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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

January 3, 1985

OPINION NO. 85-5

The Honorable David Clinger
Prosecuting Attorney
P. O. Box 568
Bentonville, Arkansas 72712

Dear Mr. Clinger:

This is in response to the inquiry of your Deputy David A. Stewart by which he submitted the following:

On November 16, 1984, the Carroll County Quorum Court passed an ordinance approving and levying the County, Municipal and School taxes for the year 1984. This was in accordance with Ark. Stat. Ann. Section 17-4002(2). The Ordinance passed a millage rate for the City of Eureka Springs, Arkansas, at 2.5 mills (apparently a .3 mill assessment for the Firemen's Relief and Pension Fund was omitted). However, it has come to our attention that the City of Eureka Springs had, in fact, not passed their ordinance approving the millage at the rate passed by the County on November 16.

1. Was the Carroll County Ordinance passed on November 16, 1984, effective as to the 2.5 millage rate assessed to the City of Eureka Springs, Arkansas?
2. If the answer to question number 1 is no, does the 1.6 millage rate previously assessed in 1983 to the City of Eureka Springs, Arkansas carry over to the year 1984.
3. If the answer to question number 2 is no, does the City of Eureka Springs, Arkansas, now have a city tax of zero?
4. If the City of Eureka Springs, Arkansas, properly certifies its November 20, 1984, Ordinance to the County of 2.8 mills, is the Carroll County Quorum Court empowered by law to amend its November 16, 1984, Ordinance to conform to the 2.8 mill assessment for the City of Eureka Springs, Arkansas?

As to the first question, Ark. Stat. Ann. §17-4002(2) requires the Quorum Court to levy the County, Municipal and School taxes at its regular meeting in November of each year. Ark. Stat. Ann. §19-4501 requires the City Council on or before the time fixed by law for levying County taxes to certify to the County Clerk the rate of taxation levied by the Municipality.

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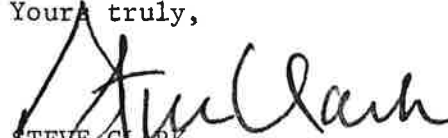
It is my understanding that November 16, 1984 was the date of the regular November meeting of the Quorum Court. Since the City Council had not approved the Municipal millage as of this date the attempted levy of the Municipal millage was invalid.

The answer to question 2 is "no" as the millage is an annual levy. Thus, the City of Eureka Springs now has a city tax of zero.

As to the fourth question, the answer is "no" as our Supreme Court has held that where a levying court convened on the wrong day the levy is void. Britt v. Harper, 132 Ark. 193, 200 S.W. 787. Berger v. Lutterloh, 69 Ark. 576, Hilliard v. Bunker 68 Ark. 340.

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