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THE SENATE
STATE OF ARKANSAS

MEMBER:
INSURANCE AND COMMERCE
TRANSPORTATION, TECHNOLOGY AND LEGISLATIVE AFFAIRS
JUDICIARY
CHILDREN AND YOUTH
EFFICIENCY

December 27, 2018

The Honorable Leslie Rutledge
Attorney General - State of Arkansas
ATTN: Opinions Department
323 Center Street, Suite 1100
Little Rock, Arkansas 72201

Dear Attorney General Rutledge:

I am writing to request an Attorney General's opinion in my capacity as a State Senator and on behalf of Representative-Elect Joe Cloud on a matter of significant importance to the citizens of our districts and all of Pope County. It is, unfortunately, very time sensitive. I am officially requesting your opinion regarding the power of the voters of Pope County to, by initiated ordinance, restrict the authority of the County Judge to act unilaterally with regard to approving a casino applicant under Amendment 100 to the Arkansas Constitution.

BACKGROUND

In the General Election on November 6, 2018, the citizens of Pope County overwhelmingly approved the ordinance, which added an amendment entitled "***Pope County Local Control for Casino Gaming Amendment of 2018***". A copy of this ordinance is attached with this request for your review.

Our incumbent County Judge did not seek reelection. He will leave office at the end of his term, which is approximately 4 days from now. He has held no hearings nor offered any indication that he is in private negotiations with or in support of a small casino operator from Mississippi until the last couple of days. However, the incumbent County Judge has now indicated with great seriousness to Pope County citizens that he is strongly considering signing a letter to the Arkansas Gaming Commission endorsing this small operator to proceed with the casino license application process. This would be an outrage to the Citizens of Pope County. If the citizens of Pope County ever decide to consider exercising the option to invite a casino operator into the county, that process should be open, transparent, and in accordance with the will of the people, including the referenced Ordinance above. My sincere hope is that the County Judge will not sully his more than 30 years of service to the County with such last minute defiance of the clear will of the citizenry.

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However, to the extent that he continues to seriously consider such an action, I have questions about his authority to do so. Thus this opinion request and my questions below.

QUESTIONS:

1. Does the County Judge of Pope County have authority to execute such a letter in violation of the above Ordinance, which was adopted by the citizens and became law on November 14, 2018?
2. Amendment 100 places no restrictions on the power of a mayor or county judge to rescind, amend or otherwise revoke any letter he or she issues. Nor does Amendment 100 expressly prohibit a mayor or county judge from rescinding, amending or otherwise revoking any such letter signed by his or her predecessor in office, prior to the Gaming Commission acting upon that letter and otherwise valid application. If the outgoing incumbent Pope County Judge executes such a letter before vacating his office, will his successor have the authority to rescind, amend or otherwise revoke it upon taking office?
3. Yesterday, the Racing Commission approved the following rule for public comment: "Letters of support and resolutions by the Quorum Court required by these rules and the Amendment shall be dated after the effective date of the Amendment." With that language in mind, can the Arkansas Gaming Commission amend that Rule, and remain compliant with Amendment 100, to require that any application for a casino license must be accompanied by a "current" or "valid" letter from a county judge (and city mayor if applicable), meaning a letter that has not been rescinded, amended or otherwise revoked by the incumbent county judge (or mayor, if applicable) between the time of said letter's issuance and the time of submission of an application for license to be considered by the Commission?
4. Would an Act of the General Assembly requiring that the Gaming Commission only consider an application that is supported by a letter or letters that have not been rescinded, amended or otherwise revoked by the incumbent County Judge (and city mayor, if applicable) be in anyway inconsistent with the plain language of Amendment 100?

I thank you in advance for your prompt consideration of this opinion request.

Respectfully,



Breanne Davis
State Senator
District 16

ENCLOSURE –Ordinance Amendment - Pope County Local Control for Casino Gaming Amendment of 2018.”

SECTION 1: The Code of Ordinances, Pope County, Arkansas, is amended by adding a section (article, etc.) to read as follows:

§ 1.1 Short Title. This Amendment shall be known as the “Pope County Local Control for Casino Gaming Amendment of 2018.”

§ 2.1 Definitions. For the purposes of this Amendment, the terms below are defined as follows:

(a) “Casino” shall be defined as a facility where casino gaming is conducted as authorized by any Arkansas law or constitutional amendment.

(b) “Casino Applicant” is defined as any individual, corporation, partnership, association, trust, limited liability company or other entity applying for a license to operate a facility where casino gaming is conducted as authorized by Arkansas law or constitutional amendment.

(c) “Casino Gaming” is defined as dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value. If and when not prohibited by federal law, casino gaming shall also be defined to include accepting wagers on sporting events.

(d) “County Judge” is defined as the individual who is duly elected or appointed to serve as the County Judge for Pope County, Arkansas.

(e) “Quorum Court” is defined as the body of duly elected justices of the peace who make up the Pope County, Arkansas Quorum Court.

§3.1 Restriction on the County Judge until authorized by a Vote of the People. The County Judge shall be prohibited from issuing a Letter of Support or substantially giving similar approval or support for a Casino Applicant who is applying to the Arkansas Racing Commission, or other governing authority, for a license to conduct Casino Gaming at a casino to be located within Pope County, Arkansas without first referring the question as to the issuance of support of a Casino or Casino Applicant to a local election, at either a general election or special election, where in order for the County Judge to issue any such support letter or similar, a majority of the registered voters of Pope County, Arkansas must approve and authorize the County Judge to take such action.

§3.2 Restriction on the Quorum Court until authorized by a Vote of the People. The Quorum Court shall be prohibited from passing any resolution giving approval or support for a Casino Applicant who is applying to the Arkansas Racing Commission, or other governing authority, for a license to conduct Casino Gaming at a casino to be located within Pope County, Arkansas without first referring the question as to the issuance of such a resolution in support of a Casino or Casino Applicant to a local election, at either a general election or special election, where in order for the Quorum Court to issue any resolution or similar, a majority of the registered voters of Pope County, Arkansas must approve and authorize the Quorum Court to take such action.

§4.1 Severability. If any section of this Amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this Amendment that can be given effect without the invalid provision or applications, and to this end, the provisions of this amendment are declared to be severable.

SECTION 2: Effective Date: this Amendment shall be effective on and after November 14, 2018.