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Secretary
Of State

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**Secretary of State
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Editor Jon Davidson

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THE ARKANSAS REGISTER

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-024

Paul Weaver
State Representative

RE: Does Izard County, or any other county, have authority to award a franchise for emergency medical services? **RESPONSE:** Yes, if by awarding a "franchise," the intent is to enter into an exclusive agreement with an emergency service provider. See Opinions 96-236, 95-311, and 67-474. (These opinions draw a distinction between emergency and non-emergency medical services; there can be no exclusive agreement for non-emergency services because of anti-trust laws).

Opinion No.: 2001-256

Janice A. Judy
State Representative

RE: In light of the conclusion reached in Op. Att'y Gen. 2001-083, stating that an Arkansas city cannot legally lease a city-owned van to a church or other nonprofit organization, may the City of Fayetteville add a Sunday morning trolley route that would include central pick-up and drop-off points for citizens? **RESPONSE:** Opinion 2001-083 stands only for the proposition that it is impermissible to lease out public property unless it has ceased to serve a public purpose, and only then if the consideration is devoted to a public purpose. That stated, your request implicates Ark. Const. art. 12, § 5, which provides that no city shall "appropriate money for, or loan its credit to, any corporation, association institution or individual," the Establishment Clause of the U.S. Constitution, which provides that government "shall make no law respecting an establishment of religion . . .," U.S. Const. amend. 1, and the analogous religion clauses set forth at Ark. Const. art. 2, §§ 24 and 25. As reflected in my discussion, determining whether the proposed trolley route would offend any of these constitutional provisions will entail engaging in an intense factual inquiry of the sort I am neither equipped nor authorized to conduct. However, under the applicable standards

of review, it appears likely that the proposed legislation would pass constitutional muster.

Opinion No.: 2001-264

Jim Milum
State Representative

RE: Would sitting Municipal Judge Peter DeStefano have to resign his Newton County judgeship in order to serve as District Judge in Boone County, or could he continue to serve in both positions as he has in the past? Q2) In lieu of appointing a new Boone County District Judge, could the Governor appoint him to continue to serve Boone County as Judge on Exchange until the next election is held? Q3) If appointed, would he have to switch his voter registration from Newton County to Boone County? Q4) If appointed, would he be able to run for the same position in the next election? **RESPONSE:** Q1) I believe Judge DeStefano could "continue to serve both counties as he has in the past" — i.e., as district judge for Newton County and as judge-on-exchange for Boone County. Ark. Const. amend. 80, § 7(E). However, he would be precluded pursuant to Ark. Const. amend. 80, § 16(F) from serving as the presiding district judge in both jurisdictions. Accordingly, I believe he would need to resign his judgeship in Newton County in order to serve as presiding district judge in Boone County. Q2) The governor is not authorized under any circumstances to appoint a judge-on-exchange, much less to do so in lieu of filling a vacancy pursuant to the established procedure set forth at Ark. Const. amends. 29 and 80. Q3) Assuming Judge DeStefano resigned his position as Newton County District Judge, I believe he would qualify for appointment as Boone County District Judge without first switching his domicile and voter registration to Boone County only if no qualified candidate for district judge resided in Boone County. See Ark. Const. amend. 80, § 16(D). Q4) If Judge DeStefano were appointed Boone County District Judge, I do not believe he would be authorized to run for the same position in the next election. See Ark. Const. amends. 29, § 2 and 80; Act 1693 of 2001, and Ark. Op. Att'y Gen. No. 2001-259.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-265

M. Olin Cook
State Representative

RE:Q1) What constitutes base salary when figuring retirement benefits for a full-time fire department employee? Q2) Is the holiday pay considered part of the base pay? Q3) Are certificates for additional training considered part of base pay? Q4) Are education payments considered part of the base salary? Q5) Is the overtime of FLSA figures considered part of the base salary? **RESPONSE:** Q1) See ACA 24-11-818. Q2) Yes, if the city has chosen to include this pay in the fire fighter's base salary. ACA 14-53-106. Q3, 4, &5) The answer depends on whether these items entitle the fire fighter to additional regular pay, or to contingent pay. If regular, they can be included for purposes of retirement. See also Pension Review Bd. Rule 7.

Opinion No.: 2001-266

Jimmy "Red" Milligan
State Representative

RE:Is there any mechanism in Arkansas law where a sewer improvement district could forgive all or a portion of delinquent assessments so that the property will be more attractive to new owners and not be a delinquent parcel? **RESPONSE:** Section 14-90-805(b) of the Code precludes the SID from forgiving delinquent assessments. Moreover, the FHA Rural Development bond agreement, which was not provided for my review, may contain security provisions that would prohibit the SID from undertaking any unilateral forgiveness of delinquent assessments.

Opinion No.: 2001-267

Bob Johnson
State Senator

RE:Has a mayor of a city with a firemen's pension fund created pursuant to ACA 24-11-801 et seq. who, without the Firemen's Pension Fund Board's approval, withdraws the firemen's pension fund and deposits it into an account in a bank of which he serves on the board of directors, violated any laws? Q2) Has a mayor of a city with a firemen's pension fund created pursuant to ACA 24-11-801 et seq. who, without the firemen's pension fund board's approval, withdraws money from the firemen's pension fund and deposits it into a municipal general fund account, violated any laws? **RESPONSE:** The mayor may not unilaterally withdraw pension funds, regardless of any ethical restraints. See ACA 24-11-802. The question of whether any laws have been violated must be determined with reference to all the facts.

Opinion No.: 2001-270

Gordon Webb
Pros Attorney, 14th Judicial District

RE:Does Sec. 1 of Act 803 of 1999 and Act 1396 of 1999, permit the upper Buffalo River Elk Information Center to lease a building separately from the law enforcement center currently under construction? Q2) Once the funds have been disbursed, is there a time limit in which the county has to spend the funds for the purpose designated? **RESPONSE:** Q1) No. The referenced legislation unambiguously appropriates money for the construction of a single facility to house both groups. Although the quorum court will need to appropriate the funds disbursed into the county

ATTORNEY GENERAL OPINIONS

treasury, it cannot designate that those funds be used for a purpose at odds with that expressed by the legislature. Q2) No, subject to the condition that the county is obliged actually to use the funds as designated, see A.C.A. §§ 14-14-802(a)(5) and 14-14-807(5) — a condition I interpret as meaning that the funds should be expended in timely fashion.

Opinion No.: 2001-273

Jim Hill
State Senator

RE:Given the difference in language of ACA 24-12-121, as it relates to ACA 24-12-123, should the retirement benefit of the city's clerk-treasurer be calculated based upon the preceding twelve (12) months salary, the previous calendar year (1999) salary, or the current year's (2000) salary? **RESPONSE:** It's not entirely clear, but in my opinion, the last twelve months salary is the correct computation.

Opinion No.: 2001-279

Jimmy "Red" Milligan
State Representative

RE:Should the Future Farmers of America (FFA) program be classified as an extracurricular activity, or can it be considered as academic credit for students who wish to take the class? **RESPONSE:** There is a presumption that FFA is not part of a school's regular curriculum. A.C.A. 6-18-220. It is not part of the State's minimum curriculum requirements. See generally 6-16-103 & 6-13-620. It falls into the category of extracurricular activity under 6-22-103, the Ark. Registered Volunteers Program Act. Academic credit could possibly be offered for FFA, but only if approved by the State Board of Education. See 6-16-103.

Opinion No.: 2001-282

Gus Wingfield
Auditor of State

RE:Since, according to the Treasurer of State, several treasury fund accounts have negative and insufficient balances to redeem state warrants, is the Auditor of State in violation of state law to continue to draw state warrants on the fund accounts that have negative balances? **RESPONSE:** No. It is my understanding that there is no real insufficiency of funds, but rather, an accounting discrepancy prompting your question. Recent legislation amended away the Auditor's responsibility to determine the sufficiency of the fund against which a warrant is drawn. Other controls exist in Arkansas law to prevent deficient spending, however, and it is my understanding that these provisions are being observed. See full opinion for complete discussion.

Opinion No.: 2001-285

Randy Minton
State Representative

RE:May a person who is currently employed as a maintenance employee of the Secretary of State's office serve in the General Assembly? Q2) May a person appointed as a member of a quorum court by the Governor, run to succeed himself in that position in the same district in view of the fact that due to reapportionment the district lines were totally changed? **RESPONSE:** It would require reference to the exact facts, but the answer appears to be "yes." Certain restrictions on that person's state salary would obtain, however, if elected. 2) The answer is unclear and may depend as a matter of fact on the materiality of the changes to the district. See also Ops. 91-379; 91-447; and 2001-165.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2001-293

Jay Bradford
State Representative

RE:When city police officers make an arrest and the arrestee is injured in the course of the arrest or is otherwise in need of medical treatment from some type of altercation and needs immediate medical attention prior to being booked into the jail, is the presenting agency responsible to the hospital for the medical expenses? **RESPONSE:** This issue may be addressed by the contract between the county and city. If not, the city will be responsible until the arrestee is delivered into the custody of the county. The city or county (whichever incurs the expense) may be able to recover expenses of this nature from the arrestee if convicted. ACA 12-41-505.

Opinion No.: 2001-296

Ed Wilkinson
State Senator

RE:Q1) Can a city council member of a second class city serve in this position and also be employed by Sebastian County as a deputy coroner? Q2) Can a volunteer fireman of a second class city also serve as a city council member? **RESPONSE:** Q1) Yes. Q2) Generally, yes, but the definitive answer will depend on the particular position in the fire department. ACA 14-42-115.

Opinion No.: 2001-298

Stephen Bright
State Representative

RE:While you have opined [in Opinion No. 2001-272] that the city attorney has an obligation to prosecute "city misdemeanor cases," can you offer more guidance on "city felony cases" and "county cases,"

whether felony or misdemeanor charges, which may have occurred outside the city limits? For instance, if an Arkansas State Trooper writes a ticket on Interstate 430 and sends that case to the Maumelle District Court, who prosecutes that case? Q2) Ultimately, does the County Prosecutor determine where county or state law enforcement agents send their cases? **RESPONSE:** Q1) In my opinion, a city attorney is wholly without authority to prosecute felony actions, which will be prosecuted by the prosecuting attorney in circuit court, not district court. Ark. Const. amend. 80, sec. 6(A). Moreover, only the prosecutor or one of his deputies, not the city attorney, is authorized to prosecute actions for misdemeanors occurring outside city limits. ACA 16-21-115 and 16-21-103. Accordingly, if an Arkansas State Trooper were to send an out-of-city traffic infraction case to Maumelle District Court, I believe the Pulaski County Prosecutor, whether personally or through one of his deputies, would be obligated to prosecute the case. Q2) I suspect the prosecutor has ultimate authority to dictate where cases are sent, including the authority to direct that law enforcement officers file their citations in particular courts within the prosecutor's district, although it is not entirely clear what remedy would lie if an officer were to ignore a prosecutor's instructions on this issue. The law would benefit by clarification. Although I obviously cannot opine on this factual question, it is my understanding that law enforcement officers in practice frequently make the choice of forum in the field, subject to the prosecutor's right to seek court permission to file a nolle prosequi and to proceed with the prosecution in another available forum.

Opinion No.: 2001-299

Link Project - Arkansas
c/o Lyndon Poole, Chair

RE:Request for certification of popular name and ballot title of a proposed initiated act to establish the criminal offense of aggravated cruelty to animals. **RESPONSE:** Popular name and ballot title substituted and certified.

ATTORNEY GENERAL OPINIONS

Opinion No.:2001-303

Jimmy Jeffress
State Senator

RE:Do provisions of the Arkansas Freedom of Information Act (FOIA) require the Employee Benefits Division of the Arkansas Department of Finance and Administration (DF&A) to disclose: 1) the rebate component of Plan administrative costs and 2) verification of participation of Arkansas pharmacies and/or pharmacists relative to the pharmacy network proposed by Advance PCS to the State and Public School Health and Life Insurance Board of the Arkansas State Employee Benefit Plan? **RESPONSE:** The FOIA does not require the production of information. Rather, it requires access to records. If DF&A possesses records that reflect this information, and that are not exempt, they must be made available. However, DF&A must, in the first instance determine whether they are exempt. If DF&A has claimed an exemption, and the requestor believes DF&A to be wrong in this claim, recourse is to the court.



ADOPTED RULES AND REGULATIONS

BOARD OF OPTOMETRY

Docket No.: 069.00.01--003
Effective Date: 11/24/01
Contact Person: Howard Flippin
Telephone: (501) 268-3577

**Regulation Article VIII, Section 1 -
Additional paragraph**

DEPARTMENT OF COMMERCE

State Bank Department

Docket No.: 003.02.01--002
Effective Date: 11/15/01
Contact Person: Candace Franks
Telephone: (501) 324-9019

**Regulations for Reservation of Bank
Corporate Name**

Docket No.: 003.02.01--003
Effective Date: 11/15/01
Contact Person: Candace Franks
Telephone: (501) 324-9019

**Regulations for Application of Bank
Fictitious Names**

Docket No.: 003.02.01--004
Effective Date: 11/15/01
Contact Person: Candace Franks
Telephone: (501) 324-9019

**Regulation for Application for Change
of Bank Corporate Name**

DEPARTMENT OF CORRECTION

Docket No.: 004.00.01--005
Effective Date: 11/15/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

AR 891 - DNA Testing ***

Docket No.: 004.00.01--006
Effective Date: 11/15/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

AR 804 - Inmate Records ***

Docket No.: 004.00.01--007
Effective Date: 11/15/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

**AR 812 - Temporary Release/Meritorious
and Emergency Furloughs *****

Docket No.: 004.00.01--008
Effective Date: 11/15/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

**AR 892 - Sex Offender Guidelines and
Procedures *****

Docket No.: 004.00.01--009
Effective Date: 11/15/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

ADOPTED RULES AND REGULATIONS

Repeal of AR 813 - Temporary Release - Emergency Furloughs ***

Docket No.: 004.00.01--010
Effective Date: 11/15/01
Contact Person: Larry Norris
Telephone: (870) 267-2000

Repeal of AR 1200-A - Furloughs for Work/Study Release Inmates ***

DEPARTMENT OF WORKFORCE EDUCATION

Docket No.: 172.00.01--001
Effective Date: 11/12/01
Contact Person: Dale Turrentine
Telephone: (501) 296-1620

Telecommunications Access Program Rules

EDUCATION DEPARTMENT *Office of Accountability*

Docket No.: 005.19.01--011
Effective Date: 10/29/01
Contact Person: Ron Tolson
Telephone: (501) 682-4227

ADE 130 - Teacher Licensure for Reciprocity

Docket No.: 005.19.01--012
Effective Date: 10/19/01
Contact Person: Ron Tolson
Telephone: (501) 682-4342

Emergency Rule: ADE 129 - Certification Laws & Regulations for Reciprocity

GAME & FISH COMMISSION

Docket No.: 002.00.01--008
Effective Date: 10/31/01 & 11/10/01
Contact Person: James Goodhart
Telephone: (501) 223-6327

Emergency Rule: Raft Creek / Steve N. Wilson WMA Closure; Final Rule: State Boating Law Revisions

HUMAN SERVICES *Administrative Services*

Docket No.: 016.14.01--022
Effective Date: 10/31/01
Contact Person: Bill Tyler
Telephone: (501) 682-9631

Policy No. 1069 - Career Opportunities Program

Docket No.: 016.14.01--023
Effective Date: 11/30/01
Contact Person: Bill Tyler
Telephone: (501) 682-9631

ADOPTED RULES AND REGULATIONS

Policy No. 1034 - Vending Facilities for the Blind

Docket No.: 016.14.01--024
Effective Date: 10/30/01
Contact Person: Bill Tyler
Telephone: (501) 682-9631

Policy No. 1100 - Disposal of Surplus Computer Equipment

County Operations

Docket No.: 016.20.01--017
Effective Date: 12/1/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

MS 31000-31050 -- Breast & Cervical Cancer Medicaid ; DCO-129 -- Breast & Cervical Cancer Medicaid Application for Assistance

Docket No.: 016.20.01--018
Effective Date: 11/9/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

TEA Policy 5140 and Arkansas' Title IV-A State Plan Section 6.5.2, Extended Support Services (ESS) Transportation

Docket No.: 016.20.01--019
Effective Date: 11/23/01
Contact Person: Sandra Miller
Telephone: (501) 682-8251

FSC 01-08 -- The Trafficking Victims Protection Act of 2000

Medical Services

Docket No.: 016.06.01--055
Effective Date: 11/1/01
Contact Person: Nikki Wade
Telephone: (501) 682-8859

State Plan Transmittal #2001-019 and Section I of all Medicaid Provider Manuals

Docket No.: 016.06.01--056
Effective Date: 11/1/01
Contact Person: Will Taylor
Telephone: (501) 682-8362

State Plan Transmittal #2001-018, Hospital/ESRD Update #58, Rehabilitative Hospital Update #34, Physician/Independent Laboratory/CRNA/Radiation Treatment Center Update #77 and Certified Nurse-Midwife Update #44

Docket No.: 016.06.01--057
Effective Date: 10/24/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8362

Emergency Rule: State Plan #2001-022 and Official Notice DMS-2001-BB-1 and DMS-2001-CC-1

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.01--058
Effective Date: 10/1/01
Contact Person: Joie Wallis
Telephone: (501) 682-5424

State Plan Transmittal #2001-021 to increase the income eligibility limit for Pregnant Women from 133% to 200% of the federal poverty level ***

Docket No.: 016.06.01--059
Effective Date: 11/15/01
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

Repeal of State Plan Transmittal #2001-024 ***

Docket No.: 016.06.01--060
Effective Date: 12/1/01
Contact Person: Betty Reed
Telephone: (501) 682-8363

State Plan Transmittal #2001-025 and Nurse Practitioner Update Transmittal #36

Docket No.: 016.06.01--061
Effective Date: 11/30/01
Contact Person: Randy Helms
Telephone: (501) 682-1857

Amendment to Chapter 5 of the Cost Manual

Docket No.: 016.06.01--062
Effective Date: 12/1/01
Contact Person: Joie Wallis
Telephone: (501) 682-5424

State Plan Transmittal #2001-020 and Official Notice DMS-2001W-1 adding the Breast and Cervical Cancer Aid Category

Docket No.: 016.06.01--063
Effective Date: 12/1/01
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Rehabilitative Services for Persons with Mental Illness Update #39 and Arkansas State Plan Transmittal #2001-028

PARKS & TOURISM *History Commission*

Docket No.: 013.02.01--001
Effective Date: 11/24/01
Contact Person: John Ferguson
Telephone: (501) 682-6900

Article II: Section 5B - Registration, Section 5K - Use of Privately-Owned Equipment, Section 6D - Additional Notes, and the first paragraph of Section 7 - Copies of Photographs and Maps

ADOPTED RULES AND REGULATIONS

PHARMACY BOARD

Docket No.: 070.00.01--014
Effective Date: 11/10/01
Contact Person: Charles Campbell
Telephone: (501) 682-0190

04-03-0001 -- Specialty Pharmacy Permits; 04-03-0002 -- Methadone Clinic Specialty Pharmacy Permit

SOIL & WATER CONSERVATION COMMISSION

Docket No.: 138.00.01--003
Effective Date: 11/23/01
Contact Person: Edward Swaim
Telephone: (501) 682-3905

Rules for the Protection and Management of Ground Water

Docket No.: 138.00.01--004
Effective Date: 11/23/01
Contact Person: Edward Swaim
Telephone: (501) 682-3905

Rules Governing Public Water Authorities

STATE LAND INFORMATION BOARD

Docket No.: 192.00.01--001
Effective Date: 11/15/01
Contact Person: Learon Dalby
Telephone: (501) 682-2929

Standards for Collecting Mapping Grade Global Positioning System Positions

TOWING AND RECOVERY BOARD

Docket No.: 157.00.01--001
Effective Date: 11/2/01
Contact Person: Cynthia Lauen
Telephone: (501) 305-2529

Emergency Rule - Charges for Notification

WORKERS' COMPENSATION COMMISSION

Docket No.: 099.00.01--001
Effective Date: 11/7/01
Contact Person: Daniel Honey
Telephone: (501) 682-3930

Amendment to rules 5, 18, 20, 26, 36 and new rules 37 and 38



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INSURANCE DEPARTMENT

01-012B

(Order to Vacate)
In the Matter of
Terry Lamb

01-194

(Order of Cancellation)
In the Matter of the
Certificate of Authority of
**International Financial Security
Life Insurance Company**

01-196A

(Order of Revocation)
In the Matter of
Kevin Hinkle

01-209

(Order of Cancellation)
In the Matter of the
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American Health Care Providers, Inc.

01-217

(Summary Suspension Order)
In the Matter of
John Townshend

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(Order of Suspension)
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(Order of Suspension)
In the Matter of the
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In the Matter of
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(Order of Suspension)
In the Matter of the
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In the Matter of
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In the Matter of
George Leon Compton

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(Amended Order)
In the Matter of the
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**Community Bank Life and
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(Cease and Desist Order)
In the Matter of the
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**Greg Kordsmeier and
Kordsmeier Auto Refinishing, Inc.**

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In the Matter of the
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**Long-Term Care Liability Insurance
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In the Matter of the
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In the Matter of the
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(Order of Revocation)
In the Matter of
George Leon Compton

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(Order of Suspension)

In the Matter of

Isaac Hal Millsap

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In the Matter of

Larry Ray Rogers

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In the Matter of

Larry Dean Neel

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(Order of Suspension)

In the Matter of

Leon A. Szamocki

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In the Matter of

Reinhold Frank Dudeck III

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(Order)

In the Matter of

Cigna Healthcare of Arkansas

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(Order of Suspension)

In the Matter of

Douglas E. Chapman

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(Order of Suspension)

In the Matter of

James S. Sterling

01-252

(Order of Suspension)

In the Matter of

**Jimmy Elmont Buckholts and
Buckholts & Associates, Inc.**

ORDERS AND NOTICES

LEGISLATIVE AUDIT October 29, 2001

Agency	Period Covered
Department of Education - Arkansas Educational Television Commission	6/30/01
Arkansas Manufactured Home Commission Two-Year Period Ended	6/30/01
Delta Counseling Associates (Private)	6/30/01
Office of the Lieutenant Governor	6/30/00
Assessment Coordination Department	6/30/00
Arkansas State Highway and Transportation Department	6/30/01
Department of Labor	6/30/01
Veterinary Medical Examining Board	6/30/01
Workers' Compensation Commission	6/30/00
Professional Counseling Associates, Inc. (Private)	6/30/01
South Arkansas Regional Health Center, Inc. (Private)	6/30/01
Southeast Arkansas Behavioral Healthcare System, Inc. (Private)	6/30/01
Western Arkansas Planning and Development District, Inc. (Private)	6/30/01

Secretary of State
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