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ATTORNEY GENERAL OPINIONS

Opinion No.: 2002-021

Minton, Randy
State Representative

RE:Do current Arkansas statutes, particularly ACA 5-73-205(1), allow agents of Remington Arms who are professionals trained in firearm safety and handling, to remove machine guns from the business premises for testing and/or demonstration purposes? **RESPONSE:** I must respectfully decline to answer your question, which invites me to counsel a private business on compliance with state law. By statute, I am specifically prohibited from engaging in the private practice of law. A.C.A. § 25-16-701. Accordingly, I can only advise that your constituent pose its question to private counsel.

Opinion No.: 2002-072

Bryles, Steve
State Senator

RE:Is it permissible to conduct early voting out of the courthouse and in the election commission's office which is within one block of the courthouse? **RESPONSE:** "No," except in a county containing one hundred fifty thousand or more registered voters. See ACA 7-5-418.

Opinion No.: 2002-074

Hathorn, Mike
State Representative

RE:Is a deputy sheriff allowed/qualified to run for justice of the peace? Q2) If elected, can he continue to serve as deputy sheriff while at the same time serving on the quorum court? **ANSWER:** Q1) Yes. A.C.A. 21-1-207. Whether he is a qualified candidate is, however, a question of fact. Q2) No. This would violate constitutional (Ark. Const. art. 4, sec. 2) and statutory (14-14-502(b)) separation of powers. It

would also violate common law doctrine of incompatibility of offices.

Opinion No.: 2002-078

Scroggin, Preston
State Representative

RE:Can a circuit judge campaign as seeking "reelection" to a different division than the one where he/she is currently seated? Q2) In light of the passage of Amendment 80, what is the law concerning a judge representing him/herself to the electorate as "Circuit Judge, Juvenile Division"? Q3) Can a judge who was elected Circuit/Chancery Juvenile Judge Second Division prior to passage of Amendment 80, and presently handling all juvenile matters in the 20th Judicial District in the Second Division pursuant to Administrative Order No. 14, run for an entirely different position in Division 4 and represent him/herself to that electorate as Circuit Judge Juvenile Division? **RESPONSE:** I must respectfully decline to answer these questions, which apparently relate to a pending dispute among the participants in a judicial election. Although I am statutorily charged with rendering legal advice to members of the legislature and various state officers regarding certain matters of state law, this office has long refrained as a matter of policy from rendering opinions on issues that either are or appear destined to become the subject of litigation. As an officer of the executive branch of government, I consider it inappropriate to interpose my opinion in a dispute that, if not otherwise settled, should properly be submitted for judicial resolution.

Opinion No.: 2002-079

Verkamp, John Paul
State Representative

RE:Q1) In light of the fluctuating values of natural gas, is it proper for the Arkansas Assessment Coordination Division ("ACD") to set annual estimated values of natural gas produced at the well head? Q2) Is it

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proper for the ACD to establish the estimated value of gas produced at the well head based on a one-year average method in light of the volatility of gas prices? Q3) What authority exists for the ACD to make these estimates of gas prices and to create an estimate by using a one-year average? Q4) Should the ACD use a weighted average method by considering both the price and the volume sold during a specified period of time rather than an average price based upon 365 daily price levels? Q5) Is it legally proper for the ACD to provide for a millage roll back/reduction and revenue reduction for those school districts receiving debt service supplement payments from the Department of Education? RESPONSE: Q1-3) ACD has the authority to set gas prices. See ACA 26-24-102; 26-24-107; 26-26-1901. The ACD's methodologies are subject to judicial review, see ACA 26-24-106, but will be given considerable deference by the courts. Q4) I cannot answer this question because of its inherently factual nature. Q5) ACD's treatment of the debt service supplement in calculating the Am. 74 minimum school millage rate for purposes of the Am. 59 rollback will have some negative impact on the benefit intended by that supplement, but I cannot say as a matter of law that this treatment is illegal or that it negates the supplement.

Opinion No.: 2002-080

McCastlain, Lona Horn

Pros. Attorney, 23rd Judicial District

RE: Pursuant to provisions of ACA 16-13-326(c), what qualifies as "by agreement between the chancery court and quorum court"? Q2) How would such an agreement be created? Q3) What qualifies as "services" that may be provided using these funds? Q4) What is the definition of "discretion of the juvenile division of chancery court"? Q5) How is that discretion to be manifested? Q6) Does the juvenile division of chancery court have the final authority on what services are provided using this money and if so, does that ultimately conflict with the provision that requires an agreement between the juvenile division of chancery court and the quorum court regarding the use of these funds? ANSWER: Q1 & 2: The agreement

must reflect the concurrence of the juvenile division and the quorum court with respect to the services that will be provided. There is no required form or procedure for entering the agreement. Q3: Juvenile probation and intake services. Q4 & 5: The judge's discretion relates to the services that are actually provided, and he or she will determine how to manifest that discretion. Q6: There is no conflict. The judge ultimately decides what services will be provided, consistent with the agreement.

Opinion No.: 2002-086

Critcher, Jack

State Senator

RE: Did the Arkansas Game and Fish Commission ("AG&FC") have authority to enter into an agreement with the Arkansas Wildlife Federation ("AWF") whereby AG&FC issued a \$25,000 lump sum payment to AWF for an education grant? RESPONSE: Yes.

Opinion No.: 2002-091

Jeffress, Jimmy

State Senator

RE: Does Act 1596 of 2001 (A.C.A. 21-5-501 through 21-5-510) give the State of Arkansas the authority to remove previous contributions by State employees to the deferred compensation program from their current accounts (Valic and Diversified Investment Advisors) and deposit these monies with the new plan administrator (CitiStreet) without the consent of the individual state employees? RESPONSE: Yes. The new investment authority under Act 1596 (see 21-5-504) is clearly intended to apply retroactively, to current account balances, i.e., previously deferred compensation. The act is procedural in nature. Individual employees have no vested right in a particular investment vehicle. The State contracted for the annuities, and the contracts are subject to Master Agreements which affirm the State's option to transfer funds with-

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out the consent of plan participants or beneficiaries.

Opinion No.: 2002-092

Rodgers, Sandra
State Representative

RE:Generally, are meetings of boards and commissions of tax-supported institutions, operating with both state and local funding, subject to notice to the media under the Freedom of Information Act (FOIA), and are those meetings open to attendance by both the public and media under FOIA? Q2) Should the conduct of a meeting be subject to the FOIA if [that organization's] minutes are public records under the FOIA? Q3) Does the advisory status of the Board of Visitors to the UA System Board of Trustees constitute it as a committee or subcommittee of the UA System Board of Trustees under the terms of the merger agreement of 1996? Q3b) If so, does that committee or subcommittee status require the meetings of the Board of Visitors to be subject to the FOIA? Q4) Does the public funding support of the operations of the University of Arkansas Community College at Hope require that its Board of Visitors be subject to the requirements of the FOIA? **RESPONSE:** Q1) So long as the referenced "boards and commissions" are governmental and have decision-making power, their meetings must be open and announced. By contrast, if the boards and commissions function in a purely advisory capacity, no open-meetings requirement applies. Q2) If UACCH qualifies as a governmental entity, its records must be made available for public inspection. However, meetings of the UACCH Board of Visitors must be open and announced only if that body has decision-making power over UACCH operations. Q3) I do not believe the UACCH Board of Visitors qualifies as a "committee or subcommittee of the UA System Board of Trustees" of the sort at issue in Pickens, in which the court held that the FOIA necessarily applied because the committee at issue was itself composed of UA board members. In my opinion, the UACCH board, which contains no UA board members, will be subject to the FOIA's open-meetings requirement only if UACCH qualifies as a governmental entity and the Board has

decision-making power over UACCH affairs. Q4) Again, so long as UACCH qualifies as a governmental entity, it will be subject to the FOIA with respect to its records. However, establishing as much does not necessarily mean that the meetings of the UACCH Board of Visitors must be open and announced. As reflected in my previous responses, the FOIA's open-meetings requirement will apply only if the Board has decision-making power over UACCH affairs. This office is neither equipped nor authorized to make this factual determination.

Opinion No.: 2002-094

Hinshaw, Cathryn E.
Director, AR Fire & Police PRB

RE:Can the compliance mechanism in ACA 24-11-202 be used to compel fire departments to define their coverage areas using identifiable physical features as provided in ACA 24-11-810? **RESPONSE:** No. The compliance mechanism of ACA 24-11-202 was not intended to extend to compliance with ACA 24-11-810. Although a similar mechanism can be used to compel compliance with some aspects of ACA 24-11-810, it does not appear to be applicable to compel the provision of fire protection service to the newly defined area of coverage. Other mechanisms are available under other laws, however.

Opinion No.: 2002-097

Hausam, David C.
State Representative

RE:If you are a part-time deputy sheriff with the Benton County Sheriff's Office and also a member of the Arkansas Army National Guard, would you have to resign your commission with the Sheriff's Department if you won the election for justice of the peace? **RESPONSE:** Ark. law prohibits holding the positions of deputy sheriff and justice of the peace concurrently. See ACA 14-52-502(b); Ark. Const. Art. 4, 2; ACA 14-14-1205(c); ACA 14-14-1202(c) (1); and the common law principle of incompatibility. The fact that the indi-

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vidual in question is a member of the national guard does not change the analysis. The provisions of Art. 19, 26 of the Ark. Const. do not apply to allow this dual officeholding.

Opinion No.: 2002-098

Foster, H. G

Pros. Attorney, 20th Judicial District

RE:What is the appropriate action that should be taken in a case where an elected school board member has a prior criminal record from another state and that state has pardoned the individual but not expunged the record? **RESPONSE:** The eligibility of the school board member to retain his position depends upon the facts surrounding this conviction. A pardon will not restore eligibility to public office in Arkansas but an expungement can. If ineligibility exists, the prosecuting attorney may institute a quo warranto action, or an action may be instituted under ACA 16-118-105, the "usurpation statute."

Opinion No.: 2002-099

Foster, H. G.

Pros. Attorney, 20th Judicial District

RE:Can the county transfer property to a nonprofit, warm water therapy association as "like kind" consideration for the entity to receive funding from a grant for a water therapy facility to benefit those in need of such therapy for medical conditions? Q2) Can the county transfer property, for one-half of the sale price of each parcel sold, to a nonprofit, industrial corporation that will oversee all aspects of the sale of said property(ies) to individuals, companies, etc., for commercial/industrial purposes to benefit the expansion and growth of jobs and population of Search County, Arkansas? **RESPONSE:** Q1) No. As posed, your question recites as "consideration" flowing from the "warm water therapy association" to the county nothing more than the association's pledge to seek grant funds that would enable it to commence business operations. The purported contract in this instance thus

appears to involve nothing more than the county's donating land to what I presume is or would be a private, nonprofit corporation, whose ability to contract for services with private citizens for some reason depends on the donation. I believe that a court would decline to characterize this arrangement as a bona-fide contract supported by adequate consideration, instead deeming it a donation of public property to a private entity in violation of Ark. Const. art. 12, section 5. Q2) No. As described, the proposed transaction would entail an outright gift of the property by the county to an industrial development corporation – an action the Arkansas Supreme Court clearly declared violative of Ark. Const. art. 12, § 5 in *Halbert v. Helena-West Helena Industrial Development Corp.*, 226 Ark. 620, 625, 291 S.W.2d 802 (1956). See Opinion No. 1999-408.

Opinion No.: 2002-100

Nutt, Houston

Chair, AR Schools for Deaf & Blind Board

RE:May advisory, non-voting members of the Board of Trustees of the Arkansas School for the Blind and Deaf attend executive sessions that are held pursuant to ACA 25-19-106(c)(1) (FOIA)? **RESPONSE:** These members may attend closed sessions that are held pursuant to 25-17-208, the specific statute governing meetings of this Board. This statute will prevail over the FOIA, to the extent of any conflict. Section 25-17-205 establishes the service of these advisory nonvoting members. No distinction is made between such members and the "regular" members (see Ark. Const. amend. 33) for purposes of attendance at Board meetings.

Opinion No.: 2002-101

Gwatney, Bill

State Senator

RE:What is the area of responsibility for public schools regarding discipline and liability when physical alter-

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cations take place outside of the actual school boundaries or more than 50 feet from a school bus stop? RESPONSE: As a general proposition, school officials are responsible for maintaining discipline on school property and school buses and at school functions. A.C.A. §§ 6-18-505(b) and -506. School districts may further adopt disciplinary policies “to insure continued orderly operation of schools.” A.C.A. § 6-16-307. I believe school districts might discipline students for conduct not occurring on school property or a school bus or at a school function only if such conduct might reasonably be characterized as undermining the “orderly operation” of the school. With respect to a school’s potential liability for altercations occurring on or near school property, school districts enjoy qualified immunity from liability and suit pursuant to A.C.A. § 21-9-301, as do school employees from claims of negligence purportedly committed in the course of their duties. I also believe a school district is under no duty to protect pursuant to the Arkansas Civil Rights Act, A.C.A. § 16-123-101 et seq. Notwithstanding state-law qualified immunity, a school district might still face liability for a violation of federal law pursuant to 42 U.S.C. § 1983. However, district employees enjoy a qualified immunity from such liability unless their conduct violated clearly established law that a reasonable person would have known.

Opinion No.: 2002-102

Emigh, Barry L.

RE: Request for certification of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by non-profit organizations and permitting the operation of for-profit gambling. ANSWER: Rejected due to ambiguities in the text of the measure.

Opinion No.: 2002-103

Knickrehm, Kurt
Director, Dept of Human Services

RE: Q1) As to operations, maintenance, policies and

procedures with a human development center, does the Department of Human Services or the Developmental Disabilities Services Board have primary control? Q2) Does either the Director of the Department of Human Services or the Developmental Disabilities Services Board have the unilateral authority to terminate the employment of a superintendent of a human development center? RESPONSE: Q1) The Developmental Disabilities Services Board has primary control over the operations, maintenance, policies, and procedure within human development centers. See ACA 20-48-205, ACA 20-48-206, ACA 20-48-403, ACA 20-48-415. Q2) The Board of Developmental Disabilities Services, rather than the Director of the Department of Human Services, has the authority to terminate the employment of a superintendent of a human development center. See ACA 20-48-415.

Opinion No.: 2002-104

Baker, Gilbert
State Senator

RE: Pursuant to provisions of ACA 26-56-228 regarding distillate special fuels, does an officer of this state have authority, under the direction of the Director of the Department of Finance and Administration, to stop and search a motor vehicle to take fuel samples without a search warrant? RESPONSE: In my opinion, it is permissible to conduct warrantless administrative inspections of vehicles and tanks located on public or commercial property. However, case law suggests that it would be impermissible to conduct such inspections without a warrant on private property. Although A.C.A. §§ 26-56-228(a)(1)(D) and -228(a)(2)(C) might be read as impermissibly authorizing warrantless searches on private property, I understand that the authorities neither read nor apply the statute in this manner. Nevertheless, legislative clarification appears warranted. In my opinion, the statute at issue must further be read as precluding the Director of the Department of Finance and Administration or his designees from conducting warrantless inspections to investigate suspected criminal activity, as opposed to merely monitoring compliance with the tax laws.

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Opinion No.: 2002-105

Broadway, Shane
State Representative

RE:What is the legality of an appointed city treasurer residing outside the city limits of the city he or she is appointed to serve? **RESPONSE:** An appointed treasurer must be a “qualified elector” of the city. See Article 19, sec. 3 of the Arkansas Constitution. “Qualified elector” status depends on domicile and is a question of fact in each instance.

Opinion No.: 2002-106

Elliott, Dean
State Representative

RE:Does the Sherwood Fire District have authority to change the method it uses to assess property in the district? **ANSWER:** Generally, yes, assuming that the applicable reassessment procedures were followed. See A.C.A. 14-284-108 to 14-284-110. The District is a fire protection improvement district. It is supported through the levy of assessed benefits, which the commissioners must annually reassess. The statutes do not specify or otherwise address the method to be used in assessing benefits. This is a matter for the board of assessors, subject to judicial review. See 14-284-111.

Opinion No.: 2002-108

Wyatt, Leslie
President, Arkansas State University

RE:Pursuant to provisions of ACA 6-62-613, does ASU have authority to use interest income earned on funds in an endowment created by the proceeds of the sale of donated property for operating expenses of the University? **RESPONSE:** ASU does not have the authority to use the funds this way under ACA 6-62-613, but it may have the authority to do so under ACA 28-69-603 (part of the Uniform Management of Insti-

tutional Funds Act), depending on the wording of the endowment agreement. If the purposes of the endowment are stated broad enough in the endowment instrument to include the general operating expenses of the university, the interest income may be used for that purpose.

Opinion No.: 2002-109

Jones, Steven B.
State Representative

RE:Can a state-supported institution of higher education participate in a secured executive benefit plan like the one developed by MKA Capital Planning for possible participation by Mid-South Community College? If so, can such participation be confined to one employee (i.e., the president)? Q2) Would the contributions by Mid-South Community College be considered an allowable investment under the guidelines of ACA 19-4-805? Q3) Would the contributions by Mid-South Community College be subject to the maximum annual salary provisions of the Higher Education Expenditure Restriction Act (ACA 6-63-301 to -309)? **RESPONSE:** 1) No, not unless a statute authorizes the investment. 2) No. 3) The act in question does not prohibit employee benefit plans that are lawfully authorized, but the plan in question does not appear to be authorized by law.

Opinion No.: 2002-110

Roebuck, Tommy G.
State Representative

RE:Q1) Pursuant to the “School Choice Act,” is it lawful for the non-resident district to operate a bus inside the resident district when neither the parents nor the resident district have agreed? Q2) Does it matter whether the non-resident district has obtained permission from the Department of Education to operate a bus within the resident district? **RESPONSE:** Q1) To operate a bus inside a resident school district, the non-resident district must receive permission from

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the resident school district. However, a written agreement is not required. See ACA 6-18-206. Q2) The consent of the Department of Education must be obtained. See ACA 6-19-102(d).

Opinion No.: 2002-111

Barger, Carl
Superintendent, AR School for the Deaf

RE:Pursuant to provisions of ACA 6-17-1206, are teachers transferring from a public school system to the Arkansas School for the Deaf entitled to the leave that they earned but did not use? **RESPONSE:** Yes. See ACA 6-17-1206 and Office of Personnel Management Regulation No. 3.19.

Opinion No.: 2002-113

Nichols, Wayne
State Representative

RE:If a driver or a passenger in a borrowed vehicle is stopped by police and drugs are found in the vehicle, can the driver or passenger be charged with possession of drugs found in the vehicle? **RESPONSE:** Decline to answer due to pending litigation in Poinsett County.

Opinion No.: 2002-114

Beebe, Mike
State Senator

RE:What effect does the Supreme Court ruling in *Prepaid Solutions, Inc. v. City of Little Rock* have on Act 1231 of 1999 (the Chuck E. Cheese law)? **ANSWER:** This case does not affect Act 1231 of 1999 (A.C.A. 26-57-402 & 26-57-404). The Chuck E. Cheese law was not at issue, presumably because the particular gaming (gambling) device in question did not fall within the provisions of 26-57-402 pertaining to "amusement devices."

Opinion No.: 2002-115

Wood, Jim
State Representative

RE:Would the annexation of property upon which a liquor store is situated jeopardize the existing liquor license when the annexing entity is a "dry" city? **RESPONSE:** No. Previous law would have made the annexed territory "dry," but that law was repealed in 1995. See former ACA 14-40-407, repealed by Act 555 of 1995. The common law rule, which now governs, is that the local option result expressing the will of the people in the area remains attached to the property, unless lawfully changed, even when the territory is annexed into a political subdivision with a different status.

Opinion No.: 2002-116

Ryall, Robert
Chair, Lincoln Co Election Commission

RE:Pursuant to provisions of ACA 7-6-102(e) and the conclusion reached in *Op. Att'y Gen. 94-097*, is a candidate who files for office at party headquarters, but fails to complete his filing requirements at the county clerk's office before the 12:00 noon deadline (April 2, 2002), eligible to have his name printed on the ballot? **RESPONSE:** Yes, assuming he cures the failure in timely fashion. A.C.A. § 7-6-102(e), as amended by Act 912 of 1989, provides that a candidate who has failed to file a timely political practices pledge shall receive notice of this failure, return receipt required, within five days of the deadline and shall have a period of twenty days from receipt of the notice to file the pledge.

Opinion No.: 2002-117

Milum, Jim
State Representative

RE:Pursuant to provisions of ACA 26-35-601, does

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the county tax collector's office have authority to accept real estate taxes from a taxpayer, or someone acting on behalf of the taxpayer, without also collecting personal property taxes that are due? Q2) Does ACA 26-35-601 address whether a taxpayer must pay personal taxes due when paying pro-rata real estate taxes at the time of transferring ownership in the real estate, and does it make any difference if the taxpayer has additional parcels of real estate remaining in his ownership after he has transferred the parcel of real estate? RESPONSE: Q1) No, unless the payment of real estate taxes occurs in conjunction with a sale of the property or the party paying the real estate taxes is either a mortgagee or a purchaser at a foreclosure sale. If the payment of real estate taxes occurs upon sale of the property at issue, the collector must simultaneously collect any delinquent personal property taxes owed by the seller. Q2) If a property owner is simultaneously conveying and paying real estate taxes on property, A.C.A. § 26-35-601(c)(3) prohibits the collector from conditioning acceptance of the real estate taxes upon the seller's payment of property taxes due, as opposed to delinquent. By contrast, A.C.A. § 26-35-601(a) requires the collector to collect personal property taxes due at the same time as he collects real estate taxes on retained property.

Opinion No.: 2002-118

Emigh, Barry

RE:Request for certification of popular name and ballot title of proposed constitutional amendment to authorize bingo and raffles by nonprofit organizations, allow for the operation of for-profit gambling by Barry Lee Emigh, empower the General Assembly to operate a lottery, and for other purposes. RESPONSE: Popular name and ballot title rejected due to ambiguity in the text of the proposed measure.

Opinion No.: 2002-119

Robinson, Charles L., CPA.
Legislative Auditor

RE:May the board of a state-supported institution of

higher education retroactively reclassify part or all of tuition as an "athletic fee" and subsequently transfer the increased "athletic fee" to the athletic fund in order to remedy a deficit in the athletic fund? Q2) If the answer to Q1 is "yes," does the reclassification and transfer to the athletic fund violate ACA 6-62-803 or any other statutory or legal restrictions? RESPONSE: Q1) If one looks exclusively to the provisions of the Arkansas Code, in particular A.C.A. §§ 6-62-803 and -804, the answer to this question is "no." Moreover, although this question invites analysis in terms of Ark. Const. amend. 33, I do not believe this constitutional provision would preclude the legislature from placing restrictions on the disposition of tuition contained within the unrestricted educational and general fund, which is what the legislature did in enacting A.C.A. § 6-62-803. Q2) Given my response to question one, this question is moot.

Opinion No.: 2002-120

Mathis, Bob
State Representative

RE:Does Arkansas' Usury law apply to Generations, a Texas corporation which conducts business with contractors in Arkansas? RESPONSE: I must decline to answer as the question involves a purely private legal matter.

Opinion No.: 2002-121

Judy, Janice A.
State Representative

RE:Q1) Can an alcohol treatment program licensed by the Department of Health ("DOH") provide "treatment" in lieu of "education" for satisfaction of the requirements for reinstatement of a driver's license under ACA 5-65-104(h)(1) and (2) and a5-65-115(a)? Q2) Can an alcohol treatment program licensed by the DOH provide education or treatment services or both for offenders who have been recommended for either education or treatment services in their pre-

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sentence report under ACA 5-65-109? Q3) Can an alcohol treatment program licensed by the DOH provide a certificate of completion that would be honored by the Office of Driver Services as proof that a person whose license is suspended or revoked has satisfied the treatment or education requirement under ACA 5-65-104(h)(3) and (i)? Q4) Can an alcohol treatment program licensed by the DOH provide the presentencing report under ACA 5-65-109(a) and (b)? RESPONSE: Q1) Yes. Q2) A "treatment" program must be approved by the Bureau of Alcohol and Drug Abuse Prevention of the Department of Health. An "education" program must be prescribed and approved by the Drug Abuse Coordinating Council (which now performs the duties previously performed by the "Highway Safety Program"). Q3) See response to Q2). Q4) An alcohol treatment program can provide the presentencing report if it has been designated to do so by the Drug Abuse Coordinating Council, pursuant to ACA 5-65-109.

Opinion No.: 2002-122

Horn, Barbara
State Senator

RE: Pertaining to ACA 26-37-205, may a 'former owner' assign their rights to excess funds to a second party, thus allowing the second party to claim and collect the excess funds? Q2) Pertaining to ACA 26-37-204, what constitutes proof that land sold at a tax sale is 'nonexistent'? Q3) If land is purchased at a tax sale and is occupied by a tenant of the former owner, what means may the new owner use to evict the tenant of the former owner? Q4) What legal rights does the tenant have in the property? Q5) If land is purchased at a tax sale and is occupied by the former owner, what means may the new owner use to eject the former owner? RESPONSE: Previously refused to answer in Ark. Ops. Att'y Gen. Nos. 2002-051 and 2002-084. Advised requestor to seek private counsel.

Opinion No.: 2002-123

Allison, Jerry
State Representative

RE: Was the Director of the Arkansas Department of Higher Education correct in his opinion that provisions of ACA 6-62-804 do not prohibit an institution of higher education from designating an additional portion of existing tuition revenues as an athletic fee after the beginning of a semester? RESPONSE: No. See Opinion 2002-119.

Opinion No.: 2002-126

Huckabee, Mike
Governor

RE: Does A.C.A. 7-1-103(a)(2)(A) allow state employees, elected officials, appointees to boards and commissions, and/or constitutional officers to drive their private vehicles during office hours with campaign stickers or banners attached and visible? Q2) Does A.C.A. 7-1-103(6) prohibit state employees, elected officials, appointees to boards and commissions, and/or constitutional officers from driving their personal cars and claim mileage with campaign stickers or banners attached a visible? RESPONSE: Q1) A.C.A. § 7-1-103(a)(2)(A) only bars public servants from "devot[ing] any time or labor during usual office hours" to campaign activities. In my opinion, nothing in this statute would bar a public servant from displaying a campaign banner or sticker on his vehicle. Q2) Nothing in A.C.A. § 7-1-103(a)(6) would preclude a public servant from seeking mileage reimbursement for the use of his vehicle on public business simply because the vehicle displays a campaign banner or sticker.

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Opinion No.: 2002-129

McGee, Ben

RE:Request for certification of popular name and ballot title of proposed constitutional amendment to legalize and tax bingo, establish a statewide lottery, allow casino gambling in certain counties, and establish a state gaming commission. **RESPONSE:** Proposed popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2002-135

Clemons, Booker T.
State Representative

RE:Q1) Is there a law compelling the chief of police to fill all existing vacancies for which the civil service

commission has tested upon certification of an eligible list? Q2) Is there a law compelling the chief of police to fill subsequent vacancies that may have been created after the date of certification from the current eligibility list? Or should a new test be administered? Q3) Is there a law compelling the chief of police to fill all existing vacancies before the expiration of the eligibility list, even in situations where it is not feasible or warranted due to other circumstances? **RESPONSE:** Q1) No law compels the chief of police to fill all existing vacancies during the life of a particular eligibility list, or during any particular time frame. Q2) The chief can fill vacancies only with persons whose names have been placed on an eligibility list after having tested successfully for the particular vacant positions. Q3) No. See response to Q1).

ADOPTED RULES AND REGULATIONS

BOARD OF DENTAL EXAMINERS

Docket No.: 038.00.02--001
Effective Date: 5/23/02
Contact Person: Judy Rickard
Telephone: (501) 682-2085

Article VIII - Requirements for Licensure of Dentists and Dental Hygienists

Docket No.: 038.00.02--002
Effective Date: 5/23/02
Contact Person: Judy Rickard
Telephone: (501) 682-2085

Article IX - Licensure by Credentials for Dentists and Dental Hygienists

BOARD OF EXAMINERS IN PSYCHOLOGY

Docket No.: 074.00.02--001
Effective Date: 5/1/02
Contact Person: Janet Welsh
Telephone: (501) 682-6168

Rules and Regulations Revisions ***

BOARD OF OPTOMETRY

Docket No.: 069.00.02--002
Effective Date: 5/23/02
Contact Person: Howard Flippin
Telephone: (501) 268-3577

Article IX: Chapter 5 - Prescribing of Controlled Substances

DEPARTMENT OF COMMUNITY CORRECTION

Docket No.: 159.00.02--002
Effective Date: 5/9/02
Contact Person: Russ Carter
Telephone: (501) 682-9572

RECINDED: Administrative Regulation AR 3.19 - Employee Training

DEPARTMENT OF CORRECTION

Docket No.: 004.00.02--001
Effective Date: 4/29/02
Contact Person: Larry Norris
Telephone: (870) 267-2000

AR 831 - Disciplinary Rules and Regulations

HUMAN SERVICES *Administrative Services*

Docket No.: 016.14.02--003
Effective Date: 7/1/02
Contact Person: Brenda Jackson
Telephone: (501) 682-6250

Social Services Block Grant Program Manual (SBG 02-2)

ADOPTED RULES AND REGULATIONS

Docket No.: 016.14.02--004
Effective Date: 7/1/02
Contact Person: Brenda Jackson
Telephone: (501) 682-6250

**Social Services Block Grant
Comprehensive Services Program Plan
(CSPP 02-02)**

Docket No.: 016.14.02--005
Effective Date: 5/15/02
Contact Person: Bill Tyler
Telephone: (501) 682-9631

Policy 1084 - Employee Discipline

Docket No.: 016.14.02--006
Effective Date: 5/19/02
Contact Person: Bill Tyler
Telephone: (501) 682-9631

**Policy 1080 - Employment
Disqualification - Criminal &
Maltreatment History Checks**

Children & Family Services

Docket No.: 016.15.02--003
Effective Date: 5/17/02
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

**Family Services Policy and Procedure
Manual, various forms, PUB-052 and
PUB-357**

County Operations

Docket No.: 016.20.02--005
Effective Date: 4/26/02
Contact Person: Sandra Miller
Telephone: (501) 682-8250

**Emergency Rule: TEA Program Policy
Sections 5130-5145; ESS Employment
Bonus & Transportation Assistance -
Title IV-A State Plan Section 6.5.1, 6.5.2
and Form DCO-177**

Medical Services

Docket No.: 016.06.02--017
Effective Date: 7/1/02
Contact Person: Tommy Wingard
Telephone: (501) 682-6117

**Section 560 - Long Term Care Provider
Manual (nursing home licensure
regulations) -- Dietetic Services**

Docket No.: 016.06.02--018
Effective Date: 5/1/02
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

ARKids First-B Update #10

Docket No.: 016.06.02--019
Effective Date: 5/1/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

ADOPTED RULES AND REGULATIONS

State Plan Transmittal #2002-002 and Official Notice DMS-2002-U-1 -- Revisions in Visual Care for Medicaid Recipients

Docket No.: 016.06.02--020
Effective Date: 5/12/02
Contact Person: Randy Helms
Telephone: (501) 682-1857

Non-State Public Nursing Facility Monthly UPL Adjustment

Docket No.: 016.06.02--021
Effective Date: 10/1/02
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Official Notice DMS 2002-N-3 -- PCP Referral for Individuals Under Age 21

Docket No.: 016.06.02--022
Effective Date: 10/1/02
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Official Notice DMS-2002-AR-7, DMS-2002-C-2, DMS-2002-DD-2, DMS-2002-YY-4, DMS-2002-SB-2

Docket No.: 016.06.02--023
Effective Date: 5/20/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2002-004

Docket No.: 016.06.02--024
Effective Date: 5/20/02
Contact Person: Binnie Alberius
Telephone: (501) 682-8361

State Plan Transmittal #2002-010

LIVESTOCK & POULTRY COMMISSION

Docket No.: 125.00.02--007
Effective Date: 5/14/02
Contact Person: Phil Wyrick
Telephone: (501) 907-2400

Emergency Rule: To Prevent the Introduction of Chronic Wasting Disease (CWD) in Cervids

POLLUTION CONTROL & ECOLOGY *Mining Division*

Docket No.: 014.06.02--001
Effective Date: 5/20/02
Contact Person: James Stephens
Telephone: (501) 682-0809

Regulation #15 - Open-Cut Mining and Land Reclamation Code

ADOPTED RULES AND REGULATIONS

PUBLIC SERVICE COMMISSION

Utilities Section

Docket No.: 126.03.02--002
Effective Date: 5/7/02
Contact Person: Robert Booth
Telephone: (501) 682-5685

Natural Gas Procurement Plan Rules

Docket No.: 126.03.02--003
Effective Date: 5/23/02
Contact Person: John Bethel
Telephone: (501) 682-1794

Extension of Facilities Rules

STATE MEDICAL BOARD

Docket No.: 060.00.02--003
Effective Date: 5/9/02
Contact Person: Peggy Cryer
Telephone: (501) 296-1802

Regulation 2(8) -- Requiring Minimum Standards for Establishing Physician Patient Relationship

TOWING AND RECOVERY BOARD

Docket No.: 157.00.02--001
Effective Date: 4/29/02
Contact Person: Cynthia Lauen
Telephone: (501) 305-2529

Emergency Rule: Rule 8.2 and 8.4 -- Fees

INSURANCE DEPARTMENT

***** No Insurance Orders were filed with the *Arkansas Register* during the past filing period for placement in this edition.**

ORDERS AND NOTICES

LEGISLATIVE AUDIT April 29, 2002

Agency	Period Covered
State Plant Board	12/30/01
Arkansas War Memorial Stadium Commission (Private)	6/30/00
Arkansas War Memorial Stadium Commission (Private)	6/30/01
Department of Finance and Administration - Revenue Division - Office of Management Services Cashier Section	6/30/01
Department of Finance and Administration - Revenue Division - Office of Driver Services	6/30/01
Department of Finance and Administration - Revenue Division - Individual Income Tax Section - For the two-year period ended	6/30/01
Department of Finance and Administration - Revenue Division - Office of Field Audit - Collection Section	6/30/01
Arkansas Revenue Department Building Commission	6/30/01
Arkansas Abstractors Board of Examiners - For the two-year period ended	6/30/01
Arkansas State Board of Cosmetology - For the two-year period ended	6/30/01
Department of Higher Education	6/30/01
Arkansas Public Service Commission	6/30/01
Arkansas Real Estate Commission	6/30/01

ORDERS AND NOTICES

Arkansas Development Finance Authority (Private)	6/30/01
Arkansas Employment Security Department (Private)	6/30/01
East Arkansas Planning and Development District, Inc. (Private)	6/30/01
Forest Echoes Technical Institute	6/30/01



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