TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-037

July 5, 2023

The Honorable David Whitaker
State Representative
717 North Lewis Avenue
Fayetteville, Arkansas 72701

Dear Representative Whitaker:

You requested my opinion regarding regular and special committees of a quorum court. Your questions stem from action taken on Ordinance No. 2023-003, which you report was unanimously adopted by the Washington County Quorum Court. The ordinance disbanded the quorum court's existing committees and reorganized them into the Finance and Budget Committee of the Whole and the County Services Committee of the Whole. You further report that after each of these committees appointed him as chairperson, the county judge began refusing requests by a justice of the peace to place items on the committees' agendas. Finally, you report that neither of the newly formed committees keeps minutes of its meetings.

Based on this background information, you have asked three questions.

1. Does the county judge's power to appoint all regular and special committees of the quorum court under A.C.A. § 14-14-904(d)(2)(A) authorize the county judge to appoint himself as a member of the committees?

   **Brief response**: It is unclear whether A.C.A. § 14-14-904(d)(2)(A) allows the county judge to appoint himself as a member of the quorum court committees.

2. Does having the county judge serve as the chairperson of a committee of the whole of the quorum court make the committee's meetings de facto meetings of the quorum court requiring compliance with all applicable laws and procedures for quorum court meetings, such as A.C.A. § 14-14-903(a) regarding minutes?

   **Brief response**: While these committee meetings are not "de facto" quorum court meetings, the committee meetings are still subject to many of the same requirements.

3. Does having the county judge serve as the chairperson of a committee of the whole of the quorum court violate A.C.A. § 14-14-502(c) with reference to the separation of powers?

   **Brief response**: It is unclear whether the county judge acting as the chairperson of the quorum court committees would violate A.C.A. § 14-14-502(c).

## DISCUSSION

**Question 1: Does the county judge's power to appoint all regular and special committees of the quorum court under A.C.A. § 14-14-904(d)(2)(A) authorize the county judge to appoint himself as a member of the committees?**

It is unclear whether A.C.A. § 14-14-904(d)(2)(A) allows the county judge to appoint himself as a member of the quorum court committees. I join multiple Attorneys General in observing that A.C.A. § 14-14-904(d)(2)(A) is ambiguous and that legislative clarification is warranted.[1]

On the one hand, under A.C.A. § 14-14-502(c), the executive branch cannot "exercise any power" belonging to the legislative branch without express permission.[2] In this instance, these committees are an extension of the quorum court because the committees manage county organization and services[3] and may "conduct any public hearings on county legislative affairs" except budget or appropriations.[4] Further, A.C.A. § 14-14-904(d)(2)(A) does not explicitly authorize the county judge to appoint himself as a member of the quorum court committees. Under the foregoing provisions, the county judge might be violating A.C.A. § 14-14-502(c) by appointing himself as a member of the quorum court committees.

On the other hand, one could argue that *voting* is the legislative power the county judge is proscribed from exercising. Under A.C.A. § 14-14-1101(a)(1), the county judge presides over the quorum court "without a vote."[5] Because the county judge is already involved in the legislative

[1] *See* Ark. Att'y Gen. Ops. 2003-180 (reversing course from prior official opinions and opining that A.C.A. § 14-14-904(d) authorizes the quorum court to set the number and function of committees while authorizing the county judge to appoint committees' members); 2001-117 (opining that A.C.A. § 14-14-904(d) authorizes the county judge to determine committees and appoint members to the committees); 95-084 (opining that A.C.A. § 14-14-904(d) authorizes the county judge to determine committees and appoint members to the committees).

[2] A.C.A. § 14-14-502(c).

[3] A.C.A. § 14-14-802.

[4] A.C.A. § 14-14-108(5).

[5] A.C.A. § 14-14-1101(a)(1).

process in the quorum court, it can be argued that the county judge could also be a member of the committees if he is not a voting member.

Because the reasoning for each of these interpretations is equally persuasive and consistent with the text of A.C.A. § 14-14-904(d)(2)(A), it seems that the statute is ambiguous on this issue. And that ambiguity hinders me from providing a definitive answer to your question.

**Question 2: Does having the county judge serve as the chairperson of a committee of the whole of the quorum court make the committee's meetings de facto meetings of the quorum court requiring compliance with all applicable laws and procedures for quorum court meetings, such as A.C.A. § 14-14-903(a) regarding minutes?**

No, these committee meetings are not "de facto" quorum court meetings because committees cannot pass ordinances and resolutions.[6] Ordinances are a county's laws,[7] and resolutions are policy statements without the force of law.[8] Without ordinances and resolutions, there is no county government, and the General Assembly has not authorized committees to pass ordinances or resolutions.[9] Thus, it is impossible for a meeting of a committee of the whole to be a "de facto" quorum court meeting.

Even so, these committees and the quorum court are subject to many of the same requirements. Specifically, Arkansas law requires both to: (1) hold open meetings unless those meetings cover certain aspects of employment;[10] (2) enact rules to give citizens "a reasonable opportunity to participate prior to the final decision;"[11] (3) keep minutes of all public meetings;[12] and (4) make those minutes available for public inspection and copying.[13] Further, because these committees

[6] A.C.A. § 14-14-904(i)–(j).

[7] A.C.A. § 14-14-904(i). An ordinance is the "enactment of compulsory law for a quorum court that defines and establishes the permanent or temporary organization and system of principles of a county government for the control and conduct of county affairs." *Id.*

[8] A.C.A. § 14-14-904(j). A resolution is "a formal statement of policy by a quorum court . . . [that] may be used whenever the quorum court wishes merely to express an opinion as to some matter of county affairs[.]" *Id.*

[9] *See* A.C.A. § 14-14-904(i)–(j). In interpreting statutes, courts follow the maxim of *expressio unius est exclusio alterius*: "[T]he express designation of one thing may be properly construed to mean the exclusion of another." *Larry Hobbs Farm Equip., Inc. v. CNH Am., LLC*, 375 Ark. 379, 385, 291 S.W.3d 190, 195 (2009) (internal citations omitted); *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (West 2012) ("The expression of one thing implies the exclusion of others….").

[10] A.C.A. § 14-14-109(a).

[11] A.C.A. § 14-14-109(b).

[12] A.C.A. §§ 14-14-109(c), 14-14-903(a).

[13] A.C.A. §§ 14-14-109(c), 14-14-110(a).

are "composed entirely of members from the parent, governing body," the committees' records are public records under the Freedom of Information Act ("FOIA") and the committees' meetings are public meetings under the FOIA.[14]

**Question 3: Does having the county judge serve as the chairperson of a committee of the whole of the quorum court violate A.C.A. § 14-14-502(c) with reference to the separation of powers?**

It is unclear whether the county judge acting as the chairperson of the quorum court committees would violate A.C.A. § 14-14-502(c).[15] My analysis in response to your first question applies here as well. While the quorum court committees are an extension of the legislative branch and the county judge is not expressly authorized to act as chairperson for those committees, separation of powers might be maintained if the county judge is not voting.

Assistant Attorney General Jodie Keener prepared this opinion, which I hereby approve.

Sincerely,

TIM GRIFFIN
Attorney General

[14] Ark. Att'y Gen. Op. 2014-124 (identifying the three different types of groups created by or from a public organization and stating each group's FOIA obligations).

[15] Article 4, § 2 of the Arkansas Constitution also requires separation of powers in county government. *Walker v. Washington County*, 263 Ark. 317, 320, 564 S.W.2d 513, 515 (1978).