



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-093

January 22, 2025

The Honorable Robin Lundstrum
State Representative
Post Office Box 14
Elm Springs, Arkansas 72728

Dear Representative Lundstrum:

I am writing in response to your request for an opinion regarding an ordinance passed by the Fayetteville City Council on October 15, 2024, which caps the fees landlords may charge prospective tenants for rental applications and background checks. You state that “the ordinance limits background fees to an amount not to exceed \$40, and if no background check is done, the maximum rental application fee is limited to \$20. If a landlord charges a background check fee and then does not obtain the background check, the fee must be returned in full to the potential tenant.”

You report that numerous constituents have raised concerns about this ordinance. Against this background, you ask the following question:

Can a city propose, pass, and enact an ordinance, like the aforementioned, that limits, restricts, or hinders what private business may charge for its services, goods, or contracts?

RESPONSE

A city cannot enact an ordinance that regulates what private individuals or businesses may charge for goods, rentals, or services sold or performed within the city.

DISCUSSION

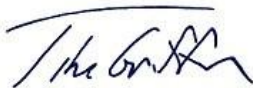
Because cities only have the power given to them by statute or the Arkansas Constitution,¹ local ordinances that conflict with state law are invalid.² There are two State laws that could potentially prohibit Fayetteville from enacting Ordinance 6800.

First, A.C.A. § 14-54-1409 prohibits local governments from enacting or enforcing rent control ordinances.³ The ordinance you describe likely does not violate this statute because it caps the fees associated with an *application* to rent, rather than “the amount of rent charged” itself.

Second, A.C.A. § 14-43-608 bars municipalities from regulating “prices for goods, rentals, or services sold or performed within the municipality by individuals or firms.”⁴ The ordinance likely violates this statute. While there are no appellate court cases construing § 14-43-608, it is my opinion that the statute’s broad wording, which clearly includes “services,” prevents a city from passing an ordinance to cap the fees a private entity charges to process a rental application or to conduct a background check.

Senior Assistant Attorney General Kelly Summerside prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN
Attorney General

¹ *Protect Fayetteville v. City of Fayetteville*, 2019 Ark. 30, 3, 565 S.W.3d 477, 480.

² Ark. Const. art. 12, § 4 (“No municipal corporation shall be authorized to pass any laws contrary to the general laws of the state....”); *Protect Fayetteville*, 2019 Ark. at 3, 565 S.W.3d at 480.

³ See A.C.A. § 14-54-1409(b) (“A local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.”). An exception exists, however, for local governments “to manage and control residential property in which the local governmental unit has a property interest.” A.C.A. § 14-54-1409(c).

⁴ A.C.A. § 14-43-608(a). As with A.C.A. § 14-54-1409, there is an exception that allows a municipality to establish the price for goods, rentals, or services furnished by, or performed by, the municipality. See A.C.A. § 14-43-608(b).