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Secretary
Of State

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**Secretary of State
State Capitol, Room 026
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ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-031

Marvin Steele
State Representative

RE:Can a city use funds from the hamburger tax to participate in the Arkansas Partnership, an organization of economic development agencies and chambers of commerce among whose activities is lobbying legislators? Q2) Can a city use funds from the hamburger tax to pay its share of a hospitality event for legislators? **RESPONSE:** Q1) I cannot answer your first question, which raises factual issues regarding the scope of the city's "participation" and the nature of the activities conducted by the Arkansas Partnership. As a general proposition, I believe the city could expend hamburger tax revenues on the Arkansas Partnership, including for the purpose of lobbying, so long as the expenditures served a public purpose and the ends recited in A.C.A. § 26-75-606. Q2) With respect to your second question, I believe the city's advertising and promotion committee could likewise devote hamburger tax revenues to "a hospitality event for legislators" so long as the committee reasonably concluded the event served the ends recited in A.C.A. § 26-75-606.

Opinion No.: 2001-035

Dean Elliott
State Representative

RE:Is it legal for a board to establish the price schedule of maximum manufacturer prices for prescription drugs sold in the state after consideration of the prices charged for prescription drugs in Canada and Mexico, the prices listed on the federal supply schedule for pharmaceuticals and drugs maintained by the United States Department of Veterans Affairs and any other relevant information? **RESPONSE:** In my opinion, if the prices are pegged to track the indices named in your request, the practice you describe might well constitute an unlawful delegation of legislative power in violation of Ark. Const. art. IV, §§ 1 and 2, and Ark. Const. amend. VII. I further believe the practice might violate the commerce clause, U.S. Const. art. I, § 8, cl. 3.

Opinion No.: 2001-038

David Malone
State Senator

RE:In light of the county court's constitutional authority and the Supreme Court's decisions in *Butler v. City of Little Rock*, 231 Ark 834, 844 SW2d 812 and *Yates v. Sturgis*, 311 Ark 618, 846 SW2d 633, and *Ops. Att'y Gen.* 94-343, 97-181, 97-182 and 98-009, are any ordinance passed by the quorum court regarding roads and ordinances passed by the cities regarding roads in subdivisions in their extraterritorial growth areas unconstitutional? **RESPONSE:** This can only be answered with reference to specific ordinances. Generally, neither a quorum court nor a city council can pass an ordinance that would interfere with the exclusive jurisdiction of the county court under Ark. Const. article 7, section 28, or with the county judge's operation of the system of county roads under amendment 55, or with the constitutional or statutory authority of the county judge which existed at the time of the adoption of amendment 55, section 3. (See *Op.181*). Whether such jurisdictional encroachment has occurred in any instance will depend upon the particular ordinance.

Opinion No.: 2001-040

Margaret Meads
Chair, Arkansas Board of Review

RE:Q1) Is the Board of Review required to notify the media of its regular meetings, or any special or emergency meetings, if no request has been made for this information? Q2) Is the Board authorized to go into executive session to conduct its business, specifically to determine whether a claimant is entitled to unemployment insurance benefits, in order to meeting the confidentiality provisions of ACA 11-10-314? Q3) Are Board of Review and Appeal Tribunal files concerning specific claims for unemployment insurance benefits exempt from disclosure under the Freedom of Information Act (FOIA)? **RESPONSE:** Q1) No. Notice need only be given to persons who have requested it. Q2) No. Executive sessions are permitted for only the purposes stated in the FOIA,

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and the determination of claims for unemployment benefits is not one of those purposes. The board must avoid violation of the confidentiality statutes in another way, such as referring to claimants by number rather than name. Q3) Yes, under the "catch-all" exemption of ACA 25-19-105(a).

Opinion No.: 2001-044

Gunner DeLay
State Senator

RE:Q1) Can an out-of-state mortgage company contract for a second mortgage at a higher rate than an in-state mortgage company? Q2) If there is a legal limit on what in-state mortgage companies can charge for a second mortgage, please state your opinion as to what that rate is. **RESPONSE:** Q1) The answer will depend on what kind of institution the "mortgage company" in question is. If it is an FDIC-insured institution, it may be given parity under federal law (the Gramm-Leach-Bliley Act, 12 USC 1831u(f).) Even if it is not, it may be given parity under some other federal law. But it would be necessary to know the type of institution and the type of loan in question in order to determine whether other federal laws would apply. Q2) Arkansas' usury law, Art. 19, 13 states the limit on interest rates in Ark.

Opinion No.: 2001-045

David L. Gibbons
Prosecuting Attorney, 5th Judicial District

RE:Do provision of ACA 16-17-115 contemplate that the county will pay 50% of the expenses (of the municipal court) or that the expenses will be apportioned between the city and county divisions and the county will pay only those expenses attributable to the county division? Q2) Can the city and county agree that an exact apportionment may be unobtainable and agree on a figure between themselves? **RESPONSE:** Q1) Pope County is only

obligated by state law to pay one-half of the salaries of the municipal judge and the clerk of the Russellville Municipal Court. See generally Ops. 93-001, 88-011, 84-098. See Op. 99-207 regarding salary of municipal clerk only, not deputy clerks. Q2) The County could agree to contribute toward other expenses of the court, but there is no requirement.

Opinion No.: 2001-048

Frank White
Commissioner, AR State Bank

RE:Is the formula rate under Ark. Const. amend. 78, required to be set quarterly by the Bank Commissioner, subject to the maximum lawful rate of interest as set by Ark. Const. amend. 60? Q2) If the answer the Q1 is "yes," must the formula rate be altered during a calendar quarter if the federal discount rate is changed during the calendar quarter? **RESPONSE:** Q1) In my opinion, the formula rate as calculated pursuant to the formula set forth in amendment 78 should apply even if the calculation exceeds what would be permitted under amendment 60, which is incorporated into Ark. Const. art. 19, § 13. Under standard principles of constitutional construction, a more recent amendment more narrowly tailored to a particular issue will control in the event of a conflict. Q2) Moot.

Opinion No.: 2001-049

Bill Scrimshire
State Representative

RE:Is it legal for the county tax collector to refuse property tax payment until a patron in a rural fire district had paid his assessed fee of \$50.00? **RESPONSE:** If the question pertains to a fire improvement district governed by ACA 14-284-201 et seq., it is my opinion that the answer is "no." The relevant statutes do not allow this. See 14-284-216. See also Opinion 2000-299.

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Opinion No.: 2001-050

Charles L. Ormond
State Representative

RE:Q1) If a pupil applies for school choice by April 17 of the year in which he plans to begin the fall semester at the nonresidential district and chooses not to exercise his right to choice and returns to his residential district in the fall, can he choose to leave to go to the nonresident district later that year, or must he forfeit that right to choice until he can make application in April to file for the fall semester of the next year? Q2) Can nonresident districts pick up students inside the resident district if the resident district agrees, and can the parent agree to let the bus come into the resident district if the resident district opposes? **RESPONSE:** Q1) The School Choice Act currently does not address this issue. In the absence of legislative or judicial clarification, this is a matter that must be decided by each school district. Q2) Yes. See ACA 6-18-206(c).

Opinion No.: 2001-052

Mike Beebe
State Senator (President Pro Tempore)

RE:Is the ordinance of the City of Beebe ((No. 2001-003), which governs the procedure to follow with regard to FOIA requests, valid? **RESPONSE:** The ordinance is invalid in at least some respects, but is valid in others. Public information and open meetings are not a "municipal affair" so any local legislation must be consistent with state law. The ordinance conflicts with current state law in requiring FOIA requests to be in writing and the fees authorized by the ordinance may be unreasonable. See the opinion for further discussion.

Opinion No.: 2001-053

Denny Altes
State Representative

RE:Are the provisions of Act 551 of 1997

constitutionally suspect? **RESPONSE:** No. The Act, which requires that 75% of adults and 75% of property owners within a three-mile radius approve construction of any new motor-vehicle racing facility, is a valid exercise of the state's police power to control noise pollution, air pollution and traffic congestion. I do not believe the Act qualifies as special legislation in violation of Ark. Const. amend. 14, nor does it offend the privileges and immunities clause, Ark. Const. art.2, section 18, or the equal protection clause, U.S. Const. amend. 14.

Opinion No.: 2001-056

Bill Bridgforth
Chair, State Board of Law Examiners

RE:Can a judgment of guilty for two felony convictions that was subsequently discharged without an adjudication of guilt pursuant to ACA 5-64-407 and expunged under ACA 16-90-901, be considered a felony conviction for purposes of application of Section 7.L.(2)(b) of the Procedures of the Ark.S.Ct. Regulating Professional Conduct of Attorneys at Law? Q2) Also, in your opinion is there a conflict in the provisions of ACA 5-4-301(d)(1) and those cited in the attached "Order for Discharge, Dismissal and To Seal"? **RESPONSE:** In my opinion, the document you have submitted captioned "Judgment" is a "felony conviction" to the extent that it imposes a fine. A.C.A. § 5-4-301(d)(1) (Supp. 1999). Although the court's subsequent "Order for Discharge, Dismissal and to Seal" purports to expunge this conviction, I believe the court lost jurisdiction to review the conviction once the time for filing post-trial motions regarding the fine had passed. Accordingly, I believe the conviction stands, triggering application of Section 7.L.(2)(b), which would preclude the applicant from applying for readmission to the bar. ACA 5-64-407

Opinion No.: 2001-058

Stephen Bright
State Representative

RE:Is House Bill 1382, entitled "An Act to Make Long-

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Term Care Affordable and Available for Facility Residents; and for Other Purposes,” constitutional — especially the equal protection part? The bill imposes a cap on non-economic and punitive damages in cases for medical injury against a long-term care facility. RESPONSE: Subsection (a)(3) of Section 13 of the bill in all likelihood violates article 5, sec. 32 of the Arkansas Constitution and the separation of powers doctrine. There are a number of other possible constitutional challenges which might be brought and courts across the country are split on those arguments.

Opinion No.: 2001-059

Jay Bradford
State Senator

RE: Does ACA 24-11-413 compel a police department to contribute forfeitures and fines imposed as discipline on “any members of the police department,” including those who are members of LOPFI, or only on members of the police department who are members of the local police or fire pension fund? RESPONSE: It requires the department to contribute forfeitures and fines imposed as discipline an “any” member of the department, including LOPFI members — not just members of the local pension fund.

Opinion No.: 2001-060

Russ Hunt
State Representative

RE: Does the phrase “all persons under the Arkansas Medicaid Program are required to maintain at their or its principal place of Medicaid business all records at least for a period of five (5) years from the date of claimed provision of any goods or services to any Medicaid recipient,” as it is used in ACA (f), require a Medicaid-eligible nursing home facility to maintain records of employee work hours (e.g., time cards, payroll sheets, work schedules, etc.) for the five (5) year period? RESPONSE: Yes. By statute, a nursing facility or nursing home is required to maintain a

certain ratio of staff to residents. A.C.A. § 20-10-1404 (Repl. 2000). Any violation of this statute constitutes a failure to provide adequate care, potentially triggering the range of penalties set forth at A.C.A. § 20-10-206 (Repl. 2000). Any such violation implicates Medicaid because it would preclude a provider from truthfully attesting to compliance with “the rules, regulations, and provider agreements issued by the Arkansas Medicaid Program or its fiscal agents.” A.C.A. § 5-55-111(1) (Repl. 2000).

Opinion No.: 2001-061

Steve Schall
State Representative

RE: Pursuant to provisions of ACA 24-12-117(a)(3) regarding pension benefits to minor children, the City of Conway has concluded that the amount of pension received should be \$50, as set out in sections 24-12-117(a)(1) and (2). Is this interpretation correct? RESPONSE: I agree that the amount of the pension is \$50. However, subsection (a)(3) of the statute differs from subsections (a)(1) and (2) in that each of the individuals specified is entitled to a \$50 monthly pension. By contrast, under the circumstances set forth in subsections (a)(1) and (2), the total monthly pension to survivors collectively could not exceed \$50.

Opinion No.: 2001-062

Gilbert Baker
State Senator

RE: Once a state agency has promulgated regulations which include eligibility criteria, does the agency have the authority, without going back through the process required under the Arkansas Administrative Procedures Act, to employ more restrictive criteria to disallow services to persons who meet the promulgated standards? Q2) If the answer to question 1 is “yes,” must the state agency provide notice to the persons formerly eligible under the promulgated standards or to the agencies providing services under

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the promulgated regulations or both, and if so, what notice must be given? Q3) If the answer to question 1 is "yes," does the state agency have the authority to retroactively disallow services so that payments for services provided under the promulgated regulations are disallowed or ordered repaid or both? RESPONSE: The application and formulation of DHS rules to establish eligibility for early intervention and early childhood services under Medicaid is currently at issue in the pending case of *Whitaker v. Pryor et al.*, Case No. 4-01 CV00116GH (E.D. Ark. 2001), in which I am a defendant. As a matter of policy, this office has consistently declined to issue opinions on matters that are the subject of pending litigation. Consequently, I must respectfully decline to address your questions.

Opinion No.: 2001-064

Cathryn Hinshaw
Exec. Dir., AR Fire & Police Pension Review Board

RE:Q1) Pursuant to provisions of ACA 24-11-830, what is a participating municipality? Q2) Do provisions of ACA 24-11-830 prohibit retired DROP participants from ever working for any fire department anywhere? Could a DROP retiree serve as a volunteer for their former fire department? Q3) If this Code section does not apply to DROP members and it is permissible for them to become volunteer members of their former department, is there any state or federal law that would prevent the city from covering and paying health insurance premiums for these people? RESPONSE: Q1) A participating municipality is a municipality that has opted to participate in the DROP program. Q2) It prohibits them from working for any fire department in a participating municipality, for compensation. However, they can work as volunteers for no compensation. Q3) No. Such coverage is specifically authorized by ACA 24-11-818.

Opinion No.: 2001-065

Bill Gwatney
State Senator

RE:How many quorum court members are necessary

to constitute a "public meeting," thereby requiring media notification? Q2) Is it a violation of the Freedom of Information Act (FOIA) for: a) two quorum court members to speak on the telephone or play golf? b) three quorum court members to meet for lunch? c) several quorum court members to meet socially and it not be considered a public meeting? RESPONSE: Q1) See Opinions 99-018 and 2000-096. This will turn on the facts of each case. Q2(a) Telephone conversations are addressed in Ops. 99-018 and 2000-096. A social event such as a golf game is generally not governed by the FOIA, although it must be recognized that a social function cannot be used to circumvent the act. Q2(b) Assuming this is a social gathering and that any discussion of public business is intermittent and incidental to the social function, then the FOIA will not apply. See Op. 95-020. Q2c) See above response.

Opinion No.: 2001-066

Russ Hunt
State Representative

RE:In reference to ACA 21-2-105 and 14-34-106, is it legal for the mayor of a town or city to administer an oath of office? Q2) Is a mayor of a town or city qualified to perform a marriage ceremony outside the city limits? RESPONSE: 1) No. See ACA 21-2-105; 14-42-106(b) and Opinion 2001-018. 2) Yes. See ACA 9-11-213 and 9-11-702.

Opinion No.: 2001-067

John E. Brown
State Senator

RE:If a county sheriff resigns during the first twelve months after his election and swearing in, who appoints or elects the new sheriff? Q2) How long is the term of the new sheriff? Q3) If the quorum court appoints or elects a new sheriff, is there another special election prior to the next general election for county sheriff? Q4) If someone is elected or appointed by the quorum court, can they run for re-election at the next general election? RESPONSE: 1) The

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quorum court. Amendment 55, sec. 4 and ACA 14-14-1310. 2) He serves for the entire unexpired term and until his successor is elected and qualified after the next general election. Amendment 29, sec. 4. 3) No. 4) No. Amendment 29, sec. 2 and ACA 14-14-1310(a)(2)(E).

Opinion No.: 2001-068

Gary Biggs
State Representative

RE:Are local law enforcement officers who approve an Arkansas Department of Correction (ADC) request for furlough from an inmate to be released in their jurisdiction held responsible for the prisoner's actions while away from the ADC? **RESPONSE:** Although there is no authority directly on point, I do not believe local law enforcement officers would subject themselves to potential liability by "approving" an inmate's request for a furlough. In my opinion, whether to grant or deny a furlough is a non-delegable decision for the ADC to make. I believe A.C.A. § 12-50-108 reflects a legislative determination that the director of the agency charged with custody of an inmate should bear ultimate responsibility for the consequences of granting a conditional release.

Opinion No.: 2001-069

Jim Argue
State Senator

RE:Is the Arkansas Aids foundation, a private, nonprofit organization that receives Ryan White Title II federal grant funds through the Arkansas Department of Health, subject to provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** This cannot be conclusively answered because it requires a factual review of the Foundation's operations, as well as its specific activities or functions in relation to the grant. The question is whether the private entity carries on "public business" or is otherwise sufficiently intertwined with the activities of government.

Opinion No.: 2001-070

Rebecca F. Ward, LCSW
Chair, Social Work Licensing Board

RE:Request for reconsideration of Op. Att'y Gen. 2001-016. Should provisions of ACA 17-103-105(1) be interpreted to mean that any individual who represents him or her to the public as a social worker when not licensed by the Social Work Licensing Board is in violation of the Social Work Licensing Act? **RESPONSE:** Op. No. 2001-016 is upheld. It should not, however, be interpreted to mean that it is permissible for a person to hold himself/herself out to the public to be a "social worker" if he/she is not a "social worker." Rather, that opinion addressed a particular fact situation that did not involve such conduct.

Opinion No.: 2001-071

Dottie M. Hampton
ADHS, DCFS-Foster Care Unit

RE:Is the decision of the custodian of records to release the hire packet and personnel file of Ms. Dottie Hampton, withholding specific exemptions, consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The answer depends on the records in the file. The opinion contains an analysis of the various applicable standards of releasability.

Opinion No.: 2001-072

Mark Riable
Chair, Board of Trustees, AR School for Blind & Deaf

RE:Are Senate Bills 782 and 783, which transfer the powers of the Board of Trustees of the School for the Blind and Deaf to two new boards, constitutional? **RESPONSE:** In my opinion, although the reorganization and consolidation called for in the proposed bills do not facially violate Ark. Const. amend. 33, the bills may nevertheless be constitutionally suspect. A fact question exists as to

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whether the Institution for Advocacy for the Blind and the Institution for Advocacy for the Deaf, notwithstanding their names, qualify as "institutions" subject to the provisions of amendment 33. If not, I believe the reorganization and consolidation would be prohibited. Moreover, I believe the provision for mandatory attendance of the School for the Blind or the School for the Deaf by "normal" handicapped students residing in school districts whose schools do not accommodate the handicapped might be deemed to violate Ark. Const. art 14, § 1 or the equal protection clause of U.S. Const. amend. 14. Determining whether a violation exists would entail conducting a factual inquiry I am unauthorized to undertake.

Opinion No.: 2001-073

Steve Faris
State Senator

RE:In light of the decision in *Southwestern Bell Telephone Co. v. Arkansas Public Service Comm'n*, 267 Ark. 550, 593 S.W.2d 434 (1980) and the separation of powers doctrine, would H. B. 2376, which requires the Public Service Commission to provide space and accommodation for an employee of the General Assembly to act as liaison between the two entities, be legal if enacted? **RESPONSE:** The bill is constitutional on its face. Giving the liaison access to records and meetings "regarding utility issues" could, however, generate questions concerning the constitutionality of the bill as applied. This could be much broader in scope than limiting his or her access to the PSC's purely legislative function of rate-making. It is difficult to departmentalize the PSC exclusively as a branch of the legislature because it also has administrative and quasi-judicial duties. Whether the bill as applied constitutes an unconstitutional usurpation of the powers of another department of government will be a question of fact.

Opinion No.: 2001-074

Barry Emigh

RE:Request for certification of popular name and

ballot title of proposed constitutional amendment to allow the operation of bingo and raffles by nonprofit organization, permit for-profit gambling on water vessels, and exempt certain food items from new and existing gross receipt sales taxes without replacing the lost revenue. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2001-075

Henry "Hank" Wilkins, IV
State Senator

RE:Does the civil service commission have authority to place a successful candidate on a list for promotion until such time as that person has two years supervisory experience, as stated in the Job Description Manual, even though this has not been the practice of the civil service commission? Q2) If the answer to Q1 is "yes," what are the consequences of the civil service commission's past practices of promoting individuals who do not have the required two-year supervisory experience required in their Job Description Manual? **RESPONSE:** Must decline to answer because these questions are the subject of an adversary administrative proceeding.

Opinion No.: 2001-076

Marvin Parks
State Representative

RE:Do 'informal, non-business activities,' as described at Round Mountain Mud Racing facility, exempt that facility from the provisions of ACA 8-10-302, or would the actual date on which the track began construction or operation for business purposes dictate whether or not this facility must comply with state law? **RESPONSE:** In my opinion, the date of construction of the track, not the date the track opened for business, should determine whether the Facility is subject to the permit requirement. Assuming, then, that the track was built before January 1, 1995, it would not need an ADEQ permit to operate.

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Opinion No.: 2001-077

David M. Haak
State Representative

RE:Can school districts hold their money in financial institutions such as investment brokerage firms, credit unions or savings and loans? **RESPONSE:** No, under current law. See A.C.A. 19-8-104 (requiring that public funds, as defined in 19-8-101 to include school funds, must be deposited in “banks located in Arkansas.”) Note: House Bill 1772 would amend the definition of “bank” or “banking institution” to include savings and loans.

Opinion No.: 2001-078

Doyle Webb
State Senator

RE:Pursuant to provisions of ACA 21-4-102, is an employee of a county sheriff’s office who takes 15 days military leave plus 4 days necessary travel time entitled to his regular salary for 19 days? **RESPONSE:** Yes. See ACA 21-4-102.

Opinion No.: 2001-079

Mark Riable
Chair, Board of Trustees School for Blind & Deaf

RE:In light of the fact that provisions of S.B. 835 do not disclose how the Board of Trustees should determine what an “advocate” is, should the Bill be considered constitutional? Q2) Is it discriminatory or reverse discrimination to require that one of the two advocates must be blind and the other deaf? Q3) Does the Americans with Disabilities Act provide guidance on how the Board can determine whether someone is blind or deaf? **RESPONSE:** Q1) Yes. Although there may be some metaphysical debate about what it means to “represent the interests” of a particular group, as a practical matter I assume the designated representatives will qualify as “advocates” based simply on their professed alignment with the

deaf and the blind communities. Q2) No. Q3) No. Various statutes define what it means to be blind or deaf. See, e.g., ACA 20-76-419(a)(1), 20-79-203(14), 22-3-1301(1), 25-10-202, 25-26-202, 26-51-50126-51-501(2)(a), 16-10-127(1).

Opinion No.: 2001-080

Loren P. Thompson
Mayor

RE:Is the decision of the custodian of records to release the personnel file of the former police chief, except those items clearly exempt from disclosure, consistent with provisions of the Freedom of Information Act (FOIA)? Q2) Also, should forms and information related to the former chief’s military service as well as a copy of his psychological evaluation be released? **RESPONSE:** Most of the records are subject to inspection and copying with certain information redacted. The military “DD Form 214” documents are subject to disclosure with certain information redacted. The psychological evaluation itself should be shielded, but the confirmation that it was performed is subject to inspection.

Opinion No.: 2001-081

ALERT
c/o Gerhard Langguth

RE:Request for certification of popular name and ballot title for proposed constitutional amendment to eliminate taxes on food and medicine. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2001-082

Darrell F. Brown
Attorney at Law

RE:Was the decision of the Little Rock Police Department to withhold release of information

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gathered during the investigation of a citizen complaint consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: If the custodian correctly characterized the records as employee evaluation/job performance records, his determination that the records should not be released was correct. Statements of witnesses, taken in the course of an investigation of an allegation of misconduct, are employee evaluation/job performance records.

Opinion No.: 2001-083

William "Bill" Walker, Jr.
State Senator

RE: May the City of Wrightsville put two donated 16-passenger vans to uses other than specific city functions without violating State law? Q2) May the City lease these vehicles to civic groups, churches, non-profit groups and other entities? Q3) Are there any circumstances in which the vehicles may be loaned to such groups for their use? RESPONSE: In my opinion, the city may not use the vans for any purpose that does not further municipal affairs. The city may lease out the vans only if doing so would serve some legitimate public purpose. I believe loaning out the vans to churches or private nonprofit organizations would be flatly unconstitutional. The propriety of loaning the vans out to other entities must be determined on a case-by-case basis, subject to the general principle that municipalities are generally barred from donating public resources to other entities. Ark. Const. art. 12, sec. 5. ACA 14-42-108(b)(1).

Opinion No.: 2001-084

Arnell Willis
State Representative

RE: In light of the fact that other Phillips County Constitutional officers entered office making the same salaries as their predecessors, should it be considered a reduction in salary in violation of A.C.A. 14 - 14 -

1203 for the current county treasurer to enter office making less than his predecessor? RESPONSE: No. The raising of other officers' salaries does not constitute a decrease in the treasurer's salary.

Opinion No.: 2001-085

Stephen D. Bright
State Representative

RE: Nine questions regarding the proper organization, procedures and authority of property owners associations. RESPONSE: I would be unable to answer these questions without reviewing the charter documents of the POA, which I presume is a private, nonprofit corporation. Questions regarding the scope of authority of the POA's board of directors can only be answered by recourse to these documents, as well as to certain generally applicable corporate law. I am further barred by statute from answering many of these questions, which relate a non-public dispute that should be addressed by private counsel.

Opinion No.: 2001-086

Steve Oliver
Prosecuting Attorney, 18th Judicial District East

RE: Are records located in the administrative section of the sheriff's department, which is open from 8 a.m. to 5 p.m. Monday through Friday, subject to inspection and copying under the FOIA twenty-four hours a day 7 days a week because the jail division is part of the sheriff's department and maintains the longer hours? RESPONSE: In my opinion, a finder of fact might well conclude that the "regular business hours" of the custodian of the records at issue are 8 a.m. to 5 p.m. Monday through Friday, thus supporting the conclusion that no FOIA inspection need be permitted at other times. However, the law on this question is unclear. Moreover, determining who should be deemed the custodian of the records will involve undertaking a factual inquiry I am unauthorized and unable to conduct.

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Opinion No.: 2001-087

Preston Scroggin
State Representative

RE: Does a non-profit child care facility have to have a privilege license to [or] tax in the town in which it operates? **RESPONSE:** In my opinion, a town has the authority to impose a privilege or occupational tax on a nonprofit child-care facility. ACA 26-77-102. To determine whether the tax applies, one must refer to the town's ordinances.

Opinion No.: 2001-089

Kevin Smith
State Senator

RE: Pursuant to provisions in A.C.A. 13-2-502, -508, and 14-14-705, is the City of Stuttgart legally entitled to appoint 7, 10 or 12 members to their joint city-county library board? **RESPONSE:** A joint city-county library should be "established and operated" like a public city library. ACA 13-2-508(e). The library should consequently have no fewer than five and no more than seven trustees. ACA 13-2-502(a)(1).

Opinion No.: 2001-091

David Thomas
c/o Stephen Lisle, Lisle Law Firm

RE: Is the decision of the custodian of records to release Mr. Thomas' resume after redacting all protected information consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The decision is generally correct, but may sweep too broadly with regard to "purely personal information". Such information may not rise to the level of protectability. The opinion also includes a discussion of the issue of addresses and telephone numbers.

Opinion No.: 2001-092

Stephen D. Bright
State Representative

RE: Does a nursing home facility have the right under state law to prohibit a resident in a nursing home from installing an electronic monitoring device (EMD), whether it is video or audio? Q2) Does the nursing home have the right to deny admission or expel a resident who wants or attempts to install one of these EMDs where notice is given to all who enter the room informing them about the use of the EMD and the roommate, if any, agrees to the EMD in the room? This could also be requested by the legal guardian of the resident. Q3) Does it make any difference if the resident is private pay or Medicare pay? Do the residents still have the same rights regarding these devices in their rooms? Q4) Would rights of the nursing home employees affect the use of these devices in these facilities? Q5) What rights do renters have (i.e., apartment complexes) to install these types of devices in their domicile? Do their rights differ from those of nursing home residents? Q6) Do nursing homes have the right to install EMDs in the rooms if the facility wants to? Would they have to get the permission of the resident? Q7) Is the room considered home to the resident and, if so, what rights would that bring to them? **RESPONSE:** 1) The issue is not governed by law. As such, it is a matter of contract between the parties. 2) Same. 3) No. 4) As long as there is a legitimate reason for the monitoring and the employee is informed of it beforehand, "no." No rights of the employee would be violated in that instance. 5) Their rights are also governed by contract (a lease agreement). The difference is practical, not legal. 6) No, not without the residents permission, and perhaps not even with their permission. See opinion. 7) Residents have such rights as are guaranteed them by ACA 20-10-1204 and by contract.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-093

Mark Riable
Board Chairman, AR Schools for Deaf & Blind

RE:Should an employee for the Arkansas Schools for the Blind and Deaf immediately contact the [Child Abuse] hotline when he or she learns of an allegation, or report the incident to their supervisor and allow the supervisor to make the decision to contact the hotline? Q2) Do other entities, i.e., Department of Education, have existing procedures that can provide assistance in this regard? **RESPONSE:** I decline to answer because these questions are the subject of pending litigation.

Opinion No.: 2001-096

Sarah Agee
State Representative

RE:A person is charged with DWI 3 in city #1 on one date and is then charged with DWI 3 in city #2 a short time later. He pleaded guilty to the DWI 3 in city #2, while the charge in city #1 is pending trial. Can the DWI 3 in city #1 be amended to a DWI 4 and referred to the prosecutor's office for prosecution as a felony? Q2) Does a candidate have authority to use the title of "judge" on a ballot after having been appointed or elected, even if it is at a higher level? **RESPONSE:** Q1) I decline to answer this question because it appears to be the subject of pending litigation. Q2) Yes, regardless of whether the incumbent was elected or appointed. ACA 7-7-305(c)(1)(A) permits any holder of "elective office" to use his title. A judgeship is an elective office even if the incumbent has been appointed to fill a vacancy pursuant to Ark. Const. amend. 29.

ADOPTED RULES AND REGULATIONS

DEPARTMENT OF COMMERCE

State Plant Board

Docket No.: 003.11.01--002
Effective Date: 3/16/01
Contact Person: Mary Smith
Telephone: (501) 682-9631

Emergency Rule: Official Standards for Seed Certification

DEPARTMENT OF CORRECTION

Docket No.: 004.00.01--003
Effective Date: 3/25/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

AR 226 (ADC) / AR 3.15 (DCP) - Sexual Harassment

Docket No.: 004.00.01--004
Effective Date: 3/25/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

AR 892 - Sex and Child Offender Guidelines and Procedures

EDUCATION DEPARTMENT

Office of Accountability

Docket No.: 005.19.01--001
Effective Date: 4/11/01
Contact Person: Scott Smith
Telephone: (501) 682-4227

Emergency Amendment to Standards of Accreditation

GAME & FISH COMMISSION

Docket No.: 002.00.01--002
Effective Date: 3/26/01
Contact Person: James Goodhart
Telephone: (501) 223-6327

Commission Code Book

Docket No.: 002.00.01--003
Effective Date: 3/30/01
Contact Person: James Goodhart
Telephone: (501) 223-6327

02.21 Elk Season; Fishing Regulation Changes

HUMAN SERVICES

Administrative Services

Docket No.: 016.14.01--009
Effective Date: 4/6/01
Contact Person: Bill Tyler
Telephone: (501) 682-9631

Repeal of DHS 1057: Catastrophic Leave Policy and DHS 1072: Family and Medical Leave

ADOPTED RULES AND REGULATIONS

Children and Family Services

Docket No.: 016.15.01--003
Effective Date: 4/19/01
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

Policy I-E: Compliance with the Multiethnic Placement Act (MEPA)

Docket No.: 016.15.01--004
Effective Date: 4/19/01
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

III-A3: Case Re-evaluation; VI-A3: Placement of Infants Born to Incarcerated Mothers; VII-D: Changes in Out-of-Home Placement; VII-D1: Changes in Out-of-Home Placement

County Operations

Docket No.: 016.20.01--003
Effective Date: 3/26/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

FSC 01-02: Maximum Excess Shelter Deduction

Docket No.: 016.20.01--004
Effective Date: 3/26/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

TEA Form DCO-181: Transitional Employment Assistance

Medical Services

Docket No.: 016.06.01--007
Effective Date: 3/26/01
Contact Person: Sharon Jordan
Telephone: (501) 682-8489

Emergency Rule: Nursing Facility Quality Assurance Fee

Docket No.: 016.06.01--008
Effective Date: 5/1/01
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

School-Based Mental Health Services Provider Manual

Docket No.: 016.06.01--009
Effective Date: 4/9/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan #2000-13 - School-Based Mental Health Services

Docket No.: 016.06.01--010
Effective Date: 4/5/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

Emergency Rule: State Plan #2001-008 - Disproportionate Share Payments for State Operated Psychiatric Hospitals and State Operated Teaching Hospitals

ADOPTED RULES AND REGULATIONS

Youth Services

Docket No.: 016.01.01--001
Effective Date: 3/23/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

**Emergency Rule: Policy and Procedure
1250 - Inclement Weather**

Docket No.: 016.01.01--002
Effective Date: 3/23/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

**Emergency Rule: Youth Services Facility
Policy Manual**

Docket No.: 016.01.01--003
Effective Date: 3/23/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

**Emergency Rule: Youth Services Facility
Emergency Plan**

Docket No.: 016.01.01--004
Effective Date: 3/23/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

**Emergency Rule: Policy and Procedure
1550 - Incident Reporting**

Pharmacy Board

Docket No.: 070.00.01--003
Effective Date: 4/5/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

**Emergency Rule: Amendment of Board
Regulations 04-02-0002 and 04-02-0005**

Docket No.: 070.00.01--004
Effective Date: 4/5/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

**Emergency Rule: 04-00-0002 - Time
Requirements for Pharmacist on Duty;
04-02-0005 - Pharmacist in Charge**

POLLUTION CONTROL & ECOLOGY

Hazardous Waste

Docket No.: 014.09.01--003
Effective Date: 4/10/01
Contact Person: Mike Bates
Telephone: (501) 682-0831

**Emergency Rule: Regulation 23 -
Hazardous Waste Management --
Section 27 Hazardous Substance
Remedial Action Trust Fund Priority List**

INSURANCE DEPARTMENT

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(Order of Removal)

In the Matter of the Certificate of Authority of

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****** No list of filings will be listed in the Register due to the large number of filings submitted. To receive a list of the filings submitted please call (501) 682-3527.**

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