



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201
August 19, 1985

(501) 371-2007

OPINION NO. 85-185

The Honorable Kirk Johnson
Prosecuting Attorney
8th Judicial District
Miller County Courthouse
Room 203
Texarkana, AR 75502

Dear Mr. Johnson:

This is in response to your request for an opinion on the following questions:

1.(a) Would a contract to haul gravel for the county (where the county pays for the gravel by paying a royalty directly to the owner of the gravel pit) be subject to bidding procedures or is it exempt as personal services?

1.(b) If a contract called for hauling gravel and then spreading it and working up a road-bed, would this constitute personal services?

2. My second group of questions can only be set out by use of a hypothetical set of facts.

Assume, in answering the following questions, that the following facts exist:

A county judge, whose office controls expenditures from the county road and revenue sharing funds, has the sum of \$600,000 appropriated by the Quorum Court in its annual budget for road work. The actual amount of revenues received into these two funds (from the various sources which generate money into these funds) comes to \$1,000,000 for the year.

(a) Is any sanction provided if the county judge spent more than the \$600,000 appropriation, in light of the fact that Ark. Stat. Ann. §17-417 has been repealed?

(b) Would the legal ramifications of such an over-expenditure be in any way affected by whether or not the total revenues generated into the two funds were exceeded (for example, in our hypothetical, if expenditures were in excess of the \$1,000,000 figure), does Amendment 10 to the State Constitution have any application to these facts?

(c) Is any sanction provided for the overspending of appropriations by one county official so long as the total revenues for the county for the year are not exceeded, and how does this relate to Amendment 10 of the Arkansas Constitution?

3.(a) How should a bill (for services rendered) be legally handled if said bill is presented for the first time for payment in the present year, but the service was rendered in the previous year and all revenues and appropriations for the year in which the service was rendered have been totally expended?

(b) What would be the legal consequence of paying a bill such as mentioned above, out of funds appropriated under the current year's budget, when services were actually rendered in a prior year?

4. Does contracting for work in a given year that exceeds the county's revenues constitute a debt, and is it a violation of the law?

In response to question No. 1 there appears to be no case law in Arkansas interpreting what constitutes personal services for purposes of Ark. Stat. Ann. §17-1602 (Repl. 1980). Other states which have similar statutory language have generally held that bid requirements do not apply to contracts by a county for securing personal services requiring professional skills, knowledge or technical learning. See Goldwin-Kent, Inc. v. Broome County, 107 MISC.2d 722, 435 NYS2d 1011 (1981). (Pharmacy services); Caldwell v. Crossey, 20 S.W.2d 822 (1929); Hellman v. St. Louis County, 302 S.W.2d 911 (1957).

If Arkansas courts were to adopt the foregoing definition of personal services it is unlikely that hauling gravel, spreading gravel or working a road-bed would qualify as personal services since these activities do not require any specialized skills. Therefore, formal bidding requirements would have to be complied with unless the total purchase price was such that the service contract is less than \$5,000. Ark. Stat. Ann. §17-1601 (Supp. 1985).

In response to question No. 2, any official who is guilty of incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance or nonfeasance while holding office may be removed from office. Ark. Stat. Ann. §17-3613 (Repl. 1980). Overspending an appropriation would possibly constitute grounds for removal.

The Honorable Kirk Johnson
Page 3
August 19, 1985

Under the facts set forth in your hypothetical, a county judge may have violated Amend. No. 10 of the Arkansas Constitution and therefore be subject to criminal sanctions. Amend. No. 10 provides that any officer who authorized, signed or issued scripts, warrants, or other certificates of indebtedness in excess of total revenue for that year is guilty of a misdemeanor and may upon conviction be fined not less than \$500.00 and should be removed from office.

By merely overspending an appropriation, a county official does not violate Amendment No. 10. Their overspending would have to exceed the total revenues for the year and be evidenced by scripts, warrants or other certificates of indebtedness before it would be violative of the amendment. Warren v. State, 232 Ark. 823, 340 S.W.2d 400 (1960).

In response to your third question, there are numerous cases which have addressed the question of contracts which require the payment of amounts in excess of annual revenues. In Goodwin v. State, 235 Ark. 457, 360 S.W.2d 490 (1962), the Court stated:

To make a contract in one year to be paid out of the revenues of a succeeding year is a violation of Constitutional Amendment No. 10.

Also, in Stanfield v. Friddle, 185 Ark. 873, 50 S.W.2d 237, (1932), it is stated:

The law may therefore be regarded as definitely settled that any contract entered into or allowance made in excess of the revenues of the year in which the contract was entered into, or the allowance made, is wholly void, and the issuance of county warrants based thereon adds nothing to their validity, as the warrants are also void. See Kirk v. High, supra; Carter v. Cain, 179 Ark. 79, 14 S.W.2d 250 (1929); Nelson v. Walker, 170 Ark. 170, 279 S.W. 11 (1926).

Furthermore, Art. 12, §4 of the Constitution of Arkansas provides:

The fiscal affairs of counties, cities and incorporated towns should be conducted on a sound financial basis, and no county court or levying board or agent of any county shall make or authorize any contract or make any allowances for any purposes whatsoever in excess of the revenue from all sources for the fiscal year in which said contract or allowance is made; Or shall any county officer sign or issue any script, warrant, or make any allowance in excess of the revenue from all sources for the current fiscal year.

The Honorable Kirk Johnson
Page 4
August 19, 1985

Under this section, contracts made in excess of the revenue for the year in which they are made are void, and since they are void when made, they cannot thereafter, in subsequent years, be paid. Cook v. Shackelford, 192 Ark. 44 90 S.W.2d 216 (1936).

In response to question 4, Amendment No. 10 and Art. 12 §4 of the Arkansas Constitution prohibits a county from making a contract or incurring an obligation in excess of its revenues for a fiscal year in which the contract obligation is made. If the county does enter such a contract, it should be deemed void and cannot be paid out of the revenues of the succeeding year. Dixie Culvert Manufacturing Co. v. Perry County, 174 Ark. 107, 294 S.W. 381 (1927); Accord, City of Little Rock v. White Co., 193 Ark. 837, 103 S.W.2d 58 (1937).

There are exceptions to the general rule that prohibits a county from incurring an obligation in excess of its revenues for a fiscal year. The most notable exception is where a county enters into a lease-purchase agreement. This office has recently issued an opinion that discusses lease purchase agreements and I am attaching a copy of it for your consideration. The rationale seems to be that the lease purchase agreement is not a "flat" expenditure and is not in violation of Amendment No. 10 as long as the apportioned cost (monthly payment) for each year, together with other county expenditures, do not exceed county revenues for that year. Kirk v. High, supra.

The foregoing opinion, which I hereby approve, was prepared by E. Jeffery Story, Assistant Attorney General.

Sincerely,


STEVE CLARK
Attorney General

SC/EJS/pw