

August 30, 2012

Hon. Robert Herzfeld
Administrative Judge, 22nd Judicial Circuit
Benton, AR 72015

VIA HAND DELIVERY

Dear Judge Herzfeld:

Recently, issues have arisen concerning the Circuit Clerk's role in conducting commissioner's sales. Based on my understanding, the Arkansas Attorney General has opined in Op. No. 2011-103 that serving as a commissioner to sell property is not one of the circuit clerk's official functions and that the clerk could receive the commissioner fee for conducting the sale of property.

The Attorney General further opined in this opinion that, by virtue of his/her office, the circuit clerk used to be the ex-officio commissioner of the circuit court. Because of that fact, the clerk could not keep the fee received for serving as commissioner but would instead remit any commissioner fees received to the county treasury pursuant to A.C.A. § 14-14-1313.

Upon the adoption of Act 1185 of 2003, the statute that conferred upon the clerk the ex-officio commissioner's duties was repealed. Therefore, the Attorney General has opined that "*there is nothing that ties a commissioner's duties to a circuit clerk's official functions. That means that when a person who is a circuit clerk is appointed to serve as a commissioner, the person is serving as a commissioner in his or her private capacity as a general citizen, not in his or her official capacity as a circuit clerk.*"

My main concern is not serving as a commissioner in a private capacity nor in personally receiving the commissioner's fees that are allowed by A.C.A. § 21-6-412(a)(1) notwithstanding the Attorney General's opinion. To alleviate any issues regarding commissioner's sales in the 22nd Judicial Circuit, I would respectfully propose as follows:

1. A standing order be adopted by the 22nd Judicial Circuit Judges that all orders appointing the Saline County Circuit Clerk as commissioner for the sale of property in this judicial circuit are appointing the Clerk in his or her official capacity as circuit clerk, unless another person is specifically appointed commissioner; and
2. Commissioner's fees remitted to the Clerk pursuant to court order would be remitted to the County General Fund as per A.C.A. § 14-14-1313.

Since taking office January 1, 2011, I have never been comfortable receiving payment for conducting these sales. As an elected official, I do not believe I should receive extra payments for performing duties related to my office. It appears to be legal, but in my mind it is not the

right thing for an elected official to do. I understand that what is right and what is legal are not always the same thing.

While in office, I have taken these commissioner fees and given them to charitable causes of my choosing. When there is a commissioners' sale, it is because of someone's unfortunate circumstances. I do not see how an elected official personally profiting from someone's misfortune is right. It may be legal, but it isn't right.

Please advise my office at your earliest convenience if the solution outlined in this letter would be acceptable to yourself and your fellow circuit judges or if additional information is needed. Thank you in advance for your consideration.

Sincerely,

Dennis Milligan

Saline County Circuit Clerk

cc: Hon. Gary Arnold
Hon. Bobby McAllister
Hon. Grisham Phillips