The Arkansas Register

Volume XXV, Number 2

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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**

**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.: 2001-167**

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.
Opinion No.: 2001-171
Harmon R. Seawell
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 ACA 6-13-631, 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 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 ACA 26-35-601, 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; ACA 26-35-601(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 an-
nounce its new boundaries, will they 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 superseded 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.
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 non-profit 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: 1) Are school buses entirely exempt from the provisions of Act 470 of 2001? 2) Can school buses be used to transport children who require child safety seats? 3) 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: 1) Yes. (I use the term “school buses” in the traditional way, and not to refer to vans.) 2) Yes. 3) No.

Opinion No.: 2001-203
Neal Fernell
Chief Deputy Director
Department 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 rel easeability must be analyzed under the three-part test for that type of record. Whether this test has been satisfied is a question of fact.
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.: 2001-210

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.: 2001-209

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.: 2001-211

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.
DEPARTMENT OF COMMERCE
Arkansas Securities Department

Docket No.: 003.14.01--001
Effective Date: 8/13/01
Contact Person: Theodore Holder
Telephone: (501) 324-9260

Rules 102.01 and 504.01: Viatical Settlement Contracts

ASSESSMENT COORDINATION DEPARTMENT

Docket No.: 177.00.01--006
Effective Date: 8/6/01
Contact Person: Rita Rollins
Telephone: (501) 324-9240

Supplement to Rules and Regulations

BOARD OF CHIROPRACTIC EXAMINERS

Docket No.: 029.00.01--001
Effective Date: 8/24/01
Contact Person: Carol Ann Gates
Telephone: (501) 682-9015

E) Professional Practices, 5. License Renewal, Continuing Education and Forfeiture; C) Professional Conduct, 2. Unprofessional Acts (q)

BOARD OF PHARMACY

Docket No.: 070.00.01--005
Effective Date: 7/26/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

08-02-0001 thru 08-02-0008 - List I Chemicals

Docket No.: 070.00.01--006
Effective Date: 8/13/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

01-00-0007 - Fees

Docket No.: 070.00.01--007
Effective Date: 7/26/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

04-00-0002 & 04-02-0005 -- Pharmacist in Charge - Time
ADOPTED RULES AND REGULATIONS

Docket No.: 070.00.01--008
Effective Date: 8/13/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

07-00-0006 - Generic Substitution

CAPITOL ZONING COMMISSION

Docket No.: 034.00.01--001
Effective Date: 7/27/01
Contact Person: Randy Jeffery
Telephone: (501) 324-9644

Emergency Amendment: To Master Plan for the Governor’s Mansion Area

DEPARTMENT OF COMMUNITY PUNISHMENT

Docket No.: 159.00.01--002
Effective Date: 8/31/01
Contact Person: G. David Guntharp
Telephone: (501) 682-9510

AR 3.15 - Sexual Harassment

DEPARTMENT OF COMMERCE

State Plant Board

Docket No.: 003.11.01--004
Effective Date: 7/28/01
Contact Person: Mary Smith
Telephone: (501) 225-1598

Changes to the Official Standards for Seed Certification

EDUCATION DEPARTMENT

General Education Division

Docket No.: 005.15.01--001
Effective Date: Proposed
Contact Person: Janinne Riggs
Telephone: (501) 682-4219

PROPOSED RULE: Academic Standards for Student Participation in Competitive Interscholastic Activities

Office of Accountability

Docket No.: 005.19.01--005
Effective Date: Proposed
Contact Person: Ron Tolson
Telephone: (501) 682-4342

AR 7.15 - Segregation
ADOPTED RULES AND REGULATIONS

PROPOSED RULE: Teacher Licensure for Reciprocity

ETHICS COMMISSION

Docket No.: 153.00.01--001
Effective Date: 8/13/01
Contact Person: Graham Sloan
Telephone: (501) 324-9600

Rules on Lobbyist Registration and Reporting

Docket No.: 153.00.01--002
Effective Date: 8/13/01
Contact Person: Graham Sloan
Telephone: (501) 324-9600

Rules on Gifts

Docket No.: 153.00.01--003
Effective Date: 8/13/01
Contact Person: Graham Sloan
Telephone: (501) 324-9600

Rules on Campaign Finance & Disclosure

Docket No.: 153.00.01--004
Effective Date: 8/13/01
Contact Person: Graham Sloan
Telephone: (501) 324-9600

Rules of Practice and Procedure

FORESTRY COMMISSION

Docket No.: 128.00.01--001
Effective Date: Proposed
Contact Person: John Shannon
Telephone: (501) 296-1940

PROPOSED RULE: Forestry Best Management Practices

GAME & FISH COMMISSION

Docket No.: 002.00.01--005
Effective Date: 8/4/01
Contact Person: James Goodhart
Telephone: (501) 223-6327

2001-2002 Early Migratory Bird Hunting Seasons and Regulations & Statewide and WMA Hunting Regulations

HEALTH SERVICES AGENCY

Docket No.: 049.00.01--003
Effective Date: 8/9/01
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

Hospice Methodology

Docket No.: 049.00.01--004
Effective Date: 8/9/01
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

Changes to the Permit of Approval Rulebook
# ADOPTED RULES AND REGULATIONS

## HIGHER EDUCATION
*Colleges and Universities Plans and Operations*

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### Parking and Traffic Regulations

### HUMAN SERVICES
*Administrative Services*

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### Policy 1025 - State Employee Political Activity

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### Social Services Block Grant Program Manual

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### Policy 1053 - Freedom of Information Act

### County Operations

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**MS 01-05: Dropping the Resource Test from ARKids A; DCO-995 - ARKids First Mail-In Application; DCO-975 - ARKids First Annual Renewal Notice**

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**Transitional Employment Assistance State Plan; Policy 3350, 3500-3524, Forms DCO-1420, DCO-1421, DCO-1422**

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**State Plan for the 2001-2002 Community Services Block Grant Program**

### Developmental Disabilities Services

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### Emergency Rule: Policy 1087 - Criminal Record Checks
# ADOPTED RULES AND REGULATIONS

## Medical Services

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**State Plan Transmittal #2001-008 -- Additional Disproportionate Share Payment**

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**Emergency Rule: State Plan Amendment #2001-024 -- Private Duty Nursing Services**

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## Nursing Facility Cost Report Forms

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## State Plan Transmittal #2001-007 -- 12(a) Prescribed Drugs

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## Labor Department

**Board of Electrical Examiners**

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## Regulation 5.7 - Examination Fees

**Northwest Arkansas Regional Solid Waste Management District**

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# ADOPTED RULES AND REGULATIONS

## Rules, Regulations and Administrative Practices and Procedures

### POLLUTION CONTROL & ECOLOGY

_Hazardous Waste_

- **Docket No.:** 014.09.01--004
- **Effective Date:** 8/24/01
- **Contact Person:** Mike Bates
- **Telephone:** (501) 682-0831

### Emergency Rule: Regulation No. 23 - Hazardous Waste Management

## PUBLIC SERVICE COMMISSION

_Utilities Section_

- **Docket No.:** 126.03.01--002
- **Effective Date:** 7/27/01
- **Contact Person:** Diana Wilson
- **Telephone:** (501) 682-5782

# Standard Service Package Guidelines

- **Docket No.:** 126.03.01--003
- **Effective Date:** 8/4/01
- **Contact Person:** Diana Wilson
- **Telephone:** (501) 682-5782

## Guidelines for Minimum Filing Requirements for Competitive Customer Services

### WATER WELL CONSTRUCTION COMMISSION

- **Docket No.:** 096.00.01--001
- **Effective Date:** 8/13/01
- **Contact Person:** A. Mark Bennett
- **Telephone:** (501) 682-3965

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ORDERS AND NOTICES

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East Arkansas Planning and Development District, Inc. (Private) 6/30/00
Northwest Arkansas Economic Development District, Inc. (Private) 6/30/00
Forest Echoes Technical Institute 6/30/00
Great Rivers Technical Institute 6/30/00
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Secretary of State
Arkansas Register Division
State Capitol Building, Room 026
Little Rock, AR 72201-1094

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