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OPINION NO. 86-307

May 13, 1986

The Honorable Knox Nelson
Senator, District 27
P.O. Box 5715
Pine Bluff, AR 71611

Dear Senator Nelson:

This letter is in response to your request for an official opinion with regard to the expenditure of a balance of funds resulting from property assessments in No Fence District #1 of Jefferson County. You have asked whether these remaining funds may be used to supplement other available funds to construct a county jail.

Assuming that No Fence District #1 is a continuing legal entity, the answer to your threshold question is yes. Ark. Stat. Ann. §78-1364 (Repl. 1981) entitled "Surplus fund in fencing district - Disposal" provides as follows:

When any fencing district in this State has completed all of the contemplated improvements and has paid and discharged all of its obligations and has a surplus of funds on hand, not needed for repair or maintenance or the operation of the district, then in such event, the Board of Directors of such district may in their discretion contribute so much of such surplus funds as they may determine to any public, charitable, educational or general welfare purpose within the county in which the district is situated.

Although there is no case law on point, it would appear that §78-1364 has general applicability to all fencing districts within the State. Therefore, assuming that No Fence District #1 was properly established and that it has not been abandoned or dissolved, the Board has authority under §78-1364 to contribute the surplus funds to construction of a jail within Jefferson County. This would certainly qualify as a

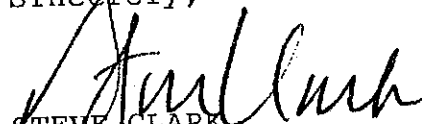
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"public purpose." This assumes, of course, that the various conditions of §78-1364 are met; specifically, that all contemplated improvements have been made and all obligations discharged, and that the surplus is not needed for repair or maintenance or operation of the district. It further assumes that the Board of Commissioners referenced in your letter is the equivalent of the "Board of Directors" appearing in §78-1364. This would seem to be a reasonable assumption, particularly since applicable statutory provisions use the terms "Fencing Board", "Commssioners" and "Directors" interchangeably. See Ark. Stat. Ann. §78-1301 et seq. (Repl. 1981).

Since §78-1364 appears to give broad discretion to the Board for disposal of such surplus funds, the procedure for transfer of the funds can be determined by the Board. §78-1364 contains no directive with respect to actual accomplishment of the "... public, charitable, educational or general welfare purpose" The Board would, of course, need to formally direct the trustee in this regard.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General, Elisabeth A. Walker.

Sincerely,


STEVE CLARK
Attorney General

SC:EAW:jr