

Sale of an Arkansas Municipal Water System: Arkansas Attorney General Opinion Addressing Applicable State Statutory Procedures



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The Arkansas Attorney General (“AG”) issued an August 29th Opinion addressing a question involving the sale of a municipal water system. See Opinion No. 2018-058 (“Opinion”).

Arkansas State Representative R. Trevor Drown of Dover, Arkansas, submitted the request for an Opinion. Representative Drown provided, in his request, a “factual scenario” that read as follows:

An Arkansas incorporated town (the “Town”) that owns and operates a water system (the “System”) is exploring whether it is in the best interest of the Town to sell the System (including the right to operate the System). The System will be sold as one unit (i.e., the entire System will be sold), and for purposes hereof, it is assumed that the fair market value of the System is in excess of \$20,000.

In its research regarding the procedures for sale of the System, the Town noted the requirements of Ark. Code Ann. § 14-199-302, which pertains specifically to a municipal corporation selling a water system, as well as the requirements of Ark. Code Ann. § 14-54-302 (generally pertaining to the purchase, lease, sale and disposal of municipal property). The Town is seeking guidance regarding which statutory scheme controls for purposes of the sale of the System.

Representative Drown then asked:

Does Ark. Code Ann. § 14-199-301 et seq., as a specific statute, control the procedures and requirements for the sale of the System, or is the Town required to comply with the procedures set forth in Ark. Code Ann. § 14-199-301 et seq. and with the procedures set forth in Ark. Code Ann. § 14-54-302 (particularly Ark. Code Ann. § 14-54-302(d))?

The AG concludes in response that “based on the standard rules of statutory construction,” that the sale of the municipal water system is governed by both of the referenced Arkansas statutory provisions.

The “Discussion” section of the Opinion puts forth a number of points in support of the conclusion, which include:

- Ark. Code Ann. §§ 14-199-302-305 (“305”) specifically addresses a town’s sale of its waterworks system or other municipally owned public utility
- Ark. Code Ann. § 14-54-302 (“302”) addresses sales of “any real estate or personal property owned or controlled by the municipality (requiring competitive bidding for sales of items municipal real estate or personal property worth more than \$20,000)

- 302 does not except sales of municipal water systems
- 305 does not affirmatively require competitive bidding in the sale of town water systems
- 305's failure to affirmatively require competitive bidding does not create a conflict with 302
- Absent a conflict and because 302 applies to all sales of municipal property, there is no reason to conclude that it does not apply to municipalities' sales of their water systems.

A [copy of the Opinion](#) can be found here.