



STEVE CLARK
ATTORNEY GENERAL

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

(501) 371-2007

OPINION NO. 85-26

January 29, 1985

Honorable Bobby Newman
Representative, District 97
P. O. Box 52
Smackover, Arkansas 71762

Honorable John M. Lipton
Representative, District 90
108 S. Walnut
Warren, Arkansas 71671

Dear Sirs:.

This is in response to your opinion request wherein you pose the following facts and attendant question.

Section 8(b) of Act 34 of the First Extraordinary Session of 1983 (Ark. Stat. 80-850.17(b)) requires each school district, beginning with the 1985-86 school year, to pay its qualifying certified personnel an amount at least equal to seventy percent (70%) of its net current revenue. Net current revenue is defined to include local tax receipts. We request your official opinion of the constitutionality of the General Assembly dictating to the local school districts the manner in which they must spend local tax receipts.

For the following reasons this office is not prepared to conclude that §8(b) of Act 34 of the First Extraordinary Session of 1983 is unconstitutional.

Attached for your consideration is an opinion previously issued by this office to the Honorable G. W. "Buddy" Turner on what became Act 34 (Opinion No. 83-204). The question submitted by Rep. Turner was similar to the inquiry herein and reads as follows:

Does the provision of Senate Amendment No. 7 (hereinafter "Amendment 7") to House Bill 44 of 1983 (1st Ex. Sess.) requiring local school districts to pay their certified personnel at least seventy percent (70%) of

Honorable Bobby Newman
Honorable John M. Lipton
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their net current revenue (beginning with the 1985-86 school year) violate Amendment 40 to the Arkansas Constitution of 1874?

In concluding that Act 34 would withstand judicial scrutiny, in addition to the reasoning contained in the attached opinion response, pertinent and dispositive of your inquiry are the following legal principles:

However, it is well-settled Arkansas law that in determination of constitutionality of an act of the General Assembly (House Bill 44 has been passed by the legislature with Amendment 7 and has, as of this writing, been engrossed), an Arkansas court bases its decision on whether it is possible to construe all parts of that act as legally valid.

This test has been consistently applied by the Arkansas Supreme Court. See Carter v. State, 255 Ark. 225, 500 S.W.2d 368 (1973), cert. den., 416 U.S. 905, 94 S.Ct., 1611, 40 L.Ed.2d 110 (1974); Jones v. Mears, 256 Ark. 825, 510 S.W.2d 857 (1974); and Handy Dan Imp. Center, Inc. v. Adams, 276 Ark. 268, 633 S.W.2d 699 (1982). In Davis v. Smith, 266 Ark. 112, 583 S.W.2d 37 (1979), the Court recognized:

An act of the General Assembly should be given a construction that meets the test of constitutionality, if possible to do so.

Id. at 121.

Hence, for the above reasons this office is not prepared to change its position with respect to the constitutionality of Act 34 of the First Extraordinary Session of 1983.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General C. R. McNair, III.

Sincerely,


STEVE CLARK
Attorney General

SC:CRM:jkb

Enclosure



STEVE CLARK
ATTORNEY GENERAL

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

(501) 371-2037

October 27, 1983

Opinion No. 83-204

The Honorable G. W. "Buddy" Turner, Chairman
Education Committee
House of Representatives
State Capitol
Little Rock, Arkansas 72201

Dear Representative Turner:

This official opinion is written in response to your request of October 26, 1983 in which you ask the following question, as paraphrased:

Does the provision of Senate Amendment No. 7 (hereinafter "Amendment 7") to House Bill 44 of 1983 (1st Ex. Sess.) requiring local school districts to pay their certified personnel at least seventy percent (70%) of their net current revenue (beginning with the 1985-86 school year) violate Amendment 40 to the Arkansas Constitution of 1874?

You also specifically request our review of Section 8(b) of House Bill 44 and the effect of Amendment 7 on its constitutionality.

House Bill 44 of 1983 (1st Ex. Sess.) provides a formula for distribution of state aid to Arkansas public schools. Senate Amendment No. 7 thereto provides, among other things, in school year 1985-86 and each year thereafter, "each district in the State shall pay its certified personnel an amount equal to at least seventy percent (70%) of its net current revenue". As you point out in your request, the net current revenue of a school district includes not only aid given by the State to school districts, but local tax monies as well.

Amendment 40 to the Arkansas Constitution of 1874 authorizes local school districts to levy an annual tax, by vote of their qualified electors, for the maintenance of that district's schools, the retirement of existing indebtedness, etc. Additionally, Amendment 40 directs the Board of Directors of each district to prepare a proposed budget for the coming school year to submit to the public outlining proposed expenditures and the rate of tax necessary to fund those proposals sixty (60) days prior to the annual school election at which the electors vote for or against the tax.

The Education Committee's concern, as outlined in your request, is that should the amount budgeted by the local school board and/or the amount of local tax levied be insufficient to comply with the 70% provision of Amendment 7, a school district could be forced to divert local taxes levied for one purpose to another purpose; namely, the payment of salaries to its certified personnel.

Clearly, Amendment 40 prohibits such a result as it states:

(N)o such tax (a local levy) shall be appropriated for any purpose. . .than that for which it is levied.

However, it is well-settled Arkansas law that in determination of constitutionality of an act of the General Assembly (House Bill 44 has been passed by the legislature with Amendment 7 and has, as of this writing, been engrossed), an Arkansas court bases its decision on whether it is possible to construe all parts of that act as legally valid.

This test has been consistently applied by the Arkansas Supreme Court. See, Carter v. State, 255 Ark. 225, 500 S.W.2d 368 (1973), cert. den., 416 U.S. 905, 94 S.Ct., 1611, 40 L.Ed.2d 110 (1974); Jones v. Mears, 256 Ark. 825, 510 S.W.2d 857 (1974); and Handy Dan Imp. Center, Inc. v. Adams, 276 Ark. 268, 633 S.W.2d 699 (1982). In Davis v. Smith, 266 Ark. 112, 583 S.W.2d 37 (1979), the Court recognized:

An act of the General Assembly should be given a construction that meets the test of constitutionality, if possible to do so.

Id. at 121.

It is possible for a school district to estimate its expenditures, propose a budget to local electors and subsequently raise an adequate amount of tax to accomplish the dictates of Amendment 7 to House Bill 44.

As noted above, local taxes levied for one purpose cannot be diverted to another. However, Amendment 7 provides that its mandate may be waived by the local school board and a majority of its teachers if they agree to a different distribution; thus, a remedy exists to circumvent a violation of Amendment 40.

With these factors and applicable legal principles in mind, it is my opinion that Amendment 7 to House Bill 44 could withstand judicial scrutiny under Amendment 40.

Section 8(b) of House Bill 44 provides that seventy percent (70%) of a local district's net current revenue shall be paid to its qualified certified personnel beginning in school year 1985-86. That subsection then defines a district's gross current revenue. The remainder of that subsection is specifically superceded by Senate Amendment 7. Net current revenue is defined at subsection (c) and would be judicially viewed in conjunction with (b) to give meaning and effect to both.

The Honorable G. W. "Buddy" Turner, Chairman
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provisions. See, e.g., Berry v. Sale, 184 Ark. 655, 43 S.W.2d 225 (1931) and Commercial Printing Co. v. Rush, 261 Ark. 468, 549 S.W.2d 790 (1977).

You request our review of the entirety of Section 8(b) as affected by Amendment 7. There is no facial conflict between these two provisions. Amendment 7 merely adds requirements to Section 8(b) in the original bill.

Finally, you ask if Amendment 7, would, in any other manner, affect the constitutionality of House Bill 44. This Office has previously, in Official Opinion No. 83-202, opined that House Bill 44 meets the basic requirements set out by the Arkansas Supreme Court in Dupree v. Alma School District No. 30, 279 Ark. 340, ___ S.W.2d ___ (1983). Also, House Bill 44 contains a severability clause (Section 15) which would allow a court to strike Amendment 7 without affecting the remainder of the enactment. While I recognize legal challenge could be made to Amendment 7 under constitutional or statutory law other than Amendment 40, it is not appropriate for me to speculate as to what form those challenges might take.

Sincerely,



STEVE CLARK
Attorney General

SC:ble