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OPINION NO. 85-73

March 7, 1985

The Honorable Bill Walters
State Senator
State Capitol Building
Little Rock, Arkansas 72201

HAND DELIVERED

Dear Senator Walters:

This Opinion is written in response to your request of February 25, 1985 in which you ask the following questions:

1. Does [a] county judge have the exclusive power to operate the system of county roads?
2. Does [a] county judge have the exclusive power to authorize and approve disbursement of appropriated county funds?
3. Does [a] county judge have the right to decide which equipment the county purchases provided it is purchased according to the laws of the State of Arkansas and the money has been appropriated by the Quorum Court?

Additionally, you asked about the legal validity of Logan County Ordinance 85-3 which you attached to your opinion request.

Amendment 55, Section 3 to the Arkansas Constitution of 1874 provides:

The county judge, in addition to other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote, but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court. . .

Act 742 of 1977 was enacted to implement Amendment 55 to the Arkansas Constitution which substantially revised the operation of county governments in Arkansas. Specifically, Ark. Stat. Ann. §17-3901 (B)(1) and (2) sets out the specific manner in which the county judge may perform the executive powers conferred on him by Section 3 of Amendment 55. In Mears v. Hall, 263 Ark. 827, 834-835, 569 S.W.2d 91 (1978), the Arkansas Supreme Court held that Section 3 of

Amendment 55 was in "irreconcilable conflict with the provisions of Article VII, Section 28 relating to disbursement of county funds".

A review of Ark. Stat. Ann. §17-3901(B)(1) and (2) reveal that a county judge, acting in his executive capacity, has the responsibility for operation of the system of county roads "including the maintenance and construction of public roadways and bridges and roadway drainage designated as eligible for expenditure of county funds." Further, the county judge in his executive capacity has the authority to approve disbursement of legally appropriated county funds provided that there is a sufficient appropriation available for the purpose, and that such expenditure is in compliance with the purposes for which the funds are appropriated and in compliance with State purchasing laws and that the money is due and owing for services rendered or goods provided. At subsection (d) of the cited statute, the Arkansas General Assembly stated:

The county judge shall have the authority to enter into necessary contracts or other agreements to obligate county funds and to approve expenditure of county funds appropriated therefor in the manner provided by law.

Therefore, based on the quoted state law, the answer to your questions 1, 2 and 3 is "yes" provided the county judge has acted in accordance with other applicable purchasing law.

Your fourth question relates to appropriation Ordinance 85-3, enacted by the Quorum Court of Logan County which transfers a certain sum from the one cent (1¢) sales tax fund to the anticipated revenue available for appropriation in the county road fund. In question is section 3 which provides:

Prior approval of the aforesaid funds for capital purchases shall be made with prior approval of the Quorum Court Road Committee.

Subsection (2)(c) of Section (B), §17-3901 mandates that before approving any voucher for the payment of county funds, the county judge shall determine that all state purchasing laws and other state laws or ordinances of the Quorum Court are complied with in the expenditure of said monies. This section refers to ordinances enacted by the Quorum Court concerning the procedure or policies surrounding expenditure of county monies that are not in conflict with either Amendment 55, Section 3 or its statutory implementation sections; namely, Ark. Stat. Ann. §17-3901 et seq. (Repl. 1980).

No statutory authority is found which would allow prior approval by a committee of a county Quorum court of otherwise legal expenditures authorized by county judges. Such approval would constitute a legislative encroachment into powers and authorities clearly executive in nature.

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This opinion was prepared by Chief Deputy Attorney General
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Sincerely,



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