



Arkansas  
Secretary  
Of State

# The Arkansas Register



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*Corporate Records - Elections - Capitol Building and Grounds*

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**Secretary of State  
State Capitol, Room 026  
Little Rock, AR 72201-1094**

**Editor .....** **Jon Davidson**

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*Secretary of State*

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-132**

Sarah S. Agee  
*State Representative*

**RE:** Q1) Are the attached proposed Washington County ordinances, which proscribe guidelines for the safe, sanitary and esthetic maintenance of private property, constitutional? Q2) Does existing state law require such stringent control on property owners? Q3) Is there anything in the environmental law or waste management division that would give the county such power? Q4) Is such power granted under the duties of the county judge or quorum court, or is it within the city's jurisdiction under the 5-mile growth law? **RESPONSE:** Q1) The ordinances may give rise to due process and equal protection concerns. See opinion for discussion. Q2) In order to answer this question thoroughly, it would be necessary for me to know the particular violation in question. Some state laws do carry more stringent penalties for some violations. Q3) Counties are authorized by state law to regulate the types of activities addressed by these ordinances. This authority comes from various sources. See opinion. Q4) In the event of a conflict between city and county in the five mile area (see 14-56-413) the city's regulations will take precedence.

**Opinion No.: 2001-161**

Gene Jeffress  
*State Representative*

**RE:** Pursuant to ACA 27-22-104(a)(1), regarding the operation of a motor vehicle and proof of insurance, and in light of a standing order from the Camden municipal judge, do local police officers have a legal right to impound a vehicle that is not covered by insurance? **RESPONSE:** No, not merely for failure to carry insurance. ACA 27-22-104.

**Opinion No.: 2001-167**

David Malone  
*State Senator*

**RE:** If the credit-reporting program proposed by the Arkansas Staffing Association is established as described in the attached article, would it violate any Arkansas anti-trust or other laws? Q2) Are there any restrictions in Arkansas law on who might serve as an independent third party as described on page two of the attached article? **RESPONSE:** The Arkansas Staffing Association is a private entity that I am neither authorized nor equipped to advise regarding the application of federal antitrust law.

**Opinion No.: 2001-168**

Tim Wooldridge  
*State Senator*

**RE:** Q1) Pursuant to provisions of ACA 5-77-201, can a business engaged in the sale of emergency lights or other devices legally sell a blue light to a firefighter or fire department in another state that uses blue lights on its firefighting equipment? Q2) How can such a business legally sell blue lights on the Internet? Q3) Can such a business make sales of blue lights to a law enforcement department without requiring individual identification that legally demonstrates that the buyer is a law enforcement officer or a county coroner? **RESPONSE:** Q1) Such a sale cannot be made unless the purchaser can establish that he is a law enforcement officer or coroner, within the meaning of the State Police regulations defining how this is to be established. Q2) Sales of blue lights on the internet are not possible, given that the State Police regulations require the presentation of a photo id, as a part of establishing one's status as a law enforcement officer, which contemplates an in-person transaction. Q3) No.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-171**

Harmon R. Seawel  
*State Representative*

**RE:** Does the Board of Commissioners for the Ozark Acres Suburban Improvement District have authority to employ their elected constable as a district security officer? **RESPONSE:** Only if he is qualified and deputized as a deputy sheriff under ACA 14-15-503.

**Opinion No.: 2001-174**

Kevin Smith  
*State Senator*

**RE:** Can a local school district, school board, or a public school rent a school building to a not-for-profit organization for the purpose of holding an auction if the items being auctioned on the school property include firearms? **RESPONSE:** No. Section 5-73-119 of the Arkansas Code expressly prohibits anyone other than designated individuals from possessing firearms on school property. Representatives of the National Wild Turkey Foundation are not included on this list.

**Opinion No.: 2001-175**

Leigh Quirk  
*Senior Account Planner, The Communications*

**RE:** Request for approval of Interlocal Cooperation Agreement between the Arkansas Department of Human Services, Division of Medical Services and the Memphis and Shelby County Health Department to operate the Campaign for Healthier Babies. **RESPONSE:** Approved as submitted.

**Opinion No.: 2001-176**

Claude V. Cash  
*State Senator*

**RE:** Pursuant to provisions of ACA6-13-631, must all Jonesboro School District board members, even those members whose terms have not expired, stand for reelection in September, 2001? **RESPONSE:** Yes.

**Opinion No.: 2001-177**

Sharon Priest  
*Secretary of State*

**RE:** Pursuant to provisions of Act 1789 of 2001, if a qualified elector votes using a separate nonpartisan judicial general election ballot at any time during the election process (i.e., absentee, early, at the poll on election day), is that elector still eligible to vote a preferential primary election ballot at a later time during that same election process? **RESPONSE:** No. If voters were able to use the separate nonpartisan judicial election ballot, and then use the preferential primary ballot that also lists the judicial candidates, they would have the opportunity to vote twice for the judicial candidates — a situation clearly not contemplated by Act 1789.

**Opinion No.: 2001-179**

Bill H. Stovall, III  
*State Representative*

**RE:** Does the Skypoint Suburban Improvement District (SSID) have authority to allocate a portion of the taxes collected toward operating expenses of the Skypoint Property Owners Association (SPOA)? Q2) Is the SSID limited to the list of items included in the 1978 petition (i.e., maintenance of roads, airstrip, boat

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# ATTORNEY GENERAL OPINIONS

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ramp, park), or can they expand their authority to complete any other projects they choose? Q3) Are there state laws or any other restrictions that would prohibit the SSID from meeting with the SPOA informally at semi-annual meetings to answer questions about SSID projects and expenditure of tax funds? RESPONSE: 1) This is a factual question best resolved by the district's counsel. See Opinions. 2) They are limited. 3) No, but the district must comply with the FOIA.

**Opinion No.: 2001-181**

Jim Milum  
*State Representative*

**RE:** Does a quorum court have authority to enact a planning ordinance that specifically excludes any reference to the establishment or enforcement of zoning? RESPONSE: No, the quorum court cannot remove the Planning Board's authority to recommend zoning ordinances (see ACA 14-17-205(f)), but the quorum court is under no obligation to approve any such ordinances.

**Opinion No.: 2001-182**

Gary Biggs  
*State Representative*

**RE:** Pursuant to provisions of ACA26-35-601, is a collector required to accept real estate tax for a transferred parcel of property without having to collect current personal property tax? RESPONSE: A transferor of real property is obligated to pay only delinquent, as opposed to currently due, personal property taxes in conjunction with payment of general real estate taxes upon conveying title. See Opinions 99-304 and 2000-118; ACA26-35-601(c)(3).

**Opinion No.: 2001-188**

Kevin Smith  
*State Senator*

**RE:** Q1) In light of the provisions of Act 1139 of 2001, how can a circuit clerk prepare a list of the names of bail bond companies "in the same order that the company initially registered with the circuit clerk," when a company is no longer in business? Q2) Who is responsible for providing the local address, the bail bond company or the circuit clerk? RESPONSE: Q1) The removal of a defunct business from the list will not change the required order of listings of remaining companies in relation to one another. Q2) The circuit clerk must provide the list to the chief law enforcement officer of the facility where the list is to be posted. ACA 17-19-306.

**Opinion No.: 2001-189**

Barbara King  
*State Representative*

**RE:** Q1) Should a school district that already has a 10% or greater minority population and already has single member zones based on 1990 federal census statistics be required to examine 2000 federal census statistics in order to determine where population shifts within the district's boundaries may have occurred? If not, what code or statute determines how often, if at any time, should a school district be required to update its existing zoned boundaries? Q2) If a school district that has existing single member zones is required to examine its 2000 federal census statistics, upon what date should the districts and its board have finished the process of redrawing the zoned boundaries based upon the new census statistics? Q3) If a school district that already has a 10% or greater minority population and already has single member zones does not meet the deadline to announce its new boundaries, will they

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# ATTORNEY GENERAL OPINIONS

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lose 20% of their funding according to state law? If not, why? Q4) If a school district that has existing single member zones redraws its boundaries and at least one boundary line changes, are school leaders required to allow all residents that live within all of the district's zoned boundaries to vote for new board members? If not, how applicable to this given situation is the 14th Amend. to the U.S. Constitution, which adheres to the "one man, one vote" doctrine? Q5) If a resident lives within one zoned boundary after the 1990 census and is placed in a new zoned boundary after the redistricting process based upon the 2000 federal census statistics, should that resident be allowed to vote for a new representative since his zone has been changed? If not, who should be allowed to vote, if anybody, if boundary lines are changed within one or more zones? Q6) Can the Attorney General's office issue a directive to the Dept of Education to require the district to redraw its boundaries and adhere to the legal opinion? RESPONSE: 1) It's a decennial requirement, unless the district is exempt. 2) Ninety days prior to the annual school election. 3) See Opinion 2001-140. 4) See Opinion 176-176. 5) See Opinion 2001-176. 6) No.

**Opinion No.: 2001-190**

Doyle Webb  
*State Senator*

**RE:** Q1) In light of provisions of the current Standard Fire Prevention Code which apparently allow for the sale of fireworks within the city limits at the will of the city council, did the Mayor have authority to prohibit the sale of fireworks within the corporate limits of the City of Benton? Q2) Has Benton City Ord. No. 17 of 1986 been superceded by state law and is therefore invalid? RESPONSE: Q1) The rules of statutory construction indicate that the ordinance allowing sale within the city limits may be in effect. Q2) No.

**Opinion No.: 2001-192**

John T. Lowery, Jr.  
*State Representative*

**RE:** In light of the fact that the El Dorado School District has created voting zones in compliance with a federal court order, is the District exempt from the reporting requirements and other provisions of ACA 6-13-631 et seq.? RESPONSE: This is a question of fact, not law, which cannot be answered in an Attorney General opinion.

**Opinion No.: 2001-193**

J. Shepherd Russell, III  
*Friday, Eldredge & Clark*

**RE:** Request for approval of an interlocal cooperation agreement between the Town of Highfill, Arkansas and the Benton County Rural Development Authority to construct, operate and maintain water lines to provide water service for current and future growth needs of Highfill. RESPONSE: Approved as submitted.

**Opinion No.: 2001-195**

Jo Carson  
*State Representative*

**RE:** Are companies doing business in the State of Arkansas subject to the provisions of Article 19, Section 13 of the Arkansas Constitution (usury laws) when financing is secured by second mortgages on residential loans? RESPONSE: The answer will depend upon the type of lending institution and the type of transaction. See Op. 2001-044.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.:** 2001-196

Barry Emigh

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to authorize the operation of gambling by Barry Lee Emigh and his transferees, bingo and raffles by nonprofit organizations, and to exempt certain items from state and local tax. **RESPONSE:** Popular name and ballot title certified as revised.

**Opinion No.:** 2001-201

Jake Files

*State Representative*

**RE:** Q1) Are school buses entirely exempt from the provisions of Act 470 of 2001? Q2) Can school buses be used to transport children who require child safety seats? Q3) Does Act 470 in effect prohibit the transportation of preschool children on buses that do not have the capability of anchoring child safety seats? **RESPONSE:** Q1) Yes. (I use the term "school buses" in the traditional way, and not to refer to vans.) Q2) Yes. Q3) No.

**Opinion No.:** 2001-203

Neal Fernell

*c/o Dept. of Community Punishment*

**RE:** Would it be consistent with provisions of the Freedom of Information Act (FOIA) to allow the Arkansas Democrat Gazette to review my personnel file in light of the fact that I was terminated from the Department of Community Punishment? **RESPONSE:** The opinion sets out the relevant tests for determining whether these employment related records are open

to public inspection and copying and focuses on the applicable legal analysis that the custodian must consider in making his decision as to disclosability.

**Opinion No.:** 2001-204

Gene E. McKissic

*Attorney, Cross Kearney & McKissic, PLLC*

**RE:** "Since my client has appealed the disciplinary action taken against him by his employer, would it be consistent with provisions of the Freedom of Information Act (FOIA) for the custodian to release documents located in his personnel file as a matter of public record?" **RESPONSE:** It depends upon the disciplinary action and the nature of the appeal. If the disciplinary action was not a suspension or termination, employee evaluation or job performance records relating to the action are not disclosable. If the action was a suspension or termination, the records are not disclosable until all "administrative" appeals are final and not unless the other criteria for release have been met. Personnel records are subject to a different test.

**Opinion No.:** 2001-205

Ricky Sisson

**RE:** Was the decision of the custodian of records not to release any incident reports, memoranda or internal affairs documentation of an investigation of alleged misconduct on the part of a police department captain (who was suspended for at least 10 days with pay during the investigation) consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** These records are most likely employee evaluation/job performance records, and their releasability must be analyzed under the three-part test for that type of record. Whether this test has been satisfied is a question of fact.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-208**

Oscar Stilley  
*Attorney at law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to prohibit the judicial disqualification of initiated measures except in instances specified by this proposed measure. **RESPONSE:** Popular name certified, ballot title substituted and certified.

**Opinion No.: 2001-209**

Oscar Stilley  
*Attorney at law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to cap the salaries and regulate benefits of public servants, and for other purposes. **RESPONSE:** Certified as submitted, but caution warranted in light of length and complexity of measure.

**Opinion No.: 2001-210**

Oscar Stilley  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to abolish Arkansas state tax upon personal and corporate incomes. **RESPONSE:** Rejected.

**Opinion No.: 2001-211**

Oscar Stilley  
*Attorney at Law*

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment to abolish ad valorem taxes on personal and utility property, repeal the \$300 property tax credit for homesteads and the 1/2% statewide sales and use tax imposed to offset the revenue loss caused by the tax credit, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

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# ADOPTED RULES AND REGULATIONS

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## ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Docket No.: 187.00.01--001  
Effective Date: 7/19/01  
Contact Person: Jennifer Jones Taylor  
Telephone: (501) 682-9400

### Requirements for the Conduct of Mediations and Mediators

Docket No.: 187.00.01--002  
Effective Date: 7/19/01  
Contact Person: Jennifer Jones Taylor  
Telephone: (501) 682-9400

### Guidelines for Mediator Skills and Qualifications

## BOARD OF DENTAL EXAMINERS

Docket No.: 038.00.01--004  
Effective Date: 7/19/01  
Contact Person: Judy Rickard  
Telephone: (501) 682-2085

### Amendment to Articles V, VI, and VII

## BOARD OF OPTOMETRY

Docket No.: 069.00.01--001  
Effective Date: 6/30/01  
Contact Person: Howard Flippin  
Telephone: (501) 268-3577

### Amendment to Article II - Section 6

Docket No.: 069.00.01--002  
Effective Date: 6/30/01  
Contact Person: Howard Flippin  
Telephone: (501) 268-3577

### Amendment to Article V, Section 1

## BOARD OF PUBLIC ACCOUNTANCY

Docket No.: 019.00.01--001  
Effective Date: 7/30/01  
Contact Person: James George  
Telephone: (501) 682-1520

### Rule 12 - Fees

## BOARD OF REGISTRATION FOR PROFESSIONAL SOIL CLASSIFIERS

Docket No.: 188.00.01--001  
Effective Date: 7/21/01  
Contact Person: Sheri Herron  
Telephone: (501) 267-3991

### Rules and Regulations

## DEPARTMENT OF ARKANSAS HERITAGE

*Historic Arkansas Museum*

Docket No.: 012.05.01--001  
Effective Date: 7/23/01  
Contact Person: W. B. Worthen, Jr.  
Telephone: (501) 324-9308

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# ADOPTED RULES AND REGULATIONS

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## Fees and Charges for Public Use and Educational Programming

### DEPARTMENT OF COMMERCE

#### *State Plant Board*

Docket No.: 003.11.01--003  
Effective Date: 7/20/01  
Contact Person: Don Alexander  
Telephone: (501) 219-6323

**Section 5 - Petroleum Products, Lubricants, and Fossil Fuels; National Institute of Standards and Technology (NIST) Handbook 133; NIST 130; National Bureau of Standards Handbook 133 with supplements 1,2 and 3**

### EDUCATION DEPARTMENT

#### *Administrative Services*

Docket No.: 005.01.01--004  
Effective Date: PROPOSED  
Contact Person: Bobbie Davis  
Telephone: (501) 682-1297

**Proposed Rule: Rules Governing Waivers of Earnings Limitations under the Teacher Retirement System**

### HUMAN SERVICES

#### *Administrative Services*

Docket No.: 016.14.01--013  
Effective Date: 7/27/01  
Contact Person: Bill Tyler  
Telephone: (501) 682-9631

## DHS Policy 1009 - Equal Opportunity/Affirmative Action

#### *Children and Family Services*

Docket No.: 016.15.01--005  
Effective Date: 7/19/01  
Contact Person: Vivian Jackson  
Telephone: (501) 682-1577

**Policy I-C, Procedure II-E11, Policy V-B, Procedure V-B1, Procedure IX-A2, IX-A3, IX-A4, and the CFS-312**

#### *County Operations*

Docket No.: 016.20.01--007  
Effective Date: 7/2/01  
Contact Person: Sandra Miller  
Telephone: (501) 682-8250

### FSC 01-04 -- Vehicle Exclusion

Docket No.: 016.20.01--008  
Effective Date: 7/23/01  
Contact Person: Sandra Miller  
Telephone: (501) 682-8251

### DCO-124 -- Transitional Medicaid Eligibility Report Form

#### *Medical Services*

Docket No.: 016.06.01--030  
Effective Date: 6/28/01  
Contact Person: Binnie Alberius  
Telephone: (501) 682-8361

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# ADOPTED RULES AND REGULATIONS

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## State Plan Transmittal #98-012

Docket No.: 016.06.01--031  
Effective Date: 6/28/01  
Contact Person: Carolyn Bradley  
Telephone: (501) 682-8577

## State Plan Transmittal #01-002

Docket No.: 016.06.01--032  
Effective Date: 7/2/01  
Contact Person: Carolyn Bradley  
Telephone: (501) 682-8577

## Transportation Update Transmittal #47

Docket No.: 016.06.01--033  
Effective Date: 7/22/01  
Contact Person: Carolyn Bradley  
Telephone: (501) 682-8577

## Visual Care Update Transmittal #46

Docket No.: 016.06.01--034  
Effective Date: 8/1/01  
Contact Person: Carolyn Bradley  
Telephone: (501) 682-8577

## Pharmacy Update Transmittal #51

Docket No.: 016.06.01--035  
Effective Date: 8/1/01  
Contact Person: Suzette Bridges  
Telephone: (501) 324-9141

## Process by the Arkansas Medicaid Program to Determine Medications to be Prior Authorized

Docket No.: 016.06.01--036  
Effective Date: 7/22/01  
Contact Person: Will Taylor  
Telephone: (501) 682-8362

## State Plan Transmittal #01-004

Docket No.: 016.06.01--037  
Effective Date: 7/22/01  
Contact Person: Nikki Wade  
Telephone: (501) 682-8859

## Section I - All Medicaid Providers: Additions and deletions from DMS-652 and Electronic Fund Transfer Provider form

Docket No.: 016.06.01--038  
Effective Date: 8/1/01  
Contact Person: Tommy Wingard  
Telephone: (501) 682-6117

## Cycle-Fill - Pharmacy Notification and Disposition of Unused Drugs

### *Youth Services*

Docket No.: 016.01.01--011  
Effective Date: 6/18/01  
Contact Person: Al Garrett  
Telephone: (501) 682-6688

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# ADOPTED RULES AND REGULATIONS

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**Emergency Rule: Operational Policy and Procedure 4220 - Suicide Prevention and Intervention**

## **INSURANCE DEPARTMENT**

Docket No.: 054.00.01--002  
Effective Date: 7/7/01  
Contact Person: Ashley Fisher  
Telephone: (501) 371-2820

**Regulation #47 - Valuation of Life Insurance Policies**

Docket No.: 054.00.01--003  
Effective Date: 7/7/01  
Contact Person: Ashley Fisher  
Telephone: (501) 371-2820

**Regulation #72 - Dental Point of Service Option**

## **Rehabilitation Services**

Docket No.: 165.00.01--001  
Effective Date: 6/29/01  
Contact Person: Dale Turrentine  
Telephone: (501) 296-1620

**Client Services Handbook**

## **SOCIAL WORK LICENSING BOARD**

Docket No.: 120.00.01--001  
Effective Date: 8/1/01  
Contact Person: Troylene Jones  
Telephone: (501) 372-5071

### **X. Code-of-Ethics / Standards for Practice**

Docket No.: 120.00.01--002  
Effective Date: 8/1/01  
Contact Person: Troylene Jones  
Telephone: (501) 372-5071

### **IX. Continuing Education Guidelines**

Docket No.: 120.00.01--003  
Effective Date: 8/1/01  
Contact Person: Troylene Jones  
Telephone: (501) 372-5071

### **XII. Disciplinary Procedures**

Docket No.: 120.00.01--004  
Effective Date: 8/1/01  
Contact Person: Troylene Jones  
Telephone: (501) 372-5071

### **VIII. Expiration and Renewal**

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# ADOPTED RULES AND REGULATIONS

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Docket No.: 120.00.01--005  
Effective Date: 8/13/01  
Contact Person: Troylene Jones  
Telephone: (501) 372-5071

Docket No.: 060.00.01--002  
Effective Date: 7/15/01  
Contact Person: Peggy Cryer  
Telephone: (501) 296-1802

## VII. Fees

### STATE MEDICAL BOARD

Docket No.: 060.00.01--001  
Effective Date: 7/15/01  
Contact Person: Peggy Cryer  
Telephone: (501) 296-1802

**Regulation 2.8 - Requiring Minimum Standards for Establishing Physician/Patient Relationships**

## **Regulation 6 - Governing the Licensing and Practice of Occupational Therapists**

Docket No.: 060.00.01--003  
Effective Date: 7/15/01  
Contact Person: Peggy Cryer  
Telephone: (501) 296-1802

**Regulation 7 - Regulations Governing the Prescribing of Amphetamines and Amphetamine Type Drugs**

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# INSURANCE DEPARTMENT

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**\*\*\* No Insurance Orders were filed with the *Arkansas Register* during the month of July.**

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# ORDERS AND NOTICES

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## LEGISLATIVE AUDIT

Agency

Period Covered

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\*\*\* No Audit Reports were filed with the *Arkansas Register* during the month of July.

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*Arkansas Register Division*  
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