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ATTORNEY GENERAL OPINIONS

Opinion No.: 2002-049

Simon, Raymond
Director, AR Dept of Education

RE: Q1) If a resident school district has placed a non-resident school district on notice, for at least ten (10) days, that the non-resident district has admitted, without property legal authority, students from the resident district, can the resident district then simply file a petition with the Arkansas Department of Education ("DOE") seeking a transfer of state aid for each of the resident students attending the non-resident district based upon ACA 6-18-105(b)(1) (Repl. 1999), or is the resident school district first required to obtain a court order or judgment pursuant to ACA 6-18-202(e) (Repl. 1999)? In other words, does a conflict exist between the statutory requirements of ACA 6-18-205(b)(1) (Repl. 1999) and ACA 6-18-202(e) (Repl. 1999)? Q2) If a conflict does exist between ACA 6-18-202(e) and ACA 6-18-205(b)(1), which statutory authority controls with regards to the proper procedures by which a school district must petition the DOE for a transfer of state aid for those resident students improperly attending a non-resident school district? Q3) May the requirements of ACA 6-18-202(e) and 6-18-205(b)(1) be read in harmony so that a school district wishing to petition the DOE for a transfer of state aid must attach as part of its petition to the DOE a court order or judgment finding that a school district has improperly admitted for ten (10) school days or more a student(s) the district should have known was a resident of another district? **RESPONSE:** The two statutes do not conflict. ACA 6-18-205(b)(1) controls in the event that the facts are undisputed, and ACA 6-18-202(e) controls in the event that the facts are disputed.

Opinion No.: 2002-050

Johnson, Calvin
State Representative

RE: Can the Pine Bluff City Council enact an ordinance abolishing the city's utility commission by a simple majority vote, or would a two-thirds majority of the council be required? **RESPONSE:** Such an

ordinance requires only a simple majority vote.

Opinion No.: 2002-059

Minton, Randy
State Representative

RE: Is the mandatory use of soil pits to determine soil suitability for individual sewage disposal permits (as decreed in a memorandum from the Arkansas Department of Health) within the parameters of Act 402 of 1977? **RESPONSE:** Act 402 of 1977 (ACA 14-236-101 to -118) does not mention soil pits. The applicable regulations of the Dept. of Health, however, refer to a "soil bore or pit" as a necessary initial soil suitability test. Either test is authorized by the regulations. See also Opinions 99-215, 99-257 and 99-083.

Opinion No.: 2002-060

McCastlain, Lona Horn
Pros. Att'y, 23rd Judicial District

RE: Pursuant to provisions of ACA 14-14-104, what does the term "general circulation" of a newspaper mean for purposes of this statute? **RESPONSE:** See Opinions 95-037 and 90-134 and ACA 16-3-105.

Opinion No.: 2002-064

Faris, Steve
State Senator

RE: Are the law enforcement logs kept by the Hot Spring County 911 Dispatch Center ("Center") subject to the Freedom of Information Act (FOIA)? Q2) Are the ambulance and fire department logs kept by the Center subject to the FOIA? Q3) Are the incoming and outgoing calls to and from the Center subject to the FOIA? Q4) Are other recorded telephone lines in the Center subject to the FOIA? Q5) Is subscriber information (name, address and telephone numbers) forwarded by a service provider subject to the FOIA?

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Q6) Are recordings of information broadcasted over law enforcement frequencies subject to the FOIA? ANSWER: The answer to Q 1 through 4 and 6 is, generally, yes, assuming that the Dispatch Center is a government agency or otherwise subject to the FOIA because it receives public funds. The possible applicability of specific exemptions must be considered, however, including the exemption for ACIC information. See ops. 90-236, 93-106, 94-100, 95-232, and A.C.A 12-10-317. Q5) No, pursuant to 12-10-317.

Opinion No.: 2002-065

Baker, Gilbert
State Senator

RE: Can a licensed real estate agent serve as a member on a city planning commission? **RESPONSE:** Yes, subject to the condition that the commissioner must not participate in making decisions that might constitute a common-law conflict of interests.

Opinion No.: 2002-066

Jones, Steven B.
State Representative

RE: Pursuant to provisions of Sales Tax Regulation GR-51 B-5, how can storage tanks sold to farmers not be tax exempt if they are used in the irrigation capacity? Q2) Since grinding wheels and sandblasting grit must be used in the manufacture of above and underground storage tanks, why are they subject to the sales and use tax? **RESPONSE:** These questions were reportedly posed by a constituent involved in a tax dispute. I am unable to respond since, by statute, I am barred from engaging in the private practice of law. A.C.A. § 25-16-701. Moreover, to the extent this request merely seeks my advisory opinion on a general issue of state tax law, the Department of Finance and Administration, Revenue Division, is the appropriate authority to issue letter opinions on such questions. See Gross Receipts Tax Regulations GR775 and -76 (“No opinion,

whether formal or informal, issued by any other agency can be binding on the Department of Finance and Administration, Revenue Division.”).

Opinion No.: 2002-071

Bright, Stephen D.
State Representative

RE: Q1) Does the Arkansas usury law apply to loans originated by out-of-state non-bank lenders? Q2) Are the legal opinions issued by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation applicable to a non-bank lender? **RESPONSE:** Q1) The answer will depend on specific facts about the particular loan contract under consideration. See opinion for generally applicable principles. Q2) The answer will depend entirely on the opinion in question, the issue addressed in that opinion, and the legal authorities upon which the opinion relies.

Opinion No.: 2002-073

Beebe, Mike
State Senator

RE: Can a municipal office holder continue to hold office until his term expires if he is elected to a legislative seat in a special election? Q2) If a person is elected to the Legislature in a special election to fill an unexpired term, can he still serve 6 more years in the House of Representatives or 8 more years in the Senate? **RESPONSE:** Q1) The answer to this question will depend on the nature of the municipal office at issue. If the municipal position qualifies as a “lucrative office . . . under this State,” the dual service will be prohibited pursuant to Ark. Const. art. 5, § 7. Although it seems unlikely, the dual service might further be precluded pursuant to a statute pertaining to the particular municipal office or pursuant to the common-law doctrine of incompatibility. Without knowing the specific office at issue, I cannot opine more definitively on this question. Q2) Given the provisions of Ark. Const. amend. 73, I believe the answer to this question is in all likelihood “yes.”

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Opinion No.: 2002-075

Minton, Randy
State Representative

RE: Would it violate the uniform requirements for competitive bidding for a municipality to send out bid invitations to equipment companies naming a specific manufacturer? **RESPONSE:** The answer will depend on the facts and circumstances surrounding the bid invitation — particularly the motive for specifying a particular manufacturer, and whether the public interest is best served by that product. Generally, bid invitations must be specific enough to enable competitors to know how to formulate a bid, but not so specific as to restrict competition. See opinion for analysis.

Opinion No.: 2002-077

Emigh, Barry

RE: Request for certification of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, and permitting the operation of for profit casino gambling. **RESPONSE:** Popular name and ballot title rejected due to an ambiguity in the text of the proposed measure.

Opinion No.: 2002-081

Dees, Joyce
State Representative

RE: Does Arkansas law require that the elected sheriff have the responsibility of being the administrator of the jail, or is it the county's responsibility to furnish the jail? Q2) Can the jail be set up as a separate department, not under the authority of the sheriff, and hire an administrator to operate the jail who would be a county employee and answer to the county judge? **RESPONSE:** Q1) A.C.A. § 12-41-502 charges the sheriff with administrative responsibility over the jail. However, pursuant to Ark. Const. amend. 55, §2, subject to voter approval, the quorum court might transfer that responsibility

elsewhere at the end of a sheriff's term. Moreover, insofar as it exclusively wields the power of appropriation, the county could well be described as having "responsibility to furnish the jail," notwithstanding the fact that the sheriff normally has administrative responsibility over its operations. Q2) Yes, subject to the condition that the county observe the procedural requirements dictated in Amendment 55.

Opinion No.: 2002-083

Priest, Sharon
Secretary of State

RE: Request for declaration of popular names for two resolutions of the General Assembly passed at the 2001 regular session. **RESPONSE:** Popular names and ballot titles fixed and declared under ACA 7-9-110 for HJR 1004 and SJR 16.

Opinion No.: 2002-087

Pine Bluff City Employees
c/o Ken Ferguson, Dir of Human

RE: Is the decision of the custodian of records to release the names and addresses of all employees of the City of Pine Bluff in compliance with a Freedom of Information Act (FOIA) request consistent with provisions of the FOIA? **RESPONSE:** The decision to release the names is consistent with the Act except to the extent the employees include undercover police officers. The decision to release the addresses is generally consistent with the FOIA unless a particular employee has a heightened privacy interest in the information that would make its release a "clearly" unwarranted invasion of personal privacy.

Opinion No.: 2002-088

Parker, Donald L.
Chair, Craighead Co Election Comm'n

RE: Are the offices of deputy sheriff and deputy circuit clerk for the Eastern District of Craighead

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County authorized by Arkansas law to be popularly elected positions by the registered voters of the Eastern District of Craighead County, Arkansas? RESPONSE: No. As an elected official of the county, the sheriff has the authority to hire and fire his or her employees. See Ark. Const. Amend. 55, § 3; Op. Att'y Gen. No. 87-312; A.C.A. § 14-14-805(2). Amendment 55, §§ 4 and 5 to the Arkansas Constitution and A.C.A. § 14-14-801 authorize the quorum court of each county to fix, by ordinance, the number and compensation of deputies and county employees, as well as the compensation of county officers. As a matter of constitutional law, it is the role of the quorum court to determine the number and compensation of all county deputies, including deputy sheriffs and deputy clerks, and it is the role of the elected official, following any requisite appropriations by the quorum court, to fill the authorized positions by appointment. See Ark. Op. Att'y Gen. No. 87-312.

Opinion No.: 2002-089

Smith, Roger
State Representative

RE: Can a volunteer fire department, rural or municipal, collect fees for responding to a structure fire on the property of a nonmember? RESPONSE: Yes, subject to certain conditions set forth in ACA 20-22-901 et seq. See Opinion 2001-257.

Opinion No.: 2002-090

Goodman Gaston Massanelli
c/o Ken Ferguson, Dir of Human

RE: Is the decision of the custodian of records to release dates of hire, annual salary, date of last salary adjustment and amount of last salary adjustment for 11 Pine Bluff city employees consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: Yes. In my opinion, the requested documents constitute personnel records whose disclosure would not constitute a clearly unwarranted invasion of personal privacy.

Opinion No.: 2002-093

Smith, Roger
State Representative

RE: In light of the provisions of ACA 14-58-303, giving the mayor the exclusive power to enter into contracts, may a mayor prevent the city from entering into an approved contract with funds validly appropriated by refusing to sign it? Q2) If the mayor refuses to sign the contract, may the recorder of a second class city or incorporated town sign the contract pursuant to ACA 14-42-111? Q3) Does ACA 14-43-502, which gives the council control of the city finances, allow the council members to sign the contract or appoint some other person to do so; or does the statute or any other provisions of law provide that any person may sign the contract on behalf of the city? RESPONSE: Q1) Given that the mayor has "exclusive power" to contract on behalf of a city, A.C.A. § 14-58-303, I believe he has sole control over which contracts to enter, regardless of what appropriations the city council might have made. Q2) I do not believe A.C.A. § 14-42-111 authorizes the recorder to execute a contract the mayor refuses to sign, since the referenced statute authorizes the recorder to do so only if the mayor is incapacitated or absent. Q3) Neither A.C.A. § 14-43-502 nor any other provision of state law empowers the city council, its designees or any other person other than the mayor or his designee to execute contracts on behalf of the city. The power to control finances through the power of appropriation does not necessarily carry with it a power to determine what contracts the city will execute. Section 14-58-303 unequivocally locates the latter power in the mayor or his designee.

Opinion No.: 2002-095

Thomas, Clark E.

RE: Is the decision of the custodian of records to release a copy of the investigative file on a sexual harassment complaint, with specific items redacted, consistent with provisions of the Freedom of Information Act (FOIA)? (The subject of the complaint

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was suspended) ANSWER: The custodian's decision is consistent with the FOIA, with one minor exception involving the removal of a name from the job performance record on constitutional right to privacy grounds. The records may also be available to the requester (the employee/complainant) as her personnel records.

Opinion No.: 2002-096

Stilley, Oscar
Attorney at Law

RE: Request for certification of popular name and ballot title of a proposed constitutional amendment to prohibit the judicial disqualification of initiated constitutional amendments for any reason except failure to collect the required number of valid

signatures, and for other purposes. **RESPONSE:** Popular name approved as submitted; ballot title certified as revised.

Opinion No.: 2002-107

Witherell, Stacey
Empl Servs Mgr, LR Human Resources

RE: Is the decision of the custodian of records to release detailed salary information (employee name, date of hire, job title, beginning salary and current salary) on all city positions that are classified at Grade 405 consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** Yes. The requested salary records constitute disclosable "personnel records" under the FOIA.

ADOPTED RULES AND REGULATIONS

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

Multi-Family Housing

Docket No.: 109.04.02--001
Effective Date: 4/19/02
Contact Person: Patricia Patton
Telephone: (501) 682-5902

Final Version of the Private Activity Volume Cap Rules and Regulations

Economic Development

Docket No.: 109.01.02--001
Effective Date: 4/10/02
Contact Person: Nancy Covington
Telephone: (501) 682-5900

Second Amendment to the By-Laws of the Authority

Executive Division

Docket No.: 109.00.02--001
Effective Date: 3/28/02
Contact Person: Patrick Patton
Telephone: (501) 682-5902

Professional Selection Policy

BOARD OF ELECTION COMMISSIONERS

Docket No.: 108.00.02--003
Effective Date: 4/14/02
Contact Person: Bonnie Noe
Telephone: (501) 682-1783

Rules and Regulations for Voter Intent

BOARD OF EXAMINERS IN SPEECH PATHOLOGY

Docket No.: 117.00.02--001
Effective Date: 4/19/02
Contact Person: Betty Bass
Telephone: (501) 682-9180

Revised Rules and Regulations

DEPARTMENT OF COMMERCE

Arkansas Securities Department

Docket No.: 003.14.02--001
Effective Date: 4/1/02
Contact Person: John Moore, Jr.
Telephone: (501) 324-8686

Amendments to the pertaining to the adoption of Rules 1 and 2 under the Arkansas Mortgage Loan Broker Act

ADOPTED RULES AND REGULATIONS

State Plant Board

Docket No.: 003.11.02--001
Effective Date: 7/1/02
Contact Person: David Blackburn
Telephone: (501) 225-1598

Circular 11: Regulations on Plant Diseases and Pests

Docket No.: 003.11.02--002
Effective Date: 7/1/02
Contact Person: Mary Smith
Telephone: (501) 225-1598

Seed Regulation Changes

DEPARTMENT OF LABOR

Board of Electrical Examiners

Docket No.: 010.13.02--001
Effective Date: 3/29/02
Contact Person: Reece Stewart
Telephone: (501) 682-4547

Regulation 6.7

EDUCATION DEPARTMENT

Early Childhood

Docket No.: 005.24.02--001
Effective Date: Proposed
Contact Person: Janie Huddleston
Telephone: (501) 682-4891

PROPOSED RULE: Arkansas Better Chance Program Regulation ***

General Education Division

Docket No.: 005.15.02--001
Effective Date: Proposed
Contact Person: Ray Lumpkin
Telephone: (501) 682-4557

PROPOSED RULE: Standards for Accreditation of Arkansas Public Schools ***

Docket No.: 005.15.02--002
Effective Date: Proposed
Contact Person: Ray Lumpkin
Telephone: (501) 682-4557

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

GAME & FISH COMMISSION

Docket No.: 002.00.02--002
Effective Date: 3/22/02 & 4/1/02
Contact Person: James Goodhart
Telephone: (501) 223-6327

Emergency Rule: Prohibition of Importation of Deer, Elk and other Cervids; Adopted Rule: 2002 Elk Season

Docket No.: 002.00.02--003
Effective Date: 4/19/02
Contact Person: James Goodhart
Telephone: (501) 223-6327

ADOPTED RULES AND REGULATIONS

32.18 -- Restrictions for Taking Suckers

HEALTH SERVICES AGENCY

Docket No.: 049.00.02--002
Effective Date: 4/21/02
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

Regulation 200M - Residential Care Facility (RCF) Methodology

HUMAN SERVICES

County Operations

Docket No.: 016.20.02--004
Effective Date: 4/11/02
Contact Person: Sandra Miller
Telephone: (501) 682-8251

FSC 02-05 -- Revision to Scheduling Interviews and Processing Changes

Medical Services

Docket No.: 016.06.02--014
Effective Date: 3/29/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

Emergency Rule: State Plan Amendment #2002-010 -- Revisions in the Home Health program

Docket No.: 016.06.02--015
Effective Date: 3/29/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

Emergency Rule: State Plan Amendment #2002-004 -- Revisions in the Personal Care program

Docket No.: 016.06.02--016
Effective Date: 3/29/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #98-011 -- Rehabilitative Services for Children

INSURANCE DEPARTMENT

Docket No.: 054.00.02--005
Effective Date: 4/19/02
Contact Person: Sara Farris
Telephone: (501) 371-2820

Rule and Regulation #76 -- Arkansas External Review Regulation

MOTOR VEHICLE COMMISSION

Docket No.: 063.00.02--001
Effective Date: 5/1/02
Contact Person: Patricia Stroud
Telephone: (501) 682-1428

Rules & Regulations (Effective 5/1/2002)

ADOPTED RULES AND REGULATIONS

PROFESSIONAL ENGINEERS & LAND SURVEYORS

Docket No.: 044.00.02--001
Effective Date: 4/4/02
Contact Person: J. T. Clements, Jr.
Telephone: (501) 682-2824

Rules of the Board

PUBLIC SERVICE COMMISSION

Utilities Division

Docket No.: 126.03.02--001
Effective Date: 3/30/02
Contact Person: John Bethel
Telephone: (501) 682-1794

Docket No. 01-169-R -- Calling Plan Rules

SEBASTIAN COUNTY REGIONAL SOLID WASTE MANAGEMENT

Docket No.: 186.00.02--001
Effective Date: 4/25/02
Contact Person: Daniel Reikes
Telephone: (479) 784-2431

Solid Waste District Truck Tire Recycling Fee

INSURANCE DEPARTMENT

99-203

(Consent Order)

In the Matter of

**Home Mutual Fire Insurance Company, a
Farmers' Mutual Aid Association**

01-032A

(Order)

In the Matter of

Liliana Murphy

01-239A

(Order)

In the Matter of

Helen D. Starks

01-253

(Adoption Order)

In the Matter of the

Report of Examination of

Farmers Union Mutual Insurance Company

01-254

(Order of Continued Suspension)

In the Matter of the

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American Bonding Company

01-255

(Consent Order)

In the Matter of

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

01-256

(Order)

In the Matter of the Application of

**Fortis, Inc. to Acquire Control of Denticare of
Arkansas, Inc.**

01-257

(Adoption Order)

In the Matter of the

Report of Examination of

Citizens Fidelity Insurance Company

01-258

(Order of Suspension)

In the Matter of the

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Far West Insurance Company

01-259

(Order)

In the Matter of the

**Arkansas Property and Casualty
Guaranty Fund**

01-260

(Adoption Order)

In the Matter of the

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White River Valley Insurance Company

01-261

(Order)

In the Matter of the Acquisition of
or Change in Control of

**Wonder State Life Insurance Company, a
Domestic Arkansas Insurer, by Buyer,
Lorentzen Group Holdings, Inc.**

01-262

(Order of Revocation)

In the Matter of

Paul Alexander Robertson

01-263

(Order)

In the Matter of the Application for the
Approval of the Acquisition of

Fidelity Standard Life Insurance Company

01-264

(Order)

In the Matter of

Robert Lee McAtee

INSURANCE DEPARTMENT

01-265

(Consent Order)

In the Matter of

Isaac Hal Millsap and Jack Eugene Womack

01-266

(Consent Order)

In the Matter of

Judy A. Lutes

01-267

(Consent Order)

In the Matter of

Larry Ray Rogers

02-001

(Consent Order)

In the Matter of

Daniel P. Williamson

02-002

(Order of Cancellation)

In the Matter of the

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Far West Insurance Company

02-004

(Order)

In the Matter of the Examination of

Union Life Insurance Company

02-005

(Order)

In the Matter of

Capitol Life and Accident Insurance Company

02-006

(Order of Continued Suspension)

In the Matter of the

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GHS Fire Insurance Company

02-007

(Order of Continued Suspension)

In the Matter of the

Certificate of Authority of

Northwestern National Insurance Company

02-008

(Order of Continued Suspension)

In the Matter of the

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Protective National Insurance Company of

Omaha

02-010

(Cease and Desist Order)

In the Matter of the

Illegal Insurance Activities of

United Employers Voluntary Employee

Beneficiary Association, National Association of

Working Americans, American Benefit Plans,

and John Rhondo and David Neal

02-011

(Emergency License Suspension Order)

In the Matter of

Robert David Neal

02-012

(Consent Order)

In the Matter of

United Casualty Insurance Company of America

and United Insurance Company of America

02-013

(Consent Order)

In the Matter of

Douglas E. Chapman

02-014

(Order of Continued Suspension)

In the Matter of the

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Instant Auto Insurance Company

02-015

(Order)

In the Matter of

Kevin J. Hudson

02-016

(Adoption Order)

In the Matter of the

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Farmers Fire Insurance Company, Inc.

INSURANCE DEPARTMENT

02-017

(Order)

In the Matter of

**Ashley Life Insurance Company's Application
for Exemption from the Change of Control**

02-018

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In the Matter of

Coregis Insurance Company

02-019

(Adoption Order)

In the Matter of the

Report of Examination of

Farmers' Mutual Aid Association of Arkansas

02-020

(Order)

In the Matter of the Examination of

Southern Fidelity Life Insurance Company

02-021

(Order)

In the Matter of the Examination of

Smith Burial and Life Insurance Company

02-022

(Order)

In the Matter of

Brenda Diane Sahr

02-023

(Order)

In the Matter of the Examination of

Farmers Mutual Fire Insurance Company

02-024

(Amended Order)

In the Matter of the Examination Report of

United Healthcare of Arkansas, Inc.

02-025

(Order)

In the Matter of

Donald Fay Moon

02-026

(Adoption Order)

In the Matter of the Examination of

Farmers' Protective Insurance Company

02-027

(Cease and Desist Order)

In the Matter of the

Illegal Insurance Activities of

**United Employers Voluntary Employee
Beneficiary Association, National Association of
Working Americans, American Benefit Plans,
and John Rhondo and David Neal**

02-028

(Adoption Order)

In the Matter of the Examination of

Denticare of Arkansas, Inc.

02-029

(Order of Suspension)

In the Matter of the

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California Compensation Insurance Company

02-030

(Order of Continued Suspension)

In the Matter of the

Certificate of Authority of

Fidelity Mutual Life Insurance Company

02-031

(Order of Suspension)

In the Matter of the

Certificate of Authority of

Commercial Compensation Casualty Company

02-032

(Order of Suspension)

In the Matter of the

Certificate of Authority of

Superior National Insurance Company

02-033

(Adoption Order)

In the Matter of the

Report of Examination of

Ashley Life Insurance Company

ORDERS AND NOTICES

LEGISLATIVE AUDIT April 1, 2002

<u>Agency</u>	<u>Period Covered</u>
Department of Workforce Education	6/30/01
Department of Aeronautics	6/30/01
Assessment Coordination Department	6/30/01
Arkansas State Athletic Commission - For the Two-Year Period Ended	6/30/01
Department of Finance and Administration - Revenue Division - Corporation Income Tax Section - For the Two-Year Period Ended	6/30/01
Department of Education - Arkansas School for the Deaf	6/30/01
Disabled Veterans Service Office	6/30/01
Arkansas Judicial Retirement System	6/30/01
Arkansas Public Employees Retirement System	6/30/01
Arkansas Science and Technology Authority	6/30/00
Arkansas Science and Technology Authority	6/30/01
Arkansas Public Service Commission - Tax Division	6/30/01
Southeast Arkansas Economic Development District, Inc. (Private)	6/30/01

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