Wind Energy Facilities/Local Legislative Bodies: Arkansas Attorney General Opinion Addressing Act 945 of 2025



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The Arkansas Attorney General ("AG") addressed in an Opinion various questions regarding Act 945 of 2025. See Opinion No. 2026-060.

The AG was responding to questions from State Representative Brad Hall of Van Buren.

The questions addressed included:

1. If a wind energy facility is deemed exempt under A.C.A. § 23-18-1418 of Act 945, is the local legislative body for the jurisdiction in which the wind energy facility is located also exempt from adhering to Act 945?
    1. The AG responds in the negative, stating that Act 945 does not exempt a local legislative body merely because a wind energy facility in its jurisdiction qualifies for the exemption in A.C.A. § 23-18-1418. That exemption applies to a "wind energy facility project" under development as of April 9, 2025—not to a governmental body, local legislative body, or other entity.
2. Can a local legislative body enact regulations less restrictive than Act 945 for a wind energy facility in their jurisdiction, if that wind energy facility is deemed exempt under A.C.A. § 23-18-1418?
    1. The AG responds in the negative, stating that Act 945 does not permit a local legislative body to adopt regulations that are less restrictive than the Act. Under A.C.A. § 23-18-1413, local regulations must remain consistent with Act 945, and local permit criteria may not be less restrictive than the criteria established by the Act.
3. Does a local legislative body have the right to pass an ordinance regulating a wind energy facility in their jurisdiction if that wind energy facility has been deemed exempt by the Arkansas Public Service Commission under A.C.A. § 23-18-1418 of Act 945?
    1. The AG responds in the negative, stating that A local legislative body may not rely on A.C.A. § 23-18-1413 as authority to regulate a wind energy facility project that is exempt under Act 945.

The Opinion does note that Act 945 does not displace independent local, state, or federal requirements that apply by their own force. For example, it states that the Act does not amend the Arkansas Water and Air Pollution Control Act; affect the jurisdiction of the Division of Environmental Quality, the Arkansas

Pollution Control and Ecology Commission, or the Arkansas Game and Fish Commission; or affect the requirement to obtain permits from any state agency or federal entity with jurisdiction over a facility. Further, it is noted that depending on the project and location, those may include generally applicable zoning, subdivision, road-use, building, drainage, floodplain, environmental, wildlife, aviation, utility, or other permitting requirements.

A copy of the Opinion can be found here.