

# The Arkansas Register



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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-185**

Berry, Stan  
*State Representative*

**RE:** Does ACA 26-74-214 apply as the method of disposition of funds for a sales and use tax imposed based on ACA 26-73-113? If not, what Code section applies as the method of disposition of the tax? Q2) If a ballot title regarding the levy of a sale and use tax pursuant to ACA 27-73-113 does not specify a method of distribution of the tax, is a pro-rata distribution required as set out in ACA 26-74-214(b)(2)(B)? Q3) Does ACA 26-73-103 apply to the levy of a sales and use tax pursuant to ACA 26-73-113? Q4) With regard to ACA 26-73-103(e), must a sales and use tax pursuant to ACA 26-73-103 benefit not only the county but also every municipality located within that county? **RESPONSE:** Q1) A.C.A. § 26-74-214(f) dictates the appropriate disposition of sales and use tax revenues devoted to debt service on bonds. However, given the limitations on the use of other tax revenues pursuant to A.C.A. § 27-73-113, I believe the pro-rata distribution of tax revenues among the county and its municipalities, which A.C.A. § 26-74-214(b)(2)(B) anticipates, would mark a diversion of revenues from their intended purpose in derogation of Ark. Const. art. 16, § 11. In my opinion, the appropriate distribution scheme is set forth at A.C.A. § 26-73-105, which authorizes a local unit of government to distribute such tax revenues either through its local collector or by designating the director of the Department of Finance and Administration to do so. Q2) As noted in my response to your first question, I believe a pro-rata distribution of tax revenues collected pursuant to A.C.A. § 27-73-113 would amount to an illegal exaction in violation of Ark. Const. art. 16, § 11. Q3) A.C.A. § 26-73-103 is consistent with A.C.A. § 27-73-113 in that the former statute anticipates that subsequent legislation like the latter statute might approve the levying of sales and use taxes. To the extent that the statutes conflict, I believe A.C.A. § 27-73-113 will control because it was enacted later. Q4) I am unable to answer this question, since A.C.A. § 26-73-103 does not authorize levying sales and use tax. However, to the extent that A.C.A. § 26-73-103(e) might be read as requiring that any subsequently

enacted legislation authorizing a sales and use tax provide for a pro rata distribution of tax proceeds among the county and its municipalities, I believe this statute is superseded by the contrary provisions of A.C.A. § 26-73-113.

**Opinion No.: 2003-190**

Wilkins, Henry "Hank", IV  
*State Senator*

**RE:** Would a program that allows non-violent offenders to "work off" their fines in local businesses that choose to participate in the program as described violate provisions of Article 12, Section 5 of the Arkansas Constitution, A.C.A. 5-4-322, as amended, or any other relevant provision of Arkansas law regarding disposition of criminal offenders? **RESPONSE:** Assuming the proposed program would indeed benefit the probationer and, by extension, society, the program would probably not offend the provisions of Ark. Const. art. 12, § 5. However, given the constraints on conditioning probation set forth at A.C.A. § 5-4-303, I do not believe a district court could impose a program that simply assigned probationers, in lieu of paying a fine, to work without court monitoring performing undesignated, possibly non-educational tasks for the benefit of private businesses.

**Opinion No.: 2003-196**

Lamoureux, Michael  
*State Representative*

**RE:** If a city of the first class owns a waterworks system and leases said system pursuant to ACA 14-199-701 to a nonprofit corporation, can the city levy a franchise fee on the nonprofit corporation running the utility? Q2) Can a franchise fee be collected by a utility from customers located outside the municipality if the utility and most of its equipment supplying the customers outside the municipality is located inside the municipality? Q3) Can a city of the first class levy a franchise fee on a utility located in the municipality based on the total amount of revenue collected by

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the utility from the selling of its product regardless of whether some of the revenue came from customers outside the municipality? RESPONSE: Q1) In my opinion, yes. Even though the lessee corporation is deemed an “instrumentality” of the city pursuant to A.C.A. § 14-199-701, it nevertheless qualifies as a “public utility” under the applicable statutory definition set forth at A.C.A. § 14-200-101. As such, it is subject to a franchise fee pursuant to A.C.A. § 24-200-101(a)(1)(A). Q2) In my opinion, no. Subsection 14-200-101(a)(1)(D) of the Code expressly provides that a utility may recoup its franchise fee only “from its customers residing in each municipality.” Accordingly, the utility may not apportion its recoupment among city dwellers and customers residing outside city limits. Q3) No. If a city elects to calculate a franchise fee as a percentage of a utility’s revenues, it should in all likelihood do so based upon only those revenues realized from rates charged city residents.

## Opinion No.: 2003-197

Lamoureux, Michael  
*State Representative*

**RE:**Do ACA 14-200-103 and -104 mean that once a city and utility enter into a franchise agreement that the agreement is in effect indefinitely until the city decides to purchase the property of the utility? Q2) Can a city and utility agree to a finite time period for a franchise agreement between them or would such an agreement be prohibited by the above referenced statutes? Q3) Can a city and utility place other terms that would terminate a franchise agreement between them other than having the city buy the utility’s property or would such terms be prohibited by the above referenced statutes? Q4) If a city and utility amend a franchise agreement in place by ordinance, can a city subsequently amend the ordinance to remove terms unrelated to the actual franchise tax? Would the city need the utility’s agreement to the amendment before the city passed such an amendment to the ordinance? Q5) Can a city and utility amend a franchise agreement between them to increase the franchise tax if the agreement is deemed to last for an indefinite amount of time? Q6) Can a city unilaterally terminate

or amend a franchise agreement for convenience or is such an action prohibited by the above mentioned statutes? RESPONSE Q1) A.C.A. §§ 14-200-103 and -104 provide that a utility franchise “shall be unlimited as to time,” subject to termination only by the city’s authorized purchase of the utility’s property or termination for “misuser or nonuser” — i.e., failure of the utility to perform its functions. In my opinion, the Arkansas Public Service Commission (“PSC”), by cancellation of the utility’s certificate of public convenience and necessity, is the appropriate agency to make the latter determination. Q2) No. A.C.A. §§ 14-200-103 and -104 are unequivocal in declaring that the grant of a franchise “shall be unlimited as to time.” Q3) The only conditions that might terminate a franchise are the city’s purchase of the utility’s property or termination for “misuser or nonuser.” In my opinion, any contractual provisions reciting additional grounds for termination would be unlawful. Q4) Unless a franchise agreement specifies otherwise, subject to PSC review for reasonableness, I believe a city by ordinance may change all terms and conditions of a franchise except the duration of the franchise. In my opinion, this power of amendment includes what you call the “franchise tax” — i.e., the franchise fee. Q5) Assuming the city and a utility have set a particular franchise fee by contract, I believe the parties might change that fee by mutual assent. If no franchise agreement commits the utility to pay a specified fee, I believe the city by ordinance may unilaterally impose a higher, reasonable fee that does not exceed the cap set forth at A.C.A. § 14-200-101. Any fee imposed above that cap must be by mutual consent or by vote of the people. Q6) I do not believe a city can unilaterally terminate a utility franchise. However, unless a franchise agreement expressly indicates otherwise, I believe A.C.A. § 14-200-101 authorizes a city by ordinance to amend the terms of a franchise subject to PSC review for reasonableness.

## Opinion No.: 2003-198

Lamoureux, Michael  
*State Representative*

**RE:**Q1) If a city has not adopted the 2003 Edition of

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the Arkansas Fire Prevention Code ("Code") by local ordinance but has the previous edition of the Code adopted by a previous ordinance, which Edition of the Code is in effect in the city — the 2002, the previous version, or none? Q2) If a city has adopted the 2002 Edition of the Code by local ordinance but the local ordinance did not specifically adopt any of the Appendices of the 2002 Edition of the Code, are the Appendices in effect in the city by the application of State law or not? Q3) Is the adoption of the 2002 Edition of the Code required to be adopted by local ordinance by the municipality in order to enforce the Code within the municipality? Q4) If a provision of an Appendix of the 2002 Edition of the Code, which was not adopted specifically by local ordinance, conflicts with a provision of the city's Land Subdivision and Development Code, which was adopted by local ordinance pursuant to ACA 14-56-417, and the Fire Code provision is more stringent than the Land Subdivision and Development Code, which provision prevails and should be applied? Q5) Would the answer to the proceeding question be any different if the scenario was the same except for the Code Appendix provision in conflict with the Land Subdivision and Development Code was specifically adopted by ordinance? RESPONSE: Q1) The 2002 Edition of the state code will govern to the extent that it is more stringent than the previously adopted code. Q2) Yes. The appendices adopted by the State Fire Marshall are part of the 2002 Edition and are in effect along with the rest of the code. Q3) No. Q4) If the appendix is one that was adopted by the State Fire Marshall and if it is more stringent than the city's land development ordinance, the appendix will prevail and should be applied. Q5) No.

**Opinion No.: 2003-211**

Gillespie, Jeff  
*State Representative*

**RE:**Would time served as a volunteer fireman and paramedic for a second class city make an applicant eligible to take the exam for a position in the fire and rescue department of a city of the first class? **RESPONSE:** If the previous position was not a paid

position, the previous service will not qualify him for the exemption from the age restriction.

**Opinion No.: 2003-222**

Laverty, Randy  
*State Senator*

**RE:**Does a city of the first class have any options other than a ballot initiative to increase the millage rate or otherwise raise funds for its police and fire retirement plans? Q2) Can the city place a sunset clause on any of the available options? **ANSWER:** Q1) The answer to the first part of this question is "no," assuming that the "millage rate" refers to the special property tax levied under Ark. Const. Amendment 31. A majority vote at an election would be required to increase this millage. Regarding other options, the particular circumstances would have to be considered. If the city has not already levied the full 5 mills (Ark. Const. article 12, section 5), it may wish to increase the general operating millage. Disciplinary fines may also offer a source of increased contributions. A.C.A. 24-11-413.

**Opinion No.: 2003-223**

Longstreth, Linda  
*Exec Dir, AR Prof Bail Bondsman Licensing Board*

**RE:**Request to reconsider the conclusion reached in Op. 2003-092, in light of the Bail Bondsman Licensing Board's conclusion that civil process servers do not have any contact with defendants who would normally require a bail bond and that the bail bond company, not the bail bondsman, becomes the surety for the appearance of the defendant in court when a bail bond is written. **ANSWER:** The Opinion is modified, in recognition of the Board's interpretation of A.C.A. 16-84-106, I.e., in the case of a corporate surety, the licensed bail bondsman who writes the bond does not "become [the] surety" for purposes of the proscription in 16-84-106. But there is a caveat

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regarding a licensed bail bondsman who has an ownership interest in the bail bond company. Depending upon the ownership interest, the bail bondsman may be indistinguishable from the company. If that case, the prohibition may be triggered.

## **Opinion No.: 2003-225**

Baker, Gilbert  
*State Senator*

**RE:**Q1) If a law enforcement officer calls for an Emergency Response Team (“ERT”) Unit to assess an individual in protective custody, is the law enforcement agency liable for the expenses incurred by the ERT Unit? Q2) If the person is released from protective custody by the issuance of a citation prior to being transported to a treatment facility, is the law enforcement agency liable for the expenses incurred as a result of the transport and resulting treatment? Q3) If a law enforcement agency, relying on third party information, requests an ambulance at an accident location but the responding ERT Unit finds there is no one at the scene in need of medical attention, is the law enforcement agency liable for the expenses incurred by the ERT Unit? Q3b) Are individuals who were involved in the accident but did not request an ambulance liable for the cost incurred by the ERT Unit? **RESPONSE:** State law does not explicitly address the issues raised by these questions. The answer to these questions will ultimately depend on a number of specific facts about the situation, including the location of the incident, the jurisdiction of the law enforcement agency, the age and circumstances of the injured person, the injured person’s insurance coverage, the identity and nature of the emergency response team, the provisions of any applicable ordinances or regulations, and the nature and terms of applicable contractual agreement.

## **Opinion No.: 2003-229**

Thomas, Lindbergh  
*State Representative*

**RE:**Can a mayor of a small city with approximately 500 people appoint a chief of police even though the city already has an elected city marshal?  
**RESPONSE:** No.

## **Opinion No.: 2003-234**

Salmon, Mary Ann  
*State Senator*

**RE:**Request for clarification of the meaning of ACA 24-12-129 and -130. Does the last sentence in 24-12-130 mean that anyone who was a member of the plan before August 1997 is eligible to continue receiving health care under the plan after they retire or does it mean only those who retired during that period? **RESPONSE:** Under ACA 24-12-130, a person who retired before August 1, 1997 with less than 20 years of service can continue to participate in the city’s health care plan. Persons who retire after that must have 20 years of service to continue to participate in the city’s health care plan.

## **Opinion No.: 2003-235**

Judy, Jan A.  
*State Representative*

**RE:**Q1) Pursuant to provisions of ACA 24-12-128, is it mandatory that the county allow qualified retirees to participate in its health care plan? Q2) Once the retired participating employee reaches eligibility for Social Security and Medicare, may the county disallow further participation in its health care plan?  
**RESPONSE:** Q1) Yes. Q2) No.

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## Opinion No.: 2003-236

Elliott, Joyce  
*State Representative*

**RE:**Is it legal for a school district (specifically Pulaski County Special School District) to sell space on any exterior portion of its school buses for commercial advertising purposes? Q2) If it is legal, will you please give your legal guidance on whether some commercial advertising must be avoided in order not to run legally afoul? **RESPONSE:** Q1) No. A.C.A. § 27-51-1002 and State Board of Education Specifications Regarding School Bus Design Nos. 10, 42 and 50. Q2) Moot.

## Opinion No.: 2003-237

Dees, Joyce  
*State Representative*

**RE:**In light of the many bail bondsmen who are also civil process servers, Legislator requests reconsideration of the conclusion reached in Op. 2003-092. **ANSWER:** See Attorney General Opinion 2003-247 (modifying 2003-092).

## Opinion No.: 2003-239

Dangeau, LeRoy  
*State Representative*

**RE:**Pursuant to provisions of ACA 14-52-106, does accrual of vacation time start on the date of hire or can the city have it start at some future date? **RESPONSE:** Municipalities have some discretion to fashion the method of accumulation of leave under this statute, but may not require employees to work a year before being allowed to accumulate vacation days.

## Opinion No.: 2003-241

Milligan, Jimmy "Red"  
*State Representative*

**RE:**In light of the provisions of Bull Shoals City Ordinance No. 104 (adopted 11/12/80), is the city obligated to bear the expense of maintenance and/or replacement and/or installation of [sewer] grinder pumps? **RESPONSE:** City officials have in the past reportedly made representations and performed services relating to grinder pumps in contravention of Bull Shoals Ordinance No. 104. The law provides that a city cannot be stopped by the unauthorized representations of its agents from asserting what might otherwise be its rights. Given that the law does not obligate a city to install and to maintain grinder pumps needed to tie homes into sewer mains, I do not believe a city can be charged with this obligation, regardless of whether city officials have made unauthorized pledges to do so.

## Opinion No.: 2003-242

Broadway, Shane  
*State Senator*

**RE:**Are provisions of ACA 12-15-202(b)(1)(A), regarding the authority of retired law enforcement officers to carry concealed weapons, applicable to a person who was a federal law enforcement officer who, in lieu of retirement, elected to receive a tax-free lifetime disability benefit under the Federal Employees Compensation Act? **RESPONSE:** The provisions of ACA 12-15-202(b)(1)(A) do not apply to any former federal law enforcement officer, whether retired or otherwise receiving post-employment benefits. This conclusion is based on the definition of "public law enforcement department, office, or agency," as stated in ACA 12-15-201(2).



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## Opinion No.: 2003-246

Broadway, Shane  
*State Senator*

**RE:**Where County "X" enters into an agreement with County "Y" and the Arkansas State Highway and Transportation Department ("AHTD"), wherein: 1) County "X" agrees to exchange with AHTD a first class bridge and an adjoining section of county road located in County "X", for 2) a first class bridge spanning a river that is the dividing line between County "X" and County "Y" and a section of an adjoining state highway lying in County "X" and 3) as a part of that agreement, Counties "X" and "Y" agree that County "X" will maintain the entire bridge, including that section of the first class bridge lying in County "Y", is that agreement in violation of Ark. Const. amend. 55, Sec. 3, and ACA 14-300-203(a)? Q2) If the answer to Q1 is "yes," do the respective bridges revert to their original owners? Q3) If the answer to Q2 is "no," who is responsible for maintenance of that portion of the bridge located in county "Y"? **RESPONSE:** Decline to answer because of the factual nature of the questions.

## Opinion No.: 2003-247

Argue, Jim  
*State Senator*

**RE:**If the bylaws of a horizontal property regime stipulate that the regime will be governed by a board of administration, to what extent may the co-owners vote to direct the actions of the board? Do the co-owners have the right to vote on matters other than amendments to the bylaws and election of board members? If the board becomes involved in an action at law concerning the regime, do the co-owners have the right to vote to direct the board concerning the conduct of the action? Q2) If the bylaws of a horizontal property do not include the required statement of the manner of removal of the board of administration, do the co-owners have the right to propose such a statement to the board and to vote on inclusion of that statement in the bylaws? If yes, would the vote

require an affirmative vote of the co-owners representing two-thirds of the total value of the building as a "modification of the system of administration" under ACA 18-13-109(a)? Q3) Do provisions of ACA 18-13-102 (3) and 18-13-108, taken together, require only fifty-one percent or more of the basic value of the property as a whole be present in order to establish a quorum? Or, do these provisions also require that fifty-one percent or more of the basic value of the property as a whole actually vote in the affirmative on any given measure for that measure to pass? **ANSWER:** Q. 1: This depends upon the specific governing bylaws (see 18-13-108) and perhaps other regime instruments, including the master deed. Accordingly, these issues cannot be resolved in an opinion from this office, but should be referred instead to private legal counsel. Q.2: The statutes do not address the procedure for including all of the particulars where the bylaws do not satisfy the statutory requirements under 18-13-108. This may involve amending the bylaws, but I cannot definitively opine in this regard. This would not, however, constitute a "modification" of the "system of administration," as contemplated by 18-13-109. Q.3: 18-13-108 (b) (2) governs the vote requirement, and construed with reference to the act as a whole requires 51% or more of the basic value of the property as a whole. (see definition of "majority of co-owners" under 18-13-102(6)).

## Opinion No.: 2003-248

Gibbons, David  
*Pros Att'y, 5th Judicial District*

**RE:**In light of the fact that city council members serve two-year terms does a lease agreement between a city of the first class and a non-profit corporation, under which the city, pursuant to ACA 14-199-701, leases to the non-profit corporation the city's water works and sewer system for a term of more than two years violate Arkansas law because of the length of the term of the lease which exceeds the city council's term of office? **RESPONSE:** No. The statute permits the city council to determine the term of the lease up to 80% of the life of the system.

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## Opinion No.: 2003-249

Higginbotham, Steve  
*State Senator*

**RE:** Does the City of West Helena have authority to hire a convicted felon to serve in the capacity of code enforcement officer? **RESPONSE:** State law does not prohibit this unless the position is deemed to be a law enforcement position. The city's ordinances and internal policies should be reviewed to determine whether they prohibit it.

## Opinion No.: 2003-250

Jeffress, Jimmy  
*State Senator*

**RE:** Does a municipal police officer employed by the City of Lake Village have jurisdiction to enforce traffic violations on a state highway that has only its northern right-of-way contiguously annexed to the municipality? **RESPONSE:** This question is confusing. Subject to certain limitations, police officers have jurisdiction to patrol streets and highways within city limits. See Opinions 2003-150 and 98-003.

## Opinion No.: 2003-251

Wingfield, Gus  
*State Treasurer*

**RE:** In light of the provisions of Act 880 of 1987, codified at ACA 12-9-209, which involves reimbursement between employing municipalities for the training expenses of law enforcement officers, is the Treasurer of State required to do more than withhold the amount of reimbursement claimed due to a county, city or town and remit that amount to the debtor government entity after providing notice of the claim for reimbursement? Q2) If the answer to Q1 is "no," on what basis is the

Treasurer of State to make a determination of the correctness of such claims, since such claims for reimbursement by the Treasurer of State are most likely to arise in disputed fact circumstances? **RESPONSE:** To the extent your question is whether the due process clause requires the Treasurer to do more than what the statute dictates, the answer is "no." But the Treasurer of State may want to work with legal counsel to formulate an approach to these issues.

## Opinion No.: 2003-255

Stovall, Bill H.  
*State Representative*

**RE:** What constitutes legal bingo in Arkansas? **RESPONSE:** There is no such thing as legal bingo in Arkansas if money or other consideration is paid for a chance to win a prize of cash or property. Questions as to enforcement should be directed to the prosecuting attorney or other law enforcement authorities.

## Opinion No.: 2003-259

Hardwick, Horace A.  
*State Representative*

**RE:** Q1) Do the Commissioners of the Bentonville Advertising and Promotion Commission have sole authority for the use or pledge of its revenue derived from the A&P tax as prescribed in the ACA 26-75-606 and City of Bentonville Municipal Code 3.16, Sec. 3.16.04(A)(2) in the creation of the A&P Commission? Q2) Does the City of Bentonville have the authority to make provisions that govern the revenue allocations of the City's A&P funds towards advertising and Parks/ Other Facilities as outlined in the City of Bentonville's Municipal Code 3.16, Sec. 3.16.04(D)? **RESPONSE:** The A&P Commission has the sole authority for the use and pledge of A&P revenues. Q2) The city

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council does not have the authority to direct the use of A&P revenues. Although the city council can pass an ordinance or resolution suggesting a particular use, the A&P Commission is not bound to follow that suggestion.

**Opinion No.: 2003-265**

Lamoureux, Michael  
*State Representative*

**RE:** Does the assessment fees, application fees and other department fees assessed by the State Banking Department on banks in the State under the authority of ACA 23-46-509 prevent or prohibit a city of the first class from assessing a municipal occupational tax or business license under the authority of ACA 26-77-102 on banks conducting business in the city limits of that city? Q2) Is there any provision in Act 89 of 1977 (The Arkansas Banking Code of 1997) which prevents or prohibits a city of the first class from assessing a municipal occupational tax or business license under the authority of ACA 26-77-102 on banks conducting business in the city limits of that city? Q3) Is there any state law which prevents or prohibits a city of the first class from assessing a municipal occupational tax or business license under the authority of ACA 26-77-102 on any particular trade, business, profession, vocation or calling that is conducted within the city limits of that city? **RESPONSE:** Q1) No. Q2) No. Q3) No.

**Opinion No.: 2003-267**

Bradford, Jay  
*State Representative*

**RE:** Q1) Can a city police department collect a fee for service of criminal summons and subpoenas issued by a prosecutor in criminal and traffic cases? Can this fee be assessed to the defendant upon conviction? Q2) Can a city require all property owners who are non-residents of the city to have a local agent for

service of notices from the city code enforcement department? Can a penalty be assessed for property owners who do not comply? Can this penalty be placed as a lien on the property? If an agent cannot be required for persons living outside the city limits, can it be required for out-of-state property owners? Can the local agent be cited for failure to comply with the notices? **RESPONSE:** Q1) Yes. See ACA 21-6-502. Q2) Yes.

**Opinion No.: 2003-269**

Simon, Raymond  
*Director, AR Dept of Education*

**RE:** If a school district is subject to a U.S. District Court order requiring the district to accept students on a nondiscriminatory basis, can that school district participate in the Arkansas School Choice Act codified at ACA 6-18-206? Q2) To the extent the two school districts come in conflict regarding any students that have been accepted into the district under the previously assumed U.S. District Court order and those districts petition the State Board of Education for resolution of that issue pursuant to ACA 6-18-206(g), does the State Board of Education have the necessary legal authority to decide that a school district is in compliance with the Arkansas School Choice Act and may accept students outside of the racial parameters called for in ACA 6-18-206 as long as the district is in compliance with the requirements of the assumed U.S. District Court order? **RESPONSE:** 1) This will depend upon the provisions of the applicable court order. 2) No, not if in so deciding the Board would have to interpret a federal court order.

**Opinion No.: 2003-272**

Jeffress, Gene  
*State Senator*

**RE:** May funds collected by an Advertising & Promotion Commission, whether they be from the lodging tax or prepared food tax, be used in any way for economic

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development, including advertising for people to move to a city and business and industry to relocate to said city? RESPONSE: The answer will depend upon whether the particular expenditure falls within the permissible uses listed in ACA 26-75-606. If the purpose of the expenditures is to attract permanent residents and businesses to the city, the expenditures may be contrary to the purposes of the A&P tax.

## Opinion No.: 2003-275

Emigh, Barry

**RE:**Request for certification of the popular name and ballot title for a proposed constitutional amendment to permit the operation of bingo, raffles, state-operated lotteries and gambling. **RESPONSE:** Popular name and ballot title rejected due to an ambiguity in the text of the proposed measure.

## Opinion No.: 2003-277

Dangeau, LeRoy  
*State Representative*

**RE:**Since records of the Cross County Assessor's office show dual ownership on some parcels of property, should the Assessor continue to carry these parcels on the tax books or drop them? **RESPONSE:** Decline to answer because of the fact-intensive nature of the question. The county attorney should investigate and seek declaratory relief regarding title in the circuit court, joining all interested individuals as parties to the suit.

## Opinion No.: 2003-290

Dinwiddie, David E.

**RE:**Request for certification of the popular name and ballot title of a proposed initiated act to prohibit the broadcasting of infomercials on local television stations in Arkansas. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

## Opinion No.: 2003-292

Frazier, Deborah L.  
*Director, AR Health Services Permit*

**RE:**Do provisions of Act 166 of 2003 exempt the Fayetteville Veterans' Nursing Home from a Permit of Approval (POA) for construction of the nursing home? **RESPONSE:** A permit of approval is not necessary for the Fayetteville Veterans' Nursing Home.

## Opinion No.: 2003-298

Insua, Henry C.  
*Permit Engineer, State Permits,*

**RE:**Is the decision of the custodian of records to release the names or name initials of licensed professionals within the Department of Environmental Quality, along with other information (i.e., title, salary and seniority), consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** Records were not provided. The opinion sets forth the applicable tests for determining disclosability of the requested records.

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# ADOPTED RULES AND REGULATIONS

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## ARKANSAS TEACHER RETIREMENT

Docket No.: 088.00.03--004  
Effective Date: 10/18/03  
Contact Person: Julie Cabe  
Telephone: (501) 682-1836

### Revision of ATRS Committee Charters

Docket No.: 088.00.03--005  
Effective Date: 10/18/03  
Contact Person: Julie Cabe  
Telephone: (501) 682-1836

### Revision of ATRS Investment Policy

Docket No.: 088.00.03--006  
Effective Date: 10/18/03  
Contact Person: Julie Cabe  
Telephone: (501) 682-1836

### Revision of ATRS Policies & Forms - Qualified Domestic Relations Orders

## DEPARTMENT OF COMMERCE

### *Securities Department*

Docket No.: 003.14.03--001  
Effective Date: 10/20/03  
Contact Person: John Moore, Jr.  
Telephone: (501) 324-8686

### Rule 213.01 -- Investor Education Program

### *State Plant Board*

Docket No.: 003.11.03--008  
Effective Date: 11/1/03  
Contact Person: Terry Walker  
Telephone: (501) 225-1598

### Circular 6 -- Licensing Pest Control Operators

## ETHICS COMMISSION

Docket No.: 153.00.03--001  
Effective Date: 10/2/03  
Contact Person: Graham Sloan  
Telephone: (501) 324-9600

### Rules on Campaign Finance & Disclosure

Docket No.: 153.00.03--002  
Effective Date: 10/2/03  
Contact Person: Graham Sloan  
Telephone: (501) 324-9600

### Rules on Lobbyist Registration and Reporting

Docket No.: 153.00.03--003  
Effective Date: 10/2/03  
Contact Person: Graham Sloan  
Telephone: (501) 324-9600

### Rules of Practice and Procedure

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# ADOPTED RULES AND REGULATIONS

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## ECONOMIC DEVELOPMENT

Docket No.: 168.00.03--003  
Effective Date: 11/3/03  
Contact Person: Gay Johnson  
Telephone: (501) 682-7323

### Arkansas Existing Workforce Training Program

## FINANCE & ADMINISTRATION

*Revenue Division*

Docket No.: 006.05.03--006  
Effective Date: 10/20/03  
Contact Person: Linda Holmstrom  
Telephone: (501) 682-7751

### Regulation 2003-1: Implementing Act 46 of 2003 (1st Ex. Sess.) Eighty-Fourth Session Projects Account within the General Improvement Fund

## GAME & FISH COMMISSION

Docket No.: 002.00.03--007  
Effective Date: 10/12/03  
Contact Person: James Goodhart  
Telephone: (501) 223-6327

### St. Francis River Floodway Waterfowl Zone; Amended Regulations Restricting Possession of Mountain Lions (*Puma concolor*)

## HEALTH DEPARTMENT

*Protective Health Codes*

Docket No.: 007.24.03--001  
Effective Date: 9/29/03  
Contact Person: Terry Granderson  
Telephone: (501) 661-2642

### 2003 Arkansas Mechanical Code \*\*\*

## HEATH SERVICES AGENCY

Docket No.: 049.00.03--004  
Effective Date: 10/17/03  
Contact Person: Mary Brizzi  
Telephone: (501) 661-2501

### HSC Regulation 500M - Assisted Living Methodology

## HIGHER EDUCATION

*Financial Aid*

Docket No.: 008.10.03--001  
Effective Date: 10/2/03  
Contact Person: Melissa Goff  
Telephone: (501) 371-2055

### Arkansas Workforce Improvement Grant Rules

Docket No.: 008.10.03--002  
Effective Date: 10/2/03  
Contact Person: Melissa Goff  
Telephone: (501) 371-2055

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# ADOPTED RULES AND REGULATIONS

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## **Amendments to the Rules of the Arkansas Academic Challenge Scholarship Program**

### **HUMAN SERVICES**

#### *Childcare & Early Childhood Education*

Docket No.: 016.22.03--003  
Effective Date: 9/16/03  
Contact Person: David Griffin  
Telephone: (501) 682-8590

#### **Emergency Rule: Minimum Licensing Requirements for Child Care Family Homes -- Transportation (Roster)**

Docket No.: 016.22.03--004  
Effective Date: 9/16/03  
Contact Person: David Griffin  
Telephone: (501) 682-8590

#### **Emergency Rule: Minimum Licensing Requirements for Child Care Centers -- Transportation (Roster)**

Docket No.: 016.22.03--005  
Effective Date: 9/16/03  
Contact Person: David Griffin  
Telephone: (501) 682-8590

#### **Emergency Rule: Registration Requirements for Registered Child Care Family Homes -- Transportation (Roster)**

Docket No.: 016.22.03--006  
Effective Date: 9/16/03  
Contact Person: David Griffin  
Telephone: (501) 682-8590

## **Revisions and Updating of Rules: PUB 001, PUB 002, and PUB 003**

#### *County Operations*

Docket No.: 016.20.03--012  
Effective Date: 10/10/03  
Contact Person: Linda Greer  
Telephone: (501) 682-8257

## **FSC 03-12: Immigrant Children**

#### *Medical Services*

Docket No.: 016.06.03--020  
Effective Date: 10/1/03  
Contact Person: Tommy Wingard  
Telephone: (501) 682-6117

## **Procedures for Determination of Medical Need for Nursing Home Services**

Docket No.: 016.06.03--021  
Effective Date: 10/1/03  
Contact Person: Tommy Wingard  
Telephone: (501) 682-6117

## **Alzheimer's Special Care Units for Nursing Homes**

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# ADOPTED RULES AND REGULATIONS

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Docket No.: 016.06.03--022  
Effective Date: 10/1/03  
Contact Person: Tommy Wingard  
Telephone: (501) 682-6117

**Criminal Record Checks for Employees of Long Term Care Facilities**

Docket No.: 016.06.03--023  
Effective Date: 11/1/03  
Contact Person: Betty Reed  
Telephone: (501) 682-8363

**Official Notice: DMS-2003-AR-3, DMS-2003-C-2, DMS-2003-F-1, DMS-2003-I-1, DMS-2003-L-7, DMS-2003-KK-8, DMS-2003-FF-2, DMS-2003-R-11, DMS-2003-EE-2, DMS-2003-Y-3, DMS-2003-YY-3**

Docket No.: 016.06.03--027  
Effective Date: 9/30/03  
Contact Person: Joie Wallis  
Telephone: (501) 682-5424

**Emergency Rule: State Plan Transmittal #2003-012**

Docket No.: 016.06.03--029  
Effective Date: 10/3/03  
Contact Person: Joie Wallis  
Telephone: (501) 682-5424

**Emergency Rule: Official Notices to add and/or correct procedure codes and modifiers to comply with HIPAA requirements**

Docket No.: 016.06.03--030  
Effective Date: 10/6/03  
Contact Person: Carolyn Patrick  
Telephone: (501) 682-8359

**Emergency Rule: Official Notice DMS-2003-DD3, DMS-2003-YY-9, DMS-2003-YC-3, DMS-2003-SB-3**

Docket No.: 016.06.03--031  
Effective Date: 10/13/03  
Contact Person: Nikki Wade  
Telephone: (501) 682-8859

**Emergency Rule: Official Notice DMS-2003-E-9**

Docket No.: 016.06.03--032  
Effective Date: 10/13/03  
Contact Person: Nikki Wade  
Telephone: (501) 682-8859

**Emergency Rule: Official notice DMS-2003-G-4**

Docket No.: 016.06.03--033  
Effective Date: 10/1/03  
Contact Person: Tommy Wingard  
Telephone: (501) 682-6117

**Changes to Section 520 of the LTC Provider Manual to establish minimum direct-care staffing requirements in nursing homes**



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# ADOPTED RULES AND REGULATIONS

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Docket No.: 016.06.03--034  
Effective Date: 11/1/03  
Contact Person: Betty Reed  
Telephone: (501) 682-6117

**Private Duty Nursing Update Transmittal #45**

**PUBLIC SERVICE COMMISSION**

*Utilities Section*

Docket No.: 126.03.03--002  
Effective Date: 10/11/03  
Contact Person: Diana Wilson  
Telephone: (501) 682-5782

**Repeal of Rules in Compliance with Act 204 of 2003 (various rules) \*\*\***

Docket No.: 126.03.03--003  
Effective Date: 10/11/03  
Contact Person: Diana Wilson  
Telephone: (501) 682-5782

**Amendment of Rules in Compliance with Act 204 of 2003 -- Rules of Practice and Procedure \*\*\***

**SOIL & WATER CONSERVATION COMMISSION**

Docket No.: 138.00.03--001  
Effective Date: 10/2/03  
Contact Person: Crystal Phelps  
Telephone: (501) 682-3905

**Title XVII: Rules Governing Public Water Authorities**

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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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## LEGISLATIVE AUDIT September 29, 2003

<b>Agency</b>	<b>Period Covered</b>
Department of Health	6/30/02
Department of Workforce Education - Arkansas Rehabilitation Services	6/30/02
Arkansas Livestock Show Association	6/30/02
Department of Information Systems	6/30/02
Arkansas Department of Labor	6/30/02
Department of Finance and Administration - Revenue Division - Expenditures	6/30/02
Arkansas Game and Fish Commission	6/30/02
Arkansas Public Service Commission	6/30/02
State Crime Laboratory	6/30/02
Arkansas Geological Commission	6/30/02
State Board of Registration for Professional Geologists	6/30/02
Arkansas Livestock and Poultry Commission	6/30/02
State Plant Board	6/30/02
Department of Finance and Administration - Revenue Division - Office of Motor Vehicle	6/30/02

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# ORDERS AND NOTICES

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Department of Finance and Administration - Revenue Division - Office of Driver Services	6/30/02
Arkansas Student Loan Authority (Private)	6/30/03
Central Interstate Low-Level Radioactive Waste Commission (Private)	6/30/03
Arkansas Real Estate Commission	6/30/02
Department of Parks and Tourism - Arkansas History Commission	6/30/02



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