



Arkansas  
Secretary  
Of State

Charlie  
Daniels

# The Arkansas Register



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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

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## Opinion No.: 2003-050

Broadway, Shane  
*State Senator*

**RE:** Does an automobile expense allowance paid to a mayor of a first class city and reported to the Internal Revenue Service as taxable income on a Form 1099, constitute "salary" of the mayor as referred to in ACA 14-42-113? **RESPONSE:** Although the Arkansas Supreme Court has not directly ruled on this issue, unless a city ordinance expressly declares otherwise, a court would probably rule that an automobile expense allowance is not "salary."

## Opinion No.: 2003-068

Verkamp, John Paul  
*State Representative*

**RE:** Does the City of Greenwood have authority to extend sewer trunk lines to areas of the City that do not have city sewer services, or would this be considered an illegal exaction if the citizens to receive this new service do not pay their proportionate share of the cost of the line? **RESPONSE:** Q1) No principle of constitutional or statutory law dictates that landowners be charged their proportional shares of the cost of constructing sewer trunk lines that service their property. A city might finance a sewer trunk line extension by using either available general revenues or bond proceeds.

## Opinion No.: 2003-077

Hathorn, Mike  
*State Representative*

**RE:** What, in your opinion, was the original intent of the proposal that became Amendment 79 and subsequent legislation regarding the use of the 1/2 cent sales tax and these interest dollars? Q2) Can the redirection of these interest dollars be effectuated by

simple legislation or would a constitutional amendment be required? **RESPONSE:** Q1) Amendment 79, which provides, inter alia, for a \$300 annual homestead credit, never addresses a tax intended to reimburse counties for their revenue loss as a result of the credit, much less the permissible distribution of interest earned on that tax. The tax referenced in your question is imposed by statute. Under the current statutory law, such interest is pledged to the state's General Improvement Fund and hence may not be distributed to the counties. Q2) The General Assembly may by legislation dispose of this interest income in whatever manner it deems appropriate.

## Opinion No.: 2003-079

Madison, Sue  
*State Senator*

**RE:** Q1) Can a city of the first class divert street fund monies derived from federal and state turnback taxes to a general fund account (i.e., Shop Fund) through excessive charges over and above the actual cost of replacement, maintenance, and overhead charges related to each vehicle in question within the Street Division? Q2) If the answer to Q1 is "no," what must be done with the excess funds accumulated within the Shop Fund as a result of the equipment overcharges? Q3) Must the Shop Fund provide a detailed actual cost assignment to each vehicle being charged to the Street Fund to assure that no excess monies are being charged to the Street Fund? Q4) Since Street Fund monies must be utilized for the "construction and maintenance of safe and usable streets," can Street Fund resources (i.e., labor, equipment, materials) be diverted to work for other departments within the city without reimbursement from the department that received the resources of the Street Division (i.e., yard waste and limb pickup by the Solid Waste Department, Parks Department construction and maintenance activities)? Q5) Can Street Fund resources be utilized for the benefit of non-profit organizations putting on shows, events, or other activities without reimbursement for such assistance in the activity? **RESPONSE:** Q1) No. Q2) Any excess amount must be returned to the street

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# ATTORNEY GENERAL OPINIONS

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fund account. Q3) Cities must maintain records that are detailed enough to accurately reflect actual expenses that are payable from street fund monies. Q4) Street fund monies cannot be used to pay for labor, equipment, or materials that are not utilized in connection with streets. Q5) If, as a factual matter, the funds are used primarily for the benefit of the non-profit organizations, and not for street purposes, the use would be impermissible.

## Opinion No.: 2003-081

Lamoureux, Michael  
*State Representative*

**RE:**Can a city of the first class regulate by ordinance heavy trucks (i.e., 18-wheelers) on a state highway located within city limits including prohibiting such trucks from certain parts of the state highway and requiring them to take an alternate truck route? **RESPONSE:** The law regarding the extent of the municipal police power over state highways within city limits is unclear. However, by statute, any local ordinance restricting or rerouting heavy truck traffic on a state highway could be given effect only if the Highway Commission approves placing the regulating signs on the highway.

## Opinion No.: 2003-082

Lamoureux, Michael  
*State Representative*

**RE:**Does the term "public servant" as it is used in ACA 5-52-107, apply to non-elected public employees, supervisors, and department heads as well as elected public officials? **RESPONSE:** Yes. See ACA 5-52-107(16), defining "public servant."

## Opinion No.: 2003-084

Malone, David R.  
*Exec Dir, AR Teacher Retirement*

**RE:**Since Act 11 of 1999 was adopted after Act 638 of 1995, (expanding the definition of "salary" and now including lump sum payments for unused sick leave), does the language of ACA 24-7-202(24)(A)(i) allow monies to be used in the computation of retirement benefits beyond the limiting language of ACA 24-7-202(24)(A)(iii)? **ANSWER:** No. Based on the plain language of the statute, the only categories of exception to the 110% limitation are the four that are listed therein. Amendments by implication are not favored.

## Opinion No.: 2003-086

Weaver, Paul  
*State Representative*

**RE:**Is it a First Amendment violation for attendees of a quorum court meeting at the Stone County Courthouse to view a video of a former prisoner embracing Christianity and afterward discuss the possibility of establishing a chapel at the local jail? **RESPONSE:** The answer will depend on whether the showing of the video constituted the county's religious expression (or religious expression endorsed by the county), or an individual's religious expression, and upon whether the time and place of the showing of the video constitutes a "public forum," available to all viewpoints.

## Opinion No.: 2003-092

Adams, Bob  
*State Representative*

**RE:**Is it a conflict of interest for a licensed bail bondsman, who is considered in some respects to be an

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# ATTORNEY GENERAL OPINIONS

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officer of the court, to simultaneously serve as a civil process server for the court? ANSWER: Yes. One's service in these two positions would necessarily violate A.C.A. 16-84-106, which prohibits a process server from acting as the surety for any defendant. See also 16-84-101 regarding the "surety." By statute, a professional bail bondsman acts as the surety on a bail bond. See A.C.A. 17-19-101 (6).

## Opinion No.: 2003-094

Wood, Jim  
*State Auditor*

RE:Q1) Should retirement contributions under the State's Judicial Retirement Plan, which is actually a 414(h) plan, be treated as elective deferrals? Q2) Are these contributions subject to Social Security and Medicare taxes? RESPONSE: These questions are more appropriately addressed to the IRS or the U.S. Attorney — the federal entities that have the authority to enforce the governing federal laws and regulations.

## Opinion No.: 2003-098

Bolin, Johnnie  
*State Representative*

RE:Pursuant to current county purchasing procedures, as set out in the Arkansas Code, is it legal for county government to purchase previously purchased items from a school district at the same cost expended by the district? RESPONSE: The transaction is not legally problematic from the county's standpoint (assuming all other pertinent laws were complied with, and assuming no fraud or bad faith), but could be problematic from the school's standpoint under Art. 14, 2 and 3; Art. 16, 11; or Art. 16, 13 of the Ark. Const.

## Opinion No.: 2003-099

Scroggin, Preston  
*State Representative*

RE:In light of provisions of ACA 14-14-705(3)(A), which limit the number of consecutive terms for board members, could an individual, after serving two terms on a particular board several years earlier, be appointed back to that same board, i.e., to a non-consecutive term? ANSWER: Yes, as long as an intervening term separates the new term from the two that were served consecutively. (This includes partial terms; see Op. 95-163). This follows from the plain language, and is in accord with the general rule. See 59 A.L.R.2d 716.

## Opinion No.: 2003-101

Laverty, Randy  
*State Senator*

RE:Does the term "travel," as it is used in ACA 16-87-212(a)(2), include the travel of fulltime public defender personnel to and from the different courts within a judicial district? RESPONSE: State law grants the Ark. Public Defender Commission the authority to make this determination.

## Opinion No.: 2003-106

Ormond, Charles L.  
*State Representative*

RE:When legislators go to and from an interim committee meeting, would that have the same status as going to and from the Legislature with regard to im-

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# ATTORNEY GENERAL OPINIONS

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munity from anything other than a felony if stopped by any law enforcement? Q2) Can a legislator be cited for anything other than a felony going to or returning from a legislative session? RESPONSE: A legislator may be cited or arrested for any criminal offense, felony, misdemeanor or otherwise, going to or returning from a legislative session. The applicable constitutional provision and statute immunize members of the General Assembly only from arrest in civil actions. See Arkansas Constitution, art. 5 sec. 15 and ACA 16-81-102. This limited privilege from civil arrest does not extend to interim committee meetings occurring between sessions of the General Assembly.

## Opinion No.: 2003-108

Baker, Gilbert  
*State Senator*

RE:Would HB 2239 of 2003 in its current form on April 4, 2003, violate any provisions of the United States or Arkansas Constitutions or any federal or Arkansas state laws or regulations? RESPONSE: Not on its face; however, a definitive answer will require analysis of the particular source of federal funding that a particular continuum of care coalition is seeking, and the federal regulations governing that funding.

## Opinion No.: 2003-109

Mahony, Jodie  
*State Representative*

RE:Is a simple majority vote sufficient to pass H.B. 2662, or is a three-fourths vote necessary? RE-

SPONSE: The answer is not clear under Ark. law. However, because a tax on cigarette retailers did exist in 1934, a convincing argument could be made that a three-fourths vote is required under Art. 5, 38.

## Opinion No.: 2003-119

Daniels, Charlie  
*Secretary of State*

RE:What will be the effective date of legislation that did not carry an emergency clause or specified effective date that was passed by the 84th General Assembly, which adjourned sine die on April 16, 2003? RESPONSE: Starting with the first full day after adjournment and counting ninety full days, such legislation is effective on the ninety-first day, which is July 16, 2003. See Amendment 7 and Fulkerson v. Refunding Board, 201 Ark. 957, 147 S.W.2d 980 (1941).

## Opinion No.: 2003-123

Gullett, Brenda  
*State Senator*

RE:Would a proposed excise tax on cigarette wholesalers require a simple majority vote or a three-fourths vote? RESPONSE: Simple majority. No tax on wholesalers existed in 1934, which is the condition for the applicability of Amendment 19.

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# ADOPTED RULES AND REGULATIONS

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## DEPARTMENT OF COMMERCE

*State Bank Department*

Docket No.: 003.02.03--001  
Effective Date: 5/25/03  
Contact Person: Candace Franks  
Telephone: (501) 324-9019

### County or Regional Industrial Development Corporations

*State Plant Board*

Docket No.: 003.11.03--002  
Effective Date: 5/18/03  
Contact Person: Mike Thompson  
Telephone: (501) 225-1598

### Pesticide Classification Regulation

## ECONOMIC DEVELOPMENT

Docket No.: 168.00.03--002  
Effective Date: 5/19/03  
Contact Person: Morris Jenkins  
Telephone: (501) 682-7377

### Consolidated Incentives Act of 2003

## EDUCATION DEPARTMENT

*Office of Accountability*

Docket No.: 005.19.03--001  
Effective Date: 4/22/03  
Contact Person: Scott Smith  
Telephone: (501) 682-4227

### Emergency Rule: Amendment to Standards of Accreditation

## GAME & FISH COMMISSION

Docket No.: 002.00.03--003  
Effective Date: 5/8/03  
Contact Person: James Goodhart  
Telephone: (501) 223-6327

### 2003-2004 General Hunting Regulations and Codes

## HEALTH SERVICES AGENCY

Docket No.: 049.00.03--003  
Effective Date: 5/8/03  
Contact Person: Mary Brizzi  
Telephone: (501) 661-2501

### HSC Regulation 100M Nursing Home Bed Methodology

## LIVESTOCK & POULTRY COMMISSION

Docket No.: 125.00.03--001  
Effective Date: 5/12/03  
Contact Person: Phil Wyrick  
Telephone: (501) 907-2400

### RESCIND -- Emergency regulation to prevent the introduction of Exotic Newcastle Disease and highly pathogenic Avian Influenza filed with Arkansas Register on 5/12/03

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# ADOPTED RULES AND REGULATIONS

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## PHARMACY BOARD

Docket No.: 070.00.03--001  
Effective Date: 5/8/03  
Contact Person: Trey Gardner  
Telephone: (501) 682-0190

### Regulation 2 - Pharmacists

Docket No.: 070.00.03--002  
Effective Date: 5/8/03  
Contact Person: Trey Gardner  
Telephone: (501) 682-0190

### Regulation 5 - Long-Term-Care Facilities

Docket No.: 070.00.03--003  
Effective Date: 5/8/03  
Contact Person: Trey Gardner  
Telephone: (501) 682-0190

### Regulation 7 - Drug Products / Prescriptions



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# INSURANCE DEPARTMENT

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

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# ORDERS AND NOTICES

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

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