

WEDNESDAY

# Malvern Daily Record

February 23, 1994

Malvern, Arkansas 72104

35 Cents

## County tax would require court modifications

By AMY PARTAIN  
Staff Writer

With the growing debate over the election to consider the half-cent tax Ouachita Technical College proposed, many of those opposed to the sales tax are calling for the tax to be modified county-wide.

State Sen. George Hopkins, who is acting as legal counsel for the college, says in his opinion a county-wide sales tax is not possible.

According to Seventh Judicial District Prosecuting Attorney Dan Harmon, one reason a county tax is impossible is that an injunction, or consent order, prohibiting the county from funding projects like the one OTC is asking for was placed against the county in 1982.

Harmon said "it appears it would have to be modified" for a county tax to be possible.

Hopkins said if the quorum court passed a sales tax for OTC with the

injunction in place, the members of quorum court could be held in contempt of court.

"They have already been told they couldn't do it. Then they were told not to do it," Hopkins said. "If they did it now they would not only jeopardize what they are working for, but they could be held in contempt and fined or jailed. That is not something you want to happen to your elected officials."

If the injunction was contested and

there was any opposition to it, Hopkins said, there would not be time for OTC to receive its matching funds.

"If the plaintiff (in the original case) still lives in Hot Spring County and agrees to modify the injunction, it could happen quickly," he said.

County governments are included in the provision in the Arkansas constitution prohibiting local governments from becoming stockholders in private corporations or institutions.

The provision states, "No county, city, town or other municipal corporation shall become a stockholder in any company, association or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual."

Hopkins said if only the constitutional provision existed, the county sales tax would be possible if it was done in

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the same way OTC is approaching the city tax. The county could purchase the land from OTC, build the new facility, then lease the property back to OTC.

Many people believe the county could give the money directly to OTC, Hopkins said, but even without the injunction that would not be possible.

Hopkins said there is a state law, Act 867, which states quorum courts or voters can dedicate all or a portion of a county sales tax to support a technical college.

He said he questions the constitutionality of the law. Hopkins said the attorney who helped write the legislation tried very hard not to violate the constitutional provision. Even so, Hopkins wonders about the law.

"Without a specific court decision on it, I'm not sure it is constitutional," he said.

Hopkins' questions led him to ask for Attorney General Winston Bryant's opinion on the law. "On Friday I requested the attorney general give an opinion on the legality of this legislation," he said.

The worst possible outcome, Hopkins said, is that everyone pulls together to get a county tax passed only to have the law challenged and never reap the benefits of the hard work.

"If it was challenged, a lot of hard work and time would be lost," he said. "I'm not willing to believe and follow the latest legislation passed when I think it is subject to be challenged."

Some have questioned why Hopkins voted for a piece of legislation that he feels might be unconstitutional. Hopkins said in trying to make the state a better place, the Legislature passes many bills that might be unconstitutional.

"There is an area that we know is constitutional and there is one we know is definitely not constitutional," Hopkins said. "Then there is this large gray area, and in order to accomplish

things we often work in that gray area."

He said he feels if the other legislators are willing to try it, he should let them create the law because it might turn out fine.

Hopkins said he has not explored the county tax issue in as much depth as he has the city tax issue.

"I'm acting as an attorney and trying to help my clients achieve what they want," he said. "They wanted to try for the city tax so that is what I have been working on."

Hopkins said Harmon said he is planning to meet with the quorum court at its next meeting to

discuss the injunction.

Harmon said he feels the injunction should be modified. "It started with volunteer fire departments," he said. "It knocks them out of state funds available to the volunteer fire departments. Departments in Hot Spring County can't participate."

When asked how he would advise the quorum court to act with the situation as it stands now, Harmon said he would steer the court away from considering a county sales tax.

"They can't (act) right now unless some modification is made in that consent order," he said.

THURSDAY

# Malvern Daily Record

February 24, 1994

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35 Cents

## Municipal League opinion raises questions

By S. KOCH  
Staff Writer

A letter from the Arkansas Municipal League to a city alderman states that the legality of the Ouachita Technical College tax ordinance may be in question, but the drafters of the ordinance say it isn't so.

William G. Fleming, counsel of the Arkansas Municipal League, an organization that represents 489 Arkansas cities, said in a letter to Alderman Elmo McCool dated Feb. 22, "On October 11, 1983 the people of Malvern authorized a

maximum of 1% sales tax, see A.C.A. 26-75-207. Since the maximum 1% sales tax is now being collected in Malvern no additional tax under this law can be voted by the people of Malvern. A.C.A. 14-164-338 permits cities and towns to vote for capitol improvement without a bond issue for a maximum of 24 months."

The ordinance asking for a special election for OTC would place a half-cent sales tax on the city for 36 months.

McCool said in a statement given to this reporter: "Beginning on Feb. 15,

the *Malvern Daily Record*...has questioned the reasoning abilities of the council, accused us of being against progress...and attacked the individual members by inferring that they are stupid, even publishing a cartoon portraying us as stooges.

"I wish to address only the issue of the proposed OTC ordinance, its legality. The citizens of Malvern should know that their city pays \$16,000 per year to belong to the Municipal League of Arkansas, an organization that...(provides) them legal guidance in conducting

city business."

However, the real tale of the tape will be decided by Attorney General Winston Bryant.

Sen. George Hopkins, drafter of the proposed ordinance, said he too is waiting for an opinion from the Attorney General's office, and the letter from the Municipal League "is much ado about nothing. The reality is the Municipal League has failed to recognize changes in the law. I'd like to see the amount of time and research (Fleming) used in his approach. If he is correct, then several

municipalities are in trouble with the law. I believe the opinion is based upon an old amendment."

Executive Director of the Arkansas Municipal League Don Zimmerman said "Malvern is proceeding cautiously, and that's the wisest thing. (Hopkins has) a pretty good argument — and I hope he's right. The bigger problem is that of the (Arkansas) Constitution" and its antiquated laws, Zimmerman said. "If the people had passed new constitutions

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## Obituaries

### Jesse Ballard

Jesse Ballard, 66, of Arkadelphia died Tuesday, Feb. 22, 1994, at the Baptist Medical Center in Arkadelphia. He was preceded in death by his parents, Willie Luke and Susie Dawson Ballard. He was a retired pipe fitter for Reynolds Metal Co. a veteran of the U.S. Army and member of V.F.W. Post #7516.

Survivors include his sons, William Neal Ballard of Friendship and Jesse Willie Ballard of Vancouver, Wash.; his daughters, Frances Corn of Baytown, Texas, and Charlotte Henry of Dumas; 10 grandchildren and six great-grandchildren.

Funeral will be 10 a.m. Friday, Feb. 25, at the Murry-Ruggles Funeral Home Chapel in Arkadelphia, officiated by the Revs. Pete Talley and Henry Bell. Burial will be at the Gillchrist Cemetery. Family visitation will be 6-8 p.m. today at the funeral home. Memorials may be made to

V.F.W. Post #7516.

Pallbearers are Bobby Roberts, Bill Walters, Mitchell Austin, Ford McJunkins, Garland McJunkins and Lynn Talley. Honorary pallbearers are Lester Jackson, Charles Bosley, George Benson, Danny Trammel and Huston McJunkins.

### Zelmer Adam Tucker

Zelmer Adam Tucker, 65, of Bismarck, died Tuesday, Feb. 22, 1994, at his home. He was born May 18, 1928, in Bismarck to the late John Travis and Lola Lee Whitley Tucker.

Survivors include his brother, Arlis Tucker, and his sister, Ozee Moore, both of Bismarck.

Funeral will be 3 p.m. Friday, Feb. 25, at Hickory Grove Missionary Baptist Church with the Revs. Boyd Williams and Van Glidewell officiating. Burial will be at Hickory Grove Cemetery under the direction of Murry-Ruggles Funeral Home of Arkadelphia.

## Hospital update

Feb. 23

### Discharges

Diana Poplaski, Malvern

Jim Broadway, Malvern

*Due to the right of privacy of all patients, we are unable to list all admissions. Hot Spring Coun-*

## Today in history

By The Associated Press

Today is Thursday, Feb. 24, the 55th day of 1994. There are 310 days left in the year.

Today's Highlight in History:

On Feb. 24, 1868, the U.S. House of Representatives impeached President Andrew Johnson following his attempted dismissal of Secretary of War Edwin M. Stanton. Johnson was later acquitted by the Senate.

On this date:

In 1582, Pope Gregory XIII issued a papal bull, or edict, outlining his calendar reforms. The Gregorian Calendar is in general use today.

In 1803, in the case of *Marbury vs. Madison*, the U.S. Supreme Court ruled that it was the final interpreter of constitutional issues.

In 1821, Mexico declared its independence from Spain.

In 1863, Arizona was organized as a territory.

In 1903, the United States signed an agreement to acquire a naval station at Guantanamo Bay in Cuba.

In 1920, a fledgling German political party held its first meeting of importance in Munich; it became known as the Nazi Party, and its chief

Winter Olympic Games in Lake Placid, N.Y.

In 1981, Buckingham Palace announced the engagement of Britain's Prince Charles to Lady Diana Spencer.

Ten years ago: The victim of a gang rape at Big Dan's, a tavern in New Bedford, Mass., testified at the trial of two of the six men accused of attacking her that she was assaulted on a pool table by laughing strangers while others in the bar "just cheered."

Five years ago: A state funeral was held in Japan for Emperor Hirohito, who died the month before at age 87. A cargo door blew off a United Air Lines Boeing 747-100 flying near Hawaii, drawing nine passengers out to their deaths.

One year ago: Canadian Prime Minister Brian Mulroney announced he was stepping down. At the Grammy Awards in Los Angeles, Eric Clapton won six trophies, including album of the year for "Unplugged" and record and song of the year for "Tears in Heaven."

Today's Birthdays: Actor Abe Vigoda is 73. Movie composer Michel Legrand is 62.

# Murder trial going at 'a snail's pace'

JONESBORO, Ark. (AP) — The trial of two teen-agers accused of murder in the slayings of three 8-year-old boys headed into the third day of jury selection today with just one juror picked.

Prosecutor Brent Davis said Wednesday, though, that the process was going smoothly, despite the time it was taking.

"I think both sides would agree that it's going at a snail's pace," he said. "It's pretty well expected."

It isn't possible to predict how long it will take to select a jury to hear the capital murder case against Damien Echols, 19, of West Memphis and Charles Jason Baldwin, 16, of Marion, the prosecutor said.

"I think it'll be over when it's over," Davis said.

Two potential jurors from a panel of 18 questioned were excused because they said they couldn't be impartial about the case. Of the remaining 16, 13 were questioned behind closed doors, three at a time.

One of the potential jurors said the questioning was rough and she was almost driven to tears.

About 300 people have been called as potential jurors. On Wednesday, attorneys began interviewing the prospective

second-graders Steve Branch, Chris Byers and Michael Moore. The boys' bludgeoned bodies were found in a drainage ditch May 6, the day after they disappeared while riding bicycles in their neighborhood.

Earlier Wednesday, a lawyer for a third defendant in the case — Jessie Lloyd Misskelley, 18, already convicted of one count of first-degree murder and two counts of second-degree murder — said Misskelley had decided not to testify for the prosecution against his two friends.

Dan Stidham, one of Misskelley's attorneys, said the decision was reached after Misskelley met with his parents and his lawyers.

Misskelley's lawyers are appealing his Feb. 4 convictions in Clay County Circuit Court, where he was sentenced to life plus 40 years. His trial and that of his two co-defendants were moved out of Crittenden County because pretrial publicity might have made it hard to seat unbiased jurors.

On Tuesday, Jonesboro television station KAIT reported that prosecutors had offered to recommend a reduction in Misskelley's sentence if he would testify truthfully.

An instrument was on the 11th day of July, 1994, admitted as the last will of the decedent, and has been completed.

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... ago, (Malvern) wouldn't  
these problems."

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new constitutions in 1970  
1980.

... Hopkins said he was informed  
... d Hicks of the Sales Tax  
... ion in the Arkansas Depart-  
... of Finance and Adminis-  
... on that several municipali-  
... ve passed more than one  
... tax under Arkansas Code  
... 4-207, and at least one city  
... passed four.

... Unless these other cities are  
... ating illegally under 207,  
... we can do it, too," Hopkins

said.

A copy of a facsimile sent to Hopkins from the State of Arkansas Bureau of Legislative Research Senior Staff Attorney David Ferguson was sent to the *Malvern Daily Record* office today by Hopkins.

The fax read in part: "(Ferguson) believe(s) the intent was to authorize a city to levy either a 0.25%, 0.5%, 0.75%, or 1% tax. The list of tax rates are joined together by the word 'or.' The word 'or' normally functions to show an alternative," Ferguson wrote.

"I think it likely," he continued, "that the intent of the amendment was to allow the one tax to be levied at a rate of less than 1 percent. Although I think the language allows only one tax,

I cannot rule out the possibility that the section could be interpreted as allowing a city to levy more than one tax," Ferguson said. "And several cities have done so."

Malvern Mayor James Scrimshire, who received a copy of McCool's letter, said, "we all have all sorts of different opinions. I'm going to wait on the — I think they're working on — the Attorney General's opinion. I'm sure there's a way to do it, to move forward with this thing and find something we can hang our hat on. Exactly where we are today, I don't know. I respect the opinions of the attorneys working on this. I've always had a positive attitude towards the school. I'm sure there is a way we can get local financing for our school out there."