



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-2

December 31, 1984

(501) 371-2007

Mr. Charles L. Robinson
Legislative Auditor
State Capitol
Little Rock, Arkansas 72201

Dear Mr. Robinson:

You have requested an opinion from our office on the following questions:

1. Are any of the following expenses legal expenditures of the county road fund or the municipal street fund?
 - a. Street lights - erection of street lights and monthly utility bills.
 - b. A percentage of the Recorder/Treasurer's salary as administrative expense.
2. May a percentage of the County Judge's or Mayor's salary and car allowance be funded by the county road fund or the municipal street fund, respectively, where the County Judge or mayor directs the maintenance and construction of the streets and roads?
3. May the county road fund or the municipal street fund lend funds to the county or municipal general fund, respectively?
4. May the County Judge or the Mayor draw another salary as an employee of the respective political subdivision, in addition to his salary as County Judge or Mayor?

Your first three questions require an analysis of the legal expenditures of the County road fund and municipal street fund. The sources of these funds are contained in Ark. Stat. Ann. §§76-334(A) & (B), and 76-701 through 710 (1981). Section 76-334 requires the transfer of highway revenues to the County Highway Fund and to the Municipal Street Fund, to be used for the maintenance, construction, and reconstruction of roads and bridges in the County Highway System, and for the maintenance, construction, and reconstruction of streets which are not a continuation of State highways, respectively. Section 76-702 authorizes the levy of a County Road Tax on all taxable property of the county, not to exceed three (3) mills on the dollar. Section 76-704 requires that one-half (1/2) of the amount collected on property within the corporate limits of any city or town be apportioned

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for use in making and repairing the streets and bridges in the respective cities or towns. Section 76-705 amplifies §76-704, by requiring that the apportioned amount "be expended exclusively by the said cities or towns for the purpose of making and repairing the streets and bridges within the corporate limits of the town or city." (Emphasis Added). Section 76-710 requires the county courts to appropriate the money collected under the road tax to the opening, construction, and repair of its roads.

The clear import of these provisions is that the road and street funds are to be used for the construction and maintenance of county and municipal roads. Since the erection of street lights and the payment of monthly utility bills from their use are necessary for the maintenance of safe and usable streets, we conclude that these are legal expenditures of the county road or municipal street fund. However, as will be shown, the salary expenses you have described would not be.

Prior to the passage of Act 742 of 1977, Ark. Stat. Ann. §22-610.1 (1962) authorized payment of one-half (1/2) of the county judge's salary from the county road fund, and defined the judge as ex officio road commissioner. The 1977 Act repealed these provisions and Ark. Stat. Ann. §17-3901 (1980) now makes the county roads the judge's responsibility. Section 17-4201(3) provides that the annual salary of the judge includes this responsibility. Accordingly, there is no longer any provisions for the payment of salaries, or portions thereof, from the county road fund. Nor is there such a provision in regard to the municipal street fund. Additionally, §76-705, supra, clearly states that the municipal street fund is to be used exclusively for making and repairing city streets and bridges.

The response to your third question must also be "no". There is no provision for using the road or street fund to loan money to the county or city general fund. Absent such a provision, the stated purposes of the road and street funds implicitly prohibits their use for other purposes.

In response to your last question, at the county level, Ark. Stat. Ann. §17-4208 (3)(a)(1980), prescribing certain rules of conduct for county officials, prohibits the county judge from being "interested, either directly or indirectly, in any contract or transaction made, authorized or entered into on behalf of the county" This section precludes a county judge from being employed by the county since such employment necessarily would make him interested in a county contract. At the municipal level, Ark. Stat. Ann. §19-909 (Supp. 1983) provides that "no alderman or member of a city council shall be interested, directly or indirectly, in the profits of any contract, for the furnishing of . . . services to the municipality unless the governing body of the city shall have enacted an ordinance specifically permitting the aldermen or members of the council to conduct business with the city and prescribing the extent of such authority." Additionally, Sections 19-1010, 19-1101, and 19-1201 (Supp. 1983) make the mayor of first class cities, second class cities, and incorporated towns,

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respectively, ex officio president of the City Council. Accordingly, we are of the opinion that only where the governing body of the municipality adopts an ordinance allowing the mayor to work for the city and specifically prescribing the extent of work contracted for, may the mayor be employed by the municipality.

The foregoing opinion, which I hereby approve, was prepared by Chief Deputy Attorney General Rodney Parham.

Yours truly,


STEVE CLARK
Attorney General

SC:RP:lm