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OPINION NO. 86-147

April 28, 1986

The Honorable Bill Walters
State Senator
P.O. Box 280
Greenwood, AR 72936

Dear Senator Walters:

You have requested an opinion from this office concerning several questions which I will paraphrase as follows:

1. Does a prosecuting attorney have the authority to interject thoughts, opinions and arguments into a quorum court meeting? If so, must he first receive recognition from the presiding officer, i.e. the county judge? Additionally, what authority does the county judge have to prevent the participation of the prosecuting attorney absent recognition to speak.
2. If the county judge declares the meeting adjourned and leaves the quorum court session, may the remaining members of the quorum court continue to meet and conduct business in his absence?
3. Is it unusual or illegal for the county judge's office to prepare an ordinance and then have a quorum court member introduce that ordinance for consideration?
4. What are the prosecuting attorneys obligations insofar as to render legal opinions to the county judge and quorum court? If there is an obligation to render legal opinions to the county judge and quorum court, is it misfeasance, malfeasance, or nonfeasance for the prosecuting attorney to refuse to advise the county judge or quorum court as to matters pertaining to county business?
5. May the county judge obtain outside legal counsel in the event the prosecuting attorney refuses to render legal assistance? If so, does the county judge have to

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have the approval of the quorum court in order to employ legal counsel for that purpose?

6. During the meeting of a quorum court does the prosecuting attorney have concurrent authority with the county judge to direct the sheriff to remove certain persons from the meeting?

In response to your first question, the prosecuting attorney is not a member of the quorum court but is there to provide legal advice when so requested by that body. As such, the request for information must be made and the presiding official, i.e., the county judge, must authorize the prosecuting attorney addressing the quorum court while in session.

Amendment 55, Section 3 of the Arkansas Constitution states that the county judge shall preside over the quorum court without a vote but with the power to veto. This would indicate, in response to your second question that the presence of the county judge is necessary in the quorum court session.

In response to your third question, it may or may not be unusual for a county judge's office to prepare an ordinance but so long as a quorum court member introduces (and by doing so adopts as their own) that ordinance for consideration it would appear to be technically permissible.

In response to your fourth question, in the absence of a county attorney (office of civil attorney) as envisioned in Ark. Stat. Ann. §24-139 (1985 Supp.) the prosecuting attorney retains the duty to provide his or her opinion, without fee or reward to any county or township official guarding questions of civil law concerning that county and which is pending before that official. Failure to provide that opinion to a qualified county official would appear to be non-performance of a required duty.

Your fifth question raises the concern as to whether or not a county judge may obtain outside legal counsel in the event the prosecuting attorney refuses to render legal assistance. The question that must be addressed is whether or not the quorum court has appropriated funds, or in the case of hiring a county attorney, created the position and appropriated funds for payment of that attorney. The general procedure for either a professional services contract or selection of a county attorney under Ark. Stat. Ann. §24-137 (1985 Supp.) would need to be filed.

In response to your final question it would not appear that the prosecuting attorney would have the authority to require the county sheriff to eject anyone from the quorum court meeting.

Additionally, there is no authority for an Assistant Attorney General to attend and participate in a Logan County Quorum Court Session, therefore I feel that it would be inadvisable to assign an attorney for this purpose.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Kay J. Jackson Demailly.

Sincerely,

STEVE CLARK
Attorney General

SC/KD/pw