

The Arkansas Register

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Charlie Daniels
Secretary of State

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2003-122

Hickinbotham, Boyd
State Representative

RE: Does the Briarcliff Improvement District have authority to waive special assessments on lands which have gone back to the state? **RESPONSE:** No. The district proposes to release the liens upon its dissolution in order to expand the tax base for the City of Briarcliff. These liens are an asset of the district that, according to ACA 14-92-237, must be refunded pro rata to district members upon dissolution. Nothing contained in either this statute or the recitation of board powers set forth at A.C.A. §§ 14-92-210 and -220 even remotely suggests that the commissioners might forgive debt owed the district in order to benefit the tax rolls of an entirely different political subdivision.

Opinion No.: 2003-129

Baker, Gilbert
State Senator

RE: Q1) Since Act 1281 of 2003 passed without an emergency clause, may new city employees enroll in the nonuniform pension program of the City of Conway now, or must they wait until Act 1281 is effective? Q2) Under Act 1281, is participation on the part of eligible nonuniform employees voluntary, or must they enroll automatically? Can the city, by ordinance, require all nonuniform employees to participate in the program authorized by 24-12-101? Q3) Are current employees who are participating in the program prior to enactment of Act 1281 required to continue participating, or may they withdraw monies that they have contributed and end their participation? Q4) Are former or current employees who participated in the program prior to Act 1281 affected in their ability to draw their pension when eligible or continue to contribute and retire pursuant to this pension program? Q5) With respect to such employees, is their relationship to this pension program one of having a de facto pension program

or quasi contractual, where both parties (the City and the employees) believed in good faith that the pension program was established and authorized pursuant to ordinance and state law, and have operated on that assumption for approximately 40 years? **RESPONSE:** Q1) They must wait until the effective date of the Act. Q2) Participation is voluntary. Q3) Participating employees are required to continue to participate until they terminate employment. Q4) They are not affected. Q5) See Q.4.

Opinion No.: 2003-131

Stovall, Bill
State Representative

RE: Does the Sky Point Estates Suburban Improvement District have authority to control use of the SID roads by setting speed limits, regulating parking, and restricting use of the roads by airplanes for an airstrip? **RESPONSE:** Any control over use of the roads in the district would have to relate to the purpose(s) for which the district was formed and be consistent with state law, including the Uniform Act Regulating Traffic on Highways of Arkansas. The district in all likelihood has no authority over speed limits, parking and use of roads by airplanes because the roads are probably "streets or highways" for purposes of the Uniform Act.

Opinion No.: 2003-139

Glover, Bobby
State Senator

RE: Is an Arkansas municipality required by law to pay to the county real estate taxes on revenue producing buildings and property owned by the municipality? **RESPONSE:** This is a factual question to be determined by the assessor, but the opinion sets out some case law regarding exemption of airport property.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2003-141

Norris, Larry
Director, AR Department of Correction

RE:Pursuant to provisions of ACA 16-93-609, if a person commits two violent crimes, is apprehended, tried and convicted on one of the violent crimes and then is subsequently tried and convicted on the second violent crime, would he or she not be eligible for parole on the second sentence even if that individual had never been to prison before?
RESPONSE: The provisions of 16-93-609 do not apply to this situation. The second offense must be committed after disposition of the first offense. Whether the defendant has previously served time is not relevant to the applicability of this statute.

Opinion No.: 2003-145

Gillespie, Jeff
State Representative

RE:Would time served as a volunteer fireman (and paramedic) exempt an applicant for employment by the Danville Fire and Rescue Department from the fireman age restriction and allow him to take the exam?
RESPONSE: Given that Danville is a city of the second class and the civil service system applies only to cities of the first class, I see no statutory bar to employing the applicant without his taking the examination. It is possible that some local ordinance imposes age restrictions on applicants similar to those applicable to civil service systems. If so, the terms of the ordinance will control unless the city council elects to change it. The city may further have imposed a requirement that applicants take some form of exam. However, in my opinion, it would be a misnomer to designate such testing as a "civil service exam." The city should consult local counsel to determine the effects of its ordinance.

Opinion No.: 2003-146

Wright, Wm. Randal
Pros Att'y, 8th Judicial District North

RE:In light of Hempstead County Ordinance Nos. 1992-10 and 1995-16, as well as the language of the 1992 ballot title authorizing issuance of a local sales and use tax for the purpose of operating and maintaining the county detention facility, can Hempstead County construct additional improvements on the detention facility site to hold evidence and other law enforcement purposes?
RESPONSE: Given the provisions of the ballot measure the voters approved pursuant to Ark. Const. amend. 62, it would be impermissible for Hempstead County, without voter approval, to put the tax revenues at issue to any use other than "operating and maintaining jail facilities, including related law enforcement administrative and parking improvements for or within such facilities." Only a finder of fact could determine whether using the tax revenues to construct the proposed improvements referenced in your request would be consistent with the uses authorized by the voters.

Opinion No.: 2003-148

Pate, Mark
State Representative

RE:Do city courts have authority to require a fee for filing criminal affidavits and/or dismissals?
RESPONSE: No.

Opinion No.: 2003-149

Hardin, Lu
President, Univ. of Central Arkansas

RE:Pursuant to provisions of ACA 6-67-102(f)(1), would awarding the University's health insurance

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contract to a company that employs a member of the UCA Board of Trustees be considered an “indirect” interest in “. . .any contract made by the board” for this board member? RESPONSE: In my opinion the Board member’s employment by the insurance company in all likelihood does not, standing alone, evidence a violation of ACA 6-67-102(f).

Opinion No.: 2003-151

Jeffress, Jimmy
State Senator

RE:Pursuant to provisions of ACA 12-9-112, could an appointed chief of police, serving in a municipality located in the same county where he was the elected sheriff for more than ten (10) years, be certified as a law enforcement officer without having to complete the 12-week training course? RESPONSE: Although such a sheriff is qualified to be a chief of police without being certified, he is not eligible to be “certified” unless he completes the applicable requirements for certification.

Opinion No.: 2003-155

Taylor, Jerry
State Representative

RE:Are surveyors exempt from the provisions of Act 757 of 2003, specifically subsection (b)(3)? RESPONSE: Only for records executed before Jan. 1, 2004, or if the recorder grants a waiver for good cause. See ACA 14-15-402.

Opinion No.: 2003-156

Bookout, Jerry & Paul
State Senator & Representative

RE:Does Act 462, which amended ACA 6-17-114(a), require school districts to provide a minimum of 200

minutes per week to their classroom teachers for planning and preparation purposes that must be scheduled only in 40 minute increments? Q2) Can the language contained in ACA 6-17-114(a)(1) be construed separately from language contained in ACA 6-17-114(a)(2) for the purposes of implementing Act 462? Q3) Since the effective date of Act 462 occurs after the start of a new fiscal year but prior to actual resumption of classes in the fall, are school districts legally required to immediately incorporate the provisions of Act 462 into their personnel policies? Q4) Although Act 462 does not specifically authorize the Arkansas Department of Education to develop rules and regulations concerning the implementation of the act, can the Department develop such rules and regulations? If so, what is the legal basis for this action? RESPONSE: 1) No, the planning time must be provided in increments of no less than forty minutes—the act establishes a minimum of forty minutes; 2) No, you must read the subsections together; 3) yes; 4) generally “no,” but the State Board could conceivably develop guidelines in this regard.

Opinion No.: 2003-157

Argue, Jim
State Senator

RE:Does General Beebe concur with the conclusion reached in Op. 98-151? RESPONSE: Op. No. 98-151 was correct. A juvenile’s records are protected only if he or she is arrested, detained, or is the subject of proceedings before the juvenile court. Determining which records constitute the juvenile’s “records of arrest” is a question of fact that must be determined on a case by case basis.

Opinion No.: 2003-160

Richards, Henry

RE:Request for certification of a popular name and ballot title for a proposed constitutional amendment to establish a state lottery. RESPONSE: Popular

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name and ballot title rejected due to ambiguities in the ballot title and text of the proposed measure.

Opinion No.: 2003-169

Emigh, Barry

RE:Request for certification of a popular name and ballot title of a proposed constitutional amendment to permit the operation of bingo and raffles by non-profit organizations, permit for-profit gambling in hotels in cities of the first class, establish a state-operated lottery, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2003-171

Horn, Barbara & Lendall, Jim
Co-Chairs, Leg Council Review

RE:Does ACA 12-50-106(d) authorize the Department of Correction ("DOC"), acting alone, to enter into contracts for medical services for periods of up to 20 years, or is the authorization for extended year contracts under that Code section limited to cooperative ventures of the sort contemplated by the Corrections Cooperative Endeavors and Private Management Act codified at ACA 12-50-101 et seq.? Q2) If ACA 12-50-106(d) does authorize the DOC, acting alone, to enter into contracts for medical

services for periods up to 20 years, would the contracts be regulated under the Arkansas Procurement Law, ACA 19-11-201 et seq., or any other law regulating state contracts for matter other than the length of the contract? Q3) If ACA 12-50-106(d) does not authorize the DOC, acting alone, to enter into contracts for medical services for periods up to 20 years, would the contracts violate ACA 19-11-238(a), which limits state agency contracts to 7 years, or any other law limiting the length of state agency contracts? **RESPONSE:** Q1) I do not believe that the Act, including the twenty-year term limitation, applies to the proposed contract for medical services. Q2) Moot. Q3) The proposed contract would violate the permissible-term restriction set forth at A.C.A. § 19-11-238(a). Moreover, unless it contained an enforceable contingency clause voiding the contract in the event the legislature failed to make a biennial appropriation, I believe it would offend the provisions of Ark. Const. art. 5, § 29.

Opinion No.: 2003-201

Bailey, Brian K.

RE:Would it be consistent with provisions of the Freedom of Information Act (FOIA) for the custodian of records in the Hot Spring County Sheriff's Office to release personnel records and the results of an internal investigation regarding a jail incident? **RESPONSE:** The tests for releasability are set forth in the opinion.

ADOPTED RULES AND REGULATIONS

ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Docket No.: 187.00.03--001
Effective Date: 7/13/03
Contact Person: Jennifer Jones Taylor
Telephone: (501) 682-9402

Requirements for the Certification of Mediators for Circuit Courts

ARKANSAS TEACHER RETIREMENT

Docket No.: 088.00.03--001
Effective Date: 6/30/03
Contact Person: Julie Cabe
Telephone: (501) 682-1836

Setting, Reporting and Payment of Employer Contributions

Docket No.: 088.00.03--002
Effective Date: 6/30/03
Contact Person: Julie Cabe
Telephone: (501) 682-1836

Retirements Return to Service / Rescission of Retirement

Docket No.: 088.00.03--003
Effective Date: 6/30/03
Contact Person: Julie Cabe
Telephone: (501) 682-1836

Teacher Deferred Retirement Option Plan (T-DROP)

BOARD OF DENTAL EXAMINERS

Docket No.: 038.00.03--002
Effective Date: 6/22/03
Contact Person: William Trice, III
Telephone: (501) 372-4144

REPEAL of Article XII of the Rules Governing Radiation Safety

BOARD OF ELECTION COMMISSIONERS

Docket No.: 108.00.03--001
Effective Date: 7/10/03
Contact Person: Ruth Raines
Telephone: (501) 682-1783

Help America Vote Act Administrative Complaint Procedure

DEPARTMENT OF COMMERCE

State Plant Board

Docket No.: 003.11.03--005
Effective Date: 6/30/03
Contact Person: Darryl Little
Telephone: (501) 225-1598

Rules for the Northeast Delta Zone of Arkansas for Boll Weevil Eradication

Docket No.: 003.11.03--006
Effective Date: 7/3/03
Contact Person: Mike Thompson
Telephone: (501) 225-1598

ADOPTED RULES AND REGULATIONS

Emergency Rule: Class F Pesticide Buffer Zone Waiver Provision

Docket No.: 003.11.03--007
Effective Date: 7/18/03
Contact Person: James Scott
Telephone: (501) 570-1159

2002 Amendments to the National Institute of Standards and Technology (NIST) Handbooks 44, 130, 133 and the Annual Book of the American Society for Testing and Material (ASTM) Standards

DEPARTMENT OF CORRECTION

Docket No.: 004.00.03--001
Effective Date: 7/25/03
Contact Person: Carl Dyer
Telephone: (870) 267-6345

AR 1316: Emergency Powers Act - County Jail Backlog

FINANCE & ADMINISTRATION

Revenue Division

Docket No.: 006.05.03--001
Effective Date: 7/17/03
Contact Person: Linda Holmstrom
Telephone: (501) 682-7751

Regulation 2003-2 -- Standard Mileage Rates for Income Tax Purposes

Docket No.: 006.05.03--002
Effective Date: 7/10/03
Contact Person: Linda Holmstrom
Telephone: (501) 682-7751

Emergency Rule: Implementing Act 46 of 2003 (1st Ex. Sess.) Eighty-Fourth Session Projects Account within the General Improvement Fund

GAME & FISH COMMISSION

Docket No.: 002.00.03--005
Effective Date: 7/20/03
Contact Person: James Goodhart
Telephone: (501) 223-6327

Act 428 of 2003 - Sr. Citizen Lifetime Duck and Trout Privileges; 2003-2004 Statewide Hunting Code Proposals

HIGHER EDUCATION

Colleges & University Plans & Operations

Docket No.: 008.02.03--001
Effective Date: 6/28/03
Contact Person: Larry James
Telephone: (501) 450-3111

University of Central Arkansas 2003-2004 Parking & Traffic Regulations ***

ADOPTED RULES AND REGULATIONS

HUMAN SERVICES

Administrative Services

Docket No.: 016.14.03--008
Effective Date: 6/27/03
Contact Person: Bill Tyler
Telephone: (501) 682-9631

DHS HIPAA Policy 4010 & 4011 and Forms 4008, 4009, 4010 & 4011

County Operations

Docket No.: 016.20.03--004
Effective Date: 8/1/03
Contact Person: Linda Greer
Telephone: (501) 682-8257

MS 12500 - 12580: Family Planning Waiver, Increasing Income Limit to 200% FPL and Ading Yearly Re-evaluations as an Eligibility Factor

Medical Services

Docket No.: 016.06.03--010
Effective Date: 8/1/03
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Official Notice DMS-2003-NN-1 -- ElderChoices

Docket No.: 016.06.03--011
Effective Date: 7/17/03
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

ARKids First-B Update Transmittal #11

Docket No.: 016.06.03--012
Effective Date: 10/1/03
Contact Person: Suzette Bridges
Telephone: (501) 683-4122

Official Notice DMS-2003-O-6, DMS-2003-E-5, DMS-2003-II-5, DMS-2003-KK-6, DMS-2003-Q-6, DMS-2003-R-8, DMS-2003--OO-6

Docket No.: 016.06.03--013
Effective Date: 8/1/03
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Official Notice DMS-2003-J-1

Docket No.: 016.06.03--014
Effective Date: 8/1/03
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Section I Update Transmittal -- All Provider Manuals

INSURANCE DEPARTMENT

Docket No.: 054.00.03--001
Effective Date: 7/1/03
Contact Person: Jean Langford
Telephone: (501) 371-2820

Rule 18 -- Minimum Standards for Accident and Health Insurance

ADOPTED RULES AND REGULATIONS

Docket No.: 054.00.03--002
Effective Date: 7/15/03
Contact Person: Booth Rand
Telephone: (501) 371-2820

Emergency Rule 80: Notice of Non-Renewal of Employer Group Health Insurance Due to Non-Payment of Premium

Docket No.: 054.00.03--003
Effective Date: 7/15/03
Contact Person: Booth Rand
Telephone: (501) 371-2820

Emergency Rule 78: Small Employer Health Purchasing Groups

Docket No.: 054.00.03--004
Effective Date: 7/15/03
Contact Person: Booth Rand
Telephone: (501) 371-2820

Emergency Rule 79: Health Insurance Consumer Choice

LIVESTOCK & POULTRY COMMISSION

Docket No.: 125.00.03--005
Effective Date: 8/1/03
Contact Person: Karen Gray
Telephone: (501) 907-2411

Regulations for the Enforcement of the Arkansas Egg Marketing Act

PHARMACY BOARD

Docket No.: 070.00.03--004
Effective Date: 7/18/03
Contact Person: Charles Campbell
Telephone: (501) 682-0190

Regulation 07-04-0006 - Theft or Loss of Controlled Drugs

Docket No.: 070.00.03--005
Effective Date: 7/18/03
Contact Person: Charles Campbell
Telephone: (501) 682-0190

Regulation 02-04-0002 - Defining Unprofessional or Dishonorable Conduct

Docket No.: 070.00.03--006
Effective Date: 6/16/03
Contact Person: Charles Campbell
Telephone: (501) 682-0190

Emergency Regulation 07-02 - Compounding

PROFESSIONAL BAIL BONDSMAN LICENSING BOARD

Docket No.: 164.00.03--001
Effective Date: 6/26/03
Contact Person: Linda Longstreth
Telephone: (501) 682-9050

Regulation 1 - Regulation of Bail Bond Business

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 June 30, 2003

Agency	Period Covered
Arkansas State Land Department	6/30/02
Arkansas Board of Hearing Instrument Dispensers	6/30/01
Arkansas Board of Hearing Instrument Dispensers	6/30/02
State of Arkansas Safe Drinking Water Fund (Private)	6/30/02
State of Arkansas Construction Assistance Revolving Loan Fund Program (Private)	6/30/00
State of Arkansas Construction Assistance Revolving Loan Fund Program (Private)	6/30/01
State of Arkansas Construction Assistance Revolving Loan Fund Program (Private)	6/30/02
North Arkansas Human Services System, Inc. (Private)	6/30/02
Forest Echos Technical Institute	6/30/02
Riverside Vocational Technical School	6/30/02

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