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Of State

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Editor Jon Davidson

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THE ARKANSAS REGISTER

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Secretary of States’ office
Arkansas Register
026 State Capitol
Little Rock, AR 72201
(501) 682-3527
jedavidson@sosmail.state.ar.us

ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-238

Steve Franks
Director, AR Dept of Workforce Education

RE: Q1) Pursuant to provisions of ACA 6-51-901 to -907, are the technical institutes governed by local boards under the general responsibility of the State Board of Workforce Education and Career Opportunities (SWEBCO), considered “educational institutions” or “state agencies”? Q2) Are technical institutes to pass local millage or sales tax for support? Q3) Does ACA 6-51-902 require the institutes to be funded on a formula basis as approved by SWEBCO, or as a state agency pursuant to DF&A guidance? **RESPONSE:** Q1) This question cannot be answered in the abstract. Technical institutes are “state agencies” for some purposes and not for others. Cf. ACA 22-2-102 and 19-5-206. Q2) Although Am. 52 empowers the legislature to provide for the levy of local millages to support technical institutes, the legislature has not done so, nor has it authorized them to levy sales taxes. Funding is provided through appropriations and other sources. Q3) The State Board of Workforce Education may request funding pursuant to its recommended formula, but funding pursuant to this formula is not required. Both the Board and DF&A are involved in the process for the funding of these institutes.

Opinion No.: 2001-316

Brenda Gullett
State Representative

RE: Does ACA 14-52-202 prevent a city council from making alternate arrangements which would allow a city attorney to hire off-duty police officers, who have been deputized by the county sheriff, to serve subpoenas for cases the city attorney is required to prosecute? **RESPONSE:** No. This practice is permissible under ACA 16-43-212(b), Rule 45 of the Rules of Civil Procedure, the historical precedent of applying that rule to criminal proceedings, and Rule 6.3 of the Rules of Criminal Procedure.

Opinion No.: 2001-319

Charles Ormond
State Representative

RE: Does a county have jurisdiction to override a city in the naming of city streets for purposes of implementing a 911 emergency assistance system, i.e., can Perry County rename the streets in the City of Casa under its 911 regulations, therefore requiring the City of Casa to change its current street names and signage? **RESPONSE:** No, in the absence of some agreement. The naming of city streets is generally a matter for the city. See A.C.A. 14-301-101 (giving the city control and supervision over its streets). The 911 statutes are silent regarding the naming of streets. Moreover, the city streets are not part of the “system of county roads” that is operated (administered) by the county judge in an executive capacity, and over which the quorum court has local legislative authority. See A.C.A. 14-14-1102 and Ark. Const. amend. 55, sec. 3. Compare Ops. 96-373, 96-373, & 96-346 (re. naming or renaming county roads). The cases of *Yates v. Sturgis* and *Sanderson v. Texarkana* are distinguishable because there is no statute involved in this instance that might implicate the county court’s jurisdiction over county roads. See Ark. Const. art. 7, sec. 28.

Opinion No.: 2001-324

Chaney Taylor, Jr.
State Representative

RE: Which agency or governmental entity has the authority to require property owners of homes and buildings to “hook-up” to the public sewer system when its lines are within 300 feet of the property? Q1a) If the answer is more than one entity, which entity should take such action? Q1b) Does the Health Department now have authority to act or direct the proper entity to act? Q2) Since the Community Club (a property owners association organized under ACA 14-236-109) owns two (2) of the six (6) sewage treatment plants and the lines served by those plants, should those lines and treatment plants be in the same posi-

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tion and governed by the same law that governs the plants and lines of the County Facilities Board? (The Community Club manages the County Facilities Board System as well as its own.) Q3) Are the meetings of the County Facilities Board subject to the Arkansas Freedom of Information Act (FOIA)? Q4) Are the meetings of the Community Club, acting as manager of the County Facilities Board and for themselves, subject to the FOIA? RESPONSE: Q1) Nothing in the Public Facilities Boards Act of 1975, A.C.A. § 14-137-102 et seq., authorizes a facilities board to mandate hooking up to a community sewer system. Moreover, nothing in the Code expressly authorizes a county to mandate sewer hookup. Although A.C.A. § 14-14-708 does authorize the formation of a subordinate sewer service district following notice and a public hearing, only county services are covered. A facilities board is an autonomous entity not subject to county control, A.C.A. §§ 14-137-104(b) and (c), and nothing authorizes the county to mandate hookup to a private property owners' association's sewer lines. Although A.C.A. § 14-235-302(a) authorizes a city to mandate hooking up to a sewer line, the city can do so only for property within 300 feet of the line, A.C.A. § 14-235-304, and only to a municipal line. With respect to the Fairfield Bay Community Club, a property owners' association's charter documents will control whether it can direct its members to tie into its lines. With respect to potential state regulation, although the Division of Sanitarian Services of the Department of Health regulates community sewage systems in unincorporated areas and individual sewage systems throughout the state, see Arkansas Sewage Disposal Systems Act, A.C.A. § 14-236-101 et seq., I believe the state would be authorized to mandate sewer hookups throughout Fairfield Bay only if doing so were "necessary and reasonable . . . for the protection of the public health and safety." A.C.A. § 20-7-109(a)(1). Finally, although this office avoids opining on matters of federal law, even assuming that the Corps of Engineers has preemptive power to enforce federal standards regarding effluents into Greer's Ferry Lake, I strongly doubt that the Corps can mandate that residents tie into a particular sewage system. Local counsel should consult with federal officials on this issue. The city and county might contemplate forming a wastewater treatment district pursuant to A.C.A. § 14-250-102, et seq., enabling them

to contract for services with the owners of the sewer systems and to impose mandatory service fees on residents. Fifty-one percent of property owners in unincorporated areas would have to approve the formation of such a district. A.C.A. § 14-250-106(b). Again, this is a decision for local counsel and officials. Q2) Although the facilities owned by the Community Club and Facilities Board are generally subject to governmental environmental and health regulations, the question of what requirements these entities can impose on Fairfield Bay residents can only be answered by reviewing the organization's charter documents and any pertinent contractual commitments. Q3) Meetings of the Facilities Board must clearly be open pursuant to the Arkansas Freedom of Information Act. Q4) Meetings of the Community Club acting as "manager" of the Facilities Board must be open if the Community Club's management activities are publicly funded, are intertwined with the Facilities Board's public function and involve the exercise of decision-making authority normally associated with a "governing body." A.C.A. § 25-19-106(a). With respect to the Community Club's other meetings, these must be likewise be open if they deal with publicly funded activities serving some public purpose intertwined with that of government. A.C.A. § 25-19-106(a). Only a finder of fact can make these determinations.

Opinion No.: 2001-328

Gary Hunter
State Senator

RE: After Gateway Charter School surrendered its charter on 9/10/01 to the Department of Education, may the Department of Finance and Administration, pursuant to the appropriations contained in Act 1016, 1024, and 1691 of 2001, issue state warrants payable to the Gateway Charter School? Q2) If the answer to Q1 is "yes," may those state warrants be used by the Ozarks Unlimited Resource Cooperative to offset debt incurred by Gateway Charter School prior to the surrender of their charter on 9/10/01? Q3) If the answer to Q1 is "yes," and the answer to Q2 is "no," what is the proper expense of the appropriated funds? Q4) May funds appropriated pursuant to the

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listed 2001 Acts for Gateway charter School be expended for expenses of the Ozarks Unlimited Resource Cooperative, the sponsoring organization for the Gateway Charter School? **RESPONSE:** Disbursement of the appropriated funds would be unlawful under the circumstances because the purpose of the appropriations cannot be accomplished, Gateway having surrendered its charter, with no outstanding capital improvement debt. Thus, any warrants issued after surrender of the charter should not be redeemed, no further warrants should be issued, and no appropriated funds may be expended for expenses of the Cooperative.

Opinion No.: 2001-330

Cathryn E. Hinshaw

Exec Dir, AR Fire & Police Pension Review Board

RE: Is it possible to receive service credit under a local fire pension fund for service prior to the establishment of the pension fund? **RESPONSE:** Yes, as long as the member was serving at the time of creation of the fund and continued to serve thereafter. A.C.A. 24-11-818 (a) (2). See also Op. 88-299 & 92-345.

Opinion No.: 2001-335

Chaney Taylor, Jr.

State Representative

RE: Does Act 1835 of 2001 offend Amendment 14, Sec. 1 of the U. S. Constitution and art. 2, sec. 3 of the Arkansas Constitution in that it regulates the use of titles by appointed but not elected judges in judicial races? Q2) Since Amendment 80 changes certain judicial officers to nonpartisan status, does Act 1835 apply to those judges and judicial candidates covered by Amendment 80 to the Arkansas Constitution? Q3) Assuming that Act 1835 is constitutional and applicable to candidates covered by Amendment 80, to whom is the Act applicable? **RESPONSE:** Q1) The text of Act 1835 provides that only a sitting, elected judicial officer may use his judicial title on the ballot

for a judicial election. By contrast, the Act's title provides that only an incumbent appellate judge seeking reelection may use his judicial title on the ballot. I consider the text unambiguous and hence controlling. I further believe distinguishing between appointed and elected candidates would pass the rational basis test. The legislature may reasonably have concluded that only a full elective term of service on the bench sufficiently bears on a candidate's qualifications to warrant disclosure on the ballot. Moreover, the legislature may simply have been attempting to preclude the potential for taking unwarranted advantage in the making of appointments, as might occur if a governor were to fill one court vacancy pursuant to Ark. amend. 29 virtually on the eve of the deadline for filing to run for another judgeship, thereby enabling a candidate with limited or no judicial experience to use the title "Judge" on the ballot. The enactment of Act 1835 avoids this possibility. Q2) I believe Act 1835 clearly applies to all judicial positions named in Amendment 80. ACA 7-7-305, which Act 1835 amends, does not apply only to primary elections. If it did, it would have been absurd for the legislature in 2001 to insert a provision dealing with judicial elections, given that the adoption on November 2000 of Ark. Const. amend. 80, §§ 17 and 18, obviated the need for all judicial primary elections. On its face, Act 1835 addresses the use of titles in "an election for a judgeship" — language that clearly includes elections for Amendment 80 judges. See Opinion 2000-177. Q3) Act 1835 applies to all judges, including those listed in Amendment 80. I doubt it applies to justices of the peace and county judges, whose judicial duties are extremely limited. I do not believe the legislature intended to allow these officials to mislead the electorate by abbreviating their titles to "Justice" and "Judge." Moreover, to the extent the text is ambiguous on this restricted issue, I can rely on the Act's title to conclude that the legislature intended the Act to apply only to full-time judicial officers.

Opinion No.: 2001-336

Raymond Simon

Director, AR Dept of Education

RE: Do Sections 6(e) and 7(e) of Act 1599 of 2001

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exempt “employment contracts” by a public educational entity for an administrator or employee position from the Act’s disclosure requirements even “if the person seeking employment with the public educational entity is a family member of a board member or administrator of the public educational entity? Q1a) Does the “best interest” standard described in Section 5(b) of the act require the disclosure process be followed in Section 5(c) or does Section 5(c) only apply to those contracts not exempted in Sections 6(e) and 7(e) of Act 1599? Q2) Does Act 1599, specifically sections 4(a), 8, 12, and 19, provide the Department of Education (“DOE”) authority to promulgate rules and regulations establishing ethical standards and guidelines dealing with an educational entity’s expenditures for educational work-related travel, conventions, seminars, lodging and other expenses for board members, administrators and employees of the public educational entity? Q3a) Does Section 5(c)(1)(c) of Act 1599 require board members directly or indirectly interested in a proposed contract to absent themselves from the discussion and the vote on the contract issue or merely absent themselves from the vote? Q3b) Pursuant to Section 5(c)(1)(c), when a board member is required to “...leave the meeting until the voting on the issue is concluded,” is the board member actually required to physically absent himself from the location of the public meeting? Q3c) Does Act 1599 also require administrators and employees directly or indirectly interested in a proposed contract to leave the meeting during the vote process on the contract issue? RESPONSE: 1) Section 5(b) and 6(b) except the employment of family members from the requirements of 5c. 2) No, but a school district’s authority is not unlimited in this regard. 3a) From the discussion and the vote, although this issue is not entirely clear. 3b) He or she must at least step outside the room where the meeting is being held. 3c) No.

Opinion No.: **2001-337**

Jerry Taylor
State Representative

RE: Would it be lawful for a municipality to autho-

alize the direct deposit of Street and General Turnback funds and City Sales Tax collections (funds transmitted to municipalities from the State Treasury) into a cash management trust account established pursuant to ACA 19-8-301 et seq. and managed by Stephens, Inc.? RESPONSE: Most likely not. The Local Government Joint Investment Trust Act, A.C.A. § 19-8-301 et seq. (Repl. 1998), authorizes any ten or more local governments to create by ordinance a trust for the purpose of making joint investments. A.C.A. § 19-8-304. The municipalities at issue in your request have apparently formed such a trust to be funded in whole or in part from city sales tax collections and “street and general turnbacks.” With respect to this latter category of revenues, I assume that you are principally referring to funds made available from the “Municipal Aid Fund” under A.C.A. § 19-5-601 (Repl. 1998). With respect to the disposition by the state of city sales taxes to the various municipalities, A.C.A. § 26-75-217(a) dictates that these revenues be paid by the State Treasurer to the city treasurer, not to a joint investment trust account. With respect to distributions from the Municipal Aid Fund, A.C.A. § 19-5-601(b)(1) provides that the State Treasurer will make distributions to the respective cities — presumably to the treasurers. See A.C.A. § 27-70-207(b)(1) (Supp. 2001) (directing that the State Treasurer transfer highway revenues in the Municipal Aid Fund to the treasurers of the respective municipalities). See also A.C.A. § 14-59-104 (directing that turnback funds be maintained in approved depositories). The concept of automatically depositing funds into a joint investment trust further seems inconsistent with A.C.A. § 19-8-304(a), which authorizes the investment only of “moneys not currently needed by the local governments creating the trust” — a qualification that suggests the municipalities will necessarily engage in an ongoing process of review and, if feasible, appropriation. This process in itself appears inconsistent with the concept of automatic direct deposits. Unless a particular statutory provision directs the transmission of collected moneys to some specific fund, it appears that the State Treasurer should direct those moneys to the city treasury. See Opinion No. 97-290.

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Opinion No.: 2001-338

Terry A. McMellon
State Representative

RE: Is it legal for the City of Waldron to charge businesses and commercial users a fee for solid waste collection after levying a countywide sales tax to be used for solid waste purposes? **RESPONSE:** This request is somewhat confusing in that, considered in isolation, it appears to assume that the countywide sales tax was validly enacted, whereas the material submitted in support of the request appears designed to establish that the election imposing the tax was flawed because of a misleading ballot title. If the only question is whether a city or county can charge businesses a fee for picking up solid waste even though the voters have approved a countywide sales tax to finance solid waste removal, I believe the answer is "yes," so long as the fee is reasonable, A.C.A. § 14-232-110 (Repl. 1998), and, possibly, so long as the ballot title in the election did not reflect a contrary intention. However, if this request implicates the sufficiency of the ballot title, I must decline to answer because the Code expressly directs that such questions be directed to the chancery (now circuit) courts. A.C.A. § 26-74-209 (Repl. 1997).

Opinion No.: 2001-340

David L. Gibbons
Pros Att'y, Fifth Judicial District

RE: Q1) Are all of the items on the attached four-page list considered public records? Q2-13) How long must city police keep accident reports, offense reports, fine/bond records, incident reports, expungement orders from city police cases, parking meter records (city no longer uses parking meters), radio logs and complaint cards, pawn tickets obtained during investigations, closed city police case files, payroll sheets, time cards, leave requests and other employment records be kept? Q14) Would destruction of the documents on the attached list constitute a violation of the Freedom of Information Act (FOIA) if

there was no stored reproduction of any kind? Q15) Would concerns of storage space be enough of a justification to dismiss an FOIA suit that was filed because the requested records were destroyed prior to the FOIA request? Q16) If destruction of the records is allowed, is there a particular procedure to be followed when destroying them? Q17) Are there any other laws that would apply to the retention or destructions of the documents on the attached list? Q18) Is there any type of ten-year retention rule that requires police departments to keep records for the 10-year period and allows destruction of the records after the 10 years has run? **RESPONSE:** Q1) These records all appear to be "public records," within the meaning of the FOIA. Q2-13, excluding Q10) State law makes clear that these records can be destroyed if copies in some form are retained. It does not authorize destruction of both the original and all copies, and therefore, by implication, seems to require that copies be kept. Q10 is about pawn tickets, which are seized property rather than documents, and must be governed by ACA 5-5-101. Q14) Only if the documents were destroyed after an FOIA request had been made. See also ACA 5-54-121. Q15) The FOIA is not a records retention law. Litigation would not arise out of the FOIA. Q16) State law does not address this issue. Q17) See previous questions. Q18) No.

Opinion No.: 2001-342

Tom Allen
Chair, Homes Inspector Advisory Board

RE: Is it consistent with the legislation enabling the activities of the Homes Inspector Advisory Board to require an applicant for registration to supply for review copies of inspection reports the applicant has conducted in the past? Q2) Is it against "client privileges" or is there any law which would prohibit an applicant from supplying copies of inspection reports for review by the Board? Q3) If there are no prohibitions other than the code of ethics, would it be reasonable and appropriate for the Board to withhold a recommendation that an applicant not be registered based on the applicant refusing/failing to provide the requested reports for review? **RESPONSE:** Q1) No.

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Nothing in the Arkansas Home Inspectors Registration Act, A.C.A. § 17-52-101 et seq. (Supp. 2001) authorizes the Board to establish anything more than the fact of inspections. Q2) no Arkansas law expressly requires an applicant, as opposed to a registered inspector, to observe the referenced ethical codes. However, I believe that a registered inspector who supervised an applicant pursuant to A.C.A. § 17-52-103(a)(3)(B) would be obligated pursuant to A.C.A. § 17-52-202(c) to maintain the confidentiality of inspection reports produced by the applicant under his supervision. Moreover, a candidate who conducted inspections out-of-state and who seeks registration pursuant to A.C.A. § 17-52-103(a)(3)(D) may be precluded from disclosing reports by that other state's laws. In addition, an applicant might be precluded from disclosing inspection reports by the ethical standards of some professional organization to which he belongs or by the terms of the contract with his client. Q3) I do not believe it would be reasonable or appropriate for the Board to withhold a recommendation that a candidate be registered simply because the candidate observed an applicable ethical proscription.

Opinion No.: 2001-344

Tommy G. Roebuck
State Representative

RE: Do the bylaws of the Hot Spring County Solid Waste Authority (the "SWA") or provisions of Act 611 of 2001 control in determining the requirements to add a member to the SWA Board of Directors? **RESPONSE:** The requirements for increasing the size of the SWA board are set forth in A.C.A. § 14-233-108 (Supp. 2001) and in Act 611 of 2001, which is codified at A.C.A. § 14-233-105(g) (Supp. 2001). I believe the SWA bylaws conflict with these statutory requirements in authorizing the governing body of any SWA member unilaterally and without restriction to increase the size of the board by simply appointing a new director in writing. Although it appears that a quorum court can unilaterally appoint an additional board member if requested to do so by an industrial development corporation, legislative clarification on this issue is warranted.

Opinion No.: 2001-347

George French
State Representative

RE: Q1) Does an employee of the Arkansas Assessment Coordination Division have authority to perform private fee appraisals, presumably on his own time? Q2) Would this practice be considered a conflict of interest? **RESPONSE:** Q1) This practice is not strictly prohibited by law, but could raise ethical questions under ACA 21-8-304. Q2) This practice could implicate the common law doctrine of conflict of interest, although, again, the practice is not strictly prohibited by law.

Opinion No.: 2001-353

Sarah S. Agee
State Representative

RE: Should the City of Lincoln, Arkansas have established a police court in 1997 instead of a city court when it became a city of the first class? Q2) Since Lincoln did not establish a police court in 1997 when it became a city of the first class, does the city have to revert to the second class city form of government in order to keep its city court? Q3) Does Lincoln have the option to remain a city of the first class and retain its city court? Q4) Does Amendment 80 of 2001 change this option? Q5) Can Lincoln maintain its city court by passing a new city ordinance? **RESPONSE:** 1) No. 2) No. 3) Yes. 4) No, so long as the city court was validly in existence in July 2001. 5) A new ordinance is not necessary.

Opinion No.: 2001-354

Janet M. Welsh
Exec Secretary, AR Board of Examiners in

RE: Is there any statute, regulation, case law, or AG's opinion that provides immunity to a mental health

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provider in Arkansas who withholds safety-related information from the legal guardian of a minor patient? RESPONSE: Under several sources of law, withholding such information is not only permissible, but is normally required. See ACA 17-97-105, Rules 1.6 and 1.4, Model Rules of Professional Conduct (for lawyers), Rules 502 and 503, Rules of Evidence, ACA 17-97-310, Rules and Regulations of the Ark. Bd. of Examiners in Psychology, and Standards 5.02, 5.03, 5.05 of the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Assoc.

Opinion No.: 2001-358

Barry Emigh

RE: Request for certification of popular name and ballot title of proposed constitutional amendment to authorized bingo and raffles by nonprofit organizations, establish a state lottery and allow the operation of casino gambling. RESPONSE: Rejected due to ambiguities in the text.

Opinion No.: 2001-362

Jake Files
State Representative

RE: Is someone who has properly attained an assignment of judgment from a plaintiff and then attempts to recover the judgment, exempt from state law governing the operation and licensing of collection agencies? RESPONSE: I am unable to answer this question because it is in litigation.

Opinion No.: 2001-364

John E. Brown
State Senator

RE: Q1) Can the Northwest Regional Airport Au-

thority use the tax and/or revenue it collects to pay for 32 people to have dinner at a cost of \$125 per person? Q2) Is the Bentonville/Bella Vista Chamber of Commerce (a nonprofit organization) subject to the Freedom of Information Act (FOIA) relating to the tax dollars given to it by the City of Bentonville? RESPONSE: Q1) This use of tax or public revenues appears to violate ACA 14-362-122 (use of surplus funds), Ark. Const. Art. 16, 13 (illegal exaction), and Ark. Const. Art. 16, 11 (diversion of tax funds to different purpose). Q2) Yes, to the extent of matters related to its contract with the city.

Opinion No.: 2001-369

Carol Billings
City Attorney

RE: Is the decision of the custodian of records to release the internal investigation, discipline and other records relating to a city police officer's suspension consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: The decision to release the records is generally consistent with the FOIA. Any discrete items of exempt information contained in the records (e.g., SS numbers) should be redacted before they are released.

Opinion No.: 2001-370

Preston Scroggin
State Representative

RE: May the Faulkner County Conservation District mortgage property as collateral in order to obtain a loan to be used to construct a building that would serve as a service center for USDA offices? RESPONSE: ACA 14-125-303(a)(8)(E), part of the Conservation District Law, ACA 14-125-101 et seq., expressly authorizes soil and conservation districts to borrow money subject to a mortgage. ACA sections 14-125-801 and -802 provide that any such borrowing must be approved by the chancery (now circuit) court following a public hearing based upon the court's

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determination of what is “in the best interest of the owners of the land.” Given that this matter will thus necessarily be the subject of litigation, I must respectfully decline to render an opinion.

Opinion No.: 2001-371

Miriam (Peggy)Hays
Sponsor, Animal Cruelty Initiative

RE: Request for certification of popular name and ballot title of a proposed initiated measure to establish the criminal offense of aggravated cruelty to animals.
RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2001-372

Pat Bond
State Representative

RE: If a police officer is covered by the provisions of ACA 24-11-432, which provide an enhanced retirement benefit for certain law enforcement officers, is that officer entitled to the enhanced benefit for service performed while participating in the DROP program?
RESPONSE: No. DROP participants cannot accrue further years of credited service for time served during DROP participation. Their enhanced benefits must be calculated on the basis of their years of service prior to participating in DROP. ACA 24-11-432.

Opinion No.: 2001-377

Dwight Fite
State Representative

RE: Are municipal police authorized to remove keys, and leave a note of doing so, from an automobile that has been parked in a public area, without reasonable cause for suspicion of wrongdoing?
RESPONSE:State law does not address this issue.

However, it is my opinion that cities have the authority under state law to enact ordinances empowering their police officers to take such action if they do so for the purpose of protecting the car on behalf of a citizen.
A.C.A. §§ 14-52-101, -102.

Opinion No.: 2001-378

Travis J. Morrissey
Hurst Law Firm for Dog Hunters of Ark.

RE: Request for certification of ballot title of proposed measure to amend Ark. Const. Amend 35 to provide for the election of members of the Arkansas Game & Fish Commission by popular vote, and for other purposes. **RESPONSE:** No popular name submitted. Ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2001-379

Travis J. Morrissey
Hurst Law Firm for Dog Hunters of Ark.

RE: Request for certification of the ballot title of a measure initiated to amend Ark. Const. Amend. 75 for the purpose of changing the name of the environmental enhancement funds, to change the purpose for which the funds are to be used, and for other purposes. **RESPONSE:** No popular name submitted. Ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2001-380

Barry L. Emigh

RE: Request for certification of popular name and ballot title of proposed constitutional amendment to authorize bingo and raffles by nonprofit organizations, allow the operation of gambling and a state lottery.
RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

ADOPTED RULES AND REGULATIONS

ARKANSAS TITLE INSURANCE AGENTS LICENSING BOARD

Docket No.: 193.00.01--001
Effective Date: 12/30/01
Contact Person: Catherine Leonard
Telephone: (501) 219-9388

**Arkansas Title Insurance Agents
Licensing Act Rules and Regulations**

BOARD OF OPTOMETRY

Docket No.: 069.00.02--001
Effective Date: 1/24/02
Contact Person: Howard Flippin
Telephone: (501) 268-3577

**Regulation Article VI - Section 1(p) --
Regulation Written Prescriptions**

BOARD OF PRIVATE CAREER EDUCATION

Docket No.: 142.00.01--001
Effective Date: 12/21/01
Contact Person: Brenda Germann
Telephone: (501) 683-8000

**Emergency Rule: Traveling School
License & Real Estate Distance
Education**

BOARD OF PUBLIC ACCOUNTANCY

Docket No.: 019.00.01--002
Effective Date: 12/29/01
Contact Person: J. E. George
Telephone: (501) 682-5533

**Rule 3.6 - Number of Sitzings, Passing
Grade and Granting of Credit, Effective
Dates, Release of Grades and
Completion of Examination**

Docket No.: 019.00.01--003
Effective Date: 12/29/01
Contact Person: J. E. George
Telephone: (501) 682-5533

Rule 13 - Continuing Education

Docket No.: 019.00.01--004
Effective Date: 12/29/01
Contact Person: J. E. George
Telephone: (501) 682-5533

**Rule 11.11 - Publication of Disciplinary
/ Administrative Sanctions**

CRIME INFORMATION CENTER

Docket No.: 183.00.01--001
Effective Date: 12/29/01
Contact Person: Susan Mebane
Telephone: (501) 682-2222

ADOPTED RULES AND REGULATIONS

System Regulation Amendment

DEPARTMENT OF ARKANSAS HERITAGE

National Heritage Commission

Docket No.: 012.04.02--001
Effective Date: 1/25/02
Contact Person: Jane Jones-Schulz
Telephone: (501) 324-9159

New and Amended Rules and Regulations

DEPARTMENT OF COMMERCE

Arkansas Securities Department

Docket No.: 003.14.01--002
Effective Date: 12/30/01
Contact Person: John Moore, Jr.
Telephone: (501) 324-8686

Amendments to Rule 302.02 - Investment Adviser

State Bank Department

Docket No.: 003.02.02--001
Effective Date: 1/14/02
Contact Person: Candace Franks
Telephone: (501) 324-9019

County or Regional Industrial Development Corporations

Docket No.: 003.02.02--002
Effective Date: 1/14/02
Contact Person: Candace Franks
Telephone: (501) 324-9019

Bank Fictitious Names

EDUCATION DEPARTMENT

Office of Accountability

Docket No.: 005.19.01--016
Effective Date: 12/28/01
Contact Person: Barbara Patty
Telephone: (501) 682-1146

ADE 134 -- Eligibility and Financial Incentives for National Board for Professional Teaching Standards

Docket No.: 005.19.01--017
Effective Date: PROPOSED
Contact Person: Ron Tolson
Telephone: (501) 682-4342

PROPOSED RULE: Governing the Assignment of a Non-Certified Teacher to Teach a Class for Longer than Thirty Consecutive Days and for Granting Waivers ***

GAME & FISH COMMISSION

Docket No.: 002.00.01--010
Effective Date: 1/9/02
Contact Person: James Goodhart
Telephone: (501) 223-6327

ADOPTED RULES AND REGULATIONS

Paddlefish, Sturgeon, Bowfin Management and Harvest Plan; Choctaw Island WMA Closure; Revision to Code Section 01.00D - Confiscation and Seizure

HEALTH DEPARTMENT

Engineering

Docket No.: 007.18.01--001
Effective Date: 1/1/02
Contact Person: Harold Seifert
Telephone: (501) 661-2623

Revisions to the Rules & Regulations Pertaining to Public Water Systems

HUMAN SERVICES

Administrative Services

Docket No.: 016.14.02--001
Effective Date: 1/15/02
Contact Person: Bill Tyler
Telephone: (501) 682-9631

DHS Policy 1100 - Disposal of Surplus Computer Equipment

Children and Family Services

Docket No.: 016.15.02--001
Effective Date: 1/18/02
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

Family Services Policy Manual, PUB-04, PUB-22, and PUB-30, CFS-316, CFS-342A, CFS-342B, CFS-450, CFS-462, CFS-462A, and CFS-475

County Operations

Docket No.: 016.20.01--020
Effective Date: 12/27/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

State Plan for Title IV-A of the Social Security Act: Temporary Assistance to Needy Families -- Transitional Employment Assistance Program

Docket No.: 016.20.01--021
Effective Date: 12/20/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

Emergency Rule: TEA Policy Sections 3415-3416.1 and 5130-5145 and related forms; Title IV-A State Plan Section 6.5.1 and 6.5.2, Form DCO-177

Medical Services

Docket No.: 016.06.01--069
Effective Date: 12/31/01
Contact Person: Randy Helms
Telephone: (501) 682-1857

Cost Reimbursement Manual Revisions for Arkansas Health Center Name Change; Property and Equipment Rules

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.02--001
Effective Date: 2/1/02
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Pharmacy Update Transmittal #55

Docket No.: 016.06.02--002
Effective Date: 2/1/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2001-030

Docket No.: 016.06.02--003
Effective Date: 3/1/02
Contact Person: Suzette Bridges
Telephone: (501) 683-4120

Section I - All Medicaid Providers

INSURANCE DEPARTMENT

Docket No.: 054.00.01--006
Effective Date: PROPOSED
Contact Person: Rick Halinski
Telephone: (501) 371-2836

PROPOSED RULE: Regulation #73

Docket No.: 054.00.01--007
Effective Date: PROPOSED
Contact Person: Rick Halinski
Telephone: (501) 371-2836

PROPOSED RULE: Regulation # 75

Docket No.: 054.00.01--008
Effective Date: 1/10/02
Contact Person: Ashley Fisher
Telephone: (501) 371-2820

Regulation #42 - To Prevent Unfair Discrimination in Reference to HIV

LABOR DEPARTMENT

Board of Electrical Examiners

Docket No.: 010.13.01--003
Effective Date: 12/31/01
Contact Person: Reece Stewart
Telephone: (501) 682-4547

Regulation 6.2 - Applicant for Journeyman Electrician License

OIL & GAS COMMISSION

Docket No.: 178.00.01--001
Effective Date: 12/31/01
Contact Person: Reece Stewart
Telephone: (501) 682-4547

Rule C-5 - Oil Assessment; Rule D-14 - Gas Assessment

POLLUTION CONTROL & ECOLOGY

Hazardous Waste

Docket No.: 014.09.02--001
Effective Date: 1/19/02
Contact Person: Mike Bates
Telephone: (501) 682-0831

ADOPTED RULES AND REGULATIONS

Regulation #23 - Hazardous Waste Management

Docket No.: 014.09.02--002
Effective Date: 1/19/02
Contact Person: Michael O'Malley
Telephone: (501) 682-7890

Regulation 10 - Repeal of Regulation Governing the Revolving Loan Fund Program

STATE MEDICAL BOARD

Docket No.: 060.00.01--006
Effective Date: 12/31/01
Contact Person: Laurel Mills
Telephone: (501) 296-1802

Medical Board Medical Practices Acts, Rules and Regulations

Docket No.: 060.00.01--007
Effective Date: 1/6/02
Contact Person: Peggy Cryer
Telephone: (501) 296-1802

Amended Regulation 16 - Physicians, HIV and HBV and HCV

INSURANCE DEPARTMENT

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

ORDERS AND NOTICES

LEGISLATIVE AUDIT January 2, 2002

Agency	Period Covered
Teacher Retirement System	6/30/00
Arkansas State Land Department	6/30/01
State Bank Department	6/30/01
Arkansas State Claims Commission - Two Period Ended	6/30/00
Arkansas State Claims Commission	6/30/01
Arkansas Crime Information Center	6/30/00
Department of Finance and Administration	6/30/00
Department of Finance and Administration - Disbursing Officer	6/30/00
Department of Finance and Administration - Revenue Division - Office of Motor Vehicle - Two-Year Period Ended	6/30/00
Arkansas Livestock and Poultry Commission	6/30/00
Arkansas Spinal Cord Commission	6/30/01
Safe Drinking Water Fund (Private)	6/30/99
Safe Drinking Water Fund (Private)	6/30/00
Community Counseling Services, Inc. (Private)	6/30/01
Little Rock Community Mental Health Center, Inc. and Affiliate (Private)	6/30/01

ORDERS AND NOTICES

University of Central Arkansas	6/30/01
University of Arkansas Community College at Batesville	6/30/01
University of Arkansas System	6/30/01
University of Arkansas System Administration	6/30/01
University of Arkansas - Fayetteville	6/30/01
University of Arkansas at Little Rock	6/30/01
University of Arkansas at Monticello	6/30/01
University of Arkansas - Pine Bluff	6/30/01
University of Arkansas Community College at Hope	6/30/01
Phillips Community College of the University of Arkansas	6/30/01
Crowley's Ridge Technical Institute	6/30/01

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