



Arkansas
Secretary
Of State

The Arkansas Register



Volume XXIV, Number 12

June 2001

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**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.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-097

Boyd Hickenbotham
State Representative

RE: What is the liability to the city if a resident/visitor is injured in burned-out homes located within the city limits? Q2) Is the State of Arkansas responsible to clean these properties that have converted back to the state, or financially reimburse the city if the city will supervise the clean up? **RESPONSE:** 1) I believe a city owes a resident/visitor a duty arising from the police power to abate nuisances of the sort at issue. A.C.A. § 14-56-203; A.C.A. § 14-54-901. However, the city will be liable for the breach of that duty only to the extent of its liability coverage. A.C.A. § 21-9-301. 2) To the extent that the “reversion” vests ownership of the property in the state — a somewhat problematic issue, see A.C.A. § 26-37-101 — the state is responsible for abating the nuisance. I also believe the city will have a claim against the state for any costs the city incurs in cleaning up. A.C.A. § A.C.A. § 14-54-903.

Opinion No.: 2001-099

Randy Minton
State Representative

RE: What is the proper method and number of votes needed for a formerly six-member city council to fill the vacancy of a departed alderman in a second class city? Q2) What are the veto powers and authority of a mayor with respect to filling a vacancy on the city council? Can the mayor veto the council’s selection and, if so, what is the proper procedure for the council to override the mayor? Q3) Does the electorate, or the council on behalf of the electorate, have authority to request a special election to fill the council seat vacancy? Q4) How should the now 5-member council handle city business if most issues result in a 3-2 vote and the mayor votes with the minority? Q5) Can three of the five council members hire an attorney? **RESPONSE:** Q1) By statute, the vacancy should be filled by vote of the council at the first regular meeting

following the vacancy’s occurrence. A.C.A. § 14-44-104. See Opinion No. 97-265. Q2) The mayor does have the power to veto the selection of an alderman, although the council can override the veto by 2/3 vote. A.C.A. § 14-44-107. See Opinion No. 90-078. Q3) I believe an alderman who has vacated his office can only be replaced for the unexpired term by action of the remaining aldermen, not by special popular election. A.C.A. § 14-44-104 of the Code dictates that the vacancy be filled by majority vote of the council at the first regular meeting after the vacancy occurs. Although this statute might be read as dictating that a vacancy be filled by a vote constituting a majority of the entire number of alderman, subsequently enacted A.C.A. § 14-42-103(a) makes clear that the vote need only total a majority of the quorum of the whole. Q4) The mayor may vote only when his vote is needed to pass an enactment or to establish a quorum. A.C.A. § 14-44-107(a). Since four votes are needed to enact any legislation other than the filling of the vacancy, A.C.A. § 14-55-203(b), which requires only three, A.C.A. § 14-44-104, the mayor is empowered to vote on an enactment only if he sides with the three-member majority. The majority might fill the vacancy, but it is one member short of being able to override the mayor’s veto. To conduct business, someone will need to switch allegiance. Q5) No.

Opinion No.: 2001-104

Kevin Smith
State Senator

RE: Is a nonprofit organization that charges mandatory fees exempt from municipal occupation license requirements? **RESPONSE:** The answer will depend on the nature of the organization’s activities and the scope of any city ordinance establishing the occupational licensing tax. As a general proposition, cities are authorized to tax nonprofit organizations that are engaged in “any trade, business, profession, vocation, or calling” within city limits, regardless of whether the organization charges mandatory fees. A.C.A. § 26-77-102. See Opinion No. 2001-087 (opining that nonprofit charitable corporation might be subject to privilege tax).

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Opinion No.: 2001-108

Jerry Allison
State Representative

RE: Is a former APERS member who sustained a job-related injury, terminated his employment, and was subsequently determined by the SSA to be disabled as a result of the injury, but does not meet all the requirements of ACA 24-4-511(a)(1)(A), entitled to receive disability benefits? **RESPONSE:** Yes. This individual falls squarely within the provisions of A.C.A. § 24-4-511(e)(3).

Opinion No.: 2001-109

Dan Flowers
Director, AR Highways & Transportation

RE: May the Arkansas State Highway Commission borrow money from the US Dept of Transportation and pledge toll revenue from the highway project to secure a federal Transportation Infrastructure Finance and Innovation Act ("TIFIA") loan without violating Amendment 20 of the Arkansas Constitution? Q2) Does the definition of "bonds" set forth in ACA 19-9-604(1) apply to a pledge of toll revenue to secure a TIFIA loan? Q3) If the Commission can pledge toll revenue to secure a TIFIA loan, may it do so without issuing revenue bonds and following the procedure set forth in ACA 19-9-601 through -607? Q4) Given the fact that the US Dept of Transportation may require the State of Arkansas to provide revenue sources other than proceeds from tolls, including "revenues of the State," may the Commission receive a TIFIA loan and secure same without a vote of the people? **RESPONSE:** Q1) So long as the state does not incur a conditional obligation to repay a toll-secured TIFIA loan using assessments for local improvements or taxes, the state need not obtain voter approval of the loan pursuant to Amendment 20. Q2) The statutory definition of "bonds" would apply only if the TIFIA loan were non-recourse — i.e., if the parties agreed that the anticipated toll revenues or other non-tax-based

dedicated revenues would constitute the only source for repayment. Q3) Evidences of indebtedness associated with a TIFIA loan would qualify as "revenue bonds" under Amendment 65 so long as the revenues dedicated for repayment from the project or improvement financed by the bonds (e.g., tolls), the operations of a governmental unit, or any other special fund or source other than assessments for local improvement and taxes. If the loan documents qualify as "revenue bonds" under this definition, I believe the procedural requirements set forth at A.C.A. §§ 19-9-601 through -607 will apply. Q4) The answer will depend on the nature of the "revenue sources other than proceeds from tolls." As suggested above, any pledge of tax revenues or the state's faith or credit will trigger the voter-approval requirement set forth in Amendment 20.

Opinion No.: 2001-115

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

RE: Is there a limited period of time during which a member may pay back refunded contributions to a local police pension fund, and thereby have old pension plan service credit restored? **RESPONSE:** State law does not create a limited time period during which a former member of a local police pension fund may pay back refunded contributions and have service credit restored. It would be possible to create a limited time period for such repayment that would not violate state law; however, a date-specific limitation on repayment is contrary to state law, and is therefore one that municipalities are not authorized to enact.

Opinion No.: 2001-116

Ken Cowling
State Representative

RE: Pursuant to provisions of HB 2392, specifically section (c)(2), when a closing agent is under dual representation to both the lender and the seller, is the collector permitted to accept payment of the general

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real estate taxes without regard to the personal taxes? Q2) Is the closing agent exempt from paying the personal taxes by virtue of the representation of the lender(s)? Q3) In the instance of a corporation, partnership, LLC, trust, or other non-personal entity, are the personal taxes of the natural persons comprising the entity required to be current before general taxes of the entity can be accepted? RESPONSE: Q.1: No. In order for the real estate taxes to be paid at closing, A.C.A. 26-35-601(c)(3), the seller's delinquent personal property taxes must also be paid. See Ops. 2000-228, 2000-092, 99-304. Q.2: No. This requirement is not affected by the fact that a lender is involved in the transaction. Q.3: No. Because the taxpayer under your question is the non-personal entity, the only relevant inquiry is the personal property tax obligation of that entity.

Opinion No.: 2001-117

Robert C. Balfe
Pros Attorney, 19th Judicial District West

RE: In light of Amend 55 to the Arkansas Constitution, may a quorum court provide for its own organizational structure by establishing committees of the quorum court such as a budget committee, personnel committee, etc., by a vote of the court itself? RESPONSE: No. See Opinion 95-084, wherein it was concluded that the presiding officer, i.e., county judge, has the authority to establish committees of the quorum court.

Opinion No.: 2001-124

Jay Bradford
State Representative

RE: In determining when portable toilet facilities should be used on construction sites, is a municipality governed by ACA 12-13-101 et seq., which adopted the Standard Fire Prevention Code, Sec. 2101.9 (b)

(1991), or may the municipality use the applicable Rules/Regulations in the Southern Standard Building Code which may have been adopted by that municipality? RESPONSE: The municipality is authorized to adopt a separate code, but its provisions must be at least as stringent as the Standard Fire Prevention Code. See Rule 1-304.2 and 1-307 of the Standard Fire Prevention Code. The State Fire Marshall at the Arkansas State Police is the official charged with this initial determination.

Opinion No.: 2001-126

David Malone
State Senator

RE: Can a city store records digitally and still meet the requirements of Rule 1002-1105 of the Rules of Evidence? Q2) Are there any other state requirements that documents be maintained in their original paper form? RESPONSE: Q1) The Rules of Evidence (Federal and Arkansas) and certain statutes do provide generally for the admissibility of electronic records, but the admissibility of any particular record will ultimately depend on the discretion of the court to which the record is offered as evidence. Q2) There are specific retention requirements for certain county records. However, Ark. law does allow generally the destruction of originals if copies are maintained in certain forms, including electronic forms. See ACA 13-4-201 and 16-46-101.

Opinion No.: 2001-127

Bob Adams
State Representative

RE: Can a person who is employed by the Arkansas Public Defender Commission as a public defender serve in the General Assembly as a representative or a senator without violating Article V, Section 10 of the Arkansas Constitution? Q2) If not, what are the restrictions? RESPONSE: It depends

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on the particular position of “public defender” and which office is held first. See the opinion for a full description, but generally, “the” public defender who is appointed by the district judges for a term of two years is an “officer” to whom the constitutional proscriptions attach. A lesser public defender is an “employee” and the restrictions of Ark. Const. 5, sec. 7 and 10 do not apply. “The” district public defender is ineligible to a seat in the General Assembly under art. 5, sec. 7, but may resign the public defender position to seek such a seat. Rank and file public defenders may seek office and be elected to the General Assembly, but certain restrictions will thereafter apply to their employment. See ACA 21-4-402(a)(2). On the flipside, a sitting member of the General Assembly may not be appointed as “the” public defender during his term and resignation does not remove the ineligibility. He may only seek a lesser public defender position after resigning the General Assembly. See ACA21-1-402(a)(1).

Opinion No.: 2001-128

Charles L. Robinson
Legislative Auditor

RE: Prior to dissolution, may the Ashley County Board of Education grant additional compensation to the County Board Designee of one-half (1/2) the remaining funds in the County Board of Education Fund and Common School Fund, and one-half (1/2) of the gross proceeds from the sale of a building? Q2) Prior to dissolution, may the Ashley County board of Education give a computer to the County Board Designee? **RESPONSE:** Q1) No. A.C.A. § 6-12-114 prescribes how a board of education will distribute its funds upon dissolution. The statute clearly envisions that all excess funds be distributed to the county’s school districts. Conspicuously absent in the statute is any suggestion that a board might expend funds realized from the sale of real estate — or, for that matter, from any other source — to supplement a county board of education’s designee’s compensation. Q2) No. Subsection (c) of A.C.A. § 6-12-114 is absolutely unequivocal in declaring that any dissolving

board of education’s personalty or assets remaining from the sale of personalty after all debts are discharged must be conveyed to the county’s school districts.

Opinion No.: 2001-129

Barry Emigh

RE: Request for certification of popular name and ballot title of proposed constitutional amendment to allow nonprofit bingo and raffles, for profit gambling, and exempting certain food items listed under 7 U.S.C. from state and local sales tax. **RESPONSE:** Popular name and ballot title approved as revised.

Opinion No.: 2001-131

Jay Bradford
State Representative

RE: May the City of Pine Bluff, consistent with the provisions of ACA 14-269-101 et seq., lease real property in the Regional Park for the construction and operation of a privately operated hotel in the park? **RESPONSE:** To answer your question definitively, I would need to conduct an intense inquiry into the facts, including the express conditions under which the U.S. government granted the property to the city. Even assuming the only pertinent condition were that the property “be used as a park,” only a finder of fact could determine whether the proposed construction accorded with the parties’ agreement, if any, as to what structures and activities belong in a “park.” As a general proposition, A.C.A. § 14-269-103 authorizes a municipality to lease park facilities, subject to the condition that the lease serve “the recreation and cultural needs of its inhabitants” or “stimulate and encourage the economic growth of the municipality and its inhabitants.”

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Opinion No.: **2001-133**

Mike Beebe
State Senator

RE: Is the county court a court of record? Q2) Are municipal and city courts courts of record? Q3) If a county court is a court of record and the county judge retires after four years of service, can he/she solemnize a marriage? Q4) Does the term "official" as it is used in A.C.A. 9-11-213(a)(7) indicate a county elected official or any person that the quorum court may choose? **RESPONSE:** 1) Yes, see ACA 14-14-1001. 2) Municipal courts, yes, city courts, unclear. 3) Yes. 4) Any person the quorum court may choose. See also ACA 14-20-110.

Opinion No.: **2001-134**

Charles S. Campbell
Exec Dir, AR State Board of Pharmacy

RE: Is a manufacturer, wholesaler, or distributor who possesses a sales and use tax permit issued by DF&A required to license with the State Board of Pharmacy to comply with the provisions of Act 1209 of 2001 and avoid possession penalties as described in 5-64-1101(c)? **RESPONSE:** Yes. The language of A.C.A. § 5-64-1101 indicates that the legislature intended that wholesalers, manufacturers, and distributors be governed by Section (a)(4) (requiring licensure), and that Section (a)(2) (requiring a sales and use tax permit only) govern retailers only.

Opinion No.: **2001-135**

Jan A. Judy
State Representative

RE: Can the City of Fayetteville appropriate 2 mills for two years (approximately 2.3 million dollars) and donate this money to the Fayetteville Boys and Girls

Club, Inc. (an independent, nonprofit corporation) for their use to assist in construction of a new facility on their land? Q2) Can the City of Fayetteville build a parking lot and playing fields on its own land, adjoining the new Boys and Girls Club, and enter into a joint operational and use agreement with the Club for access to the parking lot and playing fields? Q3) Can the City contractually agree with the Boys and Girls Club to provide operating funds for its recreational programs even if access to this facility and the Boys and Girls Club organization requires membership dues? Q3a) Should the city's monetary support require "public" access to the facility by funding scholarships for Fayetteville youths or require other types of public access? **RESPONSE:** Q1) No. As I noted in Opinion No. 1999-408, the leading case of *Halbert v. Helena-West Helena Industrial Development Corp.*, 226 Ark. 620, 625-26, 291 S.W.2d 802 (1956) "establishes beyond all question that a municipality cannot contribute to a private, nonprofit corporation regardless of whether the corporation serves a 'public purpose.'" The court in *Halbert* based this conclusion on Ark. Const. art. 12, § 5, which provides in pertinent part: "No county, city, town or other municipal corporation shall . . . appropriate money for, or loan its credit to, any corporation, association, institution or individual." Q2) The answer will depend on the precise terms of the proposed "joint operational and use agreement." The crucial issue will be whether the agreement is supported by adequate consideration. As a general proposition, absent sufficient consideration, I do not believe the city may expend public funds to provide a particular benefit to the members of a private, nonprofit corporation. I believe the agreement might well be constitutionally suspect if it merely provided that the city, in exchange for nominal consideration, would construct facilities to which dues-paying members of the Boys' and Girls' Club would have some privileged access. In my opinion, a finder of fact might well interpret such an agreement as a disguised, impermissible donation of public assets to a private charitable organization. Q3) If you are asking whether the city can simply provide a private, nonprofit charitable corporation with operating funds to conduct recreational programs for its paying members, I believe the clear answer is "no." In my estimation, any such agreement would be tantamount to an impermissible donation of public money. Moreover, I strongly doubt the

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constitutional infirmity of any such agreement could be remedied by “funding scholarships for Fayetteville youths” — at least not if eligibility for the scholarships were restricted to any meaningful extent.

Opinion No.: 2001-136

Barbara King
State Representative

RE: Are school board retreats considered a public meeting? Q2) If the retreat is considered a public meeting, can the school board hold a meeting out of the school district or out of the state? Q3) If the retreat is considered a public meeting, can the school board spend district money on a meeting out of the school district or out of the state? **RESPONSE:** Q1) The answer depends upon whether the discussion is of official school board matters on which action might later be taken by the board. Q2) The law does not squarely address this issue, but such a meeting could be deemed to be in circumvention of the FOIA. Q3) The board cannot spend district money on a meeting held in violation of the law. However, if the retreat is not a “meeting,” the question of whether the expenditure is permissible will depend upon the district’s internal policies, and upon whether it complies with laws governing school expenditures, such as Art. 14, 3 of the Ark. Const.

Opinion No.: 2001-138

Sharon Priest
Secretary of State

RE: What will be the effective date of legislation that does not have an emergency clause or specified effective date and passed during the regular session of the 83rd General Assembly, which adjourned sine die on May 14, 2001? **RESPONSE:** Starting with the first full day after adjournment and counting ninety full days, such legislation is effective on the ninety-first day, which is August 13, 2001. See Amendment 7 and *Fulkerson v. Refunding Board*, 201 Ark. 957, 147 S.W.2d 980 (1941).

Opinion No.: 2001-139

Chambers & West
McClellan Community High School

RE: Should the Little Rock School District custodian of records comply with a Freedom of Information Act (FOIA) request from the Arkansas Democrat-Gazette to review certain employment-related records in the personnel files of these two district employees, even though the employees believe disclosure of the requested information would be a “clearly unwarranted invasion” of their personal privacy? **RESPONSE:** The employees’ beliefs regarding disclosure are irrelevant. The relevant tests for the release of personnel records or employee evaluation or job performance records will apply. Not having been supplied the records, I can offer no more.

Opinion No.: 2001-140

Raymond Simon
Director, AR Dept of Education

RE: Are school districts that have a 10% or greater minority population and do not qualify for any of the exemptions in ACA 6-13-631 (Repl. 1999), required to divide into single-member zones 90 days before the 2001 annual school election or 90 days before the 2002 annual school election? Q2) Are the districts required to determine whether they have a 10% or greater minority population of the total school district or a 10% or greater minority population of qualified electors within the district? Q3) Pursuant to ACA 6-13-631, is the Dept of Education (DOE) required to withhold 20% of state funding to a school district that has a 10% or greater minority population, does not qualify for an exemption to zoning, and attempts to divide into single-member zones prior to 90 days before the annual school election but does not receive approval of the single-member zones from the controlling county board of election commissioners prior to the annual school election and, therefore, is not in compliance with the

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zoning requirements? Q4) If the DOE is required to withhold funding to a school district for failing to comply with the provisions of ACA 6-13-631, should funds be withheld from the year of noncompliance or from the year the district is required to report noncompliance? RESPONSE: 1) Before the 2001 annual school election. 2) The calculation is based upon total population. 3) It is difficult to answer this question because current State Board of Education rules and regulations are not consistent with a 1999 amendment of ACA 6-13-631. Funds should not be withheld prior to the August 1, 2002 reporting date, however. 4) Of necessity, funds will not be withheld until the 2002-2003 school year.

Opinion No.: 2001-141

James Armstrong
Coach, JA Fair High School

RE: Should the Little Rock School District custodian of records comply with a Freedom of Information Act (FOIA) request by releasing certain documents in my personnel file, even though I believe disclosure of these documents constitutes a clearly unwarranted invasion of personal privacy? RESPONSE: The employee's beliefs regarding disclosure are irrelevant. In my opinion, three unsolicited letters of complaint against the employee, who is a coach at a public school, are "personnel records" under the FOIA. The question, then, is whether the public's interest in accessing these three complaints outweighs the employee's interest in keeping them confidential. In my opinion, the public's interest in monitoring the conduct of high school athletic programs is considerable — a fact that doubtless accounts for the reporter's undertaking his investigation in the first place. I consider this interest even stronger when the matter at issue is the interaction with students by a public authority figure. Under the applicable standard, I believe this interest clearly outweighs the employee's individual interest in avoiding potential embarrassment. Accordingly, I believe the custodian should allow inspection of these documents, although the names of students should first be redacted unless the parents accede to disclosure. The two

remaining documents were generated by the school and clearly qualify as "employee evaluation or job performance records." I believe there is a compelling public interest in disclosure of these documents. Assuming that the employee has exhausted any available administrative appeals of a suspension or termination proceeding, and further assuming the described documents formed a basis for the decision to suspend or terminate him, I believe the custodian should disclose these documents. A.C.A. § 25-19-105(c)(1).

Opinion No.: 2001-142

Marian G. Lacey
Asst Superintendent, LRSD

RE: Would disclosure of the attached documents contained in personnel files of District employees constitute clearly unwarranted invasions of personal privacy under provisions of the Freedom of Information Act (FOIA)? RESPONSE: Most of the documents are either personnel or employee evaluation/job performance records. The custodian must make the proper classification based upon the particular facts, applying the tests set forth in the opinion. The public has a particularly compelling interest in the conduct of teachers and other school authorities.

Opinion No.: 2001-143

Steven B. Jones
State Representative

RE: What is the recourse of an alderman who alleges that city firefighters circulated a petition while on duty to have him removed from the local fire commission when the city attorney has concluded that the circulation of the petition was not in violation of provisions of ACA 7-1-103? RESPONSE: To the extent the alderman seeks the imposition of criminal charges, the city attorney, prosecuting attorney, or a grand jury are the only avenues of relief.

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Opinion No.: 2001-144

Mark Burnette
Att’y, Mitchell Law Firm

RE: Is the decision of the custodian of records for the Little Rock School District to release certain records contained in the personnel files of three of Mr. Burnette’s clients consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** Some of the records should be released and others should not. The opinion analyzes these records individually and sets forth the applicable tests for releasability.

Opinion No.: 2001-145

David Yarberry
Adm Serv Mgr, LRPD

RE: Would release of personnel records and adverse action files regarding certain police officers be consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The records were not provided; therefore the opinion draws no definitive conclusions, but sets forth the various tests for releasability under which the records should be analyzed.

Opinion No.: 2001-146

Stanley Williams

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** More factual information is needed for a definitive opinion. Applicable tests are outlined in the opinion.

Opinion No.: 2001-147

Anthony Chambers
McClellan Community High School

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** Generally, “no.” Some of the records are personnel records and some are “employee evaluation or job performance records.” The records are all subject to disclosure if the employee was suspended or terminated and all other criteria are met. Student names, parent names and other personal identifiers of students must be redacted, however.

Opinion No.: 2001-148

Al Chase

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** Most of the records are either personnel or employee evaluation/job performance records. The custodian must apply the tests set forth in the opinion to the particular facts surrounding each document.

Opinion No.: 2001-149

Dennis R. Coffman

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** These records constitute employee evaluation/job performance records. They

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should be released if there has been a final administrative resolution of a suspension or termination decision. The name of the student and parent should, however, be deleted prior to release.

Opinion No.: 2001-150

Oliver Fitzpatrick

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** Generally, “no.” Some of the records are personnel records and some are “employee evaluation or job performance records.” The records are all subject to disclosure if the employee was suspended or terminated and all other criteria are met. Student names, parent names and other personal identifiers of students must be redacted, however.

Opinion No.: 2001-151

Charles R. Foote

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** Generally, “no.” Some of the records are personnel records and some are “employee evaluation or job performance records.” The records are all subject to disclosure if the employee was suspended or terminated and all other criteria are met. Student names, parent names and other personal identifiers of students must be redacted, however.

Opinion No.: 2001-152

Dennis C. Jones

RE: Are records documenting the employment and

certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** Generally, “no.” Some of the records are personnel records and some are “employee evaluation or job performance records.” The records are all subject to disclosure if the employee was suspended or terminated and all other criteria are met. Student names, parent names and other personal identifiers of students must be redacted, however.

Opinion No.: 2001-153

Curtis Lang

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** These records should be released.

Opinion No.: 2001-154

Jeffery S. Walter

RE: Are records documenting the employment and certain actions taken by a LRSD employee exempt from disclosure as a “clearly unwarranted invasion of personal privacy” under the Freedom of Information Act (FOIA)? **RESPONSE:** These records should be released, but students’ names and identifying information should be redacted, and the facts of the case may indicate that the employee’s home address should also be redacted.

Opinion No.: 2001-155

Lindbergh Thomas
State Representative

RE: Is coverage under the Arkansas Local Police

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and Fire Retirement System (LOPFI) mandatory?
RESPONSE: The answer will depend upon whether the local fund in question was a "relief fund" within the meaning of ACA24-10-102(28). If not, coverage is not mandatory. If so, coverage is mandatory for officers hired after Jan. 1, 1983, and not mandatory for officers hired before that date.

Opinion No.: 2001-169

Lisa Sevier
c/o Washington Co DHS Off of Cf

RE: Would release of Ms. Sevier's personnel records to another state employee be considered an invasion of her personal privacy in violation of provisions of the Freedom of Information Act (FOIA)?
RESPONSE: The fact that the requester is also a state employee is not a basis for denying an FOIA

request. The relevant tests for the release of personnel records or employee evaluation or job performance records will apply.

Opinion No.: 2001-172

Don H. Kidd
Int Dir, Criminal Justice Inst, UofA Sys

RE: Q1) Does the personnel records exemption extend to records maintained by the Criminal Justice Institute, as the administering agent for the Hot Springs Police Department? Q2) Is it sufficient to produce a copy of the scores with the officers' names redacted?
RESPONSE: Q1) Although the FOIA does not address this issue, it is my opinion that the exemption should apply in this instance. The CJI stands in the shoes of the employer, and to release these records would undermine the purpose of the exemption. Q2) Yes, if the officers' identities cannot be ascertained.

ADOPTED RULES AND REGULATIONS

APPRAISER LICENSING & CERTIFICATION BOARD

Docket No.: 151.00.01--002
Effective Date: 6/25/01
Contact Person: Jim Martin
Telephone: (501) 296-1843

Changes to Rules: Appraiser Licensing and Certification Board - Section VI (D & B), Section VII (D), Section VIII (B & C)

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

Multi-Family Housing

Docket No.: 109.04.01--001
Effective Date: 6/16/01
Contact Person: Patrick Patton
Telephone: (501) 682-5902

Housing Credit Program 2001 Qualified Allocation Plan

Docket No.: 109.04.01--002
Effective Date: 6/16/01
Contact Person: Patrick Patton
Telephone: (501) 682-5902

Guidelines for Allocating 2001 Tax-Exempt Multifamily Private Activity Volume Cap

Docket No.: 109.04.01--003
Effective Date: 6/16/01
Contact Person: Patrick Patton
Telephone: (501) 682-5902

HOME Program Policy & Operations Manual

ARKANSAS SENTENCING COMMISSION

Docket No.: 154.00.01--001
Effective Date: 6/25/01
Contact Person: Sandy Moll
Telephone: (501) 682-5001

Arkansas Sentencing Standards Grid, Changes to the Seriousness Reference Table, Offense Seriousness Ranking Table for All Criminal Offenses

BOARD OF DENTAL EXAMINERS

Docket No.: 038.00.01--001
Effective Date: 6/25/01
Contact Person: Judy Rickard
Telephone: (501) 682-2085

Article XI - Dental Hygienists Functions, Article XVII - Dental Assistant and Registered Dental Assistant Functions

Docket No.: 038.00.01--002
Effective Date: 6/25/01
Contact Person: Judy Rickard
Telephone: (501) 682-2085

Article XIV - Minimum Continuing Education

ADOPTED RULES AND REGULATIONS

Docket No.: 038.00.01--003
Effective Date: 6/25/01
Contact Person: Judy Rickard
Telephone: (501) 682-2085

Article XIII - Conscious Sedation Level 3

DEPARTMENT OF ARKANSAS HERITAGE

Historic Preservation Commission

Docket No.: 012.02.01--001
Effective Date: 6/25/01
Contact Person: Patrick Ralston
Telephone: (501) 324-9880

Artificial Siding Policy

Docket No.: 012.02.01--002
Effective Date: 6/25/01
Contact Person: Patrick Ralston
Telephone: (501) 324-9880

Preservation Education Grant Guidelines

Docket No.: 012.02.01--003
Effective Date: 6/25/01
Contact Person: Patrick Ralston
Telephone: (501) 324-9880

Historic Preservation Restoration Grant Guidelines

Docket No.: 012.02.01--004
Effective Date: 6/25/01
Contact Person: Patrick Ralston
Telephone: (501) 324-9880

County Courthouse Restoration Grant Guidelines

EDUCATION DEPARTMENT

Administrative Services

Docket No.: 005.01.01--001
Effective Date: Proposed
Contact Person: Annette Berry
Telephone: (501) 682-5124

Proposed Rule: Governing Loans and Bond Applications

Docket No.: 005.01.01--002
Effective Date: Proposed
Contact Person: Randall Greenway
Telephone: (501) 682-2009

Proposed Rule: Governing Limited Charter Schools

Docket No.: 005.01.01--003
Effective Date: Proposed
Contact Person: Randall Greeway
Telephone: (501) 682-2009

Proposed Rule: Regarding Charter Schools

Attorney's Office

Docket No.: 005.23.01--001
Effective Date: Proposed
Contact Person: Scott Smith
Telephone: (501) 682-4227

ADOPTED RULES AND REGULATIONS

Proposed Rule: Reporting Compliance with ACA Section 6-13-631 and for Withholding Aid from School Districts Not in Compliance with ACA Section 6-13-631

Financial Services

Docket No.: 005.04.01--001
Effective Date: Proposed
Contact Person: Annette Berry
Telephone: (501) 682-5124

Proposed Rule: Governing Mobile Phone Usage by School Bus Drivers

Office of Accountability

Docket No.: 005.19.01--002
Effective Date: 5/25/01
Contact Person: Ron Tolson
Telephone: (501) 682-4342

Emergency Rule: Governing Certification Laws and Regulations for Reciprocity

Docket No.: 005.19.01--003
Effective Date: 6/12/01
Contact Person: Scott Smith
Telephone: (501) 682-4227

Emergency Rule: ADE 122 - Rules Governing the Standards of Accreditation

Docket No.: 005.19.01--004
Effective Date: 6/22/01
Contact Person: Karen Ghidotti
Telephone: (501) 682-4379

ADE 121 - Rules Governing the Intervention Block Grant Program

School Improvement & Restructuring

Docket No.: 005.22.01--001
Effective Date: 5/18/01
Contact Person: Mary McKinney
Telephone: (501) 682-4265

Rules Governing the Intervention Block Grant Program

**FIRE & POLICE PENSION
REVIEW BOARD**

Docket No.: 137.00.01--001
Effective Date: 6/18/01
Contact Person: Cathryn Hinshaw
Telephone: (501) 682-1745

Procedure for Making Annual Disclosures of the Financial Activities and Condition of the Fund

GAME & FISH COMMISSION

Docket No.: 002.00.01--004
Effective Date: 6/24/01
Contact Person: James Goodhart
Telephone: (501) 223-6327

2001-2002 Hunting Regulations

ADOPTED RULES AND REGULATIONS

HEALTH SERVICES AGENCY

Docket No.: 049.00.01--001
Effective Date: 6/16/01
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

New Assisted Living Methodology

Docket No.: 049.00.01--002
Effective Date: 6/16/01
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

HSC Regulation 100M Nursing Home Bed Methodology

HUMAN SERVICES

Administrative Service

Docket No.: 016.14.01--012
Effective Date: 6/4/01
Contact Person: Bill Tyler
Telephone: (501) 682-9631

Administrative Procedures Manual, Rescission of Part IV

Child Care & Early Childhood Education

Docket No.: 016.22.01--002
Effective Date: 6/18/01
Contact Person: Harley Fancher
Telephone: (501) 682-8869

Appeal Procedures - Day Care Home Providers

County Services

Docket No.: 016.20.01--005
Effective Date: 5/31/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

FSC 01-03: Changes to the Food Stamp Certification Manual - Federal Regulation Changes

Docket No.: 016.20.01--006
Effective Date: 6/18/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

TEA Form DCO-1412 -- TEA Child Care Notice of Action

Medical Services

Docket No.: 016.06.01--015
Effective Date: 5/25/01
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Emergency Rule: Visual Care Update Transmittal #46

Docket No.: 016.06.01--016
Effective Date: 6/17/01
Contact Person: Sharon Jordan
Telephone: (501) 682-8489

Nursing Facility Quality Assurance Fee

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.01--017
Effective Date: 7/1/01
Contact Person: Sharon Jordan
Telephone: (501) 682-8489

Under 16 Bed ICF/MR Rate

Docket No.: 016.06.01--018
Effective Date: 6/17/01
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Pharmacy Update Transmittal #49

Docket No.: 016.06.01--019
Effective Date: 6/17/01
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Inpatient Psychiatric Update Transmittal #42

Docket No.: 016.06.01--020
Effective Date: 6/17/01
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Section IV, Glossary - All Medicaid Providers

Docket No.: 016.06.01--021
Effective Date: 6/17/01
Contact Person: Will Taylor
Telephone: (501) 682-8362

Personal Care Update Transmittal #43

Docket No.: 016.06.01--022
Effective Date: 6/17/01
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Hospice Update Transmittal #25

Docket No.: 016.06.01--023
Effective Date: 6/17/01
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Rehabilitative Services for Persons with Mental Illness (RSPMI) - Update #34

Docket No.: 016.06.01--024
Effective Date: 6/17/01
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Section IV, Glossary - All Providers

Docket No.: 016.06.01--025
Effective Date: 6/17/01
Contact Person: Will Taylor
Telephone: (501) 682-8362

Official Notice DMS-2000-L-16 -- Newborn Physiological Bilateral Hearing Screen

Docket No.: 016.06.01--026
Effective Date: 6/17/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2001-003

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.01--027
Effective Date: 6/15/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2001-001

Docket No.: 016.06.01--028
Effective Date: 6/11/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

Emergency Rule: State Plan Transmittal #2001-015

Docket No.: 016.06.01--029
Effective Date: 6/11/01
Contact Person: Betty Reed
Telephone: (501) 682-8363

Emergency Rule: Medical Assistance Policy - Official Notice DMS-2001-C-1, DMS-2001-F-1, DMS-2001-I-2, DMS-2001-L-6, DMS-2001-KK-3, DMS-2001-FF-1, DMS-2001-R-4, DMS-2001-EE-1, DMS-2001-Y-3, DMS-2001-YY-1

Youth Services

Docket No.: 016.01.01--005
Effective Date: 6/2/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

Policy 1000 - Policy Development

Docket No.: 016.01.01--006
Effective Date: 6/2/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

Facility Policy Manual

Docket No.: 016.01.01--007
Effective Date: 6/2/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

Facility Emergency Plan

Docket No.: 016.01.01--008
Effective Date: 6/2/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

Inclement Weather Policy

Docket No.: 016.01.01--009
Effective Date: 6/2/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

Policy 1075 -- Interface Between Audit and Compliance and the Community and Specialized Services Section

Docket No.: 016.01.01--010
Effective Date: 6/2/01
Contact Person: Al Garrett
Telephone: (501) 682-6688

Incident Reporting

ADOPTED RULES AND REGULATIONS

INSURANCE DEPARTMENT

Docket No.: 054.00.01--001
Effective Date: 6/15/01
Contact Person: Sara Farris
Telephone: (501) 371-2820

Emergency Rule: Regulation 74 - Insurance Consumer Financial and Health Information Privacy

LABOR DEPARTMENT

Employment Security Division

Docket No.: 010.02.01--001
Effective Date: 7/1/01
Contact Person: Allan Pruitt
Telephone: (501) 682-3151

Regulation #14(c) - Registration and Reporting

Docket No.: 010.02.01--002
Effective Date: 7/1/01
Contact Person: Allan Pruitt
Telephone: (501) 682-3151

Regulation #18 (D)

Docket No.: 010.02.01--003
Effective Date: 7/1/01
Contact Person: Allan Pruitt
Telephone: (501) 682-3151

Regulation #14(b)

PROFESSIONAL BAIL BONDSMAN LICENSING BOARD

Docket No.: 164.00.01--001
Effective Date: 7/1/01
Contact Person: Linda Longstreth
Telephone: (501) 682-9050

Regulation #1 - Regulation of Bail Bond Business

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Docket No.: 075.00.01--001
Effective Date: 5/22/01
Contact Person: Gail Stone
Telephone: (501) 682-7800

Board Regulations 103 - Employer Contribution Rates, 210 - Public Safety Credit, 214 - Drop Provisions, 304 - Membership Eligibility for Policemen and Firemen, 308 - Enrollment in APERS by Colleges and Universities, 310 - Termination of other Employer Participating Retirement Plans; Repealed 217 - Final Average Salary, 218 - Partial Annuity Withdrawal (PAW) Eligibility

INSURANCE DEPARTMENT

***** No Insurance Orders were filed with the *Arkansas Register* for listing in the June edition.**

ORDERS AND NOTICES

LEGISLATIVE AUDIT May 30, 2001

<u>Agency</u>	<u>Period Covered</u>
Judicial Discipline and Disability Commission Two-Year Period Ended	6/30/00
Department of Health	6/30/00
Office of the Attorney General	6/30/00
Secretary of State	6/30/00
Arkansas Treasurer of State	6/30/00
Arkansas State Board of Barber Examiners Two-Year Period Ended	6/30/00
Arkansas State Board of Private Career Education Two-Year Period Ended	6/30/00
State Board of Election Commissioners Two-Year Period Ended	6/30/00
Arkansas State Board of Massage Therapy Two-Year Period Ended	6/30/00
State Board of Disease Intervention Specialists	6/30/00
Arkansas Board of Examiners in Psychology Two-Year Period Ended	6/30/00
Arkansas Spinal Cord Commission	6/30/00
State Securities Department - Two-Year Period Ended	6/30/00

ORDERS AND NOTICES

State Crime Laboratory	6/30/99
State Crime Laboratory	6/30/00
Department of Workforce Education - Federal Surplus Property	6/30/00
Department of Education - Arkansas School for the Blind	6/30/00
Department of Education - Arkansas State Library	6/30/00
Department of Finance and Administration - Revenue Division - Office of Revenue Legal Counsel - Two-Year Period Ended	6/30/00
Department of Finance and Administration - Revenue Division - Office of Revenue Legal Counsel - Two-Year Period Ended	6/30/00
Department of Finance and Administration - Revenue Division - Office of Field Audit - Collection Section - Two-Year Period Ended	6/30/00
Department of Finance and Administration - Revenue Division - Office of Driver Services - Two-Year Period Ended	6/30/00
Department of Higher Education	6/30/00
Little Rock Community Mental Health Center, Inc. and Affiliate (Private)	6/30/98
Little Rock Community Mental Health Center, Inc. and Affiliate (Private)	6/30/99
Little Rock Community Mental Health Center, Inc. and Affiliate (Private)	6/30/00
Arkansas State Medical Board (Private)	6/30/00
Arkansas National Guard Morale, Welfare and Recreation Fund, Inc. (Private)	12/31/00

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Arkansas Register Division
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Arkansas Register Division
State Capitol, Room 026
Little Rock, AR 72201-1094

Presorted Standard
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