



STEVE CLARK
ATTORNEY GENERAL

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

(501) 371-2007

OPINION NO. 85-170

July 31, 1985

Honorable Wayne Matthews
Prosecuting Attorney
Eleventh Judicial District
P.O. Box 8051
Pine Bluff, AR 71611

Dear Mr. Matthews:

This is in response to a letter received from Deputy Prosecuting Attorney Stevan B. Dalrymple requesting a review of Attorney General Opinion No. 85-2, rendered on December 31, 1984. You specifically expressed concern regarding the question of whether a percentage of the County Judge's salary may be funded from the county road fund. The previous opinion prepared by Chief Deputy Attorney General Rodney Parham dealt with this issue as well as others involving the county road fund. Per your request, Chief Deputy Parham, Assistant Attorney General Jeffrey A. Bell and I have reviewed the prior opinion and researched the applicable law, and my opinion is as follows.

It is still my opinion that a county may not fund a portion of its County Judge's salary from the county road fund. Ark. Stat. Ann. §76-702 (Repl. 1981) authorizes the county to levy a county road tax. §76-704 requires that at least one half of the county road tax collected upon property within the corporate limits of any city or town in the county be apportioned for use in making and repairing streets and bridges in that respective city or town. §76-705 further states that this apportioned amount must be expended "exclusively" by the particular city or town for the "purpose of making and repairing the streets and bridges within the corporate limits within the town or city." Finally, §76-710 requires the county court to appropriate all money collected under the road tax act for use in "opening, construction and repair of roads" in the county.

In addition to the county road tax, certain highway revenues are also transferred to each county for its use by the State. Pursuant to Ark. Stat. Ann. §76-334 (Repl. 1981), all State highway revenues transferred to the county are credited to the County Highway Fund specifically to be used for "the maintenance, construction, and reconstruction of roads and bridges in the County Highway System."

Prior to 1977, Ark. Stat. Ann. §22-610.1 (Repl. 1962) provided that a portion of the County Judge's salary, not to exceed one half, could be charged to the county road fund or county highway fund upon authorization by the Quorum Court. This statute was enacted as §2 of Act 97 of 1929. By §117 of Act 742 of 1977, the Arkansas General Assembly specifically repealed §2 of Act 97 of 1929. Consequently, the statutory authorization for appropriating a portion of a county judge's salary from the county road fund or county highway fund is no longer in existence.

You are correct in your assessment of Amendment 55 to the State Constitution and its enacting statutes, which provide that a county Quorum Court may exercise local legislative authority not denied by the State constitution or State law. However, it is my position that the existing State law concerning the county road tax and county highway fund do not allow the county to use a portion of those funds to pay the salary of the County Judge. By statute, these funds are to be used specifically for the purpose of construction and maintenance of county roads and bridges. It is clear that the intent of the General Assembly in enacting the statutes providing for a county road fund and a county highway fund was to provide money for the costs of building and maintaining county roads and bridges. Simply, because one of the enumerated powers of a County Judge is to administer and maintain the system of county roads, this is not authorization to procure one half of his salary from the county road fund or county highway fund. The County Judge has many additional duties besides the administration of the county road system, which is only one of the functions of his office. It is my opinion that the use of county road funds or county highway funds to pay a portion of the County Judge's salary would be a diversion of funds which could violate State statutory or constitutional law.

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The foregoing opinion, which I hereby approve, was prepared by Chief Deputy Attorney General Rodney Parham and Assistant Attorney General Jeffrey A. Bell.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Clark", written over the typed name.

STEVE CLARK
Attorney General

SC/RP/JAB/ljm
cc: Stevan Dalrymple
Deputy Prosecutor