



Arkansas
Secretary
Of State

The Arkansas Register



Volume XXIV, Number 7

January 2001

Corporate Records - Elections - Capitol Building and Grounds

State Capitol - Little Rock, Arkansas 72201-1094 - 800.482.1127

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**Secretary of State
State Capitol, Room 026
Little Rock, AR 72201-1094**

Editor **Jon Davidson**

Published by
Secretary of State

The *Arkansas Register* is an official publication of the State of Arkansas. It contains administrative rules and regulations adopted by state agencies, boards and commissions pursuant to Act 434 of 1967, as amended. The *Arkansas Register* also includes Attorney General opinions, notice of legislative audit reports and insurance orders. The subscription rate is \$40 per year or \$3.50 a copy, distributed monthly, postpaid within the United States.

ATTORNEY GENERAL OPINIONS

Opinion Number: 2000-315

Mike Beebe
State Senator

RE: Q1) What effect does the opinion in Lake View School Dist. 25 v. Huckabee have on the question of when and how the state might waive its sovereign immunity? Q2) Assuming the state has waived sovereign immunity, will the substance of failed settlement negotiations be admissible against either or both of the parties at trial? Q3) What effect will the Supreme Court's decision in Lake View have on the state's ability to resolve litigation short of trial? **RESPONSE:** Q1) It appears that the state might risk waiving sovereign immunity if it publicly acknowledges state monetary liability in the course of and following unsuccessful class-action settlement negotiations. However, Lake View is a confusing opinion, and it is difficult to tell if the case has broader implications. Q2) Lake View might be read as establishing that, at least in class actions, the state cannot invoke the protection of Ark. R. Evid. 408, which declares that representations made in the course of settlement negotiations are inadmissible to establish either the fact or the extent of liability. However, the complicated factual and procedural background of this case, as well as the Court's reticence in the decision itself, makes it difficult to draw any certain conclusions. Although Lake View does not directly address whether a private litigant's positions in settlement negotiations might be used against him as admissions, the case has proceeded as though only the state is bound by the representations contained in the rejected agreed order of settlement. Q3) Elements of the ruling in Lake View might discourage the state from provisionally stipulating to liability – or, for that matter, anything else – in the course of publicized class-action settlement negotiations. However, Lake View strikes me as an anomalous case in many respects, and I doubt it will significantly affect the state's ability to settle anything other than highly publicized class-action lawsuits. Moreover, I believe that the General Assembly is empowered to address and resolve any evidentiary and jurisdictional-immunity concerns raised by Lake View. Ark. Const. amend. 80.

Opinion No.: 2000-332

Oscar Stilley
Attorney at Law

RE: Request for certification of popular name and ballot title of proposed constitutional amendment to reduce the number of constitutional amendments which may be referred by the Arkansas General Assembly from three to one per regular biennial session. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of your proposed measure.

Opinion Number: 2000-334

Jonathan S. Fitch
State Senator

RE: Q1) In light of the provisions of Arkansas Const. art. 5, section 10, did Rep. Ted Thomas have the authority to resign from the House of Representatives and take a position of employment in the Governor's office? Q2) Did Sen. Jim Scott have the authority to resign from the Senate and take the position as Director of the Bureau of Standards? **ANSWER:** Q.1: Yes, because Article 5, section 10 of the Arkansas Constitution is inapplicable. Rep. Thomas' position on the Governor's staff does not constitute a "civil office." The terms of employment, duties, and salary are set by the Governor. There is no oath, bond or commission of office, and he exercises no part of the State's sovereign power apart from the Governor himself. See, e.g., Opinions 96-241 and 94-031. Reference should be made, however, to Act 34 of 1999 (A.C.A. 21-1-401 - 408, and specifically 21-1-402, regarding the restrictions and procedures for constitutional officers to be employed by the state. Q.2: No. because the position of Director of the Arkansas Bureau of Standards was created as a "civil office" under state law. See A.C.A. 4-18-204 - 224. His appointment to that position during his term was thus contrary to Art. 5, Section 10. His resignation did not remove his ineligibility. See Opinions 99-396 and 96-245.

ATTORNEY GENERAL OPINIONS

Opinion Number: 2000-336

Jim Milum
State Representative

RE: Do the provisions of the Assessment Coordination Department's proposed Rule 4.08 comply with the intent and requirements of Amendment 59? **RESPONSE:** Yes.

Opinion Number: 2000-340

Barry Emigh

RE: Request for certification of popular name and ballot title of proposed constitutional amendment to establish a trust fund, using funds from state and local gross receipt sales tax on certain food items, that will provide payments to canvassers and sponsors of Amendment 7 measures, scholarships for post-secondary education of qualified students, and augmentation of teacher salaries and retirement prior to abolishing said tax. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion Number: 2000-341

Barry Emigh

RE: Request for certification of popular name and ballot title of proposed constitutional amendment to allow the operation of bingo and raffles by non-profit organizations and permit for-profit gambling on water vessels. **ANSWER:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion Number: 2001-001

Oscar Stilley
Attorney at Law

RE: Request for certification of the popular name and ballot title of a proposed referendum petition for a portion of Act 2 of the 2d Ex. Sess. (2000), which provides for the increase of state sales and use tax rates by 1/2%. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text and ballot title of the proposed measure.

ADOPTED RULES AND REGULATIONS

EDUCATION DEPARTMENT

Office of Accountability

Docket No.: 005.19.00--012
Effective Date: 12/29/00
Contact Person: Ron Tolson
Telephone: (501) 682-4341

ADE 120 - Amendment Governing the Certification Laws and Regulations Concerning Standard Certificate Renewal

Financial Services

Docket No.: 005.04.00--002
Effective Date: 12/29/00
Contact Person: Patti Martin
Telephone: (501) 682-5124

ADE 119 - Allocation of Qualified Zone Academy Bonds

FINANCE & ADMINISTRATION

Revenue Division

Docket No.: 006.05.00--015
Effective Date: 12/20/00
Contact Person: Laura Shook
Telephone: (501) 682-7751

Emergency Regulation 2000-7 - Standard Mileage Rates for Income Tax Purposes

Docket No.: 006.05.01--001
Effective Date: 1/3/01
Contact Person: Laura Shook
Telephone: (501) 682-7751

Emergency Regulation 2000-8 -- Real Property Tax Credit Claims

GAME AND FISH COMMISSION

Docket No.: 002.00.01--001
Effective Date: 1/18/01
Contact Person: James Goodhart
Telephone: (501) 223-6327

Mandatory Boating Education Codes; Waterfowl Guide Restrictions; Captive Wildlife Permit Fees

HUMAN SERVICES

Administrative Services

Docket No.: 016.14.00--021
Effective Date: 2/1/01
Contact Person: Brenda Jackson
Telephone: (501) 682-6250

Social Services Block Grant Program Manual

Docket No.: 016.14.00--022
Effective Date: 2/1/01
Contact Person: Brenda Jackson
Telephone: (501) 682-6250

Comprehensive Services Program Plan

Docket No.: 016.14.01--001
Effective Date: 1/30/01
Contact Person: Bill Tyler
Telephone: (501) 682-9631

ADOPTED RULES AND REGULATIONS

DHS Policy 1007 - DHS Leave Policy

Children and Family Services

Docket No.: 016.15.01--001
Effective Date: 1/18/01
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

Annual Progress and Services Report

Medical Services

Docket No.: 016.06.00--064
Effective Date: 12/30/00
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2000-10 - Arkansas State Operated Teaching Hospitals - Outpatient Reimbursement

Docket No.: 016.06.00--065
Effective Date: 1/1/01
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Licensed Mental Health Practitioners Manual Update #26

Docket No.: 016.06.01--001
Effective Date: 1/1/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan #2000-17

Docket No.: 016.06.01--002
Effective Date: 1/12/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

Emergency Rule: State Plan #2001-01 - Target Case Management

Docket No.: 016.06.01--003
Effective Date: 1/12/01
Contact Person: Sharon Jordan
Telephone: (501) 682-8361

Emergency Rule: To revise the Medical Assistance Program Manual of Cost Reimbursement Rules for Long Term Care Facilities

INSURANCE DEPARTMENT

Docket No.: 054.00.00--008
Effective Date: 1/1/01
Contact Person: Booth Rand
Telephone: (501) 371-2820

Regulation 43 - Unfair Claims Settlement Practices

MOTOR VEHICLE COMMISSION

Docket No.: 063.00.00--001
Effective Date: 1/1/01
Contact Person: Patricia Stroud
Telephone: (501) 682-1428

Rules and Regulations Amended January 2001

ADOPTED RULES AND REGULATIONS

WORKFORCE EDUCATION

Docket No.: 172.00.00--005
Effective Date: 1/6/01
Contact Person: Peggy Wakefield
Telephone: (501) 682-1040

Program and Policies for Secondary Program and Adult Skill Training Classes and Secondary Vocational Centers

Docket No.: 172.00.00--006
Effective Date: 1/6/01
Contact Person: Peggy Wakefield
Telephone: (501) 682-1040

Rules and Regulations for Arkansas Technical Careers Student Loan Forgiveness Program

POLLUTION CONTROL & ECOLOGY

Solid Waste Control

Docket No.: 014.03.01--001
Effective Date: 1/18/01
Contact Person: Dennis Burk
Telephone: (501) 682-7890

Regulation No. 11 - Solid Waste Management Disposal fees; Landfill Post-Closure Trust Fund; Illegal Dump Eradication and Corrective Action Program; and Recycling Grants Program

INSURANCE DEPARTMENT

***** No Insurance Orders were filed with the *Arkansas Register* during the month of January.**

ORDERS AND NOTICES

LEGISLATIVE AUDIT

Agency

Period Covered

***** No Audit report was filed with the *Arkansas Register* during the month of January.**

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ARKANSAS REGISTER

Published by:

Secretary of State

FROM: Secretary of State
Arkansas Register Division
State Capitol, Room 026
Little Rock, AR 72201-1094

Presorted Standard
U.S. Postage
PAID
Little Rock, AR 72201
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