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U.S. # 86-204

May 22, 1986

Honorable Bud Williams  
Garland County Judge  
Garland County Courthouse  
Hot Springs, AR 71901

Dear Judge Williams:

On February 5, 1986, you submitted a request for the opinion of this office on the following questions:

1. Under Amendment 55 of the Arkansas Constitution and Act 742 of the 1977 Legislature, is it permissible for the County Judge acting in his executive capacity, to establish procedures for the repair of paving cuts on roads in the county?

2. Under Amendment 55 and Act 742 of 1977, may the Quorum Court by ordinance establish procedures for the repair of paving cuts on roads in the county?

In response to your first question, reference should be made to the provisions in Amendment 55, and Act 742 dealing with the powers of the County Judge. Section 3 of Amendment 55 states in relevant part:

The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall . . . operate the system of county roads . . .

Ark. Stat. Ann. §17-3901 (1980 Repl.) sets out the executive powers of the County Judge and §17-3901(B)(1) states in relevant part:

The County Judge shall be responsible for the administrative actions affecting the conduct of a plan of public roadways and bridges throughout the unincorporated areas of the county, including the maintenance and construction of public roadways and bridges and roadway drainage designated as eligible for expenditure of county funds. (Emphasis added).

Ark. Stat. Ann. §17-3901, then clearly mandates that the County Judge will be responsible for "administrative actions affecting the conduct of a plan of public roadways and bridges throughout the . . . county." Administrative acts are defined in Black's Law Dictionary (Revised Fourth Edition, 1968) as:

acts of an officer which are to be deemed as acts of administration, and are commonly called "administrative acts" and classed among those governmental powers properly assigned to the executive department, or those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such are devolved upon it by the organic law of its existence.

To the extent it is necessary, then, for the County Judge to establish procedures for the repair of paving cuts on roads in the County in order to effectuate a plan of public roadways and bridges throughout the county which may have been established by the Legislature, the County Judge is empowered to establish such procedures.

With respect to your second question, the answer is that to the extent the Quorum Court may have established procedures for the repair of paving cuts on roads in the county as part of a plan of public roadways and bridges throughout the county, the Quorum Court is authorized by law to establish such procedures. Ark. Stat. Ann. §17-3802 (1980 Repl.) states in relevant part:

(2) A county government, acting through the Quorum Court, may provide through ordinance for the establishment of any service or performance of any function not expressly prohibited by the

Arkansas Constitution or by law. These legislative services and functions include, but are not limited to, the following services and facilities: . . .

(g) transportation services, including: roads, bridges, airports and aviation services; ferries, wharves, docks, and other marine services; parking services; and public transportation services.

Where the Quorum Court has established a procedure for paving cuts in the establishment of a road plan then, it is the duty of the County Judge to administer the Quorum Court's plan according to its specifications.

The Attorney General is authorized to render formal opinion to officers and departments of the State Government only. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Sincerely,

STEVE CLARK  
Attorney General

BY:

TIM HUMPHRIES  
Assistant Attorney General

SC/TCH/ljm