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Secretary  
Of State

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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.:** 2001-261

Judy, Jan A.  
*State Representative*

**RE:** Does the Arkansas Interstate Compact on the Placement of Children (AR ICPC) have jurisdiction to approve a non-resident adoptive family's placement when they have been granted a decree of adoption by an Arkansas court? Q1a) Is AR ICPC approval required when a decree of adoption is entered prior to the family leaving Arkansas and returning to their home state? Q2) Does the AR ICPC apply to international adoptions where an Arkansas agency obtains guardianship in the child's country prior to placing the child for adoption with an Arkansas family? Q2a) Is AR ICPC approval required when an Arkansas agency has obtained guardianship pending an Arkansas adoption of the foreign-born child? Q3) Does the Voluntary Adoption Registry require the AR ICPC to maintain their records for ninety-nine (99) years? Q3a) Is the AR ICPC required to maintain the adoption record under the provisions of the Voluntary Adoption Registry? Q4) Under what authority can AR ICPC condition approval of an interstate placement upon an inter-agency agreement being entered into between agencies in different states? Q4a) Is the inter-agency agreement AR ICPC requires before placement approval authorized by the Code? Q5) Under what authority can AR ICPC make it a condition for approval of a placement that if an agency is involved in one state, there must be an agency involved in the other state? If the placement is arranged by private adoption attorneys, is there authority to the effect that there can be no AR ICPC approval unless an agency is designated as the sending or receiving party? Q5a) Is there any Code provision or existing regulation which authorizes AR ICPC to require that an agency work only with an agency in an adoptive placement or to require that in a private adoption an agency must be involved? Q6) Does AR ICPC have the jurisdiction to disapprove home studies and placements made and approved by licensed social workers and licensed adoption agencies here in Arkansas and in another state? Q6a) Under what Code provision or regulation does AR ICPC have the authority to override the agency or social worker's pre-

adoption home study assessment when minimum licensing regulations have been met? ANSWER: Q.1: No, if no subsequent hearing is required by the terms of the decree, as long as it is entered before the family returns to their home state with the child. This applies in the case of an interlocutory decree as well. There is no interstate placement in that instance. See A.C.A. 9-29-201. Q.2: No, assuming that no agency or person in any other state had any participation in the placement arrangement. Q.3: No. See A.C.A. 9-9-507. Q.4: The compact administrator likely lacks authority to require this particular agreement. Ensuring that the "sending agency's" jurisdiction is viably retained is, however, a proper concern of AR ICPC., as the general coordinator of activities under the Compact. This might involve requiring the involvement of an agency. Q.5: Post placement supervisory services can probably be required under Article III 9d). Q.6: Generally yes, pursuant to its authority to determine that the placement "does not appear to be contrary to the interests of the child."

**Opinion No.:** 2001-348

Cook, M. Olin  
*State Representative*

**RE:** Since the Intermodal Authority located in Pope County is outside the city, can the City of Russellville grant funds to the Authority for developing a future site? Q2) Can the City of Russellville grant the Authority operating funds? RESPONSE: Q1) Assuming the City of Russellville participated in the Authority's formation pursuant to A.C.A. § 14-143-103, contained within the Regional Intermodal Facilities Act, A.C.A. §§ 14-143-101 through -129 (Repl. 1998), I believe the answer to your first question is "yes." See A.C.A. §§ 14-143-123(a) and 125(a) (expressly authorizing such contributions). However, if Russellville is not a party to the agreement creating the Authority, it may be precluded from making the proposed contributions by operation of Ark. Const. art. 12, § 5. Only a finder of fact can determine whether this constitutional proscription applies. Q2) Again assuming the City of Russellville participated in the Authority's formation, I believe the answer to your second question is likewise

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# ATTORNEY GENERAL OPINIONS

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“yes.” However, if this assumption is wrong, a finder of fact might conclude that providing operating funds is constitutionally precluded by operation of article 12, § 5.

**Opinion No.: 2001-351**

Taylor, Chaney  
*State Representative*

**RE:** Can the board of directors of a public water authority, created pursuant to Act 115 of 2001, legally charge its customers a monthly fee for volunteer fire department dues? Q2) Can a public water authority, created pursuant to Act 115 of 2001, put the issue of charging its customers a monthly fee for volunteer fire department dues to a vote of its members? If so, is a vote of approval by a simple majority legally binding on all members? **RESPONSE:** Q1) No. Act 115 of 2001, codified at ACA 4-35-201 et seq., authorizes water authorities to construct and to operate “projects” — a term that does not include firefighting. Q2) No, for the same reason.

**Opinion No.: 2001-352**

Taylor, Chaney  
*State Representative*

**RE:** Are the Arkansas Sheriff’s Ranches subject to the Arkansas Freedom of Information Act (FOIA)? **ANSWER:** This requires a factual determination, based upon their operations and funding. The opinion sets out the general test for private, nonprofit entities that receive public funds.

**Opinion No.: 2001-355**

Duggar, Jim Bob  
*State Representative*

**RE:** If a constable and a municipal police officer are both summoned to a neighborhood incident or

disturbance, does either have the primary authority or responsibility to address the situation? If so, which? Q2) If the answer to Q1 is “no,” does it matter if one was on the scene before the other? Q3) If the constable was on the scene first, does the municipal officer have the authority to take over and order the constable to leave and to arrest the constable if he refuses? Q4) In light of the governing statutory law, as well as *Credit v. State*, 25 Ark. App. 309, 758 SW2d 10 (1988), are offenses committed in the presence of a constable elected to a township in a district court jurisdiction considered “cognizable before a Justice of the Peace”? Q5) If a constable is charged with committing a criminal act while acting in his official capacity, is the county attorney required to serve as defense counsel for the constable? **ANSWER:** Q. 1, 2, & 3: No, assuming that the scene of the incident or disturbance is within the jurisdiction and realm of duties of both officers. See A.C.A. 16-19-301 (constable) and 14-52-202 & 14-52-203 (municipal police officer). See also Op. 93-261. Q.4: Yes. See Op. 98-063. Whether an offense is cognizable before a justice of the peace is irrelevant to the constable’s arrest authority.

**Opinion No.: 2001-356**

Smith, Mark Alan  
*State Representative*

**RE:** Q1) Is it proper for a circuit judge to consider a person’s religious beliefs or practices when deciding a child custody case (or any other case, for that matter)? Q2) Is it proper for a circuit judge to cite a person’s religious beliefs or practices when rendering a judgment? **RESPONSE:** Q1) Given the factual nature of the issues, I am unauthorized and unequipped to address the disposition of the particular case that gave rise to your request. The trial court’s disposition of this case was subject to judicial appeal, which the petitioner apparently failed to pursue, and as an executive officer I must decline as a matter of policy to look behind the trial court’s decision. However, I can and will opine that the answer to your first general question “yes,” so long as the court considers religious beliefs or practices only in the

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course of determining what would best serve the interests of the child. Such a limited consideration of religion has been held consistent with the freedom-of-religion guarantees set forth at U.S. Const. amend. 1 and Ark. Const. art. 2, § 24. Needless to say, in conducting this inquiry, the court may not simply define the child's best interests in terms of the content, as opposed to the physical and psychological effects, of a particular system of religious beliefs and practice. Q2) Assuming the court's consideration of religion has been properly circumscribed in the manner discussed in my response to your first question, the court may properly discuss the religious issues that influenced it in rendering judgment.

**Opinion No.: 2001-357**

Huckabee, Mike  
*Governor*

**RE:** Q1) Can a legislator resign during his or her term to accept employment with any state agency? Q2) Is a legislator prohibited during his or her term from accepting employment with any state agency, resignation or not? Q3) Does current state law allow a legislator who was already a state employee to receive the state employee salary and also receive the legislative pay? Q4) Do provisions of ACA 19-4-1604(a) prohibit a legislator who is also a state employee from receiving both salaries? **RESPONSE:** 1) This question cannot be answered in a sweeping fashion. Assuming the position is not a civil office, however, and no other constitutional or specific statutory prohibition applies, the answer is "yes" under Act 34 of 1999. ACA 21-1-402. Each position must be evaluated on its own facts, however. 2) See response to question 1. 3) Assuming there is no legal obstacle to the dual service, I can find no prohibition against receipt of both salaries. ACA 19-4-1604 appears to be inapplicable. Act 34 of 1999, however, regulates the state employee salary.

**Opinion No.: 2001-359**

Haak, David M.  
*State Representative*

**RE:** Q1) Is the 'certified over' procedure referred to in Op. Att'y Gen. 82-104 the same thing as the first appearance procedure of Rule 8.3, Arkansas Rules of Criminal Procedure? Q2) If the answer to Q1 is "yes," does Op. 82-104 stand for the proposition that once this Rule 8.3 procedure occurs the county is thereafter financially responsible for the incarceration costs of such incarcerated persons even though such incarcerated persons were initially arrested by city police officers and even though felony informations have not yet been filed against such incarcerated persons by the prosecuting attorney? Q3) If the answer to Q2 is "yes," is there any conflict between Op. 82-104 and Op. 91-409, in which the opinion was expressed that a prisoner arrested by city police remained a city prisoner until felony charges were filed against the prisoner? **RESPONSE:** All of the questions relate to the issue of whether the city or county should be responsible for the expenses of housing a prisoner in the county jail, if the prisoner was arrested by the city. It is my opinion that the determination should turn on who has the responsibility for prosecuting the prisoner. See opinion for analysis.

**Opinion No.: 2001-360**

Files, Jake  
*State Representative*

**RE:** Is it legal for the Sebastian County Juvenile Detention Center officers to use tasers on detainees in situations of self defense? **RESPONSE:** The administrator of a juvenile detention center can authorize the purely defensive use of tasers, subject to certain conditions set forth in the Juvenile Detention Standards drafted by the Juvenile Detention Facilities

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Review Commission, see Act 427 of 1989, and any further conditions imposed by the Criminal Detention Facilities Review Coordinator. See A.C.A. § 12-26-103. However, the propriety of using such measures in any particular case would depend upon the facts. In my opinion, from a constitutional standpoint, determining whether a particular use of a taser was warranted would most likely involve a substantive due process analysis under the Fourteenth Amendment, meaning that a court would inquire whether the use was impermissibly intended as punishment, as opposed to self-defense. With respect to adjudicated delinquents, as opposed to pretrial detainees, a court might alternatively conduct an analysis under the Eighth Amendment and Ark. Const. art. 2, § 9, inquiring not whether the use was intended as punishment, but rather whether the use was applied in an effort to maintain discipline or maliciously and sadistically to cause harm. With respect to possible criminal exposure, a court might further inquire whether any challenged use of a taser amounted to a justified use of force pursuant to A.C.A. § 5-2-603 et seq.

**Opinion No.: 2001-361**

Taylor, Chaney  
*State Representative*

**RE:** Can the citizens of a municipality or county approve by voter initiative a 1/8 (one-eighth) cent city- or county-wide sales tax to be used for economic development? **ANSWER:** "No" as to municipal citizens, in the absence of any authorizing statute. The process under state law for placing sales tax issues before the electorate does not involve the enactment of any local legislation, and thus does not fall within the direct initiative or referendum provisions of Ark. Const. Amendment 7. The only statute authorizing a petition of city voters in connection with a sales tax is 26-75-213, which provides for resubmitting the question of the levy or repeal of a city sales and use tax by petition no earlier than six months after it was last voted on. See also 26-75-

210 and 26-75-310 regarding abolishing a sales tax. As regards a countywide sales tax, 26-74-207 authorizes a petition of county voters for an election on the question. See also 14-174-101 and 14-174-104 (authorizing sales tax levy pursuant to existing statutory authority, with proceeds to be used for economic development purposes as authorized in 14-174-105 through 14-174-107.

**Opinion No.: 2001-363**

Simes, Alvin  
*State Senator*

**RE:** What rights of a tenant were violated when an agent/representative/invitee of the tenant was asked to leave an "all residents meeting" of the Forrest City Housing Authority? **RESPONSE:** I am unable to answer this question without knowing more about the circumstances that prompted the ejection at issue in your request. However, assuming the meeting qualified as a "public meeting" of the Authority's commissioners and the individual was asked to leave solely because he was not a resident subject to the Authority, I believe his exclusion would violate the terms of the Arkansas Freedom of Information Act, A.C.A. § 25-19-101 et seq. (Repl. 1996 & Supp. 2001).

**Opinion No.: 2001-365**

Isbell, Gary  
*Circuit Judge, 14th Judicial Dist, Div 2*

**RE:** Q1) Can a county, by and through its quorum court, for the sole purpose of avoiding the payment of overtime compensation, change a job description and convert the job from an hourly wage to a salaried position? Q2) Does the federal wage and hour legislation impact this question? Q3) Does ACA 14-14-1203(d) impact this question? **RESPONSE:** Q1) Yes. Q2) Yes, but the outcome will depend on the nature of the position in question. Q3) No.

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**Opinion No.: 2001-366**

Hunt, Russell L.  
*State Representative*

**RE:** In a water improvement district, does a landowner's property have to be annexed into the district before he can receive water from the district?  
**RESPONSE:** The answer will depend on the statutes under which the improvement district was organized.

**Opinion No.: 2001-367**

House, Don R.  
*State Representative*

**RE:** Based on Act 1788 of 2001, does the law require that the resident school district be party to any written agreement between the parent and the non-resident district to provide transportation to or from the non-resident district?  
**RESPONSE:** Although the law is not entirely clear, the language seems to indicate an intent that both districts be parties to any such agreement.

**Opinion No.: 2001-373**

Ferguson, Danny  
*State Representative*

**RE:** If a duly elected coroner receives a Freedom of Information Act (FOIA) request to inspect all coroner cases or other public records relating to that office for a specified period of time, how should that elected official respond if there is a conflict between the FOIA and the Federal Privacy Act? Q2) What is an elected official allowed to lawfully withhold under the FOIA and Federal Privacy Act? Q3) Is there a limitation period for how far back records can be requested?  
**ANSWER:** Q.1: Depending upon the particular record in question, A.C.A. 14-14-110 (b) (county privacy statute regarding "personal records") might exempt some records from public inspection and copying that would not otherwise be exempt under the FOIA.

However, specific exemptions under the FOIA (e.g. personnel records, job performance and evaluation records) will apply rather than the general county statute. Q.2: Coroner's investigation records are governed by 14-15-304. Regarding death certificates, see 20-18-304 (a) and 20-18-305 (1) (Vital Statistics Act) and Op. 97-177. See also 14-15-304 (a) regarding death certificates created during the course of a coroner's investigation. Q.3: No.

**Opinion No.: 2001-374**

Critcher, Jack  
*State Senator*

**RE:** If a church were to change the use of a piece of its property, which lies in a Historic Residential District from a residence to a parking lot, but the city denies the change in use citing a proposed ordinance, could the church claim that it is being denied permission to use its property under provisions of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000?  
**RESPONSE:** This question is too fact-intensive to be addressed in an Attorney General's opinion. I am unable to determine either the intent of the proposed ordinance or its relationship to a church's proposed construction of a parking lot. If the local governing body adopts the recited subsection, construing its language will be an undertaking for a court within the local domain, not for this office. For these reasons, I can only suggest that the aggrieved (or possibly soon-to-be-aggrieved) church retain local counsel, who can render advice based on a full understanding of the underlying facts.

**Opinion No.: 2001-375**

Altes, Denny  
*State Representative*

**RE:** A particular judge will no longer issue a warrant for a hot check written for rental payments. How can the court differentiate a hot check for rent from a hot check for groceries? Q2) Did the General Assembly pass new legislation concerning rentals and a landlord's ability to collect?  
**RESPONSE:** 1) The

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“Hot Check Law” does not apply to pre-existing debts, but it and the so-called “warm check law” each specifically apply to checks written in payment for rent. The provisions concerning rent were added after pre-existing debts were excluded from the statute. Insufficient checks written for payment of rent should be prosecutable assuming all other elements are present. 2) Not with regard to hot check prosecutions. But see Act 1733 of 2001 regarding failure to vacate.

**Opinion No.: 2001-376**

Casteel, John  
*Pros Att’y, 19th East Judicial District*

**RE:** In light of provisions of the Carroll County ordinance establishing a countywide “jail tax” to finance construction of a new jail, can money generated from this tax be used to develop operating protocols, purchase of equipment and development of training programs prior to the construction of any facility? **RESPONSE:** Yes, because of the broad language of the levying ordinance and the ballot title.

**Opinion No.: 2001-381**

Schall, Steve  
*State Representative*

**RE:** Q1) Is the \$10 fine reduction authorized by ACA 27-37-705 available for only the original traffic violation for which the motorist was stopped or must any fines resulting from additional citations or arrests be reduced by \$10? Q2) Does the phrase “any fine” mean the grand total of all fines for any and all violations or is there to be a separate \$10 taken off each fine for any and all charges brought “as a result of being stopped”? **RESPONSE:** Q1) The reduction is available for any fine imposed as a result of being stopped. Q2) The reduction must be applied to each fine.

**Opinion No.: 2001-383**

King, Barbara  
*State Representative*

**RE:** Would a UCC fixture lien filed by the circuit clerk in the Deed and record Mortgage Book without a signature or an acknowledgment be a legal document? Q2) Is there a conflict between Act 1439 of 2001 (the new UCC law) and ACA 18-40-101 (proof of acknowledgments/recording)? **RESPONSE:** 1) A financing statement filed as a fixture filing can be legal without a signature of the debtor, assuming all other requirements are met. A signature of the debtor is no longer required under the 2001 law. See ACA 4-9-502. 2) There is no conflict. Section 18-40-101 applies to mortgages, not fixture financing statements. Mortgages may also operate as fixture filings, but a fixture financing statement is not a mortgage and a signature is no longer required on a fixture financing statement.

**Opinion No.: 2001-384**

Bradford, Jay  
*State Representative*

**RE:** Can an officer purchase one year of service towards retirement from another agency if that service occurred during a break of employment with the current department? (That is, was the intent of ACA 24-11-437 to require an officer to have “prior” service before participation in the current retirement fund, or to allow credit for any former service outside the length of time covered under the pension plan?) **RESPONSE:** Yes — an officer can purchase service even if the “prior” service did not occur before some of the participation in the pension plan.

**Opinion No.: 2001-385**

Scroggin, Preston  
*State Representative*

**RE:** Are the provisions of Act 984 of 2001 (codified

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at ACA 14-20-108), authorizing collection of volunteer fire department dues with personal property taxes, legal? ANSWER: Generally, yes, although a constitutional problem arises under Ark. Const. article 12, section 5 with regard to private, nonprofit (subscription) fire departments. The practical problems that have been identified in connection with implementation do not render the act unlawful.

**Opinion No.: 2001-386**

Norris, Larry  
*Director, AR Dept of Correction*

**RE:** Q1) Do provisions of ACA 16-93-611, as revised by Act 1782 of 2001 (revision effective 4/30/2002) eliminate the requirement of currently incarcerated inmates, whose offense was committed prior to April 30, 2002, to serve 70% of their sentence? Q2) Do provisions of ACA 12-12-1109, as amended by Act 218 of 2001, require a DNA sample for an attempt, solicitation, or conspiracy to commit a residential or commercial burglary? **RESPONSE:** Q1) The date of April 20, 2002 will not trigger any change in the applicability of the 70% requirement to inmates who are currently incarcerated for the two methamphetamine offenses (and whose offenses were committed after the effective date of Act 1268 of 1999). The confusion regarding this matter arises out of a discrepancy in the codification of ACA 16-93-611. See opinion for analysis. Q2) DNA samples are not required in connection with the offense of attempt, solicitation, or conspiracy to commit a residential or commercial burglary. Those offense are not listed in the applicable statute, ACA 12-12-1109.

**Opinion No.: 2001-387**

Agee, Sarah S.  
*State Representative*

**RE:** If an individual is appointed to fill a vacancy on a county quorum court for the district in which they live, and then finds themselves in a different district after the county election commission has established

new districts, as required after each census, can that individual seek election to the county quorum court from the new district? **RESPONSE:** It depends upon the materiality of the changes to the district. See Ops. 91-379; 91-447 and 98-076.

**Opinion No.: 2001-388**

Harkey, John Norman  
*Circuit/Chancery Judge, 16th District*

**RE:** Does Judge Harkey, in his capacity as circuit judge of the 16th Judicial District, have authority to order officers in another judicial district to serve civil papers and bring persons who live in that other district to be heard before the 16th Judicial court? **RESPONSE:** At common law, "no." This extraterritorial authority, if it exists, must be specifically authorized by constitutional provision, statute, or applicable court rule. Without a more detailed description of the "officers" and "civil papers" at issue, it is impossible to say whether a particular provision authorizes the conduct described. See however, for example, Rule 45 of the Rules of Civil Procedure, which authorizes the service of subpoenas statewide.

**Opinion No.: 2001-389**

Hays, Miriam (Peggy)  
*The Reverend*

**RE:** Request for certification of popular name and ballot title of proposed Constitutional amendment to establish the offense of aggravated cruelty to animals, and for other purposes. **RESPONSE:** Popular name and ballot title certified as submitted.

**Opinion No.: 2001-390**

Stilley, Oscar  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed Constitutional amendment to

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abolish state and local sales and use tax on used goods, and for other purposes. RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2001-391**

Stilley, Oscar  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed Constitutional amendment to abolish all ad valorem taxes on personal property, authorize the change of local tax rates, provide for school choice by education vouchers, and for other purposes. RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2001-392**

Fitch, Jon S.  
*State Senator*

**RE:** Under the guidelines of the current grant proposal submitted to the Arkansas Economic Development Fund Commission by the City of Huntsville, can the LaBarge Corporation be reimbursed for their expansion costs?

**Opinion No.: 2001-393**

Hickinbotham, Boyd  
*State Representative*

**RE:** Is it unconstitutional for the City of Hardy to enter into a lease agreement with the Sharp County Library whereby the City agrees to pay all utilities and provide a rent-free facility for the library? RESPONSE: This will be a question of fact best addressed to the city and county library counsel. See however, Ops. 95-199; 93-211; and 93-070 on the topic of municipal leases generally.

**Opinion No.: 2001-395**

Cook, M. Olin  
*State Representative*

**RE:** Should Revenue Loss Funding be included in the calculation of state revenue per Average Daily Membership for the purposes of determining the amount of additional base funding a school district is eligible to receive? Q2) If revenue loss funding is included in this calculation, what is the basis for its inclusion in the computational process? Q3) Of the three Arkansas Code sections that deal with the calculation of total state and local revenue per average daily membership — ACA 6-20-326(a), 6-20-303(1) and 6-20-308(2) — which controls and how should they be read? RESPONSE: Q1) Yes. Section 6-20-326 of the Code expressly provides that revenue loss funding awarded for a significant one-year loss in student population must be included in total state and local revenue per average daily membership in determining a district's entitlement to receive additional base funding — a category of aid designed to ensure that total state and local revenue per average daily membership will at least equal minimum state and local revenue per average daily membership. The same conclusion applies if, in accordance with A.C.A. § 6-20-308(a)(2), one looks to the "federal range ratio" for guidance, see 34 C.F.R. § 222.61 et seq. (1994): Under the federal regulations, revenue loss funding is not expressly excluded from the formula and so must be treated as district revenue for purposes of determining whether a district is entitled to receive additional base funding. Finally, I believe either or both of these statutes would supersede A.C.A. § 6-20-303(29), which does not mention revenue loss funding in setting forth a formula for computing total state and local revenue per average daily membership. Q2) See response to question 1. Q3) A.C.A. § 6-20-303(1) merely defines "additional base funding" without setting forth any formula to calculate the amount. Although there might be some tension between A.C.A. § 6-20-308(a)(2), which dictates computing district revenue using the federal range ratio formula, and A.C.A. § 6-20-326(a), which simply declares revenue loss funding part of total state and local funding per average daily membership, both statutes require including revenue loss funding in the formula. To the

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extent the two statutes conflict, I believe A.C.A. § 6-20-326(a) will control because it was more recently enacted. Q4) revenue loss funding is “associated with the sparsity of population” defined as an exclusion in the federal range ratio formula insofar as a drastic drop in student population might trigger both revenue loss funding and funding for a newly existing or aggravated “sparsity.” However, to establish this “association” is by no means to establish that revenue loss funding should be excluded from total state and local revenue per average daily membership. Q5) No. for reasons explained in my response to question 4.

**Opinion No.: 2001-397**

Embry, Charles S., Jr.  
*Embry Law Firm*

**RE:** Request for certification of proposed constitutional amendment to allow any restaurant or hotel operating a restaurant in any county in the state to sell alcoholic beverages by the drink, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-001**

Emigh, Barry L.

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to authorize bingo and raffles by nonprofit organizations and allow the operation of casino gambling and a state lottery. **ANSWER:** Rejected due to ambiguity in the text of the measure.

**Opinion No.: 2002-003**

Milum, Jim  
*State Representative*

**RE:** Q1) If a county owned facility is leased by a

county judge to a private entity, does the county administrative board established to oversee the facility have any legal input in these terms? Q2) If the terms of the lease have been amended by county court order to direct lease payments to be made to the treasurer of the administrative board rather than the county treasurer, can that county court order be overridden by an ordinance? Q2b) Can any county court order be overridden by an ordinance? Q3) If lease payments are county revenues, does the authority of the administrative board with regard to the disposition of such revenues supercede the statutory authority of the depository board (ACA 19-8-106)? Q4) Would it be considered a conflict of interest if a member of the administrative board were also a board member of the bank where funds under the control of the administrative board have been deposited? **RESPONSE:** Q1) The answer will depend upon factual matters, such as the statutory authority under which the board was created, the specific provisions of the ordinance by which the board was created, and the terms of the lease in question. Q2) See response to Q1. Q3) No. Q4) The situation gives rise to concerns about conflicts of interest, as well as concerns about the provisions of ACA 14-14-705(2)(B).

**Opinion No.: 2002-005**

Butler, George  
*Washington County Attorney*

**RE:** Should the custodian of records release information regarding the disciplinary action taken against three Washington County sheriff’s deputies in response to a Freedom of Information (FOIA) request from the Northwest Arkansas Times? **RESPONSE:** It depends. The records would ordinarily be releasable under the standard for “job performance records.” There is apparently a law enforcement investigation pertaining to some of the subject matter. If the investigation is of “suspected criminal activity” and not purely an internal personnel investigation, the records may be withheld until the conclusion of the criminal investigation.

# ATTORNEY GENERAL OPINIONS

**Opinion No.: 2002-006**

Mero, Robin  
*The Morning News*

**RE:** Was the decision of the custodian of records not to release the resignation letters of two employees of the Siloam Springs Memorial Hospital claiming the release would be an unwarranted invasion of personal privacy, consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The opinion sets forth the applicable tests for the release of such records.

**Opinion No.: 2002-008**

Davis, Brent  
*Pros Att'y, 2nd Judicial Circuit*

**RE:** Q1) Do the commissions from prisoner telephone services as referred to in ACA 12-41-105 go into a separate account or are they to be combined into one account with the funds received from fees provided by ACA 21-6-307(b)? Q2) If both the fees provided in ACA 21-6-307(b) and the commissions derived from ACA 21-41-105 are to be placed into a single "fund" account, are those portions derived from the fees still to be used solely for the purposes enumerated in ACA 21-6-307(b)(2)(c) or is the entire "fund" subject to being allocated up to fifty percent for the maintenance and operation of the county jail? Q3) Does the sheriff have the authority to make expenditures from the "Communications Facility and Equipment Fund" without the Quorum Court appropriating such expenditure? Does the proper procedure for expending money from the "fund," i.e., sheriff's discretion or appropriation by quorum court, differ based on whether the funds to be expended were generated by fees or telephone commissions? Q4) Is it within the sheriff's discretion as to whether any of the "fund" (up to 50%) is expended for operation and maintenance of the county jail or can the quorum court appropriate up to 50% of the fund for that purpose? **RESPONSE:** Q1) The commissions go into one account with the "Communications Facility and

Equipment Fund. Q2) Only the portion of the Fund that is attributable to prisoner telephone commissions is subject to the allocation provision of ACA 12-41-105(b)(2). Q3) Yes. The sheriff's discretion does not depend on the source of the moneys in the Fund. Q4) It is within the sheriff's discretion.

**Opinion No.: 2002-010**

Hinshaw, Cathryn E.  
*Exec Dir, AR Fire & Police Pen Rev Bd*

**RE:** Is it possible to read provisions of ACA 24-11-827 and 24-11-818(f)(2) together and state that a retired local fire pension fund member may become active again in the same department from which retired as long as his pension benefit is suspended and he does not receive compensation for that service? How is the conflict between 24-11-827 and 24-11-818(f)(3) to be handled? **RESPONSE:** The two statutes address different types of return to service after retirement. See opinion for analysis.

**Opinion No.: 2002-011**

Embry, Charles S., Jr.  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title for a constitutional amendment to permit the sale of alcohol by the drink in all Arkansas counties, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-012**

Embry, Charles S., Jr.  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to permit the sale and distribution of alcoholic beverages

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# ATTORNEY GENERAL OPINIONS

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in all counties in the state, and for other purposes.  
RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-013**

Stilley, Oscar  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to prohibit judicial disqualification of initiated constitutional amendments, and for other purposes.  
RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-014**

Stilley, Oscar  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to cap the salaries and regulate the benefits of public officials, and for other purposes. RESPONSE: Popular name and ballot title approved as submitted.

**Opinion No.: 2002-015**

Stilley, Oscar  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to provide that inmates shall not be entitled to parole or good time unless they pay the full cost of their incarceration, and for other purposes. ANSWER: Ballot title and popular name approved as submitted (see also Op. 2000-021, previously approved). The "Arkansas Prison System Amendment."

**Opinion No.: 2002-019**

Jeffress, Jimmy  
*State Senator*

**RE:** Could an Arkansas school district provide scholarships for students to attend an Arkansas institution of higher education for which, in return, these students would agree to teach in that school district for an agreed to number of years as a way to forgive the loan? ANSWER: Generally, yes, under the theory that this would be an expenditure for the benefit of public education. See Op. 91-440.

**Opinion No.: 2002-020**

Smith, Mark Alan  
*State Representative*

**RE:** Q1) Is it legal for school board members to discuss among themselves school personnel and school business prior to a legally called school board meeting? Q2) If school board members do meet in private, does anything they say or notes taken fall under the Freedom of Information Act (FOIA) for patrons of the district? Q3) What can citizens do if their school board has had private meetings? Q4) Are there legal steps that can be taken to stop school board members from meeting about school business in private? Q5) Can school board members be removed from office for violations of laws? RESPONSE: Q1) No. Q2) Whether notes taken during a private meeting are subject to the FOIA depend upon whether they fall within the definition of "public records," as stated in the FOIA. Q3) The FOIA provides for both civil and criminal remedies. Q4) Other possible remedies may include declaratory judgment, injunction, and writ of mandamus, depending upon the specific facts of the situation, and should be considered under the guidance of private counsel. Q5) Arkansas does not provide for such removal, except in limited circumstances. See ACA 6-13-63 and 6-13-612. They can, however, be replaced by vote at the next election.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2002-022**

Formica, Santo D.

**RE:** Request for certification of popular name and ballot title of proposed measure to allow a state lottery and bingo for non-profit organizations. **RESPONSE:** Submission returned to sponsor due to insufficient information.

**Opinion No.: 2002-023**

Gillespie, Jeff  
*State Representative*

**RE:** Does the office of fire chief of the City of Atkins qualify as a municipal office pursuant to ACA 14-42-107(a)(2)? Q2) Does the fire chief of the City of Atkins qualify as a volunteer fireman under ACA 14-42-115? **RESPONSE:** This question cannot be answered without more specific information. The characteristics of a "public office" are discussed. In any event, the situation is prohibited by the doctrine of incompatibility.

**Opinion No.: 2002-026**

Emigh, Barry

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to authorize bingo and raffles for nonprofit organizations, allow casino gambling under certain conditions, authorize a lottery, establish a commission to regulate raffles, bingo and lotteries, and for other purposes. **ANSWER:** Rejected due to ambiguities in the text of the measure.

**Opinion No.: 2002-027**

Embry, Charles S.  
*Attorney at Law*

**RE:** Request for certification of the popular name and ballot title for a proposed constitutional amendment to permit the sale and distribution of alcoholic beverages in all counties, cities and townships of this state, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to an ambiguity in the text of the proposed measure.

**Opinion No.: 2002-028**

Embry, Charles S.  
*Attorney at Law*

**RE:** Request for certification of the popular name and ballot title of a proposed constitutional amendment to permit any restaurant located in a dry county to serve and sell liquor by the drink, to allow closed container sales of alcoholic beverages at any grocery store located in a dry county in the state, and for other purposes. **RESPONSE:** Popular name and ballot title certified as substituted.

**Opinion No.: 2002-043**

Witherell, Stacy  
*Employee Servs Mgr, Human Resources*

**RE:** Is the decision of the custodian of records to release payroll records, status change information and correspondence regarding benefit packages for specified employees consistent with provisions of the



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# ADOPTED RULES AND REGULATIONS

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## ARKANSAS DEVELOPMENT FINANCE AUTHORITY

### *Multi-Family Housing*

Docket No.: 109.04.02--001  
Effective Date: 2/7/02  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **2002 Housing Credit Program**

Docket No.: 109.04.02--002  
Effective Date: 2/15/02  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **Compliance Monitoring Policies and Procedures Manual for the Low Income Housing Tax Credit Program**

### *Single-Family Housing*

Docket No.: 109.03.02--001  
Effective Date: 2/8/02  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **HOME Program Policy Manual**

## BOARD OF ELECTION COMMISSIONERS

Docket No.: 108.00.02--001  
Effective Date: 2/17/02  
Contact Person: Bonnie Noe  
Telephone: (501) 682-1783

## Rules for NonPartisan Judicial Office Filing Fees

## DEPARTMENT OF COMMERCE

### *State Bank Department*

Docket No.: 003.02.02--003  
Effective Date: 2/24/02  
Contact Person: Candace Franks  
Telephone: (501) 324-9019

## County or Regional Industrial Development Corporations

## DEPARTMENT OF COMMUNITY PUNISHMENT

Docket No.: 159.00.02--001  
Effective Date: 1/31/02  
Contact Person: G. David Guntharp  
Telephone: (501) 682-9568

## AR 7.30 - Furlough Programs

## EDUCATION DEPARTMENT

### *Financial Services*

Docket No.: 005.04.02--001  
Effective Date: PROPOSED  
Contact Person: Annette Berry  
Telephone: (501) 682-5124

## Proposed Rule: 56 Percent Rule Exemption \*\*\*

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# ADOPTED RULES AND REGULATIONS

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## *Accountability*

Docket No.: 005.19.02--001  
Effective Date: 2/24/02  
Contact Person: Gayle Potter  
Telephone: (501) 682-4558

**ADE 137 - Rules Governing a Comprehensive Plan for Consistency and Rigor in Course Work**

Docket No.: 005.19.02--002  
Effective Date: 2/24/02  
Contact Person: Gayle Potter  
Telephone: (501) 682-4558

**ADE 136 - Rules Governing Uniform Grading Scales for Public Secondary Schools and for Optional Use in Public Elementary Schools**

## *Administrative Service*

Docket No.: 005.01.02--001  
Effective Date: 2/24/02  
Contact Person: Bobbie Davis  
Telephone: (501) 682-1297

**ADE 135 - Rules Governing Ethical Guidelines and Prohibitions for Educational Administrators, Employees, Board Members and Other Parties**

## **GAME & FISH COMMISSION**

Docket No.: 002.00.02--001  
Effective Date: 2/11/02  
Contact Person: James Goodhart  
Telephone: (501) 223-6327

**Emergency Rule: 44.07 Commercial Harvest of Paddlefish Prohibited on the Arkansas River**

## **HEALTH DEPARTMENT**

### *Environmental Health Services*

Docket No.: 007.04.02--001  
Effective Date: 2/22/02  
Contact Person: Sandra Lancaster  
Telephone: (501) 661-2171

**Rules Pertaining to Handwashing in a Food Service Establishment**

### *Health Facility Services*

Docket No.: 007.05.02--001  
Effective Date: 2/18/02  
Contact Person: Renee Mallory  
Telephone: (501) 661-2252

**Rules for Hospitals and Related Institutions in Arkansas ("Hospital Rules")**

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# ADOPTED RULES AND REGULATIONS

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## HEALTH SERVICES AGENCY

Docket No.: 049.00.02--001  
Effective Date: 2/1/02  
Contact Person: Mary Brizzi  
Telephone: (501) 661-2509

### **HSC Regulation 400M - Assisted Living Methodology**

## HIGHER EDUCATION

*Colleges and University Plans & Operations*

Docket No.: 008.02.02--001  
Effective Date: 2/15/02  
Contact Person: Thomas Pennington  
Telephone: (501) 964-0824

### **Arkansas Tech University Parking Rules and Regulations \*\*\***

## HUMAN SERVICES

*Children & Family Services*

Docket No.: 016.15.02--002  
Effective Date: 2/21/02  
Contact Person: Vivian Jackson  
Telephone: (501) 682-1577

### **Annual Progress and Services Report Fiscal Report 2001**

## *County Operations*

Docket No.: 016.20.02--001  
Effective Date: 2/18/02  
Contact Person: Sandra Miller  
Telephone: (501) 682-8251

### **FSC 02-03: Overpayment Plan**

Docket No.: 016.20.02--002  
Effective Date: 2/21/02  
Contact Person: Sandra Miller  
Telephone: (501) 682-8251

### **TEA Policy 5130-5145: Extended Support Service Employment Bonus & Transportation Assistance; Title IV-A State Plan, Sections 6.5.1, 6.5.2, form DCO-177 - Notice of Time Limit Determination**

Docket No.: 016.20.02--003  
Effective Date: 2/21/02  
Contact Person: Troy Branscum  
Telephone: (501) 682-8722

### **Weatherization Assistance Program's 2002 State Plan ([www.state.ar.us/dhs/dco/ocs/index.htm](http://www.state.ar.us/dhs/dco/ocs/index.htm))**

## *Medical Services*

Docket No.: 016.06.02--004  
Effective Date: 2/5/02  
Contact Person: Carolyn Bradley  
Telephone: (501) 682-8577

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# ADOPTED RULES AND REGULATIONS

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**Emergency Rule: State Plan Amendment #2002-002 and Official Notice DMS-2002-U-1 -- Revisions in the Arkansas Medicaid Visual Care program**

## INSURANCE DEPARTMENT

Docket No.: 054.00.02--001  
Effective Date: 2/21/02  
Contact Person: Sara Farris  
Telephone: (501) 371-2820

**Rule and Regulation 74 - Insurance Consumer Financial and Health Information Privacy**

Docket No.: 054.00.02--002  
Effective Date: 2/23/02  
Contact Person: Sara Farris  
Telephone: (501) 371-2820

**Rule and Regulation 73 - Regulations Concerning the Licensing and Regulation of Captive Insurance Companies**

## LABOR DEPARTMENT

*Boiler Inspection*

Docket No.: 010.01.02--001  
Effective Date: 3/1/02  
Contact Person: Sara Farris  
Telephone: (501) 371-2820

**Chapter 12 - Owner User Program**

Docket No.: 010.01.02--002  
Effective Date: 3/1/02  
Contact Person: Sara Farris  
Telephone: (501) 371-2820

**Chapter 13 - Restricted Lifetime License**

## RESIDENTIAL BUILDING CONTRACTORS COMMITTEE

Docket No.: 184.00.02--001  
Effective Date: 2/2/02  
Contact Person: Gregory Crow  
Telephone: (501) 371-1504

**Changes to the Residential Regulations**

## SOIL & WATER CONSERVATION COMMISSION

Docket No.: 138.00.02--001  
Effective Date: 3/8/02  
Contact Person: A. Mark Bennett, III  
Telephone: (501) 682-3965

**Rules governing the Arkansas Clean Water Revolving Loan Fund Program**

## WEST RIVER VALLEY REGIONAL SOLID WASTE MANAGEMENT

Docket No.: 185.00.02--001  
Effective Date: 2/9/02  
Contact Person: Ronald Smith  
Telephone: (479) 785-2651

**Rules and Regulations \*\*\***

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# INSURANCE DEPARTMENT

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**\*\*\* No Insurance Orders were filed with the *Arkansas Register* during the past filing period for placement in this edition.**

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# ORDERS AND NOTICES

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## LEGISLATIVE AUDIT January 28, 2002

<b>Agency</b>	<b>Period Covered</b>
Department of Finance and Administration Employee Benefits Division - Two-Year Period Ended	6/30/00
Secretary of State	6/30/01
Administrative Office of the Courts	6/30/00
Arkansas Department of Economic Development	6/30/01
Department of Finance and Administration - Alcoholic Beverage Control - Administration Division - Two-Year Period Ended	6/30/01
Department of Finance and Administration Alcoholic Beverage Control - Enforcement Division	6/30/00
Department of Finance and Administration Alcoholic Beverage Control - Enforcement Division	6/30/01
Arkansas Sentencing Commission	6/30/01
Soil and Water Conservation Commission	6/30/00
Arkansas State Board of Public Accountancy (Private)	6/30/01
Arkansas Childrens' Hospital (Private)	6/30/01
North Arkansas Human Services System, Inc. (Private)	6/30/01
University of Arkansas for Medical Sciences	6/30/01
University of Arkansas for Medical Sciences (Private)	6/30/01

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