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ATTORNEY GENERAL OPINIONS

OPINION NO.: 2002-179

Elliott, Joyce
State Representative

RE: Regarding state employees: During nonwork periods and uncompensated time in nonwork stations, do state employees have the right of free speech and freedom of association as it relates to the rights of state employees to communicate with one another and with members of the public, including representatives of labor organizations? Q2) Regarding state employees: Do state employees have the right to choose to join or not join a labor organization and to be free from interference or coercion by others in making that choice? Q3) Regarding access: Do representatives of labor organizations have the same rights of access to state buildings and public space as any other members of the public (e.g., parking lots, cafeterias, lobbies and other facilities and space that is open to the public)? RESPONSE: Q1) I cannot answer this question without knowing what sorts of speech activities have occurred at the various public workplaces. The opinion reviews the various standards of review that apply under U.S. Const. amend. 1 and Ark. Const. art. 2, sec. 6 regarding the freedom of speech and freedom of association depending on the nature of the forum. Q2) Both Ark. Const. amend. 34 and ACA 11-3-303 guarantee state workers the right to make an uncoerced choice regarding union membership. Q3) Yes, subject to the condition that a right of access does not necessarily carry with a right to engage in a particular speech.

OPINION NO.: 2002-184

Ormond, Charles L.
State Representative

RE: Pursuant to the provisions of Arkansas Game and Fish Reg. 11.08, could a dog owner be ticketed by a wildlife enforcement officer for his dog being on someone else’s property without prior complaint from the property owner? RESPONSE: “Yes,” subject to the condition that the wildlife enforcement officer has this authority only with respect to dogs that have been purposely released in order to hunt. I have reached this conclusion notwithstanding the fact that A.C.A. § 15-41-113 might arguably be read as criminalizing the act of ticketing under such circumstances. Although I do not believe A.C.A. § 15-41-113 applies to regulations adopted after its enactment, which preceded the issuance of Regulation 11.08, I would reach the same conclusion even if it did apply. Given that the Arkansas Constitution affords the Game and Fish Commission exclusive authority to regulate hunting, Ark. Const. amend. 35, I believe any legislative effort to restrict this authority is constitutionally impermissible. The question of whether a dog was released in order to hunt is obviously one of fact that only a court could address. If the circumstances reflect that a dog was released accidentally or for any purpose other than to hunt, I believe the wildlife enforcement officer would lack the authority to issue a citation.

OPINION NO.: 2002-193

Dangeau, LeRoy
State Representative

RE: Does the Woodruff County Nursing Home, a 132-bed skilled nursing facility owned and operated by Woodruff County, qualify for sovereign immunity? RESPONSE: The answer to this question as phrased is no, given that “sovereign immunity” applies only to the state, not to the state’s political subdivisions and agents thereof. However, the nursing home may qualify for the statutory immunity that is afforded counties pursuant to A.C.A. § 21-9-301 or pursuant to the...
ATTORNEY GENERAL OPINIONS

common-law protection of charitable immunity. Finally, any particular claim may be barred by the concept of qualified immunity, which applies under appropriate circumstances to bar federal constitutional claims against official state or local actors. Determining which, if any, of these varieties of immunity might apply will entail conducting a factual review of the sort that exceeds my authority to undertake as a basis for issuing an official opinion. However, I can and will set forth the tests a reviewing court would apply in determining whether to dismiss any given claim.

OPINION NO.: 2002-196

Melton, Don (Col.)
Director, AR State Police

RE: Does 5 U.S.C. 9101 preempt state law concerning the requirements of a notarized signature for the release of Arkansas criminal history information for non-criminal justice purposes? Q2) If the federal law does preempt the state law, are the private contractors of the federal government included with the enumerated federal agencies in the federal law such that they are not required to provide a notarized signature? Q3) If the federal law does not preempt the state law, is the Arkansas State Police required by ACA 21-15-107 to obtain a notarized signature on the request for criminal history forms that come from the private contractor or may some other form of validation of signature be used? ANSWER: 1) It is not necessary to address the federal preemption question because state law does not require a notarized signature for requests from the federal government or a federal government contractor when checking the background of prospective federal employees. The only requirement for a notarized consent form is in ACA 21-25-107(d)(1), and it only pertains to background checks in connection with state employment. 2) Same. 3) Same

OPINION NO.: 2002-197

Scroggin, Preston
State Representative

RE: If utility lines were originally laid outside the boundaries of the right of way, then can a city, after a period of seven years, automatically acquire the right of way? Q2) Can a municipality run city vehicles and/or pickup trucks on off-road fuel? RESPONSE: Q1) Although no Arkansas authority has addressed this issue, as a general principle of property law, a city can acquire a prescriptive easement. Accordingly, assuming the misplacement occurred inadvertently under a claim of right, I believe the answer is probably yes. Q2) Yes, so long as the vehicles are used for official purposes. See ACA 26-56-224 and -225

OPINION NO.: 2002-202

Creekmore, Mike
State Representative

RE: Can a neighborhood be held liable for placing a “Slow Down Children at Play” sign in their neighborhood? RESPONSE: I cannot answer this question because it seeks legal advice on behalf of a private organization. The city attorney should be able to provide counsel as to whether the placement of any such sign accords with city ordinances.

OPINION NO.: 2002-209

Harkey, John Norman
Circuit Judge

RE: In light of the provisions of art. 5, sec. 10 of the Arkansas Constitution, can a member of the Arkansas House of Representatives simultaneously serve as a city attorney for an incorporated town in Arkansas? ANSWER: No, the election of a sitting member of the House of Representatives as city attorney of an incorporated town violates art. 5, sec. 10.
OPINION NO.: 2002-226

Carpenter, Thomas M.
Office of the City Attorney

RE: Request for approval of an interlocal cooperation agreement between the Little Rock Air Force Base and the City of Little Rock for the purpose of securing to each the benefits of mutual aid in fire protection and hazardous materials incident response. RESPONSE: Approved
ARKANSAS TEACHER RETIREMENT

Docket No.: 088.00.02--002
Effective Date: 7/24/02
Contact Person: Tammy Medlock
Telephone: (501) 682-1827

Policies, Rules and Regulations

BOARD OF OPTOMETRY

Docket No.: 069.00.02--003
Effective Date: 8/31/02
Contact Person: Howard Flippin
Telephone: (501) 268-4351

Article VI: Section 1; new addition of Subsection Q - Unprofessional Conduct

GAME & FISH COMMISSION

Docket No.: 002.00.02--007
Effective Date: 8/7/02 & 8/17/02
Contact Person: James Goodhart
Telephone: (501) 223-6327

2002-2003 Early Season Migratory Bird and WMD Hunting Season and Code; Emergency Order/Code - Prohibition of Snakehead

HUMAN SERVICES

Administrative Services

Docket No.: 016.14.02--008
Effective Date: 9/30/02
Contact Person: Bill Tyler
Telephone: (501) 682-9631

DHS 1050 - Charges for Copying Documents

Medical Services

Docket No.: 016.06.02--030
Effective Date: 8/1/02
Contact Person: Tommy Wingard
Telephone: (501) 682-6117

Regulations for the Licensure of Assisted Living Long Term Care Facilities - Level 1

Docket No.: 016.06.02--031
Effective Date: 8/1/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2001-042

Children & Family Services

Docket No.: 016.15.02--004
Effective Date: 8/16/02
Contact Person: Vivian Jackson
Telephone: (501) 682-1577
POLLUTION CONTROL & ECOLOGY
Hazardous Waste

Docket No.: 014.09.02--003
Effective Date: 8/2/02
Contact Person: Mike Bates
Telephone: (501) 682-0831

Amendment to Regulation 23: Hazardous Waste Management

Docket No.: 014.09.02--004
Effective Date: 8/2/02
Contact Person: Mike Bates
Telephone: (501) 682-0831

Regulation No. 29 - Brownfields Redevelopment - 2002 Update

POST PRISON TRANSFER BOARD

Docket No.: 158.00.02--001
Effective Date: 8/19/02
Contact Person: Leroy Brownlee
Telephone: (501) 682-0831

Policies and Procedures

WATER WELL CONSTRUCTION COMMISSION

Docket No.: 096.00.02--001
Effective Date: 7/26/02
Contact Person: A. Mark Bennett, III
Telephone: (501) 682-3965

Emergency Rule: 3.9.1E -- Renewal of Annual License 2002-2003
*** No Insurance Orders were filed with the *Arkansas Register* during the past filing period for placement in this edition.
ORDERS AND NOTICES

LEGISLATIVE AUDIT

Agency

Period Covered

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