



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-040

July 3, 2024

The Honorable Mindy McAlindon
State Representative
Post Office Box 324
Centerton, Arkansas 72719

Dear Representative McAlindon:

I am writing in response to your request for my opinion about the City of Bella Vista's authority to pass a proposed ordinance.

You indicate that the City wishes to pass an ordinance to require municipal candidates to file a Campaign Contribution and Expense report ("CC&E"), in addition to the one already required by state law. The City's proposed ordinance would require municipal candidates to file this CC&E report at least seven days before early voting begins.¹ It requires this *before* early voting because "the deadline for filing the [State-mandated] reports with the county clerk is *after* the start of early voting," so many citizens are unable to view the reports before voting.² The proposed ordinance cites A.C.A. § 7-6-224 and declares that "matters concerning local elections do not fall under the category of state affairs such that cities are prohibited from legislating."

You ask the following two questions:

1. Does the proposed Bella Vista ordinance conflict with or violate any current Arkansas laws relating to or concerning campaign finance or disclosure?
2. Does the proposed Bella Vista ordinance conflict with or violate any Arkansas ethics laws or requirements?

¹ You have provided me with a copy of the proposed ordinance. Although "[t]his office has a long-standing policy prohibiting it from construing or interpreting the provisions of local ordinances," this office has consistently reviewed local ordinances "to determine their consistency with state law." Ark. Att'y Gen. Op. 2009-203; *see also* Ark. Att'y Gen. Ops. 2004-173, 2001-258, 1999-287, 1997-038. Therefore, I will assess whether the ordinance conflicts with state law.

² Emphasis added.

RESPONSE

For the reasons discussed in the opinion, the proposed Bella Vista ordinance does not conflict with or violate current Arkansas law concerning campaign finance or ethics.

DISCUSSION

1. General municipal authority. Cities, towns, and other municipalities “are creatures of the legislature” and only have powers as delegated to them by the General Assembly.³ This expressly delegated authority includes both the broad “police power” and statutory “Home Rule,” which is the general power to act concerning “municipal affairs.”⁴

1.1. Police power. The police power is the power inherent in state sovereignty and is not a grant derived from any constitution.⁵ Although municipalities do not inherently have this power,⁶ the General Assembly has expressly delegated it to them. The “police power” is the power to “make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof.”⁷ An exercise of police power “is always justified when it can be said to be in the interest of the public health, public safety, and

³ Ark. Const. art. 12, § 4; *Phillips v. Town of Oak Grove*, 333 Ark. 183, 189, 968 S.W.2d 600, 603 (1998).

⁴ A.C.A. § 14-43-602 (allowing municipalities to “perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs”); *see also* Ark. Att’y Gen. Op. 2012-051 (surveying the applicable statutes and case law).

⁵ *Geurin v. City of Little Rock*, 203 Ark. 103, 155 S.W.2d 719, 721 (1941); *see also* Thomas M. Cooley, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATE OF THE AMERICAN UNION 831–32 (7th ed. 1903) (“In the American constitutional system, the power to establish the ordinary regulation of police has been left with the individual States, and it cannot be taken from them, either wholly or in part, and exercised under legislation of Congress,” and the “national government” cannot assume any supervision of the police regulations of the States.”); U.S. Const. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

⁶ Eugene McQuillin, THE LAW OF MUNICIPAL CORPORATIONS § 24:6 (3d ed. 2024).

⁷ *See* A.C.A. § 14-55-102.

public comfort, and when it is, private rights must yield to their security,”⁸ subject to federal and state constitutional limitations.⁹

Thus, a city has discretion to determine what is necessary for the public welfare, health, safety, order, comfort, and convenience of its inhabitants.¹⁰ An ordinance enacted under a city’s police power is presumed valid unless a court concludes that there is no “rational basis” for the ordinance—that the ordinance is “arbitrary, capricious, and unreasonable.”¹¹

Although this particular issue appears to be one of first impression, it is my opinion that a court would likely find that the City has authority to pass the proposed ordinance under the City’s “police power” because the proposed ordinance, at a minimum, could be categorized as improving the order of the city and its residents.¹² Although the earliest cases typically concern health and safety,¹³ since then courts have routinely upheld ordinances regulating

⁸ *Beaty v. Humphrey*, 195 Ark. 1008, 115 S.W.2d 559, 561 (1938); *see also Phillips*, 333 Ark. at 189, 968 S.W.2d at 603 (noting that the police power is “founded in public necessity and this necessity must exist in order to justify its exercise,” which is “always justified when it can be said to be in the interest of the public health, public safety, public comfort”); Ark. Att’y Gen. Op. 95-079 (opining that “[w]hile the constitutional right of property is thus subject to the legitimate exercise of the police power, police power enactments must be reasonable”).

⁹ Although broad, the police power is not unlimited; legislation cannot be unreasonable, arbitrary, or capricious. *Phillips*, 333 Ark. at 189, 968 S.W.2d at 603.

¹⁰ *See* McQuillin, *supra* note 6, at § 24:2 (commenting that the “police power” is “difficult to limit, as it includes all matters of public welfare”); *id.* § 24:3 (noting how difficult it is “[t]o define the police power or to prescribe its extent” largely because this power “is dynamic in character...not to be defined with inexorable and mathematical certainty” but cop[ing] with the new as it has with the old and justif[ying] measures in the present that it has not justified in the past”).

¹¹ *Phillips*, 333 Ark. at 195, 968 S.W.2d at 606; Ark. Att’y Gen. Ops. 2009-203, 2009-073. I cannot definitely conclude whether the proposed ordinance is unreasonable, arbitrary, or capricious because this is largely a question of fact outside of the scope of an Attorney General Opinion. *See, e.g., City of Fayetteville v. S & H, Inc.*, 261 Ark. 148, 165, 547 S.W.2d 94, 103 (1977) (“The question of unreasonableness or arbitrariness is plainly one of fact.”).

¹² *See also* Ark. Att’y Gen. Op. 2009-203 (citing Arkansas law to illustrate that the “Arkansas Supreme Court has generally adhered to the view that cities have broad discretion to determine what is necessary for the public welfare, comfort, and convenience”); Cooley, *supra* note 5, at 830 (noting that “[i]t is much easier to perceive and realize the existence and source of this [police] power than to mark its boundaries, or prescribe limits to its exercise”).

¹³ *See, e.g.,* McQuillin, *supra* note 6, at § 24:13; Justin Craig, *Municipal Law—Municipal Police Power & Its Adverse Effects on Small Businesses in Arkansas: A Proposal for Reform*, 36 U. ARK. LITTLE ROCK L. REV. 177, 181–82 (2014) (compiling some of the early Arkansas “police power” cases).

many areas outside of health and safety—such as fraud prevention,¹⁴ aesthetics,¹⁵ business pricing,¹⁶ and general prosperity of a community¹⁷—as being reasonably related to the general welfare, order, comfort, or convenience of a city’s inhabitants.

1.2. “Municipal affairs” vs. “state affairs.” Under A.C.A. § 14-43-602(a), cities, towns, and other municipalities are also “authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs,” if the legislation is not “contrary to the general laws of the state.”¹⁸ “[M]unicipal affairs” includes “all matters and affairs of government germane to, affecting, or concerning the municipality or its government except” for “state affairs...[which are] subject to the general laws of the State of Arkansas.”¹⁹

Arkansas Code § 14-43-601(a) lists as “state affairs” 15 subjects—none of which expressly include elections or campaign finance.²⁰ But even if a subject matter is designated as a “state affair,” local legislation is permissible if it is “not in conflict with state law.”²¹

Regardless of whether an ordinance regulates a “state affair” or a “municipal affair,” state law preempts local legislation if it is “in conflict with” or “contrary to” state law.²²

2. State election law. Having determined that such an ordinance is within a city’s power, the next question is whether it would conflict with any state law. Under A.C.A. § 7-6-208(a), municipal candidates are required to file multiple campaign-contribution reports, including annual, preelection, postelection, supplemental, and campaign-ending reports. A preelection report must be filed at least seven days before a “primary election, runoff election, general election, school election, or special election in which the candidate’s name appears on the ballot” and include “all contributions received and

¹⁴ *E.g.*, *U. S. ex rel. Shott v. Tehan*, 365 F.2d 191, 194 (6th Cir. 1966).

¹⁵ *E.g.*, *City of Fayetteville v. McIlroy Bank & Tr. Co.*, 278 Ark. 500, 502–03, 647 S.W.2d 439, 440–41 (1983).

¹⁶ *E.g.*, *Hand v. H & R Block, Inc.*, 258 Ark. 774, 783–84, 528 S.W.2d 916, 921–22 (1975).

¹⁷ *E.g.*, *Williams v. State*, 85 Ark. 464, 108 S.W. 838, 839–40 (1908), *aff’d sub nom. Williams v. State of Ark.*, 217 U.S. 79 (1910); *see also State v. Mitchell*, 32 Ohio App. 2d 16, 30, 288 N.E.2d 216, 226 (Ohio Ct. App. 1972).

¹⁸ Ark. Const. art. 12, § 4.

¹⁹ A.C.A. § 14-43-601(a)(1).

²⁰ *Id.* § 14-43-601(a)(1).

²¹ *Id.*

²² *See* Ark. Att’y Gen. Op. 2013-138.

expenditures made between [certain] periods.”²³ But candidates who have “not received contributions or made expenditures in excess of five hundred dollars” or are running unopposed are not required to file a preelection report.²⁴

State law expressly authorizes “[m]unicipalities, counties, and townships” to “establish reasonable limitations on: (1) Time periods that candidates for local office shall be allowed to solicit contributions; (2) Limits on contributions to local candidates at amounts lower than those set by state law; and (3) Voluntary campaign expenditure limits for candidates seeking election to their respective governing bodies.”²⁵

3. State preemption. State statutes can preempt municipal ordinances in three ways:²⁶ (1) express preemption;²⁷ (2) field preemption;²⁸ and (3) conflict preemption.²⁹

Express preemption occurs when the text of a statute expressly forecloses local legislation on the topic.

Field preemption occurs when a state statute preempts local legislation when the breadth of State regulation indicates that the General Assembly intends to “hold the field” of a particular area of law, or regulate “an area completely so as to not leave reasonable room for local regulation.”³⁰ But the mere existence of a statute governing the same or similar area of an ordinance does not mean that the statute preempts the ordinance.³¹ “The General Assembly should be clear when it intends to pre-empt a field that otherwise could be validly

²³ A.C.A. § 7-6-208(a)(2).

²⁴ *Id.* § 7-6-208(d)(1).

²⁵ A.C.A. § 7-6-224(a).

²⁶ Preemption for state laws largely mirrors the doctrine of federal preemption. *See, e.g., Kollmeyer v. Greer*, 267 Ark. 632, 636, 593 S.W.2d 29, 31 (1980) (noting that a situation concerning a state statute and a local ordinance was “comparable to the federal doctrine of pre-emption that is utilized in reconciling federal law with any state law that seeks to regulate the same subject matter”).

²⁷ *See, e.g., McNeill*, 120 S.W.3d at 608–09; *Kollmeyer*, 267 Ark. at 636–37, 593 S.W.2d at 30–32; Ark. Att’y Gen. Op. 2015-088.

²⁸ *See, e.g., Ark. Att’y Gen. Ops. 2015-088* (reviewing a state statute that “prohibits localities from regulating in th[e] field of “antidiscrimination law”), 2005-129 (“The State may preempt any local legislative authority by regulating an area completely so as not to leave reasonable room for local regulation.”).

²⁹ *Kollmeyer*, 267 Ark. at 637, 593 S.W.2d at 31 (holding that certain local ordinances were “inconsistent [with] and in conflict with” certain state statutes).

³⁰ *E.g., Ark. Att’y Gen. Ops. 2015-088, 2005-129.*

³¹ Ark. Att’y Gen. Op. 94-402.

regulated by...ordinance.”³² This clarity is necessary because Arkansas’s Home Rule Act grants municipalities broad authority to regulate unless the regulation is “in conflict with state law.”³³

Conflict preemption occurs when an ordinance is contrary to or irreconcilable with state statutes,³⁴ or when it less restrictive than state statutes.³⁵

4. Application of state preemption analysis.³⁶

4.1. Express. The applicable state statutes concerning certain local elections do not expressly preempt municipal ordinances concerning municipal elections or municipal campaign contribution because nothing in those statutes states that they “preempt” local ordinances.

4.2. Field. The applicable state statutes concerning certain local elections do not pervasively regulate municipal elections or municipal campaign-contribution reports in a way that renders cities, towns, or other municipalities completely preempted from the field.³⁷ This is so for three reasons. First, the General Assembly has not clearly indicated that it intended to preempt the field of local-election reports that otherwise could be validly regulated by local ordinance.³⁸ Second, while statutes do govern certain local-election reports and expressly authorize local governments to “establish reasonable limitations” concerning campaign finance, state law leaves room for cities and other municipalities to regulate in the field or area of local campaign-finance reports. Third, under A.C.A. § 14-43-601(a), neither municipal elections nor campaign finance are listed as “state affairs” subject to the general laws of the State, so municipalities may presumptively legislate broadly on the subject.

³² *Id.* at 637, 593 S.W.2d at 31.

³³ A.C.A. § 14-43-601(a)(2)(B).

³⁴ *E.g., Tompos v. City of Fayetteville*, 280 Ark. 435, 437–38, 658 S.W.2d 404, 406 (1983).

³⁵ *E.g., Ark. Att’y Gen. Op.* 86-086.

³⁶ I reiterate that this analysis is based on the facts presented. To the extent additional facts exist, I have provided the analysis a court will likely use to determine whether an ordinance in question is lawful.

³⁷ *See, e.g.,* A.C.A. §§ 7-6-208 (concerning campaign-contribution reports), 14-42-203 (concerning special elections of city mayors), 14-42-206 (concerning nominating petitions in municipal elections), 14-43-202 (prohibiting write-in votes in general elections held in cities of the first or second class), 14-43-301 (concerning general elections held by cities of the first class).

³⁸ Only one case since Arkansas’s Home Rule Act has found that local legislation was field preempted, and in that case, the General Assembly expressly required uniform regulation among the municipalities. *See Kollmeyer*, 267 Ark. at 635, 593 S.W.2d at 30.

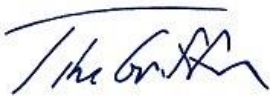
4.3. Conflict. An ordinance that requires municipal-office candidates to, “in addition to any other requirement of state law,” “file campaign contribution and expenditure reports” with a city clerk “no later than seven days prior to early voting” does not itself contradict or conflict with A.C.A. § 7-6-208(a). Although the ordinance obligates candidates to file an additional report, the provided ordinance is harmonious with state law and not less restrictive than state law. In this type of situation, it is not then impossible to comply with both the ordinance and with the state statute.

* * *

In sum, the proposed Bella Vista ordinance likely fits under a broad use of “police power” and does not conflict with or violate current Arkansas laws concerning campaign finance or disclosure, or ethics laws or requirements.

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General