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**Secretary of State
State Capitol, Room 026
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Editor Jon Davidson
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ATTORNEY GENERAL OPINIONS

Opinion No.: 2002-130

Carpenter, Thomas
City Att'y, Little Rock City Hall

RE:Request for approval of the form of an interlocal cooperation agreement between the City of Little Rock (Little Rock Police Department) and the University of Arkansas at Little Rock (Dept. of Public Safety) to provide mutual aid and assist in the interchange of law enforcement services in emergency situations. **RESPONSE:** Approved as submitted, noting one substantive matter that could become an issue under different circumstances: the fact that the agreement does not specify that the university's officers must be certified law enforcement officers. The university does currently require this.

Opinion No.: 2002-136

Bryles, Steve
State Senator

RE:Is Section 10 of Act 445 of 1983 still in effect? Q2) If a school district elects board members at large, must the person elected to the added position have residence in the former school district? **RESPONSE:** 1) No. 2) Yes, unless and until the district decides to adopt zones elections.

Opinion No.: 2002-144

Bookout, Paul
State Representative

RE:Do healthcare providers have any "duty" under Arkansas law to consult with and provide information to the listed individuals in ACA 20-17-214 regarding an advance directive and/or a health care proxy if the patient has neither? If there is a duty, what Arkansas law creates the duty? Q2) Does the term "incompetent patient" as used Op. 97-127, include minors or only those adults who are no longer able to make health care decisions? In other words, if there is a duty under ACA 20-17-214 to consult and/or inform,

does the duty apply to a minor patient? **RESPONSE:** 1) No. 2) Surrogate decision-making under 20-17-214 applies to minor patients.

Opinion No.: 2002-145

Wilkins, Henry "Hank"
State Senator

RE:In calculating the signatures needed to order a referendum in Pine Bluff, which election for mayor is the correct one to use — the election on November 7, 2000 or the runoff election on November 28, 2000? **RESPONSE:** The general election that was held on November 7. The court has permitted looking to a different election for this purpose only when strict compliance was impossible.

Opinion No.: 2002-149

Lambert, Stewart K.
Pros Att'y, 3rd Judicial District

RE:Was the decision of the Prosecuting Attorney to withhold disclosure of an ongoing State Police investigative file in his possession consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** If the records are in fact part of an ongoing investigation, then the records are exempt from disclosure at this time.

Opinion No.: 2002-151

Judy, Janice A.
State Representative

RE:Q1) Who can surface discharge "treated" household wastewaters without a permit? Q2) Who can issue permits for discharge of "treated" household wastewaters to the surface? What are the requirements of the permit? Q3) What is the difference between "treated" and "untreated" household wastewaters? Q4) How does not distinguish between "onsite" and "offsite" discharge of "treated" household waste-

ATTORNEY GENERAL OPINIONS

waters? Q5) Is it legal to have a public health hazard onsite? RESPONSE: Q1) Anyone who does not fall within the exception stated in ACA 14-236-104(c). Q2) The Division of Sanitarian Services of the Department of Health. In addition, systems that produce off-site discharges require a National Pollutant Discharge Elimination System Permit, issued by the Ark. Dept. of Environmental Quality. Q3) Wastewaters that are "treated" are in compliance with the requirements for the disinfection of effluents, set forth in the Dept. of Health's Alternate Systems Manual. Q4) The distinction arises out of the Dept. of Health's requirements concerning alternate sewage disposal systems, as set forth in the Dept's Alternate Systems Manual. Q5) No.

Opinion No.: 2002-152

Foster, H. G.
Pros Att'y, 20th Judicial District

RE: Please scrutinize the attached Circuit Court documents from Prince George's County, Maryland to determine whether an individual in these circumstances is eligible to hold elected office in Arkansas, (school board member) or must be removed by action of the prosecuting attorney. RESPONSE: It appears the individual was convicted, received probation and a suspended execution of sentence. Although only a court can conclusively determine this factual issue, the documents indicate the individual is ineligible for public office. Suspended execution of sentence is nonetheless a conviction. See also Op. 2002-098 for remedies and further information.

Opinion No.: 2002-153

Ledbetter, Sam
State Representative

RE: Do the fees and interest rates associated with the collection of Arkansas court fines (ACA 16-13-704) violate Arkansas' usury limit? RESPONSE: No. The usury laws apply only to "loans," and not to court-imposed charges.

Opinion No.: 2002-157

Greathouse, Wayne
Interim Exec Dir, AR Teacher Retirement

RE: Prior to July 1, 1971, was an administrative or clerical employee of the Arkansas Department of Education (ADE) eligible to join the Arkansas Teacher Retirement System (ATRS)? If such employees were eligible, could the employee choose whether to join ATRS? Q2) If an administrative or clerical employee was not a member of ATRS as of June 30, 1971, were they required to be members of the system on July 1, 1971, pursuant to Act 42 of 1971? Q3) If such an employee did not become a member of ATRS on July 1, 1971, is the employee now eligible to obtain service credit for the years between July 1, 1971, and the date on which the employee joined ATRS? Q4) More specifically, if such an employee became a member of the ATRS in 1976 and did not obtain service credit at that time for the prior years, can that employee now obtain service credit for the prior years? Is such a request barred by a statute of limitations, the doctrine of laches, or a statute? Q5) If such an employee is eligible to obtain service credit for the years prior to 1976, what is ADE's responsibility, if any, with regard to employer contributions and interest? Is a request for employer contributions barred by a statute of limitations, the doctrine of laches, or a statute? In the event the ADE is responsible for employer contributions, was the ADE's employer contribution made by virtue of the specific appropriations found in Act 42 of 1971, Act 427 of 1973, and Act 549 of 1975, or were the amounts appropriated simply the maximum amounts that could be paid to ATRS for ADE employees reported to ATRS? Q6) If such an employee is eligible to obtain service credit for the years prior to 1976, what is the employee's responsibility with regard to contributions and interest? Is the employee responsible for both the member and employer contributions, plus interest? RESPONSE: 1) Yes. 2) No. 3) Yes, under ACA 24-2-402. 4) Same. 5) ADE has no responsibility for employer contribution for these prior years. 6) Employee must pay both employer and employee contributions.

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Opinion No.: 2002-161

Gullett, Brenda
State Senator

RE:Q1) Can a municipal civil service commission interview applicants for the position of police officer or firefighter in executive session? Q2) Are the applications of these interviewees public record? Q3) Are the score sheets which contain the names of all interviewees and how they are scored by the commissioners public record? **RESPONSE:** Q1) The commission can interview internal applicants in executive session, but not external applicants. Q2) Yes. Q3) Although the score sheets are public records, they cannot be released without redacting the names of the interviewees.

Opinion No.: 2002-163

Seawel, Harmon
State Representative

RE:Request for an AG's opinion regarding the legality of a personnel policy proposed by the Pocahontas School District that would allow up to ninety (90) days unused sick leave paid to employees' beneficiaries, as listed with the Arkansas Teacher Retirement System, in the event the employee dies with at least three (3) years of service in the District. **RESPONSE:** Litigation is pending before the Arkansas Supreme Court that may impact the answer. Declined to answer. See *Turnbough v. Mammoth Springs School District No. 2*, (No. 01-696).

Opinion No.: 2002-164

Moore, Thomas
State Representative

RE:Are retail installment sales contracts on home improvements in Arkansas that are financed by an

out-of-state lender subject to Arkansas usury laws or would the interest rate caps in the state where the lender is located apply? **RESPONSE:** The answer will depend on various facts about each particular home improvement contract under consideration. The opinion sets forth the principles that are considered in determining whether Arkansas' usury law applies to contracts having ties to other states.

Opinion No.: 2002-166

Whitaker, Ruth
State Senator

RE:Is it illegal for a person who is wearing a cervical collar or cervical brace on his/her neck to operate a motor vehicle? **RESPONSE:** No provision of the Arkansas Code expressly bars an individual wearing a cervical collar or cervical brace from operating a motor vehicle. If such a device in fact impeded one's ability to drive safely, one might be found liable for careless or reckless driving. See *A person commits reckless driving if he "drives any vehicle in such a manner as to indicate a wanton disregard for the safety of persons . . ."* A.C.A. §§ 27-51-104(a) and 27-50-308(a). In addition, an individual driving while wearing such a device might be found liable in a civil tort action if he injures the person or property of another.

Opinion No.: 2002-167

Greathouse, G. Wayne
Interim Exec Dir, AR Teacher Retirement

RE:In the event of a vacancy on the ATRS Board of Trustees, do provisions of ACA 24-7-302 supersede Board policy, requiring the vacancy to be filled during the next regular election, or is the Board bound by the law to fill the vacancy before the next regular election? **RESPONSE:** The Board is bound by ACA 24-7-302 to fill the vacancy. This statute overrides the Board's regulation, which conflicts with the statute.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2002-168

Minton, Randy
State Representative

RE:Given the provisions of A.C.A. § 14-235-223, can Beebe Ordinance No. 2002-07, which adjusts the sewer rates charged users by the City of Beebe, be successfully challenged as invalid based upon the failure to provide pre-enactment notice and a public hearing? **RESPONSE:** The statute expressly excepts from the requirements of pre-enactment notice and a public hearing “pro rata” sewer rate adjustments. The question of whether a rate adjustment by amendment will indeed be “pro rata” in its effects is inherently factual and as such properly addressed by a court.

Opinion No.: 2002-169

Minton, Randy
State Representative

RE:Q1) Can a school district release the names, addresses, and telephone numbers of employees to political candidates and the general public? Q2) Is this (names, addresses, phone numbers) considered directory information under the Freedom of Information Act (FOIA)? **RESPONSE:** Q1) A school district must release the names of its employees. It can withhold home addresses and telephone numbers if it determines factually, pursuant to *Stilley v. McBride*, that this information could be used to harass the employees. Q2) This information (names, addresses, and telephone numbers of employees) is not “directory information”. The term “directory information” comes from the FERPA (federal law), and applies only to information about students, not employees.

Opinion No.: 2002-171

Scroggin, Preston
State Representative

RE:Can a member of a county library board sell books to the library he/she serves? Q2) If so, which stat-

utes need to be followed? **RESPONSE:** 1) No, not unless the quorum court has passed an ordinance pursuant to ACA 14-14-1202 (c.)(2)(A). 2) 14-14-1202.

Opinion No.: 2002-172

Cook, M. Olin
State Representative

RE:In light of the discussion contained in Op. Att’y Gen. 2001-395, should student growth fundings be included in the calculation of additional base funding? Q2) If student loss funding is included in total state and local funding per ADM, should student growth funding also be included in the same calculation? **RESPONSE:** Q1) Yes. See ACA sections 6-20-303(26) and 34 CFR 222.63(d) (1994) (the “federal range ratio.” Q2) Yes.

Opinion No.: 2002-177

Koch, Reggie

RE:Mr. Koch objects to the release of certain records in his personnel file pursuant to a Freedom of Information Act (FOIA) request, citing such release as a violation of his right to privacy since he contends that he was never suspended or terminated. **RESPONSE:** Decline to respond because previous release of records renders question moot, because of conflicting reports of whether there was a suspension or termination, and because of pending litigation.

Opinion No.: 2002-182

O’Fallon, Pola
c/o Ken Ferguson, HR Director

RE:Is the decision of the custodian of records to release this employee’s application for the position of housing inspector after redacting his/her social security and home phone numbers consistent with provisions of the Freedom of Information Act (FOIA)?

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RESPONSE: Yes, assuming that the custodian determined factually that the home phone number could be used to harass the employee.

Opinion No.: 2002-186

Heard, Chip
West Memphis City Fireman

RE:Subject of the records objects (under the Freedom of Information Act (FOIA)) to the city council's review of disciplinary actions in his personnel file from 1990 forward prior to making a decision about subject's eligibility for a promotion. **RESPONSE:** The disciplinary records are clearly "employee evaluation or job performance records." The opinion sets forth the applicable test for disclosing such documents.

Opinion No.: 2002-190

McGee, Ben
c/o Liberty Chevrolet

RE:Request for certification of the popular name and ballot title of a proposed amendment to repeal the anti-

lottery provisions found in the Arkansas Constitution. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2002-191

Thomas, Lynda K
Director, Conway Human Resources

RE:Is the City of Conway obligated to release full personnel records on several employees in response to a Freedom of Information (FOIA) request made by an attorney with letters stating that she represents the employees in question? Q2) Is the City obligated to recognize the union attorney representing these employees when it does not recognize the union? **RESPONSE:** 1) Yes, if she is the employees' "designated representative" for purposes of ACA 25-19-105 (c) (2). A letter from the attorney "approved by" the employee in question is prima facie evidence of authority to act as designated representative. 2) Declined to answer- not an foia question answerable pursuant to ACA 25-19-105(c)(3)(B).

ADOPTED RULES AND REGULATIONS

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

Executive Division

Docket No.: 109.00.02--002
Effective Date: 7/21/02
Contact Person: Patrick Patton
Telephone: (501) 682-5902

ADFA Investment Policy - General Fund

Docket No.: 109.00.02--003
Effective Date: 7/12/02
Contact Person: Patrick Patton
Telephone: (501) 682-5902

ADFA Bylaws

ARKANSAS MANUFACTURED HOME COMMISSION

Docket No.: 066.00.02--001
Effective Date: 7/21/02
Contact Person: Rhonda Howard
Telephone: (501) 324-9032

Regulations for Manufactured Homes

DEPARTMENT OF COMMERCE

State Plant Board

Docket No.: 003.11.02--003
Effective Date: 7/11/02
Contact Person: James Scott
Telephone: (501) 570-1159

**2001 Amendments to National Institute
of Standards & Technology (NIST)
Handbooks 44 & 130 and the Annual
Book of ASTM Standards *****

EDUCATION DEPARTMENT

School Improvement & Restructuring

Docket No.: 005.22.02--001
Effective Date: 7/13/02
Contact Person: Janinne Riggs
Telephone: (501) 682-4219

**ADE 149 - Repeal of Rules Establishing
the Academic Standards for Student
Participation in Competitive
Interscholastic Activities**

Docket No.: 005.22.02--002
Effective Date: 7/13/02
Contact Person: Janinne Riggs
Telephone: (501) 682-4219

**ADE 150 - Rules Governing the
Standards of Accreditation of Arkansas
Public Schools**

GAME & FISH COMMISSION

Docket No.: 002.00.02--006
Effective Date: 7/1/02
Contact Person: James Goodhart
Telephone: (501) 223-6327

ADOPTED RULES AND REGULATIONS

2002-2003 Hunting Regulations; Moratorium on Issuance of Wildlife Commercial Breeder/Dealer Permits for Deer, Elk, & Other Cervids for New Facilities; Guiding Prohibited on All Commission Owned or Controlled WMA's, WDA's and WRA's

HEALTH DEPARTMENT

Epidemiology

Docket No.: 007.15.02--001
Effective Date: 6/20/02
Contact Person: Robert Brech
Telephone: (501) 661-2297

Regulations Pertaining to Communicable Disease

Radiation Control & Emergency Management

Docket No.: 007.14.02--001
Effective Date: 6/30/02
Contact Person: Bernard Bevill
Telephone: (501) 661-2252

Regulations for Control of Sources of Ionization Radiation

HIGHER EDUCATION

Colleges & Universities Plans & Operations

Docket No.: 008.02.02--002
Effective Date: 7/21/02
Contact Person: Larry James
Telephone: (501) 450-3111

University of Central Arkansas 2002-2003 Parking & Traffic Regulations ***

HUMAN SERVICES

Child Care & Early Childhood Education

Docket No.: 016.22.02--001
Effective Date: 7/1/02
Contact Person: David Griffin
Telephone: (501) 682-8590

Registration Requirements for Registered Child Care Family Homes

Docket No.: 016.22.02--002
Effective Date: 7/1/02
Contact Person: David Griffin
Telephone: (501) 682-8590

Minimum Licensing Requirements for Child Care Family Homes

Docket No.: 016.22.02--003
Effective Date: 7/1/02
Contact Person: David Griffin
Telephone: (501) 682-8590

Minimum Licensing Requirements for Child Care Centers

Medical Services

Docket No.: 016.06.02--025
Effective Date: 8/1/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

ADOPTED RULES AND REGULATIONS

State Plan Transmittal #2002-013: Inpatient Hospital Services - Private Hospital Inpatient Adjustment

Docket No.: 016.06.02--026
Effective Date: 8/15/02
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Prosthetics Update Transmittal #55

Docket No.: 016.06.02--027
Effective Date: 7/20/02
Contact Person: Suzette Bridges
Telephone: (501) 683-4122

State Plan Transmittal #2002-008 -- Prescribed Drugs

Docket No.: 016.06.02--028
Effective Date: 7/20/02
Contact Person: Suzette Bridges
Telephone: (501) 683-4122

State Plan Transmittal #2002-007

Docket No.: 016.06.02--029
Effective Date: 8/1/02
Contact Person: Randy Helms
Telephone: (501) 682-1857

Amendment to Administrative Procedures of Nursing Home Quality Assurance Fee ***

PUBLIC SERVICE COMMISSION

Utilities Section

Docket No.: 126.03.02--004
Effective Date: 6/28/02
Contact Person: Diana Wilson
Telephone: (501) 682-5782

Call Center Operations - Customer Response Requirements

STATE MEDICAL BOARD

Docket No.: 060.00.02--005
Effective Date: 7/3/02
Contact Person: Peggy Cryer
Telephone: (501) 296-1802

New Regulation 26 - Informed Consent for Abortions

TOBACCO CONTROL BOARD

Docket No.: 175.00.02--001
Effective Date: 7/13/02
Contact Person: Charlie Davis
Telephone: (501) 682-9756

Cost Minimum Price Regulations ***

INSURANCE DEPARTMENT

02-035

(Order of Suspension)

In the Matter of the
Certificate of Authority of
**Connecticut Surety Company,
A Connecticut Company**

02-036

(Order of Suspension)

In the Matter of the
Certificate of Authority of
Acceleration National Insurance Company

02-037

(Order of Suspension)

In the Matter of the
Certificate of Authority of
Legion Insurance Company

02-038

(Order of Suspension)

In the Matter of the
Certificate of Authority of
Villanova Insurance Company

02-039

(Order of Continued Suspension)

In the Matter of the
Certificate of Authority of
Old Southwest Life Insurance Company

02-040

(Adoption Order)

In the Matter of the
Report of Examination of
Gibraltar National Insurance Company

02-041

(Order)

In the Matter of the
Perry James Reginelli

02-042

(Order of Suspension)

In the Matter of the
Certificate of Authority of
Legion Indemnity Company

INSURANCE DEPARTMENT

02-043

(Order of Suspension)

In the Matter of the
Certificate of Authority of

Pennsylvania Casualty Company

02-044

(Adoption Order)

In the Matter of the Report of a
Special Multi-State Examination of the

**National Council on Compensation Insurance, Inc.,
Boca Raton, FL**

02-045

(Order of Suspension)

In the Matter of the
Certificate of Authority of

Lawrenceville Property and Casualty Company

02-046

(Denial of License)

In the Matter of

Samuel Williams III

02-047

(Cancellation Order)

In the Matter of the
Certificate of Authority of

Protective National Insurance Company of Omaha

02-048

(Order)

In the Matter of

Dubisson Funeral Home

02-049

(Consent Order)

In the Matter of

James S. Sterling

02-050

(Consent Revocation)

In the Matter of

Lori Griffin

INSURANCE DEPARTMENT

02-051

(Consent Order)

In the Matter of

**Security Benefit Life Insurance Company
and Kansas City Life Insurance Company**

02-052

(Emergency Order)

In the Matter of

Donald Fay Moon

02-053

(Order of Suspension)

In the Matter of the

Certificate of Authority of

U.S. International Reinsurance Company

02-054

(Order of Suspension)

In the Matter of the

Certificate of Authority of

American Financial Security Life Insurance Company

02-055

(Continuing Order of Suspension)

In the Matter of the

Certificate of Authority of

Imperial Casualty & Indemnity Company

02-056

(Order of Continued Suspension)

In the Matter of the

Certificate of Authority of

The Home Insurance Company

ORDERS AND NOTICES

LEGISLATIVE AUDIT July 1, 2002

Agency	Period Covered
Department of Education	6/30/01
Fund Reconciliation Report	6/30/00
Fund Reconciliation Report	6/30/01
Department of Finance and Administration - Revenue Division - Office of Revenue Legal Counsel	6/30/01
Arkansas Livestock and Poultry Commission	6/30/01
Department of Arkansas Heritage - Arkansas Territorial Capitol Restoration Commission	6/30/01
Department of Arkansas Heritage - Central Administration	6/30/01
Department of Arkansas Heritage - Arts and Humanities Division	6/30/01
Department of Arkansas Heritage - Arkansas Commemorative Commission	6/30/01
Department of Arkansas Heritage - Delta Cultural Center	6/30/01
Department of Arkansas Heritage - Arkansas Historic Preservation Program	6/30/01
Department of Arkansas Heritage - Natural and Cultural Resources Council	6/30/01
Department of Arkansas Heritage - Arkansas Natural Heritage Commission	6/30/01
Office of the Governor	6/30/01
Governor's Mansion and Mansion Commission	6/30/01

ORDERS AND NOTICES

Office of the Lieutenant Governor	6/30/01
Department of Workforce Education - Federal Surplus Property	6/30/01
Arkansas Fire Protection Licensing Board	6/30/01
Health Services Agency	6/30/01
Liquefied Petroleum Gas Board	6/30/01
Department of Finance Administration - Revenue Division - Miscellaneous Tax Section - For the two-year period ended	6/30/01
Arkansas State Board of Nursing	6/30/01
Post Prison Transfer Board	6/30/01
State Securities Department	6/30/01
Arkansas Veterans Child Welfare Service	6/30/01
Veterinary Medical Examining Board	6/30/01
Workers' Compensation Commission	6/30/01
Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation (Private)	6/30/00
Central Interstate Low-Level Radioactive Waste Commission (Private)	6/30/01
Disability Determination for Social Security Administration (Private)	9/30/01
Arkansas Educational Telecommunications Network Foundation (Private)	6/30/01
Northwest Arkansas Economic Development District, Inc. (Private)	6/30/01
Arkansas State Medical Board (Private)	6/30/01
Arkansas Appraiser Licensing and Certification Board	6/30/01

ORDERS AND NOTICES

Office of the Lieutenant Governor	6/30/01
Arkansas Auctioneer's Licensing Board	6/30/01
Arkansas State Board of Barber Examiners	6/30/01
Arkansas Burial Association Board	6/30/01
Arkansas Cemetery Board	6/30/01
Arkansas State Dental Examiners	6/30/01
Arkansas State Board of Registration for Professional Engineers and Land Surveyors	6/30/01
State Board of Registration for Foresters	6/30/01
State Board of Examiners in Speech-Language Pathology and Audiology	6/30/01
Great Rivers Technical Institute	6/30/01

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