

**IN THE CIRCUIT COURT OF IZARD COUNTY, ARKANSAS
CIVIL DIVISION**

CITY COUNCIL OF HORSESHOE BEND, ARKANSAS

PETITIONER

v.

Case No. 33CV-25-155

**DUANE DeLAIR, in his official capacity as
Mayor of the City of Horseshoe Bent, Arkansas**

RESPONDENT

RESPONSE TO MOTION TO DISMISS

Comes now Petitioner, the City Council of Horseshoe Bent, Arkansas, by its attorneys, Bequette, Billingsley & Kees, P.A., for its Response to Respondent’s Motion to Dismiss, alleges and states:

Instead of proceeding in an orderly and businesslike manner toward finding ways and means of carrying out the duties of his office under the law and the mandate of the electorate of Horseshoe Bend (the City), Respondent Mayor Duane DeLair has done just the opposite by his steadfast refusal to authenticate the validly passed ordinances of the Petitioner, City Council of Horseshoe Bend, Arkansas. This case is simple and does not require a twenty-page motion to dismiss. All that is required is Mayor DeLair’s signature—a signature he is obligated to provide under clear statutory law. Rather than do so, he has put the duly elected members of the City Council in a position where they must seek redress in a court of law in order to get Mayor DeLair to perform his basic ministerial mayoral function. This court should order Mayor DeLair to authenticate the at-issue ordinances and resolutions such that all parties involved may move forward with conducting the City’s business.

I. Service

The Mayor first takes issue with the manner in which he was served. Ark. R. Civ. P. 4(f)(17) specifies that “[s]ervice on an officer or employee of a government entity listed in

paragraphs (12)–(16) of this subdivision, acting in an official capacity, shall be on the officer or employee and by mailing a copy of the process as specified in subdivision (g)(1)(A)(i) of this rule to an official on whom service can be made pursuant to paragraphs (12)–(16), as applicable, and a copy to the Attorney General if a state officer or employee is sued.” The summons and writ of mandamus was perfected on the Mayor by certified, restricted mail on November 21, 2025, as well as regular mail. *See* December 2, 2025 Affidavit of Service Docket Entry. The green card was signed by Victoria Bigness, the City bookkeeper. *Id.* The Mayor was also personally service via process server on October 20, 2025. *Id.* Accordingly, the Mayor has been properly served.

I. Argument

In reviewing the circuit judge’s decision on a motion to dismiss, the Arkansas Supreme Court has said:

“[W]e treat the facts alleged in the complaint as true and view them in the light most favorable to the party who filed the complaint. In testing the sufficiency of the complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and the pleadings are to be liberally construed. However, our rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief.”

Ark. Tech Univ. v. Link, 341 Ark. 495, 501, 17 S.W.3d 809, 812 (2000) (internal citations omitted). The Council’s Petition more than chins this bar.

Mayor DeLair takes issue with the Council’s standing to petition this court. The Mayor argues that logic dictates that the City Council does not have standing; however, his position is anathema to logic. It makes little to no sense that a City Council may be sued, but cannot then sue, particularly in circumstances such as these. Moreover, the Mayor’s position is essentially that the City Council may not act as the City or as itself in his absence, which defies both logic and the Arkansas municipal statutory scheme.

The Mayor needlessly overcomplicates the issue. Our courts have repeatedly held that, “where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation.” *Richie v. Bd. of Educ. of Lead Hill Sch. Dist.*, 326 Ark. 587, 591, 933 S.W.2d 375, 378 (1996). “In construing statutes, courts give words their ordinary meaning and attempt to give effect to legislative intent.” *Richie v. Bd. of Educ. of Lead Hill Sch. Dist.*, 326 Ark. 587, 590–91, 933 S.W.2d 375, 378 (1996). “The beginning point is to construe words just as they read and to give them ordinary and accepted meaning.” *Id.* “In addition, this court adheres to the basic rule of statutory construction which is to give effect to the intent of the legislature, *making use of common sense.*” *Id.* (internal citations and quotations omitted, emphasis added). Statutory provisions are reconciled to make them consistent, harmonious, and sensible. *Lonoke Cnty. v. City of Lonoke*, 2013 Ark. 465, 5, 430 S.W.3d 669, 672.

The City Council, pursuant to a myriad of Arkansas State statutes, has the authority to carry out the City’s business. *See generally*, Ark. Code Ann. §§ 14-37-101 et seq.; § 14-42-102 (“The corporate authority of cities that are organized shall be vested in one (1) principal officer, to be called the mayor, and one (1) board of council members, to be called the city council, together with such other officers as are mentioned in this subtitle or may be created under its authority.”) “Municipal corporations shall have power to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof.” Ark. Code Ann. § 14-55-102.

The City Council specifically has the authority to legislate and control the City’s finances and all of its real and personal property. Ark. Code Ann. § 14-43-502 (West). This would

necessarily include control over the City's records. The primary statute at issue, Arkansas Code Annotated section 14-55-205, provides:

All bylaws or ordinances after their passage shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the governing body and the clerk or recorder.

The Mayor "shall preside" at City Council meetings. Ark. Code Ann. § 14-44-107(a).

"Mandamus is traditionally regarded as a remedy to be used on all occasions where the law has established no specific remedy, and justice and good government require it." *Jacobs v. Yates*, 342 Ark. 243, 249–50, 27 S.W.3d 734, 738 (2000) (citing *State v. Craighead Co. Bd. of Election Comm'rs.*, 300 Ark. 405, 300 Ark. 405, 779 S.W.2d 169 (1989)). Justice and "good government" dictate that the Mayor comply with his statutory requirements and that is the very thing that the City Council seeks to effectuate with its requested relief.

The City Council has not overlooked the authorities relied upon by the Mayor; however, asserting that no Arkansas law is squarely on point, he cites this court to a number of cases from other jurisdictions that are neither mandatory on this court nor persuasive. Moreover, other non-mandatory authorities state that "City council members may have standing to seek a writ of mandamus to require mayor to perform a legally required duty." § 51:63. Parties, generally, 17 McQuillin Mun. Corp. § 51:63 (3d ed.)

Further, there is Arkansas authority that resolves this issue. The case of *McClendon v. City of Hot Springs*, 129 Ark. 286, 195 S.W. 686, 687–89 (1917) is particularly instructive:

"After the passage of the ordinance over the veto of the mayor, that officer was called upon to execute the contract of settlement there authorized; but he declined so to do. Whereupon a proper petition for mandamus was filed against him, praying that he be required to do so. The relief prayed was resisted upon the following grounds: (1) That the signing of said contract on the part of the mayor involves the exercise of discretion. (2) That appellees have another remedy. (3) That the ordinance providing the terms of the contract was not legally passed, and is therefore not a valid and binding ordinance of the city council of said city. (4) That

the streets were in the hands of the commissioners of the improvement district, and that the city council had no authority to pass the ordinance providing for this contract or to require the mayor to sign it. Appellant argues, and appellees concede, that mandamus will not lie to control the discretion of an officer where the performance of an official duty involves an exercise of discretion. And the concession is likewise made that mandamus will not lie where the party applying therefor has another and an adequate remedy.

Appellant says that it is now sought, in effect, to compel him to approve an ordinance which, in the exercise of his discretion, he saw proper to veto. We think, however, that such is not the case, for after the passage of the ordinance the discretion of the mayor ceased. Once a valid ordinance is passed, it becomes binding upon all persons alike, and if it imposes upon the mayor, or other officers of the city, any duty which the council has the authority to impose, then the obligation to perform that duty becomes binding. The mayor had a discretion in the approval of the ordinance, and this discretion he exercised; but, upon its passage notwithstanding his veto the mayor became charged with the performance of a mere ministerial duty, and no officer has a discretion to obey, or to refuse to obey, a law requiring the performance of a mere ministerial duty.”

It is insisted by learned counsel for appellant that:

“The contract itself being a part of the ordinance which the mayor vetoed, he cannot now be compelled, nor can they ask aid of the court to compel him, to do that which he has already exercised his discretion in refusing to do. In vetoing the ordinance, the mayor vetoed the contract as well, and now to require him to sign and approve the contract is an indirect way of compelling him to approve the ordinance providing for the contract.”

It is further insisted that if the council had authority to pass this ordinance over the mayor's veto, it had the power to approve the contract without the necessity of the mayor's signature, and that appellees are seeking to compel appellant to do a thing which the city could have done, and can yet do, itself.

We have seen, however, that this proceeding is not intended to control the discretion of the mayor, but is intended to compel the performance of a duty imposed by an ordinance which was passed over his veto. The mayor would have no more discretion, and does not have any more discretion, in obeying an ordinance passed over his veto, than he has in obeying one which was passed with his approval. It may be true the ordinance could have been so drafted as not to require the signature of the mayor to the contract; but, as passed, it did require his signature, and this cannot be said to be an inappropriate manner of executing such contracts. On the contrary, it is usual and customary for the mayor, as the chief executive officer of a city, to act for and in the name of the city in the execution of any contract which the city may lawfully make; and if the city had the authority to pass the ordinance in question, it cannot be material that it might have passed a different ordinance on

the subject and one which would not have required appellant to perform any duty in its enforcement.”

It is argued that the evidence conclusively shows that two of the aldermen, without whose vote the ordinance could not have been passed over the mayor’s veto, did not then reside in the wards for which they claimed, respectively, to be sitting as aldermen. The court found, however, that the aldermen were de facto officers, and held that their qualifications to serve as such could not be inquired into in a collateral proceeding. The court was correct in so holding, and many cases are cited in the brief in support of that position, and, among others, the following Arkansas cases: *Eureka Co. v. Furry*, 190 S. W. 427; *Barton v. Lattourette*, 55 Ark. 81, 17 S. W. 588; *Murphy v. Shepard*, 52 Ark. 356, 12 S. W. 707; *Moore v. Turner*, 43 Ark. 243.

The real question in the case is that of the authority of the council to pass the ordinance. It does not appear that any formal transfer of the street had been made from the commissioners of the improvement district to the city. But no formal delivery is required for this purpose. Evidently, the transfer had been made, and the street was under the control of the city, and had been for a sufficient length of time for the street to be so badly worn as to require the repairs which form the subject-matter of this controversy. The original contract provided that if the paving company failed to make repairs, either the improvement district or the city might sue the paving company for a breach of contract, and under this contract the city had sued that company, making the commissioners of the district parties to the suit. This suit was defended upon the ground that the paving company was under no duty to make the repairs. The compromise agreement, which the ordinance in question approved, was executed in the name of both the city and the improvement district. In the case of *English v. Shelby*, 116 Ark. 212, 172 S. W. 817, we upheld the right of the commissioners of an improvement district to sue on the bond of a contractor given to maintain a street for a specified number of years. No question was there involved about the right of the

improvement district, rather than the city, to sue. In the case of Peay v. Kinsworthy, 190 S. W. 565, we held that the commissioners of a sewer improvement district which was still in the hands and under the control of the commissioners had the right to maintain, in their name as commissioners, a suit to protect the interests of their district. There is no conflict of authority here between the city and the commissioners of the improvement district. The bond was executed for the benefit of both. The suit against the paving company was brought by both the city and the commissioners of the improvement district, and the compromise agreement, settling this litigation, which the ordinance directs the mayor to sign, runs in the name of both the city and the improvement district.

It is argued by learned counsel for appellant that the control of this litigation, and the right to enforce the provisions of the maintenance bond, and to supervise the repair of the streets, inheres in the board of public affairs, and not in the city council. But we do not agree with counsel in this contention. Section 5607 of Kirby's Digest provides that:

“The city council shall possess all the legislative powers granted by this act, and other corporate powers of the city not herein prohibited, or by some ordinance of the city council made in pursuance of the provisions of this act and conferred on some officer of the city; they shall have the management and control of finances, and of all the property, real and personal, belonging to the corporation. * * *”

Section 5530 of Kirby's Digest provides that:

“The city council shall have the care, supervision and control of all the public highways, bridges, streets, alleys, public squares and commons within the city; and shall cause the same to be kept open and in repair, and free from nuisance.”

The maintenance bond was executed by the paving company for the benefit of the city and of the improvement district, and, as an incident to the right to sue thereon, the right to settle that litigation arose. Litigants are not to be denied the right to settle their litigation. The policy of the law encourages the earliest settlement of litigation. The ordinance in question authorizes and directs this action with reference to this litigation, and as the authority exists to pass this ordinance, the matter was concluded when the ordinance was passed. We cannot consider the question of expediency involved in the enactment of this ordinance, and have not

done so. We rest our decision upon the determination of the power of the council to pass the ordinance.

It follows, therefore, that, in effect, this is a suit to compel the mayor of Hot Springs to discharge a ministerial duty pursuant to a valid ordinance, under which no discretion vests in him. His duty being to obey this ordinance, the writ of mandamus was properly awarded to compel him to do so, and the order of the court below to that effect is therefore affirmed.

McClendon v. City of Hot Springs, 129 Ark. 286, 195 S.W. 686, 687–89 (1917).

In *Hodges v. Keel*, 108 Ark. 184, 159 S.W. 21, 23 (1913), the issue of standing was raised with respect to mandamus relief. There, the Arkansas Supreme Court affirmed the grant of mandamus, noting that the “statutes of the state require the Secretary of State to cause the Acts of the General Assembly to be published under his certificate by the public printer, and those specially interested in the enforcement of the statute have the right to insist upon its being published, so as to be given proper public authenticity.” *Id.* The Court further noted that the appellees were proper parties entitled to ask for mandamus to compel the Secretary of State to discharge his duty in part because of their interest in him doing so. Here, it cannot be said that the City Council has no interest in the Mayor performing his obligations under the law, particularly as it concerns its enactment of ordinances and proper record keeping.

In *Jacobs v. Yates*, 342 Ark. 243, 256, 27 S.W.3d 734, 742 (2000), the Arkansas Supreme Court recognized that both the Phillips County Board of Election Commissioners and the Phillips County Democratic Committee had standing to request declaratory relief in part because those entities’ responsibilities were at issue. The same can be said here. The City Council is unable to completely fulfill its obligations—keeping properly authenticated records of its ordinances—where the Mayor refuses to fulfill his.

The case of *Robertson v. Derrick*, 113 Ark. 40, 166 S.W. 936, 937 (1914) is also instructive. There, the Arkansas Supreme Court stated:

“The provisions of the statute requiring the publication of the notice, in the manner and form prescribed therein, are mandatory. The publication of this notice, as provided, is merely a ministerial function, and it is the duty of the officers entrusted with its performance to act on their own motion in pursuance of the statute. All the duties of a discretionary and judicial character imposed upon the county court come after the publication of the notice. The object of this notice is to give those desiring to become the depository an opportunity to make their bids, and to procure the best bids obtainable for the county, and to notify bidders of the time propositions or bids will be received. The county judge and the county clerk have no discretion, therefore, as to whether or not they shall publish the notice required by the statute. As to what the court, as a court, may or may not do, or what it should or should not be required to do, after the publication is given as the statute prescribes, are not now before us for consideration. Judicial discretion, in those matters committed to the county court, will not be controlled by writ of mandamus; but even in those matters, where the court fails or refuses to act at all, it can be set in motion by mandamus.

The judge and the clerk, under the statute, must act by giving the notice, and their failure to act is tantamount to a refusal to perform a duty which is mandatory upon them, and their failure to act also shows conclusively their intention not to perform their duty.

...

It follows that the court erred in not ordering a writ of mandamus, and its judgment will therefore be reversed, and mandamus will issue here, directed against the appellees, commanding the judge to order and the clerk to publish the notice, and to further proceed as specified in the statute.”

Robertson v. Derrick, 113 Ark. 40, 166 S.W. 936, 937 (1914).

Arkansas caselaw is replete with instances in which a party petitions a court for a writ of mandamus to be entered directing an entity to perform its requisite ministerial functions. Surely the state of the law cannot be such that the City Council may be sued to perform its duties but may not sue to force a separate official to perform his or her requisite ministerial duties. Further, it cannot be the law in this state that the legislature has conferred obligations and duties upon the City Council, but no means by which to enforce those. Put plainly, the Mayor is not doing his job, and this Court should order him to do so. Who but the City Council is best positioned to effectuate that request?

Finally, the Mayor also argues that the City Council violated Rule 10(d) by failing to make an adequate record upon which this Court may decide the Petition because it did not attach the ordinances and resolutions referenced in the petition. Assuming solely for the sake of argument that failing to do so actually constitutes a pleading defect, it is a defect easily cured by the filing of an amended complaint. *See, e.g., Middleton v. Middleton*, 2018 Ark. App. 237, 8, 548 S.W.3d 199, 204 (2018).

III. Conclusion

For all the reasons set forth herein, the City Council has properly served the Mayor, submitted a sufficient petition under Rule 12(b), and has standing to request that this court declare that the Mayor is required to authenticate the validly passed ordinances and resolutions, and order him to do so. His Motion to Dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I electronically filed the foregoing with the Clerk of the Court using the eFlex electronic filing system, which shall send notification of such filing to the following:

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/s/ W. Cody Kees