



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2018-058

August 29, 2018

The Honorable R. Trevor Drown
State Representative
P. O. Box 1182
Dover, AR 72837-1182

Dear Representative Drown:

This is in response to your request for an opinion regarding the sale of a municipal water system. In this regard, you have provided the following factual scenario:

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.

In light of the foregoing, you have posed the following question:

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))?

RESPONSE

It is my opinion, based on the standard rules of statutory construction, that the sale of a town's water system is governed by *both* Ark. Code Ann. § 14-199-301 *et seq.* and Ark. Code Ann. § 14-54-302.

DISCUSSION

As you have noted, Ark. Code Ann. §§ 14-199-302–305 specifically address a town's sale of its waterworks system or other municipally owned public utility.¹ Ark. Code Ann. § 14-54-302, by contrast, addresses sales of “any real estate or personal property owned or controlled by the municipality,”² and, *inter alia*, requires competitive bidding in sales of items of “[m]unicipal real estate or personal property” worth more than \$20,000.³ Your question asks whether this competitive-bidding requirement, as well as section 14-54-302's other sales procedures, applies to sales of municipal water systems in light of the more specific statutes regarding those sales.

Section 14-54-302 does not except sales of municipal water systems from its requirements. By its terms, it applies to “any real estate or personal property owned or controlled by the municipality[.]”⁴ However, were there a conflict between section 14-54-302 and section 14-199-302 *et seq.*, the latter statutes, which specifically address water system sales, would control: “[i]n statutory construction where specific expressions conflict with general expressions, the greater effect is given to the more specific expression.”⁵

¹ See Ark. Code Ann. § 14-199-302(a) (Repl. 1998) (addressing the sale of “a system of waterworks or gas or electric plants”).

² Ark. Code Ann. § 14-54-302(a)(1) (Supp. 2017).

³ *Id.* at § 14-54-302(d).

⁴ Ark. Code Ann. § 14-54-302(a)(1).

⁵ *Thomas v. Easley*, 277 Ark. 222, 224, 640 S.W.2d 797, 798 (1982).

In sum, if section 14-54-302 does not conflict with section 14-199-302 *et seq.*, both section 14-54-302 and section 14-199-302 *et seq.* govern water sales. If section 14-54-302 does conflict with section 14-199-302 *et seq.*, then only the latter statutes govern water sales.

Unlike section 14-54-302, section 14-199-302 *et seq.* do not affirmatively require competitive bidding in water system sales. But their merely not affirmatively requiring competitive bidding is insufficient to create a conflict with section 14-54-302. To conflict with section 14-54-302, section 14-199-302 *et seq.* would have to provide that competitive bidding *is not required*. They do not do so.

Section 14-199-302 *et seq.* says nothing about the conduct of water-system sales themselves. Section 14-199-302 provides essentially two preconditions to the sale of a municipal water system or other public utility: 1) the municipality's council must resolve by majority vote that a sale would be in the municipality's best interest,⁶ and 2) a petition, signed by a majority in value of the municipality's real property owners, must be filed with the council within one year thereafter supporting the sale and stating a minimum price.⁷ These preconditions to authorizing a water system sale do not address how the sale is to be conducted; and the requirement of a stated minimum price is consistent with a competitive-bidding procedure. Sections 14-199-303, 14-199-304, and 14-199-305, respectively, address the method of payment for a public utility, the method of transfer of the utility to the buyer, and the use and disbursement of sale proceeds.⁸

Individually and in their totality, these provisions leave open the question of *how* a public-utility sale is conducted, speaking only to pre-sale procedures and sale consummation. They do not, therefore, explicitly or implicitly conflict with section 14-54-302's requirement of competitive bidding, or any other provision of section 14-54-302.⁹ As there is no conflict—and as section 14-54-302 applies by

⁶ See Ark. Code Ann. § 14-199-302(a)

⁷ See *id.* at § 14-199-302(b)(1).

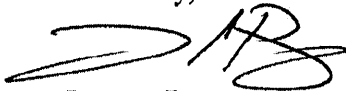
⁸ See *id.* at §§ 14-199-303–305.

⁹ In addition to requiring competitive bidding, section 14-54-302(b) requires “a majority vote of the governing body of the municipality” for sale *execution* (Ark. Code Ann. § 14-54-302(b)), a point on which section 14-199-302 *et seq.* are silent. *Cf.* Ark. Code Ann. § 14-199-302(a) (requiring majority approval to initially authorize a sale). Section 14-54-302(c) provides an

its terms to *all* sales of municipal property—there is no reason to conclude that § 14-54-302 does not apply to municipalities' sales of their water systems.

It is therefore my opinion that *both* Ark. Code Ann. §§ 14-54-302 and 14-199-302 *et seq.* govern municipal sales of water systems.

Sincerely,

A handwritten signature in black ink, appearing to read 'LR', is written over the typed name.

LESLIE RUTLEDGE
Attorney General

exception from competitive bidding for property worth \$20,000 or less, while section 14-54-302(e) provides alternative means of disposition of obsolete property. Section 14-54-302(f) addresses municipal property sale recordkeeping. Sections 14-199-302 *et seq.* do not address these subjects and do not conflict with section 14-54-302's provisions regarding them.