



Arkansas
Secretary
Of State

Charlie
Daniels

The Arkansas Register



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**Secretary of State
State Capitol, Room 026
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THE ARKANSAS REGISTER

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2003-019

Malone, Percy
State Senator

RE:Q1) Does the term “costs” as it is used in ACA 16-90-113(a) and (b) include warrant fees and/or mileage? Q2) Does the judge have discretion in including the costs in the judgment or are the costs mandatory? Q3) If the judge does not include the costs in a final judgment and the defendant fails to pay the costs, does the city have authority to bill the county treasurer for its costs? **RESPONSE:** Q1) Yes. Q2) The costs are mandatory, and the judge does not have discretion not to include them in the final judgment. Q3) No. The county can be held liable for these costs only if they were included in the judgment, the defendant has failed to pay, and execution has been issued against the defendant’s property, and the defendant’s property was insufficient to pay the costs. See ACA 16-92-101 et seq.

Opinion No.: 2003-020

Hill, Jim
Superintendent, AR School for the Blind

RE:Do provisions of S.B. 45, specifically Section 8, Subsections (f), (g) and (h), conflict with Ark. Const. amend. 33 or any other constitutional laws which establish and grant powers to the Arkansas Schools for the Blind and Deaf Boards and the respective superintendents of the two schools? **RESPONSE:** I do not believe the referenced subsections of S.B. 45, which propose to transfer into a newly created Department of Education the Arkansas School for the Blind, the Arkansas School for the Deaf, and these two institutions’ board of directors, conflict with the provisions of Ark. Const. amend. 33. S.B. 45 expressly acknowledges in its text that Amendment 33 will control over any contrary provision of the proposed legislation. Vested control over these institutions will consequently remain in their Board. However, I should note that Amendment 33 does not

apply to the superintendents, whose range of authority is defined by statute or Board resolution.

Opinion No.: 2003-025

Stovall, Bill H., III
State Representative

RE:Is the attached proposed House Bill 1030 constitutional, specifically the amnesty provision that relieves of Arkansas sales and use tax liability owners of truck tractors or semitrailers registered through third parties in Oklahoma? **RESPONSE:** Although I appreciate the legislature’s eagerness to spare certain Arkansas truck and semitrailer owners from incurring a tax liability they had not anticipated, I consider the proposed legislation constitutionally suspect. As a basis for concluding that no Arkansas use tax liability should attach to vehicles registered through third parties in Oklahoma, the drafters of H.B. 1030 attempt to define the intention of the 1949 legislature in enacting the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, A.C.A. § 27-14-101 et seq. In my opinion, this effort to resolve a pending dispute by interpreting past legislation amounts to an impermissible effort by the legislature to make a judicial determination, thus violating the principle of separation of powers set forth in Ark. Const. art. 4, §§ 1 and 2. Moreover, irrespective of whether the commercial vehicles were registered through third parties in Oklahoma, if a trier of fact were to determine that H.B. 1030 attempts to forgive what would otherwise be matured Arkansas sales or use tax liability, I believe the court would strike the amnesty provision as special legislation prohibited by Ark. Const. amend. 14 and, possibly, Ark. Const. art. 5, § 25. In my opinion, any legislative effort to forgive matured corporate sales or use tax liability would further constitute an impermissible discharge of debt in violation of Ark. Const. art. 12, § 12. Finally, I should note that only a finder of fact can determine on a case-by-case basis whether an Arkansas use tax liability has attached to commercial equipment. The judiciary constitutes the proper forum in which to make any such determination.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2003-026

Emigh, Barry

RE:Request for certification of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, authorizing for-profit gambling as specified, empowering the General Assembly to operate lotteries and pass legislation without benefit of session, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2003-028

Bisbee, David & Weaver
State Senator/State Representative

RE:Q1) Was First Sergeant Gibson a state employee or a federal employee at the time he was receiving annual training at Fort Chaffee? Q2) Does the Arkansas Claims Commission ("Commission") have jurisdiction to hear claims against the Arkansas Military Department filed by a soldier who is on annual training and who receives payment for that training from the federal government? Q3) If the Commission does not have jurisdiction, can the claimant seek redress under Workers' Comp. law? Q4) Is the state legally responsible for personal injury or death of a member of the Arkansas National Guard when the injury or death occurs during the annual training mandated by the U.S. Dept of the Army? **RESPONSE:** Q1) A federal employee. Q2) The answer to this question will depend ultimately on the employment status of the individuals whose actions are alleged to have given rise to the claim. If they were state employees, the Commission has jurisdiction. If they were federal employees, it does not. The claim is also not excluded from the the Commission's jurisdiction because it does not arise under Workers' Comp. Law, since 1st Sgt. Gibson was a federal employee at the time in

question. Q3) No. Q4) The answer to this question will turn on the resolution of various questions of fact that I am not authorized to answer.

Opinion No.: 2003-030

Hathorn, Mike
State Representative

RE:Q1) Does Sec. 1 of HB 1213, which allows certain classes of nursing home facilities to opt-out of the Patient's Recovery Fund created by the bill, offend the equal-protection clauses of either Constitution? Q2) Does allowing facilities owned or operated by "church affiliated organizations as defined by the Board" to opt out violate the U.S. Const. amend. 1, or the religious freedom provisions of the Ark. Constitution? Q3) Does Sec. 1 of HB 1213, which places limitations on punitive damage awards, violate the separation of powers clauses, the right-to-jury trial provision, the equal protection clauses, open courts and certain remedy provisions, or the due-process provisions of the Arkansas or U.S. Constitutions? Q4) In light of the fact that the pleading and proof provisions of HB 1213 may work changes on the ARCP and the AR Rules of Evidence, are these provisions valid or superceded by the Court Rules? Q5) Would the limitations period or statute of repose in HB 1213 violate the equal protection, open courts or certain remedy provisions, or due process provisions of the Constitutions since it appears to eliminate consideration of a course of conduct that culminated in or added to an injury? **RESPONSE:** Q1) The opt-out provisions does not violate equal protection. Q2) The opt-out provisions does not violate the religion clauses. Q3) The punitive damages limitation raises serious constitutional questions under Art. V, 32 and under separation of powers. It is unclear whether the punitive damages limitation violates the right to a jury trial. The punitive damages limitation does not violate equal protection, the open courts requirement, or due process. Q4) It is a question of fact whether the pleading and evidence requirements would be

ATTORNEY GENERAL OPINIONS

superseded by court rules. Am. 80 may apply. Q5) The statute of limitations does not violate Art. V. 32, equal protection, due process, or the open courts requirement.

Opinion No.: 2003-033

Haaser, Steve
Coach, Southside High School

RE:Should the custodian of records disclose “any and all records of complaints/investigations concerning Steve Haaser” in response to a Freedom of Information Act (FOIA) request? **ANSWER:** I cannot opine definitively because I have not seen the records and do not know what decision the custodian made. The records will likely be either personnel or employee evaluation/job performance records, the disclosure of which depends upon the particular facts, when evaluated under the applicable test. Unsolicited complaints usually constitute personnel records (A.C.A. 25-19-105(b)(12)), whereas documents created as part of an investigation into alleged employee misconduct are usually job performance/evaluation records (25-19-105(c)(1)). The exception for “education records” under FERPA must also be noted. 25-19-105(b)(2). This may require the redaction of student names.

Opinion No.: 2003-034

O’Fallon, Pola
c/o Ken Ferguson, Dir of Human

RE:Should the custodian of records release copies of my licenses, certificates or certifications related to housing inspections in compliance with a Freedom of Information Act (FOIA) request? **RESPONSE:** Assuming these are records related to your qualifications to perform your public employment, they are open to inspection and copying under the FOIA.

Opinion No.: 2003-052

Bright, Stephen D.
State Representative

RE:Does the forcing of only senior citizens in nursing homes to go through arbitration, as specified in H.B. 1213, violate the constitutional principle of equal protection or any other constitutional principle? **RESPONSE:** No. However, I have addressed other constitutional concerns about HB 1213 in Opinion No. 2003-030.

Opinion No.: 2003-055

Hoenle, Gena
Inspector, AR Dept of Environmental

RE:Do the privacy interests of women who complain of sexual harassment outweigh the public’s right to know to a degree that information which would identify the complainants should be redacted from the investigation file prior to responding to a request under the Freedom of Information Act (FOIA)? **RESPONSE:** The requestor is entitled to receive these records because they are his own personnel or employee evaluation/job performance records. However, if the facts so indicate, the people who were interviewed may have a protectable privacy interest that would justify redacting their names and other identifying information from these records before they are released to the requestor.

Opinion No.: 2003-060

Garrison, Elisabeth
c/o UAMS

RE:Is the decision of the custodian of records to release salary and educational background information on employees in UAMS’s Department of Development and Alumni Affairs consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** Generally, “yes.”

ADOPTED RULES AND REGULATIONS

BOARD OF EXAMINERS IN PSYCHOLOGY

Docket No.: 074.00.03--001
Effective Date: 3/14/03
Contact Person: Janet Welsh
Telephone: (501) 682-6168

Revisions to Rules and Regulations

HUMAN SERVICES *County Operations*

Docket No.: 016.20.03--002
Effective Date: 3/3/03
Contact Person: Linda Greer
Telephone: (501) 682-8257

**Emergency Rule: FSC 03-05 -
Implementation of Five Year
Requirement for Aliens**



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

Agency

Period Covered

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