EXHIBIT H5

General Turnback for Counties: Not a Grant

Payment for state services administered at the county level

Seems To Me...

Eddie A. Jones
County Consultant

There ain't no such thing as a free lunch. That's a popular adage communicating the idea that it is impossible to get something for nothing. The "free lunch" refers to the once-common tradition of saloons in the United States providing a "free" lunch to patrons who had purchased at least one drink. Many foods on offer were high in salt, such as ham, cheese, salted crackers and salted nuts. You get the picture, don't you? Those who ate them ended up buying a lot of "beverage." In other words, "There ain't no such thing as a free lunch." Someone always pays the bill.

So, who pays the bills for county government operations in Arkansas? For the most part counties do. They pay the bills with revenues derived from property taxes, sales and use taxes, fees, fines, costs and other sources of revenue. However, the state of Arkansas does provide county aid, known at the local level as general revenue turnback, and a few other sources of revenue to help offset the costs of state mandates on the county. County aid is not a grant. It is payment for state services administered at the county level. The state should be paying for those services. Not partially — but fully.

Let me provide some history and background concerning this issue. I will be as open and honest as possible, giving the state of Arkansas credit where credit is due. But I also will conclude that Arkansas is coming up short in its obligation and indebtedness to its 75 counties — and they are the state's counties, created to help the state deliver services.

The state of Arkansas recognized decades ago the moral and legal obligation they had to counties. They realized that the state must provide financial assistance to counties in order for the state's citizens to have any equity and equality in services that counties are required to provide — state services.

***

Court cases down through the years have long settled the fact that counties in Arkansas are political subdivisions of the state created for the public convenience in the administration of government. ACA § 14-14-102 states, "A county is a political subdivision of the state for the more convenient administration of justice *and* the exercise of local legislative authority related to county affairs." The word that I consider the most important word in this Arkansas law is the conjunction "and." A word connecting two separate clauses and two separate functions: (1) the state function of justice conveniently administered in accordance with law by county government, a political subdivision of the state; and (2) the local function of legislative and administrative authority relating to county affairs.

The Arkansas Supreme Court has previously opined, both in 1978 and 1980 after the passage of Amendment 55 — the Arkansas Constitutional amendment restructuring county government, that "It must be remembered that counties are still civil divisions of the state for political and judicial purposes and are the state's auxiliaries and instrumentalities in the administration of its government. They are political subdivisions of the state for the administration of justice. The word 'county' signifies a portion of a state resulting from a division of the state into such areas for better government thereof and the easier administration of justice. In these respects, we have clearly held that nothing in Amendment 55 changed the status of the county insofar as its primary purpose and functions are concerned." [*Beaumont, Judge v. Adkisson, Judge*, 267 Ark. 511 (1980); *Mears v. Hall*, 263 Ark. 827 (1978)]

The state of Arkansas recognized decades ago the moral and legal obligation they had to counties. They realized that the state must provide financial assistance to counties in order for the state's citizens to have any equity and equality in services that counties are required to provide — state services. I doubt that at the time they had any clue how profoundly correct that was.

Act 386 of 1943 established the Cities and Counties Fund and found, "whereby it is impossible for municipalities and counties to efficiently and safely administer municipal and county statutory governmental functions without additional revenues for such purposes." Without the provision of adequate funding, the General Assembly of 1943 deemed the conditions created would "jeopardize the public health and safety of the citizens of the State, the Municipalities and the Counties." A decade later, Act 188 of 1953 created and funded a County

Aid Fund. Counties still receive their "general turnback" funds each month from the County Aid Fund. Since the beginning of county aid, turnback dollars have very gradually increased, but the percentage of state general revenue the counties receive has declined sharply. In fact, the county aid appropriation in 1980 was $18,875,249; the appropriation in 2015 was $21,645,067 — a very small increase over a 35-year period.

History of Arkansas County General Funds

1980	$18,875,249
1985	$18,515,744
1990	$20,147,445
1995	$21,552,313
2000	$21,552,313
2005	$19,741,546
2010	$19,346,715
2015	$21,645,067

***

The average inflation rate from 1980 through 2015 was 3.37 percent. If counties had received an inflation adjustment of only 3 percent during that time frame, the county aid appropriation for 2016-17 would be $54,705,725. That would help counties immensely. County governments in Arkansas are currently subsidizing the state court system with county general funds to the tune of $45.7 million as validated by a Special Report of Arkansas Legislative Audit on the State Court System issued in 2015.

For the sake of fairness, I must mention that the state of Arkansas made public defenders state employees. Until Jan. 1, 1998, county government had full responsibility for the financial operation of public defender offices, including salaries. That changed with the passage and enactment of Act 1341 of 1997 to "phase in the transfer of funding of the state trial court system from county government to the State of Arkansas." This act of the General Assembly made public defenders state employees but left counties with the financial responsibility of funding public defender office operation — and took part of our revenue to help them fund the salaries of public defenders.

With the passage of Act 1341 of 1997, counties of Arkansas were required to relinquish 85 percent of the amount certified as having been collected during calendar year 1994 for the purpose of funding the office and operation of the public defender. This money had been available each year in the County Administration of Justice Fund for use in funding the public defender operation. County government gave up 85 percent of this funding source for the state to take over the salaries for public defender offices, and counties retained the other 15 percent to help pay for office operation.

Section 12 of that act, codified as ACA § 16-87-302, breaks down the responsibility for the funding of public defenders. Counties are responsible for the payment of the following: (1) the cost of facilities, equipment, supplies and other office expenses necessary to the effective and efficient operation of the public defender's office; and (2) the compensation of additional personnel within the office of the public defender, when approved in advance by the quorum court. [Note: The state is responsible for the salaries of public defenders and the salaries of secretaries and other support staff of the public defender's office.]

I must also let you know the state of Arkansas made deputy prosecutors state employees effective Jan. 1, 2000, with the passage and enactment of Act 1044 of 1999, an act that stated, "it is the intent of the General Assembly to transition to a state-funded deputy prosecuting attorney system." Even though deputy prosecuting attorneys became state employees, counties remained responsible for 80 percent of what was budgeted and expended for deputy prosecutor salaries and associated fringe benefit costs in the calendar year 1999. That amount was ascertained to be $5,459,621.28, and each county's share is withheld from its general turnback by the state each month. That deduction of more than $5 million from county government's gross "county aid" appropriation has happened every year since the year 2000 — and, without a change in law, it will continue to happen every year. So for more than 15 years there has been no continued "transition."

***

In addition to the more than $5 million that counties contribute toward salaries for deputy prosecutors — who are state employees — counties also are required to fund office operations. Act 1044 of 1999, Special Language, Section 10 requires each county or counties within a judicial district to bear the responsibility and expense of providing the cost of facilities, equipment, supplies, salaries and benefits of existing staff, *and additional personnel when approved by the quorum court* [ACA § 16-21-156]. Office operational costs have ballooned post-1999 since full-time deputy prosecutors are not allowed to conduct a private practice. Therefore the entire office operations cost is borne by the county.

Do counties have revenue sources that are dedicated to the court system? Yes, we do. But they are not sufficient to cover the costs. Here is a list of those revenues:

- Bail Bond Fee of $20 is remitted to the Public Defender Commission. Of each $20 fee, $3 is remitted quarterly to the county to defray the operating expense of the public defender office [ACA § 17-19-301].
- Circuit Court Installment Fees are to be used to fund Circuit Court-related technology and to defray the cost of fine collection [ACA § 16-13-704].
- Court Costs, Fees, and Fines for the Juvenile Division of the Circuit Court are to be used to provide services and supplies to juveniles [ACA §§ 9-27-367 and 16-13-326].
- Program User Fees set by Drug Court judges are to be used for the administration of the Drug Court Program [ACA § 16-98-304].

See **"TURNBACK"** on Page 20 >>>

Turnback

Continued From Page 19 <<<

- Juror reimbursement to the county is allowed on a quarterly basis for the $50 per diem fees paid to persons selected and seated to serve as a member of a grand jury or petit jury [ACA § 16-34-106].
- Circuit Court Fines.

Additional funding comes from the Court Security Grant Program, which is administered by the Administrative Office of the Courts to provide financial assistance to counties for implementation of physical security and emergency preparedness plans for the courts [ACA § 16-10-1006].

***

In addition, ACA § 16-10-307 established the County Administration of Justice Fund, which partially finances the following court agencies and programs with the county share of court costs established in ACA § 16-10-305:

- Prosecuting Attorney
- Prosecuting Attorney's Victim-Witness Program
- Public Defender
- County Law Library

Here's the problem: According to the Special Report on Courts released by Legislative Audit in 2015, the above-mentioned dedicated county revenues totaled $18.4 million for calendar year 2014. Expenses for the court system paid by counties in 2014 totaled $64.1 million. That's a $45.7 million difference — a deficit difference. To quote from that published report, "The deficit is primarily absorbed at the county level through the counties' general funds."

If it were a county judicial system, it would be a county problem. But, it's not. It is a state judicial system — a state court system. The state of Arkansas is divided into state judicial districts — just like it is divided into state school districts.

My good friend Mike Rainwater said soon following the *Lake View School Dist. No. 25 v. Huckabee*, 351 Ark. 31 (2002) case that much of that case was applicable to county government as a subdivision of the state. Rainwater said, "While the state can delegate to counties the duty to discharge the state's administration of justice duties, the state is nevertheless ultimately responsible for the discharge of those duties..." The Arkansas Supreme Court in its *Lake View* ruling said, quoting its prior ruling in *DuPree v. Alma School Dist. No. 30 of Crawford County*, 279 Ark. 340, 651 S.W.2d 90 (1983), "If local government fails, the state government must compel it to act, and if the local government cannot carry the burden, the state must itself meet its continuing obligation."

Rainwater also said, "The same is true when the funding scheme adopted by the state results in a denial of substantial equality among all the citizens of the state with respect to the discharge of the state's duty to provide certain services that are an essential element of due process" — the state court system. In both the *Lake View v. Huckabee* and *DuPree v. Alma School District* court cases the Supreme Court said, "Equal opportunity is the touchstone for a constitutional system."

***

The state has declared that certain essential governmental services must be provided to the citizens of Arkansas by the state's 75 counties. ACA § 14-14-802(a) establishes a priority of required county spending. The "administration of justice" through the court system is at the top of the list [a state court system], followed by "law enforcement protection services and the custody of persons accused or convicted of crimes" — that includes state prisoners backed up in county jails. The rest of the mandated list of expenditures deals primarily with the operation of the county constitutional offices and "court records management."

Of course, a county may provide many other services and functions, and many of them are expected by a county's constituency. ACA § 14-14-802(b) provides the authority for a county government to establish the provision of a litany of governmental services and functions that is a list that dwarfs the mandated services. However, counties find little money to expend in these important areas due to the huge burden of subsidizing the state court system, housing state inmates at a reimbursement rate about $15 per day per prisoner below the actual cost to house the inmates, and other state mandates. The vast majority of counties cannot adequately compensate their county officials and employees because they must expend too many of their general fund dollars on state mandates.

The state of Arkansas through the General Assembly has provided avenues for counties to levy and collect revenues for both the state-mandated expenditures and for the costs associated with the local county function of legislative and administrative authority relating to county affairs. We have already addressed the various revenues for the court system and found them to be sorely lacking to cover the costs.

Counties also have the authority to levy a maximum of 5 mills as a property tax on all personal and real property in the county for general operations [Arkansas Constitution, Article 16, § 9 and ACA § 26-25-101]. Many counties are either at the maximum or near the maximum. Most of those that aren't have made a deal with the electorate that if they would approve a sales tax or sales taxes, the county would not increase property taxes. The 5-mill general tax maximum has been in place since the 1874 Arkansas Constitution.

In 1981 the state of Arkansas provided statutory authority for counties to enact sales and use taxes with an affirmative vote of the county's electorate. That authority has been expanded substantially over the years. All but two counties have a county sales tax, and many have multiple sales taxes. Without the sales tax most counties would have already "gone down for the third time."

Just as food for thought, think about this: Municipalities are currently provided an appropriation of $29,372,099 in general revenue turnback. The general revenue turnback appropriation for counties is $21,428,616 — but counties have more than $5

million of that amount deducted by the state to help pay salaries for deputy prosecutors. What's my point? It's very basic. County government is the political subdivision of the state of Arkansas, created to help the state conveniently administer justice for a state court system. Counties are the local government division given the vast majority of state mandates. And according to the latest census, the municipalities of Arkansas are required to serve 64.64 percent of the population while the 75 counties of Arkansas serve the very same constituency as the state of Arkansas — 100 percent of the population.

***

I heard a story that goes like this: A hobo comes up to the front door of a neat looking farmhouse and raps gently on the door. When the farm owner answers, the hobo asks him, "Please, sir, could you give me something to eat? I haven't had a good meal in several days."

The owner says, "I have made a fortune in my lifetime by supplying goods for people. I've never given anything away for nothing. However, if you go around the back, you will see a gallon of paint and a clean paint brush. If you will paint my porch, I will give you a good meal."

So the hobo goes around back, and a while later he again knocks on the door. The owner says, "Finished already? Good. Come on in. Sit down. The cook will bring your meal right in."

The hobo says, "Thank you very much, sir. But there's something that I think you should know. It's not a Porsche you got there. It's a BMW."

There's something I think the state should know. And I say this respectfully — it's not a "free lunch" you got there. It's a debt. Article 16, § 2 of the Arkansas Constitution says that the General Assembly shall "provide for the payment of all just and legal debts of the state." No doubt, the state court system costs are a debt of the state.

Counties of Arkansas are not complaining about what we were created to do. We serve willingly and with great pride. We simply need the state to help pay for the state services we provide the state "for the more convenient administration of justice" so that we can adequately provide for "county affairs" [§ 14-14-102]. We call upon the state to eschew their responsibility no longer.

It is incumbent upon the General Assembly to assure vital services mandated by law are provided to all citizens throughout the state of Arkansas. It is the paramount duty of the state to provide for the fulfillment of basic governmental functions. Such was at the legal foundation of the *Lake View v. Huckabee* case. Therein the Supreme Court of Arkansas declared: "The roles of the executive and legislative branches are integral to assuring … the will of the people of our state as expressed in our constitution is fulfilled." Should any segment of the citizenry be denied the basic tenants of government: law, order, safety and justice? County Aid was created, not as a grant, but in recognition of a state responsibility and the fact that most counties do not have sufficient revenues to provide both the vital state mandated services and other very important county functions.

Counties of Arkansas are not complaining about what we were created to do. We serve willingly and with great pride. We simply need the state to help pay for the state services we provide the state "for the more convenient administration of justice" so that we can adequately provide for "county affairs." We call upon the state to eschew their reponsibility no longer.

County government understands as well as any governmental unit that there is no public tooth fairy and that Father Christmas does not work in the treasury. However, it is in the best interest of the state of Arkansas for the General Assembly to provide additional general funding for counties to assure basic mandated services can be adequately and equitably provided to all Arkansans. Theodore Roosevelt said, "In any moment of decision, the best thing you can do is the right thing. The worst thing you can do is nothing."

75 Counties - One Voice