THE ARKANSAS REGISTER

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Secretary of State
State Capitol, Room 026
Little Rock, AR 72201-1094

Editor .......................... Jon Davidson
Published by .......................... Secretary of State

The Arkansas Register is an official publication of the State of Arkansas. It contains administrative rules and regulations adopted by state agencies, boards and commissions pursuant to Act 434 of 1967, as amended. The Arkansas Register also includes Attorney General opinions, notice of legislative audit reports and insurance orders. The subscription rate is $40 per year or $3.50 a copy, distributed monthly, postpaid within the United States.
**ATTORNEY GENERAL OPINIONS**

**Opinion No.: 2002-137**

Bookout, Paul  
*State Representative*

**RE:** Pursuant to provisions of ACA 14-137-101, can a private school utilize a public facilities board to sell bonds? **RESPONSE:** With respect to any particular institution, only a court could finally answer this question based upon a review of all the attendant facts. However, assuming the revenue bond proceeds were devoted to effecting capital improvements at a private educational facility, I believe the relevant law might support this means of financing. In explanation of the fact that this conclusion is tentative, I should note that the relevant Arkansas case law deals only with the financing of a private institution of higher education. There is some question whether the same standard applies to institutions of primary and secondary education. Moreover, if the school were a sectarian or parochial institution, I believe the establishment clause would dictate that the public facilities board avoid any conduct or earmarking of bond revenues that would amount to the sponsorship of religious indoctrination. Finally, as most recently acknowledged in Steele v. Industrial Development Board of Metropolitan Government of Nashville, 2002 FED App. 0274P (6th Cir., August 14, 2002), the law is unclear as to whether a bond issue of the sort proposed would be permissible if the private school could be characterized as “pervasively sectarian.”

**Opinion No.: 2002-207**

Cleveland, Herschel W.  
*State Representative*

**RE:** How should police officers interpret and enforce provisions of ACA 27-36-215, regarding illumination of vehicle license plates? **RESPONSE:** The statute should be interpreted to mean that colored lights cannot be used to illuminate license plates, and that white lights must be used, but cannot be so bright as to render the license plate illegible at less than 50 feet.

**Opinion No.: 2002-211**

Hoofman, Cliff  
*State Senator*

**RE:** Is it appropriate for a sheriff’s office to charge defendants a fee to pick up a warrant at the sheriff’s office and be formally charged with an offense? **RESPONSE:** No. Warrant fees and other costs cannot be collected until after the court has entered a judgment against the defendant. See ACA 16-90-113 (requiring that the judgment include costs).

**Opinion No.: 2002-216**

Greathouse, G. Wayne  
*Interim Exe Dir; AR Teacher*

**RE:** Does the Teacher Retirement System have authority to legally indemnify members of the Real Estate Committee, created by the Board of Trustees,
against legal liability for errors and omissions committed in the regular scope of their duties assuming that such indemnification specifically provides that there will be no indemnity for possible liability of Real Estate Committee members to the System itself?
RESPONSE: As an initial matter, there is some question whether the trustees were authorized to form the Committee in the first place. However, absent some directly contrary provision in the ATRS trust, given the provisions of ACA 24-7-303 and the powers of delegation set forth in section 8 of Act 151 of 2001, codified at ACA 24-2-601 et seq., I believe forming the Committee was probably permissible. However, Act 151 exposes all agents of the trustees to potential liability for failure to exercise reasonable care in performing their duties. Given the directive that an investment delegate be held to account for lapses in professional performance, I do not believe the trustees may indemnify delegates for liability. I further believe even an advisory committee would be theoretically liable for lapses in rendering advice. Given this conclusion, I need not discuss whether indemnification would be objectional on constitutional grounds.

Opinion No.: 2002-219

Mahony, Jodie
State Senator

RE:Pursuant to provisions of Ark. Const. Amend. 79, does the property relief for the principal residence of a person sixty-five years or older now apply to taxpayers in Union County? If it does not, when will be the first year for the relief to apply? RESPONSE: This tax relief will become applicable in Union County on the Jan. 1st following completion of the adjustments required by Section 2 of Amendment 79.

Opinion No.:2002-224

Priest, Sharon
Secretary of State

RE:What is the result of a circuit judge election held pursuant to ACA 7-10-101 et seq. in a multi-county district when one of the county election commissions inadvertently omits an unopposed circuit judge candidate from the nonpartisan judicial general election ballot? Q2) What is the result of a circuit judge election held pursuant to ACA 7-10-101 et seq. in a single-county district when the county election commission inadvertently omits an unopposed candidate from the nonpartisan general election ballot? Q3) Is it permissible for an unopposed circuit judge candidate to be listed as an unopposed candidate on the November general election ballot or the November runoff ballot if his or her name was inadvertently omitted from the May 21 ballots? Q4) If the answer to Q3 is "no," what is the appropriate action for the election commission to take with regard to such a position? ANSWER: Q1) It is likely that the defect will not materially affect the election results. See A.C.A. 7-10-102; 7-5-208; 7-5-315. Q2) This would likely result in failure to elect the unopposed candidate, because he did not receive a majority vote as required by 7-10-102 and Ark. Const. Amendment 80. The county board of election commissioners probably lacks authority to certify or declare his election. The incumbent will thus hold over as a de jure officer under Ark. Const. Article 19, section 5.; see Op. 2000-139. Q3) No. An election cannot be held on a day other than that fixed by law. The election would probably be void and the results a nullity. Q4) There is no available action for the board.

Opinion No.:2002-227

Emigh, Barry

RE:Request for approval of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, providing for the operation of gambling by Barry Lee Emigh and his transferees, empowering the Legislature to operate lotteries, and for other purposes. RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.
Opinion No.:2002-228

Jeffress, Gene
State Representative

RE: Are "any" documents in the possession of the Governor’s office FOI-exempt as "working papers"? Q2) Are documents, scored and evaluated in one branch of state government (i.e., ADED), able to be totally shifted to another branch (i.e., the Governor's office) after initial compilation in the former and thereby gain an FOI exemption? Q3) Are the requested DRA Grant proposals/applications scorings and evaluations FOI-exempt? Q3a) If located at ADED? Q3b) If located in the Governor's office? RESPONSE: 1) "No." 2) This will depend upon the facts of a particular case, but as a general matter, the FOIA cannot be thwarted by the transfer of open public records to an agency with an FOIA exemption; 3a) No, they are not exempt if located at ADED; 3b) Yes, the documents are exempt if located at the Governor's office. The question of whether the transfer of records violates the FOIA is a factual one. A separate statute, however, ACA 15-4-203(b)(1), appears to require ADED to keep a copy of the records in question, where they would be open to public inspection.

Opinion No.:2002-229

Baker, Gilbert
State Senator

RE: Q1) Can a city that has enacted a one-cent sales tax, repeal that tax in order to participate and receive a pro rata share of the county's one-half cent sales tax? Q2) If the city does repeal its one-cent sales tax, can it later re-adopt the tax? Q3) Would the city have to submit the new sales tax to the voters or could it be done by ordinance? RESPONSE: The city need not repeal its tax in order to share in the proceeds of county taxes enacted under any authority other than ACA 26-74-401 et seq. If the county tax was enacted under ACA 26-74-401 et seq., the effect of the city's repeal of its tax would be to allow it to share in the proceeds of the county tax. The city can repeal any tax the proceeds of which have not been pledged for lease rentals or bonds. It can also re-enact the tax, but if it does so, it must follow the same procedures as for a first-time enactment of the tax, including elections (except in the case of the taxes authorized by ACA 26-75-601 et seq., which do not require an election).

Opinion No.:2002-230

Womack, Shawn A.
State Representative

RE: Can a municipal water department charge a higher rate to customers living outside the city limits rather than living inside city limits? RESPONSE: Yes, if a reasonable basis exists for charging the higher rate. ACA 14-234-110(b)(3).

Opinion No.:2002-231

House, Don R.
State Representative

RE: Q1) Must a county circuit clerk maintain in bound books, deeds, mortgages, or other instruments in writing, concerning lands and tenements, i.e., grantors and grantees, etc.? Q2) May a county circuit clerk discontinue recording in “bound written books” and use for recording purposes electronic computer recordings exclusively? RESPONSE: Q1) The clerk need not maintain “bound books”, (as referenced in ACA 14-15-401), but rather may maintain electronic records. See ACA 13-4-301 et seq. Q2) Yes. See Q.1.

Opinion No.:2002-232

Milligan, Jimmy "Red"
State Representative

RE: Does Article Four (4) of the enclosed Marion
County Budget Ordinance violate the separation of powers doctrine? ANSWER: No. It is properly within the appropriation power that vests exclusively in the quorum court. See A.C.A. 14-14-907. Although the use of line item appropriations can be problematic, I have been provided no facts in this instance indicating any encroachment on the executive branch (re. administering expenditures).

Opinion No.:2002-235

Green, Robin F.
Benton County Attorney

RE:Q1) Pursuant to provisions of the Freedom of Information Act (FOIA), should the custodian of records release records of complaints or grievances by jail inmates alleging inappropriate behavior by a former Benton County jailer along with any reports or disciplinary actions in response thereto, since the jailer in question resigned after an internal affairs investigation was conducted in response to allegations made by an inmate? Q2) Also, should the former employee be notified in advance of the release of these records as required by the FOIA prior to release of personnel records in other circumstances? RESPONSE: The complaints/grievances are personnel records if they were not created at the behest of the employer, and should be released. Any disciplinary records created by the employer in response to the complaints are employee evaluation records and should not be released since the employee was not suspended or terminated. The former employee should be notified.

Opinion No.:2002-236

Judy, Jan A.
State Representative

RE: Should the Fayetteville Police Pension Fund Board of Trustees pay the surviving spouse a police officer the “amount equal to the pension” (90% of the salary) in accordance with ACA 24-11-425(a), or should the Board follow the limiting language of ACA 24-11-425(f), which states that the sum total of the pension to be paid the surviving spouse “shall not exceed one-half (1/2) of the salary” of the police officer at the time of his or her death”? RESPONSE: The Board should following the limiting language of (f).

Opinion No.:2002-238

Ward, Janet Troutman
Pulaski County Assessor

RE: Is the decision of the custodian of records to release leave and time sheets for all employees in the Reappraisal Department of the Assessor’s office consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: In my opinion, the requested documents comprise personnel records subject to disclosure under the FOIA.

Opinion No.:2002-240

Baker, Gilbert
State Senator

RE: Is a prize give-a-way contest (contest proposal attached), which is being used as a marketing device to attract customers, a violation of the lottery or gaming laws of Arkansas? RESPONSE: This contest, as described, does not violate gaming or lottery laws, because it does not involve any risk on the part of the participants.

Opinion No.:2002-242

Emigh, Barry

RE: Request for certification of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, empowering the General Assembly to operate lotteries and authorizing Barry Lee Emigh or his transfer- ees to operate gambling. RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.
ATTORNEY GENERAL OPINIONS

Opinion No.: 2002-243

Milum, Jim
State Representative

RE: Q1) Can the A&P Commission purchase or own property? Q2) Would the City of Harrison have to be on the deed if the A&P Commission purchased a building? Q3) If the City of Harrison does have to be named on a deed, could the City and the A&P own the building jointly or would the A&P Comm’n be a representative of the City in that instance? Q4) Other than paying cash for a building, what options would the City or the A&P Comm’n have regarding financing the sale? RESPONSE: Q1) No. A&P Commissions are not statutorily granted the authority to purchase and own property. Q2) Moot. Q3) Moot. Q4) The city has various options, including Am. 78, Am 65, Am. 62, ACA 14-164-301 et seq., ACA 14-164-401 et seq., ACA 26-75-201 et seq., ACA 26-75-301 et seq., ACA 26-75-601 et seq.

Opinion No.: 2002-248

Hudnell, Lance
Deputy City Manager

RE: Request for approval of an interlocal cooperation agreement between Garland County, Arkansas and the City of Hot Springs to construct and maintain the Garland County Courts Building located in Hot Springs, Arkansas. RESPONSE: Approval denied. Agreement must specify the manner of disposal of jointly-owned property.

Opinion No.: 2002-251

Woodruff, Carla
C/o Ken Ferguson, Dir of Human

RE: Is the decision of the custodian of records to release the employee’s original job application after redacting any exempt information consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: Yes.

Opinion No.: 2002-255

Shapiro, Belvedresi & c/o Carol Billings, City Att’y

RE: Was the decision of the custodian of records to release the original employment applications for city law enforcement officers, with exempt information redacted, consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: Yes.

Opinion No.: 2002-256

Ward, Janet Troutman
Pulaski County Assessor

RE: Is the decision of the custodian of records to release “a copy of a report detailing sick and vacation leave available, accrued and taken by date for all employees of the Assessor’s office from Jan. 1, 2002 to Aug. 23, 2002,” consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: Yes.

Opinion No.: 2002-257

Witherell, Stacey
Empl Svrs Mgr, LR Human

RE: Is the decision of the custodian of records to release the requested salary and employment information, after redacting all personal information from the records, consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: Yes.
Opinion No.: 2002-263

Porter, Twana
Administrator, Office of Personnel

RE: Is the decision of the custodian of records to withhold disclosure of decisions regarding the employment and termination of a former DHS employee, citing absence of a compelling public interest, consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: The result is correct, but the basis for withholding the records from release should be that the termination in question was reversed.
# ADOPTED RULES AND REGULATIONS

## APPRAISER LICENSING & CERTIFICATION BOARD

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**Revised Rules and Regulations**

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**Part Two Regulations -- 1. Professional Conduct, 2. Unprofessional Acts(q)**

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## DEPARTMENT OF HEALTH

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## EDUCATION DEPARTMENT

**Attorney’s Office**

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**ADE 152 - Rules for Submitting a Petition for a Declaratory Order Issued by the State Board of Board of Education**

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**Regulation - In-Lieu-of-Tax Payments**

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**Small Business Tax Accounting - Use of Accrual Basis and Cash Basis Accounting Methods**

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**2002-2003 Statewide and WMA Hunting Regulations; Approved Hunting Seasons and Code Proposals; Late Migratory Bird Hunting Regulations; 2003 Fishing Regulations; Increase Non-Resident Trout Permit**

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Rulebook: Section VI.A.1 - Continuing Effect of a Permit of Approval

**HIGHER EDUCATION**

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**Parking and Traffic Regulations Handbook for Arkansas State University Academic Year 2002-2003**

**HUMAN SERVICES**

**County Operations**

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**Policy Directive, MS 02-07 - ARSeniors Medicaid Program**

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Medical Services

Docket No.: 016.06.02--032
Effective Date: 10/15/02
Contact Person: Suzette Bridges
Telephone: (501) 682-4122


Docket No.: 016.06.02--033
Effective Date: 10/1/02
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

Transportation Update Transmittal #55

Docket No.: 016.06.02--034
Effective Date: 9/18/02
Contact Person: Tommy Wingard
Telephone: (501) 682-6117

Medical Need Determination Process for Nursing Home Applicants +

INSURANCE DEPARTMENT

Docket No.: 054.00.02--006
Effective Date: 9/19/02
Contact Person: Sara Farris
Telephone: (501) 371-2820

Rule & Regulation #77 - Standards for Safeguarding Customer Information

Docket No.: 054.00.02--007
Effective Date: 9/19/02
Contact Person: Sara Farris
Telephone: (501) 371-2820

Rule & Regulation #76 - Arkansas External Review Regulation

++ Mistakenly left out of the print edition - the office of the Register regrets the error.
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Peggy Jenice Vance aka Peggy Jenice Julian

02-066
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In the Matter of the Certificate of Authority of
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02-067
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*September 3, 2002*

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<tr>
<td>Treasurer of State</td>
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<td>Counties and Municipal Aid</td>
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<td>Arkansas State Board of Architects</td>
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<td>Advisory Committee for Registration of Landscape Architects</td>
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<td>Arkansas Beef Council</td>
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<tr>
<td>Capitol Zoning District Commission</td>
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<tr>
<td>Arkansas Ethics Commission</td>
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<td>Name</td>
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<td>Arkansas Parks and Tourism - History Commission</td>
<td>6/30/01</td>
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<td>Department of Information Systems</td>
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<td>Arkansas Livestock Show Association</td>
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<td>Arkansas State Board of Physical Therapy</td>
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<td>Arkansas State Board of Private Career Education</td>
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<td>Professional Bail Bondsman Licensing Board</td>
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<tr>
<td>Arkansas Public Defender Commission (Private)</td>
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<tr>
<td>Arkansas Soybean Promotion Board</td>
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<tr>
<td>Central Arkansas Planning and Development District (Private)</td>
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Secretary of State
Arkansas Register Division
State Capitol Building, Room 026
Little Rock, AR 72201-1094

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