



Arkansas  
Secretary  
Of State

# The Arkansas Register



**Volume XXV, Number 9**

**March 2002**

*Corporate Records - Elections - Capitol Building and Grounds*

State Capitol - Little Rock, Arkansas 72201-1094 - 800.482.1127 - [www.sosweb.state.ar.us](http://www.sosweb.state.ar.us)

# TABLE OF CONTENTS

## **ATTORNEY GENERAL**

Opinions . . . . . 4

**RULES AND REGULATIONS . . . . . 14**

## **INSURANCE DEPARTMENT**

Orders . . . . .20

## **LEGISLATIVE AUDIT**

Orders . . . . .21

**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.

---

# THE ARKANSAS REGISTER

---

## DISCLAIMER

The Secretary of State website, [www.sosweb.state.ar.us](http://www.sosweb.state.ar.us), contains copies of rules filed by Arkansas state agencies, boards and commissions with the *Arkansas Register* in an “acceptable electronic format” as per Act 1648 of 2001. The rules contained therein are not to be considered “official” copies of agency rules. The official copies remain the paper copies housed in the *Arkansas Register* division of the Secretary of State’s office. While the rule texts are not the “official” copies every attempt has been made to ensure their accuracy and reliability. However, the Secretary of State’s office makes no warranties or guarantees regarding the content of the copies presented on its website.

## ACCESS TO RULES

Electronic versions of agency rule filings are available from the Secretary of State website. The rules may be accessed by clicking on the title of the rule listed in **BLUE**. Most of the rules are available in an Adobe PDF format, however, some rules may link you to a specific website for the particular agency. Rule titles followed by asterisks (\*\*\*) are not available in an electronic form. To receive a hard copy of these types of rules or any other rule you may either contact the agency contact person or the office of the *Arkansas Register*. Copies of rules obtained from the office of the Register are subject to a .25 cent per page copy charge. Inquiries may be directed to the *Arkansas Register* office at the contact points listed below.

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

---

# ATTORNEY GENERAL OPINIONS

---

**Opinion No.: 2001-382**

John E. Brown  
*State Senator*

**RE:** Can public meetings (specifically the Benton/Washington Regional Public Water Authority, which meets at the water treatment facility site) be held behind locked gates? Q2) Must a citizen verbally identify himself to a guard to gain entrance to a public meeting? Q3) Must a citizen show proof of identification to attend a public meeting? Q4) Must a citizen have their picture taken to attend a public meeting? Q5) Is a citizen required to 'sign in' when attending a public meeting? **RESPONSE:** 1) Not if the locked gates prevent reasonable access to the public meeting. 2) This requirement violates the FOIA. No. 3) No. 4) No. 5) No.

**Opinion No.: 2001-394**

Bill A. Shirron  
*Exec Dir, AR Teacher Retirement Sys.*

**RE:** In light of the fact that ACA24-7-401(c)(1)(C) states that "the employer contribution rate shall be such that the amortization period for all unfunded liability shall not exceed thirty (30) years" and ACA24-2-701 states that the employer contribution rates to the Teacher Retirement System is 12%, the Board of Trustees has asked what action, if any, can they take to follow the law since the most recent actuarial valuation states that a one-half of one percent increase in the employer contribution rate would be needed to reduce the period to pay off all unfunded liabilities to 30 years? **ANSWER:** The Board makes a recommendation based upon the actuarial valuation made by its actuary. But the General Assembly sets the rate. See ACA24-7-401c)(1)B). The rate at this time is 12%, and the Board has no authority to change the rate. This is gleaned from the legislative history of these provisions (including former ACA24-3-103).

**Opinion No.: 2001-396**

Randy Minton  
*State Representative*

**RE:** Q1a) If a city purchased a metal building for \$17,500 and then agreed to pay a contractor \$14,200 in labor costs to erect the building with all materials furnished by the city, would the labor contract need to be bid? Q1b) Would the contractor erecting the building need a commercial contractors license? Q2a) If a city of the first class were acting as general contractor on a municipal building being built or remodeled and hired a subcontractor to provide labor to install electrical devices (\$15,000) with all materials being purchased and furnished by the city (\$18,000), would the city need to bid either the material or the labor? Q2b) Would the contractor doing the labor need to be a state licensed commercial contractor? Q3a) If a city of the first class were acting as general contractor on a municipal building being built or remodeled, furnished all the materials, and then subcontracted the labor on three separate phases of the construction to the same entity (labor contracts totaling \$15,000; materials \$20,700), would the contracts need to be bid? Q3b) Would the contractor need a state contractors commercial license? Q4a) Is it reasonable for the city to enact an ordinance that imposes a \$20 reconnect fee on water bills unpaid by 2 p.m. on the 24th of the month even if the city has not actually disconnected the water? Q4b) Is there a state statute that addresses the charging of this type of fee by cities of the first class? **RESPONSE:** Q1a) Yes, unless the city has provided by ordinance for the waiver of bidding under ACA 14-58-303(b)(2)(B). Q1b) Yes. See ACA 17-25-101, 103. Q2a) Both the labor and the materials must be bid. Q2b) Yes. See discussion under Q1b. Q3a) The labor contracts must be bid. The three contracts must be considered together. See ACA 14-58-303. Q3b) Yes. See Q1b. Q4a) State law does not address this type of fee, other than to authorize cities to establish water rates. I therefore cannot opine on the reasonableness of the ordinance. Q4b) No.

---

# ATTORNEY GENERAL OPINIONS

---

**Opinion No.: 2002-002**

David C. Hausam  
*State Representative*

**RE:** Are public water authorities established under Act 115 of 2001 exempt from payment of sales taxes in connection with their acquisition and purchase of meters, pumps, tanks, pipes and other related equipment and appurtenances associated with the expansion of water lines or otherwise associated with the day-to-day obligations of the public water authority? Q2) Do employees of public water authorities qualify for participation in the Arkansas Public Employees Retirement System as established pursuant to ACA 24-4-101 et seq.? **RESPONSE:** Q1) No. Nothing in the Code exempts water authorities from sales and use taxation. Q2) Although the statutory scheme considered in isolation would appear to support declaring water authority employees eligible for participation in APERS, I believe such participation might invite constitutional attack if, notwithstanding their designation as “public,” the water authorities’ activities retain a distinctly “private” character. Moreover, the APERS board has extremely wide discretion under A.C.A. § 24-4-746 to deny eligibility based on its determination that participation would be “detrimental to the system.”

**Opinion No.: 2002-004**

Stephen D. Bright  
*State Representative*

**RE:** Do provisions of ACA 14-42-107(b)(1) apply to an elected mayor of a first class city with the mayor-council form of government? Q2) If not, are there any constitutional or statutory restrictions on or procedures for the mayor, or any entity in which the mayor has a financial interest, contracting with the city to perform services? **RESPONSE:** 1) Yes. See *Thompson v. Roberts*, 333 Ark. 544, 970 S.W.2d 239 (1998). 2) Unnecessary to answer.

**Opinion No.: 2002-007**

Barbara King  
*State Representative*

**RE:** Since the City of West Helena was not a party to the lawsuit brought by Betty Jo Dial against Mayor Johnny Weaver, should Mayor Weaver be required to reimburse the City of West Helena for the unauthorized checks he wrote totaling \$17,180.52 to pay his lawyer’s fees in the case? **RESPONSE:** Decline to answer due to pending litigation.

**Opinion No.: 2002-009**

Bill S. Shirron  
*Exec Dir, AR Teacher Retirement*

**RE:** Do the provisions of Ark. Const. art. 19, Sec. 13 apply to interest rates charged by the Arkansas Teacher Retirement System? **RESPONSE:** Yes. However, the question of whether these provisions are preempted by federal for ATRS is a question of fact.

**Opinion No.: 2002-016**

Jay Bradford  
*State Representative*

**RE:** Please reconcile the language in the *Hunt v. State of Arkansas* decree where it states that a judge running for a position in a judicial sub-district is not required to reside in that judicial sub-district, with the new Amendment 80 (Ark. Const. art. 7, Secs. 16(D) and 17(A)). **RESPONSE:** The *Hunt* Decree still controls. Pursuant to the *Hunt* Decree, judicial candidates running in the specially created election subdistricts are not required to reside in the sub-district, but only in the larger judicial district. Nothing in Amendment 80 changes this fact.

---

# ATTORNEY GENERAL OPINIONS

---

**Opinion No.: 2002-017**

Barney Reeves  
*Director, Alcoholic Bev Cntrl Enf/DF&A*

**RE:** May an alcohol beverage control agent, who is also a certified law enforcement officer, in the course of making an arrest for alcohol sales to a minor, seize a retail store closed circuit video tape recorder and tape as evidence of the sale of alcohol to the minor when the store owner refuses to turn over the video tape to the agent? **RESPONSE:** Under the Fourth Amendment, assuming he had probable cause to make the arrest, an ABC agent would in all likelihood be justified in confiscating the tape as corroborating evidence. However, absent some factual predicate not apparent in your request as posed, it is more questionable whether an officer would be justified in also seizing the videotape recorder.

**Opinion No.: 2002-018**

Charles L. Robinson  
*Legislative Auditor*

**RE:** If an individual is declare the winner of a mayoral election by the courts in March, and that individual did not serve as mayor in the months of January and February, may a city council approve, and may the individual receive, compensation and expense allowances for the January and February he did not occupy the office of mayor? Q2) If the individual is not entitled to compensation for the months of January and February, should these funds be repaid to the city? **RESPONSE:** Q1) I am unable to answer this question, which raises an issue of first impression in Arkansas. Other jurisdictions are split on this question, with the majority holding that a municipality need not pay back salary and emoluments to a rightful officeholder (a "de jure" officer) when it has already paid an officer holding under color of right (a "de facto" officer). However, the Arkansas Supreme Court has characterized salary as an incident of office, suggesting that a de jure officer who prevails in an election contest is entitled to recover back salary from some source. The court has not expressly

subscribed to this position, nor has it indicated whether, if back compensation is warranted, the source of payment should be the city or the de facto officer who held office under color of right. Q2) Assuming, as your question implies, that the de jure mayor was not entitled to compensation during the period at issue, I believe he should clearly return the money. However, as reflected in my response to your first question, given the absence of controlling case law, I cannot render an opinion on his entitlement to back salary and emoluments. Judicial or legislative clarification appears warranted.

**Opinion No.: 2002-024**

Scroggin, Preston & Parks, M.  
*State Representatives*

**RE:** To what extent, if any, may a city council set working hours for the mayor? **ANSWER:** It is my opinion as a general matter that the council may etsatblish the hours during which the office of mayor must be open. However, I doubt that the council could dictate the hours that the mayor must be physically present in the office. See generally A.C.A. 14-43-504 (b)(3) (council can prescribe other duties), 14-43-502 (city council's local legislative authority), 14-43-401(a)(2) (mayor to keep an office to be provided by the city council), and Op. 96-328.

**Opinion No.: 2002-025**

Bill Pritchard  
*State Representative*

**RE:** Can a 1972 Washington County Chancery Court Decree enjoining the owners of a stock car race track from operating the track after 10 p.m. be used to force the new owners of the track to comply with the 10 p.m. closing hour? **RESPONSE:** Refuse to answer because this question implicates only private interests that should, in any case, be addressed in light of all the facts by the court that issued the decree 30 years ago.

---

# ATTORNEY GENERAL OPINIONS

---

**Opinion No.: 2002-029**

Claud V. Cash  
*State Senator*

**RE:** Pursuant to provisions of Act 1653 of 2001, which amended the Freedom of Information Act (FOIA), specifically section 25-19-109 regarding charges for electronic mail and personnel costs, what are reasonable fees for photocopies for the public?  
**RESPONSE:** The answer will depend on the actual cost of complying with the request in each particular case.

**Opinion No.: 2002-030**

Mike Beebe  
*State Senator*

**RE:** After delinquent property is deeded to the state and appears on the tax records as state property, does the parcel qualify for the homestead credit?  
**RESPONSE:** No, assuming this question refers to the annual \$300 homestead credit available pursuant to Ark. Const. amend. 79, § 3 (Supp. 2001) and A.C.A. § 26-26-118(a)(1) (Supp. 2001).

**Opinion No.: 2002-031**

Tom Tatum II  
*Pros. Att'y, 15th Judicial District*

**RE:** Since the Scott County Election Commission has set new quorum court districts resulting in four current JPs running against each other and the court believes it is possible to draw the districts without pitting incumbents against one another, can the Scott County Quorum Court bring suit against the Scott County Election Commission or would individual JPs have to challenge the district? Q2) Can Scott County pay for both attorneys? **RESPONSE:** I cannot answer these questions. Whatever course the interested parties pursue, any court entertaining the described litigation will in all likelihood be obliged to assess its jurisdictional and procedural propriety. In

order to avoid encroaching upon exclusively judicial prerogatives, it has long been the policy of this executive-branch office to avoid rendering opinions on matters that are either pending or appear inevitably bound to be submitted to the courts for resolution. Moreover, insofar as the dispute you describe implicates the private interests of individual aldermen, I am expressly prohibited from rendering an opinion pursuant to A.C.A. § 25-16-701, which prohibits me from engaging in the private practice of law.

**Opinion No.: 2002-033**

Don McSpadden  
*Pros Att'y, 16th Judicial District*

**RE:** When would the election for the additional judgeship created by Act 816 of 2001 be held?  
**RESPONSE:** The election should be held in accordance with Act 1789 of 2001 (passed later in time than Act 816), which directs that elections for non-partisan judgeships be held at the same time as the preferential primary. The date for such primaries is May 21, 2002. See ACA 7-10-102 and 7-7-203.

**Opinion No.: 2002-034**

Phillip T. Jacobs  
*State Representative*

**RE:** Since a 1967 local ordinance gives the city council authority to appoint members to the Clarksville Light and Water Commission, is the mayor authorized to cast the tie-breaking vote to pass a motion to appoint a member to the Commission? **RESPONSE:** Yes. See ACA 14-43-501(b). Thompson v. Younts is inapposite.

**Opinion No.: 2002-036**

Harmon Seawel  
*State Representative*

**RE:** Do provisions of ACA 14-42-110 permit the

---

# ATTORNEY GENERAL OPINIONS

---

city council to override the mayor's appointment of a chief of police by a two-thirds vote of the council members? RESPONSE: Yes.

**Opinion No.: 2002-037**

Sam Boyce  
*Chair, Jackson Co. Election Comm'n*

**RE:** Since Judge Winningham is currently serving his fourth year as a holdover, having failed to file in 1998, could he file for municipal judge in the year 2002, and if so, where would he file? RESPONSE: No. Pursuant to Ark. Const. amend. 80, section 19(A)(3), the holdover judge's current term runs until December 31, 2004.

**Opinion No.: 2002-038**

Cecile Bledsoe  
*State Representative*

**RE:** Can it be authentically documented that public officials and/or judges of the various courts — municipal (aka District), circuit, etc. — are authorized by law to disregard International Law (TIAS 10072), FRCP/ARCP Rule 44(a)(2), FRCrP Rule 27, Fed.R.Evid./ARE 902(3), ACA 25-16-403(e)(2), ACA 25-19-101 through -109, ACA 14-54-1410 and public documents received per ACA 25-19-105(h), and if so, please document? RESPONSE: I am uncertain as to the exact focus of the inquiry, but can state that the fact that a document is properly authenticated for purposes of a court proceeding is not tantamount to a legal right to its admission into evidence. The judge retains some discretion as to whether documents are admitted.

**Opinion No.: 2002-039**

David C. Hausam  
*State Representative*

**RE:** Would a current member of the Northwest

Regional Airport Authority be required to resign her seat if elected to the Arkansas General Assembly? RESPONSE: No. See Ark. Const. art. 5, § 7. However, Ark. Const. art. 5, § 10 would prohibit the Board member's reappointment to the Board so long as she continued to serve as a legislator.

**Opinion No.: 2002-040**

Jerry Taylor  
*State Representative*

**RE:** Are members of a county advisory board immune from liability for claims arising out of nursing home patient care provided by Beverly Enterprises on property owned by the county? RESPONSE: The relationship between the county and Beverly is unclear, and as described does not appear to be one in which liability normally could be imputed. Assuming hypothetically, however, that liability could be imputed, limited statutory immunity may be available to the advisory board members under certain circumstances. See ACA 21-9-301 and 16-120-102, 103; *Saucier v. Katz*, 533 U.S. 194 (2001).

**Opinion No.: 2002-041**

Oscar Stilley  
*Attorney at Law*

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

**Opinion No.: 2002-042**

Barry Emigh

**RE:** Request for certification of popular name and

---

# ATTORNEY GENERAL OPINIONS

---

ballot title of proposed constitutional amendment to authorize bingo and raffles by nonprofit organizations, authorize certain for profit gambling operations, establish a state lottery and procedures for regulation of such, and for other purposes. RESPONSE: Popular name and ballot title rejected.

**Opinion No.: 2002-046**

Cecile Bledsoe  
*State Representative*

**RE:** Do charter school board members have to be sworn in by the county clerk? **ANSWER:** No. There is no statutory requirement under the Charter Schools Act, nor does Ark. Const. article 19, section 20 (the constitutional oath requirement for «civil officers») apply because state law establishes no such office as “charter school board member.” This is presumably asked with regard to the governing body of an open-enrollment charter school, whose governing structure is described by its charter. State law does not prescribe the structure or otherwise establish any oath requirement in connection with therewith.

**Opinion No.: 2002-047**

Stacy Witherell  
*Empl Servs Mgr, Human Resources Dept*

**RE:** Is the decision of the custodian of records to release the requested personnel records while withholding evaluations unless they have formed the basis for a suspension or termination, consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** Having not been provided the records at issue, I will simply set forth the tests the custodian should apply in determining whether to release all or part of the requested information.

**Opinion No.: 2002-048**

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

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to permit the sale of alcoholic beverages in “dry” areas of the state, and for other purposes. **RESPONSE:** Approved and certified as modified.

**Opinion No.: 2002-051**

Cliff Hoofman  
*State Senator*

**RE:** Pursuant to provisions of ACA 26-37-205, does a “former owner” have authority to assign their rights to excess funds to a second party, thus allowing the second party to claim and collect the excess funds? If so, may their rights be assigned after the property has been sold at the tax sale? Q2) If a property is foreclosed by a tax exempt homeowners association, however the association does not pay the back taxes that the former owner neglected to pay and the property is eventually sold at a tax sale, would the winning bidder have merely a lien on the property since the current owner was “tax exempt” at the time of the sale or would the tax deed actually transfer title to the winning bidder at the tax sale? **RESPONSE:** Have your constituent hire a lawyer,

**Opinion No.: 2002-052**

Steven B. Jones  
*State Representative*

**RE:** Can an individual who has served by appointment on a county quorum court run for a seat on the same court once their term has expired? This is asked “because of redistricting.” **ANSWER:** The answer will turn on whether the appointee would be succeeding himself, contrary to Ark. Const. Amendment 29. This will depend upon the extent to which the district is a new district or in reality the one

---

# ATTORNEY GENERAL OPINIONS

---

to which he was appointed with only minor variations. This is a fact question. See Ops. 2001-387, 91-447, 91-379. If there has been no material change in representation, Amendment 29 may prevent the candidacy.

**Opinion No.: 2002-053**

Brenda Gullett  
*State Senator*

**RE:** Q1) In light of the opinion rendered in Op. Att'y Gen. 2001-204, is the authority to charge occupation taxes/licenses on vending machines implied from the language of ACA 14-54-103(10)? Q2) Does ACA 14-54-1411 prohibit a mayor from issuing an administrative directive or executive order that no employee of a city except uniformed police officers or a fire marshal may carry handguns while on duty with the city or while using city property, i.e., city vehicles? **RESPONSE:** Q1) Yes, if the vending machine in question falls within the language of ACA 14-54-103(10). Q2) The answer will depend upon the language of the mayor's directive or order. It must be consistent with state and federal law. If it is, it is permissible. However, such a directive or order may conflict with such laws as the concealed weapon law (ACA 5-73-301 et seq.).

**Opinion No.: 2002-054**

Chaney Taylor, Jr.  
*State Representative*

**RE:** When should the elections for the judgeships created by Acts 114, 300, 816 and 1186 of 2001 be held? **RESPONSE:** May 21, 2002. This issue is governed by Act 1789 of 2001, which was enacted later in time that the Acts referenced in the question.

**Opinion No.: 2002-055**

Joe Childers  
*Assistant City Attorney*

**RE:** Per requests from the subjects of the records in question, is the decision of the custodian to release the requested information in these police officers' personnel files consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The conditions for the release of most of the records appears to have been met. However, those conditions do not appear to have been met with regard to some of the records. Those records therefore should not be released.

**Opinion No.: 2002-056**

Mark Smith  
*State Representative*

**RE:** Under current state law, can the private contractor constructing the Panda Power Plant conduct random, post-accident and reasonable cause breath alcohol tests at the job site? **RESPONSE:** Subject to the foregoing proviso, I believe that a private employer that has not entered into a contract expressly barring on-site alcohol testing might legally adopt a policy of the sort referenced in your request. However, if the employer wishes to realize the workers' compensation insurance rate benefits referenced at A.C.A. § 11-14-112 (Supp. 2001), I believe it must observe the restrictions on testing set forth at A.C.A. § 11-14-101 et seq. (Supp. 2001) and in Workers' Compensation Commission Rule 36, including the proscription against a covered employer's randomly testing for alcohol, as opposed to drug, use unless the randomly tested employee occupies a "safety-sensitive" position. With respect to the issue of on-site testing, the applicable federal regulations expressly authorize the employer to designate a qualified breath alcohol technician ("BAT") or screening test technician ("STT") to conduct testing

---

# ATTORNEY GENERAL OPINIONS

---

at a suitable "alcohol-testing site." 49 C.F.R. § 40.3. The regulations further authorize a BAT to conduct both screening and confirmation tests. 49 C.F.R. § 40.211. In my opinion, so long as an on-site facility meets the conditions to qualify as an alcohol testing site, see 49 C.F.R. §§ 40.221 and 40.223, and the person conducting the test in fact qualifies as either a BAT or an SST, see 49 C.F.R. § 40.213, a covered employer may always conduct such tests on-site following an accident or for reasonable cause. Given these same assumptions, I further believe a covered employer may randomly conduct on-site testing of employees holding safety-sensitive positions. Finally, I intend nothing in the foregoing to suggest that a private contractor retaining at-will employees is prohibited by law from randomly testing its workers for alcohol, whether on-site or not. The Act does not more than establish that an employer conducting such tests will be ineligible to receive the premium discount authorized by A.C.A. § 11-14-112.

**Opinion No.: 2002-057**

Travis J. Morrissey  
*Att'y at Law, Hurst Law Firm*

**RE:** Request for certification of the popular name and ballot title of a proposed constitutional amendment to Ark. Const. amend. 75 to provide that the General Assembly shall, upon approval of the electorate, change the name of the environmental enhancement funds, change the purpose for which such funds are to be used, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-058**

Travis J. Morrissey  
*Att'y at Law, Hurst Law Firm*

**RE:** Request for certification of the popular name and ballot title of a proposed constitutional amendment to amend Ark. Const. amend. 35 to provide for the election of members of the State Game and Fish

Commission by popular vote, to provide for the appointment of the director of the Commission by the Governor, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-061**

*Pros Att'y, 22nd Judicial District*

**RE:** Pursuant to provisions of Act 1255 of 2001, are persons who committed the offense of residential burglary prior to the effective date of the act (8/13/2001) but were sentenced to imprisonment after that date eligible to serve their sentences in a regional correctional facility? **RESPONSE:** No. The Ark. S. Ct. has repeatedly declined to apply changes in sentencing laws retroactively in the absence of a clear statement of legislative intent that the law be applied retroactively. See, e.g., *State v. Ross*, 244 Ark. 364 and *Elders v. State*, 321 Ark. 60.

**Opinion No.: 2002-062**

David Gibbons  
*Pros Att'y, 5th Judicial District*

**RE:** Since Russellville declined to pass a resolution requesting party primaries for municipal offices for the year 2002, as authorized by provisions of ACA 14-42-206, is Russellville City Ordinance 1242 (passed in 1987 under authority of Act 545 of 1985) still valid? Q2) If Ord. 1242 is valid, is it applicable when a city declines to use preferential primary elections? Q2b) How can Ord. 1242 determine the proper filing time for a municipal candidate when it requires candidates to file their petition no later than noon on the day before the preferential primary election? Q3) If Ord. 1242 is valid, should a candidate file his/her petition with the county board of election commissioners as contemplated by Ord. 1242, or with the county clerk as indicated by ACA 14-42-206(e)(1)? Q4) If the Russellville City Council decides to repeal Ord. 1242 so that it will have no application to the 2002 elections, what is the latest date the City Council

---

# ATTORNEY GENERAL OPINIONS

---

could act? ANSWER: Q1&2: The Ordinance is likely valid, but it does not apply if the election of municipal officials is to be nonpartisan. The Ordinance applies to "independent candidates" who run without party affiliation when the political parties conduct primary elections. The remaining questions are thus moot. This conclusion follows from the legislative history of Act 545 of 1985 (former A.C.A. 7-1-107), well as 14-42-206. See also former Opinions regarding these provisions. (Ops. 90-209, 90-28, 92-254, 98-164).

**Opinion No.: 2002-063**

Cliff Hoofman  
*State Senator*

**RE:** Would a contract such as that proposed by the Maumelle Suburban Improvement District No. 500 for the purchase and installation of "Radio Read" water meters constitute a contract governed by ACA 22-9-203, or would it constitute a contract governed by the Arkansas Procurement Law codified as ACA 19-11-201 et seq.? Q2) If the contract proposed by the District is not governed by either of the foregoing statutes, is the District free to enter into such a contract without the solicitation and taking of competitive bids? **RESPONSE:** 1) A court would in all likelihood conclude that the proposed contract would be subject to the competitive bidding requirement referenced in A.C.A. § 22-9-203 (Repl. 1996 & Supp. 2001), not to the alternative competitive bidding requirement set forth in the Arkansas Procurement Law, A.C.A. § 19-11-201 et seq. (Repl. 1998 & Supp. 2001). Q2) This question is moot in light of my response to your previous question.

**Opinion No.: 2002-067**

James A. Etter  
*ASP Retired, c/o Van Hook Law Office*

**RE:** Are the personnel records of a former State Police employee open to inspection and copying under the FOIA where allegedly requested on behalf of a

potential political opponent for the Office of Union County Sheriff? **RESPONSE:** Generally "yes." Certain redactions of exempt information may be required however. The motive of the requester is not determinative where a public interest in the information nevertheless exists.

**Opinion No.: 2002-068**

Mark W. Dossett  
*Att'y, Benton Co Rural Dev Authority*

**RE:** Is the decision of the custodian of records to release all records relating to applicants for the position of operator or manager for the Benton County Rural Development Authority (BCRDA) consistent with provisions of the Freedom of Information Act (FOIA)? Q2) Since the applicants are neither successful nor unsuccessful at this point, should the BCRDA treat the documents as "personnel records" or simple public records for the purpose of applying the proper privacy tests? Q3) Under whichever test is applicable, does the person whose information is being disclosed have a sufficient privacy interest to require the BCRDA to redact the applicant's name if the applicant so requests? **RESPONSE:** Q1) Subject to certain conditions, "yes." Q2) I believe the pending applications are "simple public records," not "personnel records." However, the courts are split on this question and appellate court clarification appears warranted. Q3) Barring extraordinary circumstances, I believe the answer to this question is "no."

**Opinion No.: 2002-069**

Oscar Stilley  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to prohibit the judicial disqualification of initiated constitutional amendments for any reason except failure to collect the required number of signatures,

---

# ATTORNEY GENERAL OPINIONS

---

and for other purposes. RESPONSE: Popular name and ballot title rejected due to an ambiguity in the text of the proposed measure.

**Opinion No.: 2002-070**

Oscar Stilley  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment (2nd version) to prohibit the judicial disqualification of initiated constitutional amendments for any reason except failure to collect the required number of signatures, and for other purposes. RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

**Opinion No.: 2002-084**

Jim Argue  
*State Senator*

**RE:** Pursuant to provisions of ACA 26-37-205, may a "former owner" assign their rights to excess

funds to a second party, thus allowing the second party to claim and collect the excess funds? Q2) What constitutes proof that land sold at a tax sale is "nonexistent"? Q3) If land is purchased at a tax sale and is occupied by a tenant of the former owner, what means may the new owner use to evict the tenant of the former owner? Q4) What legal rights does the tenant have in the property? Q5) If land is purchased at a tax sale and is occupied by the former owner, what means may the new owner use to eject the former owner? RESPONSE: Have your constituent hire a lawyer.

**Opinion No.: 2002-085**

Glenda Beatty  
*Adm Asst, DHS Off. of Systems & Tech.*

**RE:** Is the decision of the custodian of records to allow review of the subject's personnel file consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: The applicable tests for the release of personnel and evaluation records are set forth in the opinion.

---

# ADOPTED RULES AND REGULATIONS

---

## ASSESSMENT COORDINATION DEPARTMENT

Docket No.: 177.00.02--001  
Effective Date: 3/3/02  
Contact Person: Bob Leslie  
Telephone: (501) 324-9240

[Rules and Regulations Manual](#)

## ARKANSAS TEACHER RETIREMENT

Docket No.: 088.00.02--001  
Effective Date: 3/17/02  
Contact Person: Tammy Medlock  
Telephone: (501) 682-1827

[Revision of Board Policies, Rules and Regulations](#)

## BOARD OF ELECTION COMMISSIONERS

Docket No.: 108.00.02--002  
Effective Date: 3/17/02  
Contact Person: Bonnie Noe  
Telephone: (501) 682-1783

[Rules and Regulations for Election Officials Training](#)

## BOARD OF PRIVATE CAREER EDUCATION

Docket No.: 142.00.02--001  
Effective Date: 4/1/02  
Contact Person: Brenda Germann  
Telephone: (501) 683-8000

[Rules and Regulations for Arkansas Code 6-51-601 Through 622](#)

## DEPARTMENT OF WORKFORCE EDUCATION

Docket No.: 172.00.02--001  
Effective Date: 3/3/02  
Contact Person: Peggy Wakefield  
Telephone: (501) 682-1500

[Careers Student Loan Forgiveness Program](#)

## EDUCATION DEPARTMENT

*Financial Services*

Docket No.: 005.04.02--002  
Effective Date: 3/23/02  
Contact Person: Patricia Martin  
Telephone: (501) 682-5124

[ADE 146 - Repeal of Rules and Regulations Governing the Distribution of Growth Facility Funding](#)

---

# ADOPTED RULES AND REGULATIONS

---

Docket No.: 005.04.02--003  
Effective Date: 3/23/02  
Contact Person: Patricia Martin  
Telephone: (501) 682-5124

**ADE 145 - Regulations Governing the Funding of Alternative Learning Environments**

Docket No.: 005.04.02--004  
Effective Date: 3/23/02  
Contact Person: Patricia Martin  
Telephone: (501) 682-5124

**ADE 144 - Repeal of Regulations Governing the Distribution of Isolated Funding**

Docket No.: 005.04.02--005  
Effective Date: 3/23/02  
Contact Person: Patricia Martin  
Telephone: (501) 682-5124

**ADE 143 - Regulations Governing School District Filing Requirements of Personnel Policies**

Docket No.: 005.04.02--006  
Effective Date: 3/23/02  
Contact Person: Patricia Martin  
Telephone: (501) 682-5124

**ADE 142 - Repeal of Regulations Governing the Granting of School District Waivers from the 70 Percent of Net Current Revenue Expenditure Requirements**

Docket No.: 005.04.02--007  
Effective Date: 3/23/02  
Contact Person: Patricia Martin  
Telephone: (501) 682-5124

**ADE 141 - Repeal of Rules and Regulations Governing 56 Percent Rule Exemption**

Docket No.: 005.04.02--008  
Effective Date: 3/23/02  
Contact Person: Cindy Chaney  
Telephone: (501) 682-4494

**ADE 140 - Rules and Regulations Governing Debt Service Funding Supplements**

*Office of Accountability*

Docket No.: 005.19.02--003  
Effective Date: 3/23/02  
Contact Person: Ron Tolson  
Telephone: (501) 682-4341

**ADE 138 - Emergency Regulations Governing Parental Notification of an Assignment of a Non-Certified Teacher to Teach a Class for More Than Thirty Consecutive Days and for Granting Waivers**

Docket No.: 005.19.02--004  
Effective Date: 3/23/02  
Contact Person: Ron Tolson  
Telephone: (501) 682-4341

---

# ADOPTED RULES AND REGULATIONS

---

## **ADE 139 - Regulations Governing Parental Notification of an Assignment of a Non-Certified Teacher to Teach a Class for More Than Thirty Consecutive Days and for Granting Waivers**

Docket No.: 005.19.02--005  
Effective Date: Proposed  
Contact Person: Marcia Harding  
Telephone: (501) 682-4221

## **PROPOSED RULE: Amendments to Early Childhood Special Education \*\*\***

### **FORESTRY COMMISSION**

Docket No.: 128.00.02--001  
Effective Date: 3/16/02  
Contact Person: John Shannon  
Telephone: (501) 296-1940

## **Best Management Practices for Water Quality Protection**

### **HUMAN SERVICES**

#### *Administrative Services*

Docket No.: 016.14.02--002  
Effective Date: 3/21/02  
Contact Person: Bill Tyler  
Telephone: (501) 682-9631

## **Policy 1059 -- Confidential Materials - Collection, Storage, Disposal**

#### *Developmental Disabilities Services*

Docket No.: 016.05.02--001  
Effective Date: 3/4/02  
Contact Person: Regina Davenport  
Telephone: (501) 682-8668

## **Policy 1087 - Criminal Record Checks**

Docket No.: 016.05.02--002  
Effective Date: 4/1/02  
Contact Person: Sherrill Archer  
Telephone: (501) 682-8699

## **Service Provision Guideline for Family Training, Counseling, & Home Visits**

#### *Medical Services*

Docket No.: 016.06.02--005  
Effective Date: 3/1/02  
Contact Person: Suzette Bridges  
Telephone: (501) 683-4120

## **State Plan Transmittal #2001-038 and Official Notice DMS-2001-Q-6 -- Ingredient Cost Reimbursement**

Docket No.: 016.06.02--006  
Effective Date: 2/21/02  
Contact Person: Randy Helms  
Telephone: (501) 682-1857

## **Emergency Rule: Non-State Public Nursing Facility Monthly UPL (Upper Payment Limit) Adjustment**

---

# ADOPTED RULES AND REGULATIONS

---

Docket No.: 016.06.02--007  
Effective Date: 3/1/02  
Contact Person: Suzette Bridges  
Telephone: (501) 682-4122

**Emergency Rule: State Plan  
Transmittal #2002-008**

Docket No.: 016.06.02--008  
Effective Date: 3/1/02  
Contact Person: Suzette Bridges  
Telephone: (501) 682-4122

**Emergency Rule: State Plan  
Transmittal #2002-007**

Docket No.: 016.06.02--009  
Effective Date: 3/16/02  
Contact Person: Betty Reed  
Telephone: (501) 682-8363

**State Plan Transmittal #2001-033 and  
Developmental Rehabilitation Services  
Provider Manual**

Docket No.: 016.06.02--010  
Effective Date: 3/20/02  
Contact Person: Carolyn Patrick  
Telephone: (501) 682-8359

**Pharmacy Update Transmittal #57**

Docket No.: 016.06.02--011  
Effective Date: 4/1/02  
Contact Person: Carolyn Patrick  
Telephone: (501) 682-8359

**Official Notice DMS-2002-AR-2, DMS-2002-G-2, DMS-2002-II-2, DMS-2002-KK-2, DMS-2002-R-3, DMS-2002-OO-2 -- Primary Care Physician Administration of Medical and Hearing Screens**

Docket No.: 016.06.02--012  
Effective Date: 4/1/02  
Contact Person: Carolyn Patrick  
Telephone: (501) 682-8359

**State Plan #2001-035 and Official Notice DMS-2002-AR-6, DMS-2002-C-1, DMS-2002-DD-1, DMS-2002-YY-1, DMS-2002-YC-1, DMS-2002-SB-1 -- PA Outpatient Mental Health Services**

Docket No.: 016.06.02--013  
Effective Date: 4/1/02  
Contact Person: Randy Helms  
Telephone: (501) 682-1857

**Revision of Chapter 4-A of Manual of Cost Reimbursement Rules for Long Term Care Facilities**

## INSURANCE DEPARTMENT

Docket No.: 054.00.02--003  
Effective Date: 3/16/02  
Contact Person: Ashley Fisher  
Telephone: (501) 371-2820

**Rule and Regulation #26**

---

# ADOPTED RULES AND REGULATIONS

---

Docket No.: 054.00.02--004  
Effective Date: 4/9/02  
Contact Person: Rick Halinski  
Telephone: (501) 371-2820

## Rule and Regulation #75

### LIVESTOCK & POULTRY COMMISSION

Docket No.: 125.00.02--001  
Effective Date: 4/1/02  
Contact Person: Paul Norris  
Telephone: (501) 907-2400

## Laboratory / Regulatory Fee Schedule

Docket No.: 125.00.02--002  
Effective Date: 4/1/02  
Contact Person: Conley Byrd  
Telephone: (501) 907-2400

## Exhibition Health Requirements for Livestock, Poultry, and Exotic Animals

Docket No.: 125.00.02--003  
Effective Date: 4/1/02  
Contact Person: Conley Byrd  
Telephone: (501) 907-2400

## Rules for Entry, Exhibition, and Change of Ownership Testing of Cervidae, Camelids, and other Exotic Animals for Brucellosis and Tuberculosis

Docket No.: 125.00.02--004  
Effective Date: 4/1/02  
Contact Person: Conley Byrd  
Telephone: (501) 907-2400

## EIA (Equine Infectious Anemia) Verifier Regulation

Docket No.: 125.00.02--005  
Effective Date: 4/1/02  
Contact Person: Conley Byrd  
Telephone: (501) 907-2400

## Health Requirements for the Entry of Livestock, Poultry, and Exotic Animals

Docket No.: 125.00.02--006  
Effective Date: 4/1/02  
Contact Person: Conley Byrd  
Telephone: (501) 907-2400

## Rules for the Disbursement of State Funds Appropriated for the Payment of Premiums and Construction at Fairs and Livestock Shows

### PHARMACY BOARD

Docket No.: 070.00.02--001  
Effective Date: 3/3/02  
Contact Person: Charles Campbell  
Telephone: (501) 682-0190

## 04-03-0001 - Specialty Pharmacy Permits

---

# ADOPTED RULES AND REGULATIONS

---

## REHABILITATION SERVICE

Docket No.: 165.00.02--001  
Effective Date: 3/17/02  
Contact Person: Dale Turrentine  
Telephone: (501) 269-1620

### Substance Free Policy

## STATE MEDICAL BOARD

Docket No.: 060.00.02--001  
Effective Date: 3/8/02  
Contact Person: Peggy Pryor Cryer  
Telephone: (501) 296-1802

## Regulation 18 -- Fees for the Centralized Credentialing Verification System (CCVS)

Docket No.: 060.00.02--002  
Effective Date: 3/8/02  
Contact Person: Peggy Pryor Cryer  
Telephone: (501) 296-1802

## Regulation 10 - Regulations Governing the Licensing and Practice of Respiratory Care Practitioners



---

# 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 February 25, 2002

Agency	Period Covered
Department of Arkansas State Police	6/30/00
Department of Health	6/30/01
Office of Prosecutor Coordinator	6/30/01
Arkansas Prosecuting Attorneys Association	12/31/01
Department of Education - Arkansas School for the Blind	6/30/01
Department of Finance and Administration Revenue Division - Sales and Use Tax Section - For the Two-Year Period Ended	6/30/01
Highway Employees Retirement System	6/30/01
Arkansas State Police Retirement System	6/30/01
Arkansas Board of Examiners in Psychology	6/30/01
Arkansas Transitional Employment Board	6/30/01
Southwest Arkansas Planning & Development District, Inc. (Private)	6/30/01
West Central Arkansas Planning & Development District, Inc. (Private)	6/30/01
White River Planning & Development District, Inc. (Private)	6/30/01
Arkansas Tech University	6/30/01

---

# ORDERS AND NOTICES

---

Rich Mountain Community College	6/30/01
Arkansas Valley Technical Institute	6/30/01
Cossatot Technical College	6/30/01
Henderson State University	6/30/01
Southern Arkansas University	6/30/01
Southern Arkansas University - Tech	6/30/01
Arkansas State University	6/30/01
Arkansas State University - Beebe	6/30/01
Arkansas State University - Mountain Home	6/30/01
Arkansas State University - Newport	6/30/01
East Arkansas Community College	6/30/01
Garland County Community College	6/30/01
Mid-South Community College	6/30/01
Mississippi County Community College	6/30/01
North Arkansas College	6/30/01
South Arkansas Community College	6/30/01
Westark College	6/30/01
Northwest Arkansas Community College	6/30/01
Black River Technical College	6/30/01
Ouachita Technical College	6/30/01

---

# ORDERS AND NOTICES

---

Ozarka College	6/30/01
Petit Jean College	6/30/01
Southeast Arkansas College	6/30/01
Pulaski Technical College	6/30/01
Cotton Boll Technical Institute	6/30/01
Foothills Technical Institute	6/30/01
Northwest Technical Institute	6/30/01
Quapaw Technical Institute	6/30/01
Delta Technical Institute	6/30/01

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

\*\*\*\*\* **2002** subscriptions to the *ARKANSAS REGISTER* will be sold on a "CALENDAR YEAR" basis (January through December) only. To subscribe to the *ARKANSAS REGISTER* complete the following form and mail to the address given above.

\_\_\_\_\_ I would like to subscribe to the *ARKANSAS REGISTER* for the **2002** year (January through December) at the price of **\$40** per subscription.

\_\_\_\_\_ I would like to order the following copies of the *ARKANSAS REGISTER* at \$3.50 per copy.

**Volume:** \_\_\_\_\_ **Issue:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_ **Phone No.:** (    ) \_\_\_\_\_

The *ARKANSAS REGISTER*, an official publication of the State of Arkansas, is published monthly with a cumulative index published annually. Subscribe to the *ARKANSAS REGISTER* by completing the form above and mailing it to the address given on the form. Make all checks payable to the *ARKANSAS REGISTER*.

# 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  
Permit No. 2855