

The Act “revise[d] the compensation plan under the Uniform Classification and Compensation Act” and “amend[ed] various laws concerning state employee salaries and benefits.”⁵ Relevant to your first question, the Act generally exempted employees of the Commission from the UCCA,⁶ the subchapter that establishes “uniform classifications” and “a uniform compensation plan”⁷ for affected state employees. The UCCA specifically authorizes a “base salary” as

² *Brock v. Townsell*, 2009 Ark. 224 at 9, 309 S.W.3d 179, 185-86 (internal citations omitted).

³ *City of Ft. Smith v. Tate*, 311 Ark. 405, 409-10, 844 S.W.2d 356, 359 (1993) (“All statutes on the same subject are *in pari materia* and must be ... made to stand if capable of being reconciled.”); *see also Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d 493, 496 (1999).

⁴ *Brock*, 2009 Ark. at *9, 309 S.W.3d at 186 (noting that a court “construes [a] statute so that no word is left void, superfluous, or insignificant,” such that “meaning and effect are given to every word.”).

⁵ Acts 2017, No. 365, title section. The Act took effect on July 1, 2017. *See id.* at § 29 (“Emergency Clause”).

⁶ *See id.* at § 9 (stating that “this subchapter does not apply to ... employees of ... [t]he Arkansas State Game and Fish Commission.”) (to be codified at Ark. Code Ann. § 21-5-204(a)(4)).

⁷ Ark. Code Ann. § 21-5-202(a) (Repl. 2016).

well as a “compensation differential”⁸ for qualifying employees, such as those whose duty assignments are “physically hazardous or dangerous due to location, facility, services provided, or other factors”⁹ I gather that prior to passage of the Act, the Commission compensated qualifying employees through base salaries as well as differentials.¹⁰

The Commission may, in my opinion, continue to issue the base salaries and compensation differentials referenced in your first question. Generally speaking, the UCCA applies “sound business management practices” to the administration of “uniform position classification[s] and compensation plan[s].”¹¹ Among other things, the Act amended the UCCA by adding the Commission to the list of “agencies excluded”¹² from the uniform statute. But it is conceivable that the “sound business management practices”¹³ informing the UCCA might independently guide the Commission’s compensation plan (for example, its formulation of base salaries and compensation differentials). Especially since the Commission has greater budgetary discretion than “other state agencies that are not independent constitutional agencies,”¹⁴ I believe the Commission could choose to pattern its salaries and differentials on the “sound ... practices” embodied in the UCCA.¹⁵

Likewise, the UCCA indicates that the compensation plan for a given entity (even one subject to the statute) is primarily governed by the entity’s “existing

⁸ Ark. Code Ann. § 21-5-221 (Supp. 2016).

⁹ *Id.* at § 21-5-221(c)(1)(A).

¹⁰ *See, e.g.*, Op. Request, p. 2 (noting the “base salaries and differential pay [Commission] employees historically have received ... pursuant to the UCCA.”).

¹¹ Ark. Code Ann. § 21-5-202(b).

¹² Acts 2017, No. 365, § 9. See the responses to Questions 2 and 3, *infra*, for a discussion of the limited ways in which the amended UCCA applies to the Commission.

¹³ Ark. Code Ann. § 21-5-202(b).

¹⁴ *Chaffin v. Ark. Game & Fish Comm’n*, 296 Ark. 431, 438, 757 S.W.2d 950, 954 (1988).

¹⁵ Ark. Code Ann. § 21-5-202(b); *accord* Op. Att’y Gen. 2010-89 (opining that “the Commission can comply with any and all state systems for financial management on a voluntary basis.”).

appropriation.”¹⁶ If the “appropriation act of the state agency specifically allows the state agency to provide salary increases” not contemplated by the UCCA, then the “special language” from the appropriation will control.¹⁷ This recognizes the constitutional principle that the legislature generally “shall fix the salaries and fees”¹⁸ of state employees, including employees of the Commission.

The Commission therefore cannot pay compensation differentials to such a degree that its employees “receiv[e] a greater salary than fixed by the Legislature.”¹⁹ But generally, compensation differentials might be valid if consistent with the applicable appropriation act. Deciding whether a given differential is valid in terms of the Commission’s appropriation exceeds the scope of my duties in responding to an opinion request.²⁰

Question 2: May the Commission administer its employee-compensation plan using a merit-based pay system that is consistent with Ark. Code Ann. § 21-5-1101, so long as the Commission does not exceed the maximum pay level for each employee established by the General Assembly?

In my opinion, “yes.” The UCCA as amended by the Act specifically authorizes merit-pay increases for Commission employees. That is, an employee of an entity exempted from the UCCA is nevertheless eligible for a “merit pay increase”²¹ under Ark. Code Ann. § 21-5-1101. Section 21-5-1101, in turn, describes a

¹⁶ Acts 2017, No. 365, § 20 (amending Ark. Code Ann. § 21-5-221(b)(1)(C) (“Authorization for one (1) or more compensation differentials may be approved if the ... cost of implementing and maintaining a compensation differential is within the state agency’s existing appropriation ... ”)).

¹⁷ Ark. Code Ann. § 21-5-205(a) (Repl. 2016).

¹⁸ Ark. Const. art. 16, § 4; *see also* Ark. Const. amend. 35, § 7 (“The Commission shall elect ... personnel, office assistants, wardens, game refuge keepers, and hatchery employees, whose salaries and expenditures must be submitted to the Legislature and approved by an Act covering specific items in the appropriation as covered by Article XVI Section 4 of the Constitution.”).

¹⁹ *Gipson v. Ingram*, 215 Ark. 812, 821, 223 S.W.2d 595, 600 (1949); *accord* Ark. Code Ann. § 19-4-1601(b) (Repl. 2016) (stating that “no greater salary or fee than that fixed by the law shall be paid to any ... employee.”).

²⁰ *See, e.g.*, Op. Att’y Gen. 2017-022 (“I must emphasize, however, that ... legal counsel should be consulted when considering the proposed use of ... revenues.”).

²¹ Acts 2017, No. 365, § 9 (amending Ark. Code Ann. § 21-5-204(b)(1)(B)).

“merit-based pay system that incorporates pay and performance evaluation standards ... and establishes criteria for payments for employees who meet requisite performance categories.”²² Thus, the plain language of the amended UCCA allows the Commission to offer employees a “merit-based pay system.” But it is ultimately the Commission’s appropriation act that would authorize (or disallow) this component of its employee-compensation plan.

Question 3: May the Commission administer its employee-compensation plan using salary adjustments, including cost-of-living adjustments, that are consistent with the procedure outlined in Ark. Code Ann. § 21-5-211, so long as the Commission does not exceed the maximum pay level for each employee established by the General Assembly?

In my opinion, “yes.” Employees of state entities exempted from the UCCA are still eligible for a “salary increase or a line item maximum increase”²³ under Ark. Code Ann. § 21-5-211. And section 21-5-211 describes the following salary increases: one-percent increases in Fiscal Year 2018 over employees’ current salaries, increases to the entry pay-level for employees whose salaries are less than the entry level, and the potential for increases of up to two percent each fiscal year.²⁴ But a “cost of living adjustment,” as such, is not available under section 21-5-211 or elsewhere in the amended UCCA.²⁵

Because the Act eliminated cost of living adjustments from the UCCA, I cannot state with certainty that “salary adjustments, including cost of living adjustments,”²⁶ are authorized by the amended statute. However, to the extent the cost of living adjustments proposed by the Commission qualify as “salary increases” or “line item maximum increases” under section 21-5-211, these adjustments would be permissible.²⁷

²² *Id.* at § 27.

²³ *Id.* at § 9 (amending Ark. Code Ann. § 21-5-204(b)(1)(A)).

²⁴ *Id.* at § 16 (amending Ark. Code Ann. § 21-5-211).

²⁵ *Id.* at §§ 9, 16.

²⁶ Op. Request, p. 2.

²⁷ Ark. Code Ann. § 21-5-204(b)(1)(A).

In all events, the Commission's appropriation act will control. And the appropriation might authorize cost of living increases. Whether salary adjustments, including cost of living increases, are justified under a given appropriation act is a matter beyond the scope of an opinion response.

Question 4: May the Commission continue utilizing the Arkansas Administrative Statewide Information System, in cooperation with the Office of Personnel Management, for purposes of administering its employee-compensation plan?

I believe the answer is “yes,” in the sense that there is no prohibition on the Commission using AASIS. AASIS is a “database resource management tool that encompasses many types of information for management use in addition to accounting data, such as budgeting, purchasing and human resource management”²⁸ “[M]ost agencies and departments of Arkansas State Government” use the system,²⁹ which is organized under regulations promulgated by the Department of Finance and Administration. Your opinion request states that prior to passage of the Act, the Commission relied on AASIS in cooperation with the Office of Personnel Management (“OPM”)³⁰ in order to administer its employee-compensation plan.

References to AASIS are scant in the Arkansas Code,³¹ and I am not aware of any statute or regulation prohibiting the Commission (now that it is largely exempt from the UCCA) from continuing to use AASIS in this manner. Certainly, utilizing AASIS for employee compensation would be consistent with its

²⁸ Ark. Admin. Code 006.09.1 R1-19-4-504 (“Overview of the Financial Management System”).

²⁹ *Id.*

³⁰ The Office of Personnel Management is under the “direction, control, and supervision of the Director of the Department of Finance and Administration.” Ark. Code Ann. § 25-8-103 (Repl. 2016).

³¹ In total, “AASIS” and “Arkansas Administrative Statewide Information System” appear twice in the Arkansas Code: once in the UCCA itself (as a classification for the position of AASIS Administrator), and once in the Arkansas Scholarship Lottery Act. *See* Ark. Code Ann. § 21-5-208(b); Ark. Code Ann. § 23-115-308(a) (Supp. 2015). And the Arkansas Administrative Code has one reference to “AASIS” or the “Arkansas Administrative Statewide Information System” in conjunction with the Commission. *See* Ark. Admin. Code 006.09.3 (“State Vehicle Fleet Management Guide”).

establishment as a tool for manipulating “accounting data, such as budgeting, purchasing and human resource management”³²

However, you ask specifically about the Commission’s use of AASIS in “cooperation” with OPM. I interpret “cooperation” in this context as referring to personnel assistance that OPM must provide the Commission. The most relevant statute is Ark. Code Ann. § 21-5-207, which defines OPM’s responsibilities with respect to the UCCA. Among other things, OPM must “cooperate with any other state agency, department, board, commission, or institution that is not covered by [the UCCA] which may wish to voluntarily establish its positions into classifications in a like manner as provided in this subchapter for state agencies covered by it.”³³

In my opinion, OPM is required to cooperate with exempt entities in order to assist with position classification, whereas more plenary personnel assistance from OPM is reserved to non-exempt entities.³⁴ First, section 21-5-207(a)(3) expressly couches OPM’s duty to cooperate in terms of establishing an exempt entity’s “positions into classifications in like manner as provided in this subchapter”³⁵ And under the UCCA, establishment of classifications is both a term of art³⁶ and a specifically defined task for OPM.³⁷ Second, section 21-5-207(a)(3) is the only

³² Ark. Admin. Code 006.09.1 R1-19-4-504.

³³ Acts 2017, No. 365, § 12.

³⁴ See, e.g., Ark. Code Ann. §§ 21-5-703(a)(12) (directing OPM to “provide assistance to state agencies in identifying, developing, and maintaining training and resource programs.”), (a)(14) (directing OPM to “review and approve both the classification and number of positions for each state agency on a biennial basis and provide a recommendation to the Legislative Council.”).

³⁵ See *MacSteel Div. of Quanax v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 31, 210 S.W.3d 878, 883 (2005) (“The ... express designation of one thing may properly be construed to mean the exclusion of another.”) (citation omitted).

³⁶ See Acts of 2017, No. 365, § 13 (listing Class Codes, Titles, and Grades for numerous positions, “subject to the appropriation acts of the various state agencies affected by this subchapter.”).

³⁷ See Ark. Code Ann. §§ 21-5-207(a)(1) (stating that OPM must “determine that each position of a state agency affected by this subchapter is allocated to a class having a written class specification”), (a)(2) (stating that OPM must “assist the various state agencies in the allocation of positions to classes established in this subchapter ... and ... disallow the allocation of a position to a class that is not in conformance with this subchapter”); see also Ark. Code Ann. § 21-5-211(a) (“The Office of Personnel Management has administrative responsibility for

part of the UCCA in which OPM is directed to assist state entities “not covered by this subchapter.” Given that section 21-5-207(a)(3) should be construed “just as it reads,”³⁸ I believe that OPM’s duty to cooperate is limited to establishing position classifications for an exempt entity as if that entity were subject to the UCCA.

The same rationale applies to whether OPM must employ AASIS, or otherwise make it available, when cooperating with a UCCA-exempt entity. Section 21-5-207(a)(3) does not mention AASIS in terms of OPM’s duty to cooperate. Indeed, the amended UCCA refers to AASIS only once, as a position classification.³⁹ Because a court “will not add words [to a statute] to convey a meaning that is not there,”⁴⁰ I do not believe OPM’s duty to “cooperate” with an exempt entity necessarily requires utilization of AASIS. But as noted above, there is no prohibition on a state entity using AASIS to administer its employee-compensation plan. Should OPM and an exempt entity such as the Commission agree to utilize AASIS jointly for this purpose, such a use of AASIS would undoubtedly be permissible.

Sincerely,



LESLIE RUTLEDGE
Attorney General

enforcing compliance by state agencies affected by this subchapter in implementing classification and grade changes”).

³⁸ *Brock*, 2009 Ark. 224 at 9, 309 S.W.3d at 185-86 (internal citations omitted).

³⁹ Ark. Code Ann. § 21-5-208(b) (establishing Class Code, Title, and Grade for “AASIS System Administrator”).

⁴⁰ *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 339, 969 S.W.2d 190, 192 (1998); *see also McMillan v. Live Nation Entm’t, Inc.*, 2012 Ark. 166 at 5, n.2, 401 S.W.3d 473, 476 (“Adding words to a statute that is not ambiguous disregards the legislature’s intent.”).