TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-096

October 6, 2025

The Honorable John Thurston
Treasurer of State
500 Woodlane, Suite 220
Little Rock, Arkansas 72201

Dear Treasurer Thurston:

You have requested an opinion from this Office concerning Act 453 of 2023, codified at A.C.A. § 14-234-120. Subdivision (c)(1) of that statute establishes a process under which certain moneys are withheld from or restored to municipalities that fail to file water or sewer system reports. Under the statute, when a municipality fails to file its report, the Legislative Joint Auditing Committee "may give notice of that fact to the Treasurer of State." Upon receiving that notice, the Treasurer "shall then withhold any turnback funds due the municipality in escrow."

Both those steps have happened here. In July 2025, the Legislative Joint Auditing Committee notified you under the statute that 43 municipalities had failed to submit their required reports. And, upon receiving that notice, you withheld the turnback funds.

Your question relates to how the funds are restored. While the funds are being withheld, they must be placed in "escrow until notified by the Legislative Joint Auditing Committee that all reports covering periods through the most recent fiscal year have been filed, at which time the escrowed turnback funds shall be released to the municipality."

You report that, on September 12, 2025, the Legislative Joint Auditing Committee voted to direct you to release turnback funds currently held in escrow under A.C.A. § 14-234-120(c)(1). While three of the original 43 municipalities have since submitted their reports, the Committee has directed you to release turnback funds "to all remaining municipalities on the list submitted in July if … [they] completed an audit by December 31, 2025 (or submitted an engagement letter stating that an audit would be completed by December 31, 2025)."

You ask whether you should release these funds on the next distribution date of October 10, 2025.

RESPONSE

Under A.C.A. § 14-234-120, the Treasurer may release withheld turnback funds to a municipality only upon receiving notice from the Legislative Joint Auditing Committee that a municipality has submitted all applicable reports concerning municipal water and sewer systems. An engagement letter from a municipality promising to complete an audit and submit reports in the future does not satisfy the statutory condition for the release of funds. But for reasons discussed in the opinion, a successful motion by the Committee to expunge the July 2025 notice would authorize the Treasurer to release the withheld funds from the date of the July 2025 notice to the date of expungement.

DISCUSSION

Act 453 of 2023 requires municipalities to submit certain municipal water and sewer system reports to the Legislative Auditor within eighteen months after the end of the fiscal year the report covers. If the municipality fails to do so, the Legislative Joint Auditing Committee "*may* give notice of that fact to the Treasurer of State."[1] Upon receiving the notice, the Treasurer "*shall* then withhold any turnback funds due the municipality in escrow *until* notified by the Legislative Joint Auditing Committee" that all applicable reports have been filed.[2]

Thus, after the Treasurer receives an initial notice of noncompliance, he lacks the authority to release the turnback funds. That authority is restored only after he receives a second notice from the Committee, stating that the applicable reports have been filed under A.C.A. § 14-234-120. If the Treasurer does not receive this second notice, he does not have the authority to release the funds.

Your question may be prompted by uncertainty regarding the scope of the Committee's authority. A legislative committee must act within the authority it is given by the General Assembly.[3] While A.C.A. § 14-234-120 grants the Legislative Joint Auditing Committee discretion, this discretion lies in whether to send an initial notice. The General Assembly has not authorized the Committee to submit a second notice to the Treasurer directing funds be restored or changing the conditions under which the Treasurer releases withheld funds.

To the extent the General Assembly wishes to change this process, it may amend the conditions under which the Treasurer may release withheld turnback funds under A.C.A. § 14-234-120. It may also amend the applicable statutes to broaden the Committee's discretion at different stages of the process under § 14-234-120.

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[1] A.C.A. § 14-234-120(c)(1) (emphasis added).

[2] *Id.* (emphases added).

[3] *See generally* Ark. Att'y Gen. Ops. 94-170, 77-125 (discussing the authority of legislative committees).

Rather than countermanding its earlier notice, the Committee may simply vote to expunge its July 2025 notice to the Treasurer, thereby nullifying the legal effect of that notice. If the Committee's rules of parliamentary procedure authorize it to expunge acts it has taken, the Committee may follow its own rules and expunge its July 2025 notice to the Treasurer.[4] And if the Committee does not have its own specific rules on expunging votes, the Committee may expunge its notice by a two-thirds vote of the total membership of the Committee.[5] The expunged notice would be treated as though it were never sent. It is my opinion that a successful motion to expunge would authorize the Treasurer to release the withheld funds from the date of the July 2025 notice to the date of expungement because it is as if the original notice never existed. A vote to expunge would also allow the Treasurer to continue to release the turnback funds until he receives another notice under A.C.A. § 14-234-120(c)(1). The Committee would not be acting contrary to State statute or the Constitution because it has the authority—independent of A.C.A. § 14-234-120—to expunge votes. Once the notice is expunged, the statutory condition triggering the Treasurer's obligation to withhold funds is no longer met. Accordingly, the Treasurer could then release the turnback funds without violating the statute.

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

Sincerely,

TIM GRIFFIN
Attorney General

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[4] A.C.A. § 10-3-408 ("The Legislative Joint Auditing Committee may establish any rules as it may deem fit which are not inconsistent with law.").

[5] Ark. House R. 19(h); Ark. Sen. R. 11.15; *see also* Ark. Const. art. V, § 12 ("Each house shall have power to determine the rules of its proceedings.").