TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-068

November 18, 2025

The Honorable Clint Penzo
State Senator
Post Office Box 7988
Springdale, Arkansas 72766

Dear Senator Penzo:

I am writing in response to your request for my opinion concerning Act 519 of 2025.

You report that in light of Act 519—which requires the majority of the voting members of a county planning board to reside in unincorporated areas of the county—a quorum court was advised by legal counsel "to disband the existing planning board and reappoint all new members to comply with the newly established requirement." You also note that "an opposing interpretation asserts that existing, lawfully appointed and confirmed board members should be allowed to serve the remainder of their terms, with future appointments used to gradually rebalance the board" to comply with the act.

Because Act 519 of 2025 did not contain an emergency clause or other specified effective date, it went into effect on August 5, 2025.[1] The act applies to planning boards created before and after its passage.[2]

Against this background, you ask the following questions:

1. Does Act 519 require counties to immediately restructure their planning boards to comply with the rural residency requirement? Or may counties allow existing planning board members to finish their current terms, bringing the board into compliance through attrition and future appointments?

[1] *See* Ark. Att'y Gen. Op. 2025-032 (opining that the effective date "of acts passed without an emergency clause or other specified effective date at the regular session of the 95th Arkansas General Assembly" was August 5, 2025).

[2] *E.g.*, Ark. Att'y Gen. Op. 2008-116 (noting that "[w]hen the legislature has intended to apply a new law only to districts created after a certain date, or to preserve prior law as to previously-created districts, it usually states as much in express terms").

2. If immediate compliance with Act 519 is required, may counties simply add members to their boards (within the twelve-member limit under 203(a)) to achieve the ratio required by Act 519 instead of eliminating existing members?

   Brief response: In response to your first two questions, Act 519 is currently in effect and applies to county planning boards created before and after its passage. This opinion discusses the four potential paths to compliance that you have raised: (1) addition; (2) attrition; (3) dissolution; or (4) subtraction.

3. Would the act of removing all members on an existing planning board prior to the expiration of their four-year term (and not for cause) expose a county to potential litigation:

   a. From members of the existing board who happen to reside in an unincorporated area of the county and who, despite not being a part of the problem Act 519 seeks to remedy, are nevertheless thrown out with the bath water?

   b. From all members who are prematurely removed given that, at the very most, Act 519 only requires a change of membership to a simple majority of its members to achieve the required ratio and thus never necessitates a wholesale removal of existing members?

4. Conversely, if the entire board is not removed, would the county be exposed to potential litigation for arbitrarily removing some members from office while arbitrarily leaving others to continue in their service?

   Brief response: In response to questions 3 and 4, both the likelihood of litigation and exposure to liability are generally outside the scope of an Attorney General opinion and should be addressed by the appropriate legal counsel. But concerning "arbitrarily removing some members from office while arbitrarily leaving others," the government cannot "arbitrarily" remove a planning board member because members can be removed only for cause.

5. What, if any, due process rights are owed to existing members who may be stripped of their positions (and their compensation under 204(c)) if Act 519 is read to require immediate removal of some or all members on county planning boards?

   Brief response: Members of a county planning board who serve for a fixed term and who may be removed only "for cause" have a property interest in their positions and should be given reasonable notice and a fair opportunity to be heard before removal.

6. If Act 519 does require the removal of some or all of the current members on county planning boards, which county official or officials are legally authorized to decide who and how many members will be removed to comply with the Act?

Brief response: If, for reasons discussed in the opinion, the member is a de facto officer, he or she can be removed by a court through a quo warranto action. Outside of such an action, the county judge may recommend removal for cause subject to the quorum court's confirmation.

7. Once Act 519 takes effect, will county planning boards lose their lawful authority to act until they have satisfied this new residency ratio requirement?

Brief response: Even if a board loses its lawful authority because it fails to meet Act 519's residency requirements, the acts of the members as de facto officers would be valid until such officers are removed through a quo warranto proceeding.

DISCUSSION

Question 1: Does Act 519 require counties to immediately restructure their planning boards to comply with the rural residency requirement? Or may counties allow existing planning board members to finish their current terms, bringing the board into compliance through attrition and future appointments?

Question 2: If immediate compliance with Act 519 is required, may counties simply add members to their boards (within the twelve-member limit under 203(a)) to achieve the ratio required by Act 519 instead of eliminating existing members?

1. Act 519's requirements. Act 519 of 2025, which amends A.C.A. § 14-17-203(a), requires a "majority of the voting members of the county planning board" to "reside in an unincorporated area of the county."[3] The act, however, does not identify how county planning boards are supposed to comply with that new requirement. Your questions concern how a board can come into compliance.

2. Compliance. If the majority of a board's voting members do not reside in an unincorporated area of the county, the board's configuration does not comply with Act 519. Does this mean that the only way to comply is to remove individual current members or dissolve the entire board? It does not. There is more than one way to restructure the board, and you specifically ask about four options: (1) addition; (2) attrition; (3) dissolution; or (4) subtraction.

2.1. Addition. If the seats on the board can lawfully be increased, the county judge may appoint additional members to the county planning board—subject to the quorum court confirming the appointments—as long as the total number of members remains between five and twelve.[4] This

[3] Codified at A.C.A. § 14-17-203(a)(4).

[4] A.C.A. § 14-17-203(a).

method allows the county to comply without removing any current member or dissolving the entire board.

2.2. Attrition. If the county planning board cannot add enough new members to meet Act 519's requirements, it can reduce the number of nonrural members through attrition—allowing current members to serve out their terms and replacing them with rural residents as vacancies arise.[5] But this path means the board remains out of step with Act 519 until the majority of members reside in an unincorporated area of the county.

2.3. Dissolution. No statute or constitutional provision expressly authorizes a county government to dissolve a county planning board, but no statute or constitutional provision prohibits it either. Creating a county planning board is permissive: "the county judge of any county may create a county planning board," subject to the quorum court's approval.[6] And a quorum court may "elect to assume the powers, duties, and functions of the board" if "implemented by ordinance."[7] The Arkansas Supreme Court has held that when a municipality has the authority to create a commission, it also has inherent authority to abolish it, provided there are no constitutional or statutory restrictions.[8]

Generally, abolishing a board or commission is not the same as removing members from the board.[9] While dissolving or abolishing a county planning board may have "the obvious effect of separating" individual board members from their positions, the member "has not been removed[;] the office itself has been terminated."[10] Arkansas Code § 14-17-203 provides for the mechanism by which board members can be removed, but it should not be read to curtail the power of the county judge and quorum court to undo what they are "empowered to do."[11]

But if the county judge and quorum court seek to dissolve or abolish the board as pretext for removing certain members to be replaced by others, courts may treat the acts as "removals" under

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[5] *See Attrition*, *The American Heritage Dictionary* 116 (5th ed. 2011) (defining "attrition" as the "gradual reduction in personnel or membership because of resignation, retirement, or death, often viewed in contrast to reduction from layoffs").

[6] A.C.A. § 14-17-203(a)(1).

[7] *Id.* § 14-17-203(f).

[8] *See City of Pine Bluff v. S. States Police Benev. Ass'n, Inc.*, 373 Ark. 573, 578, 285 S.W.3d 217, 221 (2008); *City of Ward v. Ward Water & Sewer Sys. by Pehosh*, 280 Ark. 177, 179–80, 655 S.W.2d 454, 456 (1983).

[9] *Pine Bluff*, 373 Ark. at 578, 285 S.W.3d at 221 (holding that "[i]n accordance with [] precedent and with [the Court's] standard of review for statutory interpretation," a removal for cause statute "applies only to the removal of individual commissioners, and not to the abolishment of a commission altogether").

[10] *Ward*, 280 Ark. at 178–79, 655 S.W.2d at 455 (interpreting a statute governing a city commission that contained similar language to the statutes concerning county planning boards).

[11] *See id.*

A.C.A. § 14-17-203,[12] triggering A.C.A. § 14-17-203(b)'s "for cause" requirement, as discussed below.[13]

2.4. Subtraction. To achieve Act 519's requirements by subtracting, or removing, individual members before their terms have expired, the county judge must recommend removal "for cause," and the quorum court must confirm the recommendation.[14] The applicable statutes do not define "for cause" or "cause." But the Arkansas Supreme Court has determined that "cause" in this context means "any act of commission or omission that … would stamp the person in question as unfit to occupy the position," such as misconduct.[15] Further, it must be a "legal cause" that "specially relates to and affects the administration of the office" and "directly affect[s] the rights and interests of the public."[16] Where an "appointing power may remove for cause," the appointing authority is also the "sole judge of the existence of the cause."[17]

The question, then, is whether statutory amendments by the General Assembly, such as those changing the required make-up of a county planning board, constitute sufficient cause for removal. While some current board members may not reside in an unincorporated area of the county, a court likely would not find that this fact qualifies as a "legal cause" for removal because it does not reflect an "act of commission or omission" or misconduct by the individual member.

3. Retroactivity. One might be concerned that Act 519's application to boards created before the act went into effect would render the Act retroactive. But, for reasons explained below, I do not believe that is the case.

An act is retroactive if it expressly or impliedly alters the legal consequences of a past action or event.[18] Courts presume that the General Assembly intends for its laws to apply only prospectively

[12] *See, e.g.*, *id.*, 280 Ark. at 179, 655 S.W.2d at 455–56.

[13] A.C.A. § 14-17-203(b).

[14] *Id.*

[15] *Williams v. Dent*, 207 Ark. 440, 450, 181 S.W.2d 29, 34 (1944).

[16] *Carswell v. Hammock*, 127 Ark. 110, 191 S.W. 935, 936 (1917) (quoting *State ex rel. Hart v. Common Council of City of Duluth*, 53 Minn. 238, 244, 55 N.W. 118, 120 (1893)) (internal quotations omitted); *see also For cause*, *Black's Law Dictionary* 783 (12th ed. 2024) (defining "for cause" as "[f]or a legal reason or ground").

[17] *See Patton v. Vaughan*, 39 Ark. 211, 215 (1882); *see also* Ark. Att'y Gen. Op. 87-5 (opining that what constitutes "cause" in a particular situation "is a subjective determination that must be made by the appropriate, responsible public officials").

[18] Ark. Att'y Gen. Ops. 2023-026, 2014-075, 2013-059. *But see JurisDictionUSA, Inc. v. Loislaw.com, Inc.*, 357 Ark. 403, 411, 183 S.W.3d 560, 565 (2004) (noting that the retroactive application of an act must be "stated or implied so clearly and unequivocally as to eliminate any doubt").

to future acts and events.[19] Laws should not be read as being retroactive if they may reasonably be read otherwise, and any doubt must be "resolved against retroactivity."[20]

Act 519 is not retroactive. It does not expressly state or "clearly implicate" that it applies retroactively.[21] Therefore, the presumption against retroactivity is not overcome and the act will not be considered retroactive.[22] If the majority of the voting members of a county planning board do not reside in an unincorporated area of the county, the board must determine the best path to comply.

Question 3: Would the act of removing all members on an existing planning board prior to the expiration of their four-year term (and not for cause) expose a county to potential litigation:

- ***a. From members of the existing board who happen to reside in an unincorporated area of the county and who, despite not being a part of the problem Act 519 seeks to remedy, are nevertheless thrown out with the bath water?***

- ***b. From all members who are prematurely removed given that, at the very most, Act 519 only requires a change of membership to a simple majority of its members to achieve the required ratio and thus never necessitates a wholesale removal of existing members?***

Question 4: Conversely, if the entire board is not removed, would the county be exposed to potential litigation for arbitrarily removing some members from office while arbitrarily leaving others to continue in their service?

While anyone can file a lawsuit, both the likelihood of litigation and exposure to liability are generally outside the scope of an Attorney General opinion and should be addressed by the appropriate legal counsel.[23]

On your question concerning "arbitrarily removing some members from office while arbitrarily leaving others," the government cannot "arbitrarily" remove a planning board member because members can be removed only "for cause," as discussed above.[24] Below I will analyze whether

[19] *Bolin v. State*, 2015 Ark. 149, 4, 459 S.W.3d 788, 791.

[20] *Arkansas Rural Med. Prac. Student Loan & Scholarship Bd. v. Luter*, 292 Ark. 259, 261–62, 729 S.W.2d 402, 403 (1987) (internal quotations omitted).

[21] Ark. Att'y Gen. Op. 2023-026.

[22] *Gannett River States Pub. Co. v. Arkansas Indus. Dev. Comm'n*, 303 Ark. 684, 688, 799 S.W.2d 543, 546 (1990).

[23] *E.g.*, Ark. Att'y Gen. Ops. 2010-113, 2002-122, 2002-078, 87-240 (opining that the potential for litigation "dictates that the individuals posing these questions look to those from whom they ordinarily seek legal advice").

[24] *See* A.C.A. § 14-17-203(b).

due process rights may apply. Additionally, if for reasons discussed further below, the member is a de facto officer, he or she can be removed by a court through a quo warranto action.

Question 5: What, if any, due process rights are owed to existing members who may be stripped of their positions (and their compensation under 204(c)) if Act 519 is read to require immediate removal of some or all members on county planning boards?

To establish a procedural due process violation under either the U.S. Constitution or the Arkansas Constitution in this context, a board member must first show that he or she has a property interest in the planning board membership and that a government's acts deprived the member of that property interest without notice or an opportunity to be heard.[25] Thus, the key question is whether a board member has a property interest in continued membership on the board. If not, due process protections do not apply.

A property interest must arise from a source independent of the constitution, such as state law or a contract.[26] When an appointed public "officer" does not serve at the pleasure of another official, but instead holds office subject to removal for specified reasons, that officer has a property interest in the position and must be given notice and an opportunity to be heard before removal.[27] These due process safeguards also apply if an officer is appointed to a fixed term and can only be removed "for cause," even if the statute does not provide specific grounds for removal.[28]

A public "office" typically involves the exercise of some of the State's sovereign power; its tenure, compensation, and duties are typically fixed by law; and the position typically requires the taking of "an oath of office, the receipt of a formal commission, and the giving of a bond … although no

[25] *See, e.g.*, *Land v. BAS, LLC*, 2025 Ark. 107, 5, 713 S.W.3d 1, 6 (analyzing a due process claim under the Fourteenth Amendment of the U.S. Constitution); *City of Little Rock v. Alexander Apartments, LLC*, 2020 Ark. 12, 8, 592 S.W.3d 224, 230 (analyzing a due process claim under the Arkansas Constitution); *see also* U.S. Const. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law.").

[26] *Jasper Sch. Dist. No. 1 of Newton Cnty. v. Cooper*, 2014 Ark. 390, 9, 441 S.W.3d 11, 16.

[27] *Rockefeller v. Hogue*, 244 Ark. 1029, 1037–38, 429 S.W.2d 85, 90–91; *Lucas v. Futrall*, 84 Ark. 540, 106 S.W. 667, 671 (1907).

[28] *Patton*, 39 Ark. at 213 (noting that "[t]he power to remove 'for cause' can only be exercised for just cause after opportunity for defense"); *Williams*, 207 Ark. at 449–50, 181 S.W.2d at 33–34 (citing to a collection of cases contained in American Jurisprudence that due process must also be given "where a municipal officer is … appointed for a fixed term, and provision is made generally for his removal for cause") (internal quotations omitted); *Rockefeller*, 244 Ark. at 1039, 429 S.W.2d at 91 (holding that any entity "having the power to remove, for cause, an officer serving a fixed term acts in a quasi-judicial capacity in conducting a hearing" and the "procedure must assure a fair trial and due process of law").

single factor is ever conclusive."[29] Based on these characteristics, a county planning board member position is best classified as a public "officer" for purposes of a due process analysis.[30]

Accordingly, members of a county planning board who serve for a fixed term and may be removed only "for cause" have a property interest in their positions and should be given reasonable notice and a fair opportunity to be heard via a hearing before removal.

As discussed above, however, when the board or position is abolished, individual members are not being "removed." In such circumstances, due process protections—notice and a hearing—are not required.[31] But again, if the county judge and quorum court seek to dissolve or abolish the board as pretext for removing certain members and replacing them with others, such acts would likely constitute "removals" under A.C.A. § 14-17-203.[32] In that event, affected members would be entitled to reasonable notice and an opportunity to be heard, including a fair proceeding.

Question 6: If Act 519 does require the removal of some or all of the current members on county planning boards, which county official or officials are legally authorized to decide who and how many members will be removed to comply with the Act?

The authority to remove a county planning board member depends on the method of removal. If, for reasons discussed further below, the member is a de facto officer, he or she can be removed by a court through a quo warranto action. Outside of such an action, the county judge may recommend removal for cause subject to the quorum court's confirmation.[33]

Question 7: Once Act 519 takes effect, will county planning boards lose their lawful authority to act until they have satisfied this new residency ratio requirement?

Even if a board loses its lawful authority because it fails to meet Act 519's residency requirements, the acts of the board—through its members—could still be valid under the "de facto officer rule."[34] Under that rule, someone who discharges the duty of an office under the color of title (such as

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[29] *Maddox v. State*, 220 Ark. 762, 762–64, 249 S.W.2d 972, 972–73 (1952); *see also* Ark. Att'y Gen. Ops. 2023-100, 2023-082.

[30] *See* Ark. Att'y Gen. Ops. 2002-328 (opining that based on the case law, "membership on a planning commission does constitute an office"), 2017-112 (opining that a county parks and recreation commission likely is a "civil office"); *see also Carswell*, 127 Ark. at 110, 191 S.W. at 936 (noting that a city council had the authority to remove a member of an improvement district board "only for cause, and after a hearing, and upon due notice").

[31] *See, e.g.*, *Satterfield v. Fewell*, 202 Ark. 67, 149 S.W.2d 949, 951–52 (1941) (noting that with civil service positions, removal with notice and a hearing are not required if the position is abolished "in good faith").

[32] *See, e.g.*, *id.*, 280 Ark. at 179, 655 S.W.2d at 455–56.

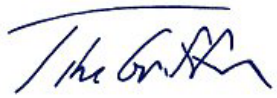
[33] A.C.A. § 14-17-203.

[34] *See, e.g.*, *Bell v. State*, 334 Ark. 285, 298–301, 973 S.W.2d 806, 813–15 (1998); Ark. Att'y Gen. Ops. 2008-012, 2006-186, 2002-018, 2001-018, 2001-015, 99-024, 97-257, 97-003, 96-054, 93-031, 90-144.

being lawfully appointed as a board member) is considered a de facto officer, and public acts of a de facto officer are legally valid.[35] A de facto officer "may continue to exercise the power and authority of the office until removed."[36] The authority of de facto officers can be challenged in a particular proceeding under quo warranto—the only way to remove a de facto officer.[37] In addition to removing such a person from office, a court could order a de facto officer to reimburse the compensation or expenses received as a de facto officer.[38] But these remedies are only available through a direct legal challenge, not through a collateral attack that does not directly concern the eligibility of the officer.[39]

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,



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[35] *See Ctr. Hill Sch. Dist. No. 32 v. Hunt*, 194 Ark. 1145, 110 S.W.2d 523, 525 (1937); *Faucette v. Gerlach*, 132 Ark. 58, 200 S.W. 279, 279–80 (1918); *Miller v. Callaway*, 32 Ark. 666, 667 (1878); *De facto officer defined*, 3 *McQuillin Mun. Corp.* § 12:157 (3d ed. 2025); Ark. Att'y Gen. Ops. 99-024, 96-054, 93-031, 90-144.

[36] Ark. Att'y Gen. Op. 2008-012; *see also Chronister v. State*, 55 Ark. App. 93, 96, 931 S.W.2d 444, 445 (1996) (holding that a prosecution by a city attorney acting as a de facto officer was valid).

[37] *See Keith v. State*, 49 Ark. 439, 5 S.W. 880, 881 (1887); *Kaufman & Co. v. Stone*, 25 Ark. 336, 337–38 (1869).

[38] *See Sitton v. Burnett*, 216 Ark. 574, 577–78, 226 S.W.2d 544, 545–46 (1950); Ark. Att'y Gen. Ops. 96-265, 89-251.

[39] *See Appleby v. Belden Corp.*, 22 Ark. App. 243, 247–48, 738 S.W.2d 807, 809 (1987) (holding that official acts of a Workers' Compensation Commissioner "were legally valid and effectual" as a de facto officer "notwithstanding the supreme court's determination that he was not qualified to serve"); Ark. Att'y Gen. Ops. 2001-018, 90-144.