



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-052

December 4, 2025

The Honorable Richard McGrew
State Representative
324 Ouachita Avenue
Hot Springs, Arkansas 71901

Dear Representative McGrew:

You have requested my opinion regarding Act 736 of 2025, which “expands the eligibility for water development state programs, amends the Water Authority Act, and amends the uses of the Construction Assistance Revolving Loan Fund.” You report that Hot Springs Village (HSV) is a gated community located in Garland and Saline Counties. The population of HSV is governed by the HSV Property Owners’ Association (POA), which is a nonprofit corporation. You have asked whether HSV “would qualify, be eligible to participate in, and receive loan funds pursuant to and as outlined in Act 736.”¹

RESPONSES

As an unincorporated community, HSV lacks legal status, so it cannot become a water authority. But its POA, as a nonprofit corporation, could become eligible to form or convert to a water authority under the conditions discussed below.

DISCUSSION

Under the Water Authority Act,² as amended by Act 736 of 2025, “a qualified corporation involved in the sale, transmission, and distribution of potable water … may form or convert its entity status to be a water authority.”³ As a “public body politic and governmental entity organized” under the

¹ Although your question only mentions HSV, I have also addressed whether the POA itself could qualify to participate in and receive loan funds under Act 736.

² A.C.A. §§ 4-35-101 through -306.

³ *Id.* § 4-35-101.

Water Authority Act,⁴ a water authority may exercise the power of eminent domain,⁵ issue interest-bearing bonds for water projects,⁶ and borrow tax-exempt funds for water projects.⁷ The General Assembly has further provided that a water authority’s projects and project income are public property to be used for a public purpose and are exempt from ad valorem taxation.⁸

1. Qualified corporation. Under A.C.A. § 4-35-103(7), as amended by Act 736, a “qualified corporation” is either:

- “A nonprofit corporation … that provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and … other users or that proposes to accomplish, develop, or construct any of the foregoing”; or
- “Any governmental entity … [or] investor-owned water or wastewater utility … that provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and … other users that proposes to accomplish, develop, or construct any of the foregoing.”

As an “unincorporated community,”⁹ HSV has no legal status.¹⁰ Without legal status, HSV cannot be a nonprofit corporation, a government entity, or an investor-owned water or wastewater utility. Thus, HSV is not a qualified corporation under A.C.A. § 4-35-103(7).

⁴ A.C.A. § 4-35-103(12) (“‘Water authority’ means the public body politic and governmental entity organized pursuant to the provisions of this chapter”).

⁵ *Id.* § 4-35-210(16).

⁶ *Id.* § 4-35-301(a).

⁷ *Id.* §§ 15-5-901 through -910 (“Construction Assistance Revolving Loans”). A water authority can also obtain tax-exempt funding through the Clean Water State Revolving Fund; the Drinking Water State Revolving Fund; the Water Development Fund; the Water, Sewer, and Solid Waste Fund; and the General Obligation Bond Program. Arkansas Department of Agriculture, *Water and Wastewater Funding* (Nov. 12, 2025), <https://agriculture.arkansas.gov/natural-resources/water-development/water-and-wastewater-funding/>.

⁸ A.C.A. § 4-35-108.

⁹ *Id.* § 14-270-102(5) (“‘Unincorporated community’ means an unincorporated community in a rural area of the state”); 15 C.A.R. § 189-102(19)(A) (“Unincorporated community” means a population center with historic boundaries that are understood in local custom and amenable to mapping, but which is not legally incorporated as a municipality”); 15 C.A.R. § 189-102(19)(B) (“Census designated places recognized by the United States Bureau of the Census are automatically recognized as unincorporated communities, while other unincorporated communities’ status and boundaries must be established by maps and narratives…”).

¹⁰ *See Bunch v. Launius*, 222 Ark. 760, 762, 262 S.W.2d 461, 462 (1953) (holding that “an unincorporated labor union cannot be sued in its society name”); *Dist. No. 21, United Mine Workers of Am. v. Bourland*, 169 Ark. 796, 277 S.W. 546, 549 (1925) (holding that “an unincorporated or voluntary association of persons has no legal entity”).

Although the POA is not a governmental entity¹¹ or an investor-owned water or wastewater utility,¹² it could qualify under A.C.A. § 4-35-103(7) because it is a nonprofit corporation.¹³ While the POA provides water services for HSV residents,¹⁴ it does not offer water services to the surrounding communities. Thus, it is unclear whether the POA provides water services “to or for the benefit of members of the general public.” The ordinary and usually accepted meaning of “general public” is “any and everyone.”¹⁵ But I am not a factfinder when issuing opinions, and whether the POA provides water services “to or for the benefit of members of the general public” is a question of fact to be determined by the Director of the Natural Resources Division of the Department of Agriculture.¹⁶

2. Formation. To create a water authority, two or more persons must pay a fee and file the appropriate paperwork with the Natural Resources Division.¹⁷ Under A.C.A. § 4-35-201, “persons ... include cities, counties, or other public bodies.” But the Rules Governing Water Authorities state that “persons” also includes nonprofit corporations.¹⁸ And the ordinary and usually accepted meaning of “person” includes “artificial persons such as corporations, partnerships, associations, and both public and private organizations.”¹⁹ Thus, the Director of the Natural Resources Division would likely find that the POA is a “person” under A.C.A. § 4-35-201.

Because HSV has no legal status, it is not a person under A.C.A. § 4-35-201 and therefore cannot participate in the formation of a water authority. But as a nonprofit corporation, the POA could participate in the formation of a water authority if (1) the Director of the Natural Resources Division determines that the POA is a qualified corporation under A.C.A. § 4-35-103(7) and (2) a second person or entity is involved in the formation process.

¹¹ See *Coombs v. Hot Springs Vill. Prop. Owners Ass'n*, 98 Ark. App. 226, 229 fn1, 254 S.W.3d 5, 8 (2007) (“The Village [POA] is not a municipality”).

¹² See *Articles of Amendment to the Amended and Restated Articles of Incorporation of Hot Springs Village Property Owners Association*, <https://www.explorethevillage.com/governing-documents/articles-of-incorporation> (“The Association shall have members. The Association shall not have or issue shares of stock, no dividends shall be paid, and no part of the income of the Association shall be distributed to its directors, officers, or members ...”).

¹³ *Articles of Amendment to the Amended and Restated Articles of Incorporation of Hot Springs Village Property Owners Association*, <https://www.explorethevillage.com/governing-documents/articles-of-incorporation>.

¹⁴ *Hot Springs Village Property Owners Association Policy Guide*, Chapter 4 – Public Services, <https://www.explorethevillage.com/governing-documents/policy-guide>.

¹⁵ *Harvey v. Bell*, 292 Ark. 657, 661, 732 S.W.2d 138, 140 (1987) (quoting C.J.S. *Dedication* § 54 (1956)); see also Ark. Att'y Gen. Ops. 1999-365, 1991-387, 1991-338.

¹⁶ 4 C.A.R. § 1-203 (formation); 4 C.A.R. § 1-304 (conversion).

¹⁷ A.C.A. § 4-35-201; 4 C.A.R. § 1-201.

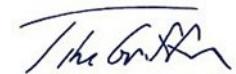
¹⁸ *Id.*

¹⁹ Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 273 (2012).

3. Conversion. To convert to a water authority, a qualified corporation must pay a fee and file the appropriate paperwork with the Natural Resources Division.²⁰ As explained above, HSV cannot use A.C.A. § 4-35-202 to convert to a water authority because it has no legal status. But the POA could convert to a water authority if the Director of the Natural Resources Division determines that the POA is a qualified corporation under A.C.A. § 4-35-103(7).

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

Sincerely,



TIM GRIFFIN
Attorney General

²⁰ 4 C.A.R. § 1-301.