

# The Arkansas Register



Volume XXVII, Number 3

September 2003

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

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*Charlie Daniels*

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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-159**

Anderson, Kevin  
*State Representative*

**RE:** May a current district judge in Benton County conduct bail bond hearings, review probable cause affidavits for search and arrest warrants, conduct extradition hearings, and conduct indigency hearings regarding the appointment of the public defender to represent criminal defendants in a matter that is filed in another District Court in the county or in Benton County Circuit Court? **ANSWER:** One of the current district judges could agree to serve in a capacity similar to a former magistrate, and conduct these functions in matters arising throughout the county, because the Benton County district judges currently exercise countywide jurisdiction. The county cannot, however, arrange for any compensation for this purpose. The relevant provisions are Ark. Const. Amendment 80, Act 1185 of 2003 (repealing A.C.A. 16-17-107 regarding appointment of magistrates and amending A.C.A. 16-88-101 regarding district courts' jurisdiction on July 16, 2003 and January 1, 2005), Act 1727 of 2003 (establishing judicial districts and the number of judges, in anticipation of the 2004 elections, interpreted in Op. Att'y Op. 2003-240, and A.C.A. 16-17-108 (as amended by Act 1475 of 2003, the salary act).

**Opinion No.: 2003-165**

Blair, Buddy  
*State Representative*

**RE:** 1. Pursuant to provisions of Act 344 of 2003, may the state legally appropriate and collect special revenue funds to be distributed to private entities for non-governmental purposes? Specifically, may the legislature authorize the issuance of specialty license plates bearing the slogan "Choose Life," with the proceeds to be distributed to nonprofit organizations that avoid providing any abortion-related services and instead counsel pregnant girls and women to pursue adoption as an alternative? Q2) Is the requirement of Act 858 of 2003 that materials harmful to minors be maintained so that the lower 2/3rds not be exposed

to view and segregated in a manner that physically prohibits access to the material by minors unconstitutional? Can a bookstore comply with the erection of physical barriers without violating the rights to access to the material by adults and still be in compliance with the Americans with Disabilities Act? **RESPONSE:** Q1) A reviewing court would in all likelihood declare Act 344 of 2003 unconstitutional as offending the guarantees of freedom of speech, equal protection and due process. U.S. Const. amends. 1 and 14 and Ark. Const. art. 2, § 6 and §§ 2, 3 and 18. Indeed, federal courts in two states have already held unconstitutional legislation authorizing the issuance of "Choose Life" plates under facts virtually identical to those at issue here. Under applicable case law, it is impermissible for a legislature to adopt a legislative scheme that affords the legislature unfettered discretion to make viewpoint-based classifications regarding what messages individuals may convey on a given topic in a limited public forum. Based on the case law, it appears that Act 344 marks an exercise of such constitutionally impermissible discretion. With respect to the disposition of funds collected pursuant to Act 344 to nonprofit organizations that advocate adoption instead of abortion, I believe the courts would not deem funding such advocacy as violating the principle that public money must be used for a "public purpose," and thus that aspect of the Act would likely withstand judicial scrutiny. Q2) I must decline to address this question, since it is currently the subject of litigation in the case of Shipley, Inc. d/b/a That Bookstore in Blytheville et al. v. Huckabee et al., Case No. 4-03CV.00481GTE, United States District Court, Eastern District of Arkansas, Western Division.

**Opinion No.: 2003-177**

Salmon, Mary Ann  
*State Senator*

**RE:** Is it constitutionally permissible for a county to contract with an independent contractor to collect delinquent personal and real property taxes? Q2) Assuming enabling legislation was adopted, is it constitutionally permissible for the independent contractor, who is not an officer or employee of the county, to collect the above-referenced delinquent taxes on a

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# ATTORNEY GENERAL OPINIONS

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contingency-fee basis in light of Op. 97-141: a) if the fee is a portion of the delinquent tax collected and the cost is assessed on a prorated basis to the taxing authorities; or b) if the fee, up to 30%, is charged back to the taxpayer as a penalty after notice and an opportunity to make payment without penalty? Q3) Is the county collector precluded by the Arkansas Constitution from contracting with an independent contractor for the collection of delinquent taxes in light of the proposed legislation (SB 869)? Q4) Is it constitutionally permissible for the quorum court to select the independent contractor? Q5) Is it constitutionally permissible for the quorum court to require the county collector to reasonably assist the independent contractor in providing updated records and information to the independent contractor? Q6) Is a county tax collector precluded from accepting a partial payment of delinquent taxes? Q7) What is the statute of limitation for collection of delinquent taxes? RESPONSE: Q1) Yes. See A.C.A. § 14-20-113. Q2) I believe the legislature could authorize an independent contractor to be paid on a contingency-fee basis for the collection of delinquent taxes. Q3) The proposed legislation anticipates that the collector might select the independent contractor, not that the collector will actually execute the contract. No constitutional provision would preclude the legislature from approving such a selection process. Q4) Under current law, the quorum court is precluded from selecting an independent contractor to collect delinquent taxes. A.C.A. § 14-20-113. Accordingly, pursuant to Amendment 55, the quorum court lacks the "local legislative authority" to make any such selection. Q5) I believe the quorum court is authorized to require the custodians of records bearing on tax collection to make those records available to an independent contractor retained to collect delinquent taxes. Q6) I do not believe the collector is authorized to accept partial payment of delinquent taxes. Q7) No statute of limitations applies to the collection of delinquent personal or real property taxes.

## **Opinion No.: 2003-181**

Bright, Stephen C.  
*State Representative*

**RE:** Does ACA 6-17-1001(a)(2), as amended by Act 1768 of 2003, apply only to new teachers hired by a school district or does it apply to existing teachers also? Q2) Does Act 1768 of 2003 repeal ACA 6-17-204(c)(1)(A) and (B)? Q3) Is a teacher entitled to credit for the past experience under Act 1768 if that teacher is employed by a school district on an hourly basis but is required to hold a teaching certificate by the district to hold the position? **RESPONSE:** 1) Applies to all; 2) Yes; 3) Depends upon the facts. Local counsel should resolve.

## **Opinion No.: 2003-182**

Trusty, Sharon  
*State Senator*

**RE:** What, if any, effect does the recent U.S. Supreme Court decision in *Kentucky Association of Health Plans, Inc. v. Miller*, 00-1471 (U.S. 2003) decided on April 2, 2003, have on the permanent injunction imposed against the enforcement of the Arkansas Patient Protection Act of 1995 in *Prudential Ins. Co. of Am. V. National Park Medical Ctr.*, 964 F. Supp. 1284 (E.D. Ark. 1997), affirmed, 154 F.3d 812 (8th Cir. 1998)? **RESPONSE:** Decline to respond due to pending litigation.

## **Opinion No.: 2003-193**

Courtney, Michael D., D.C.  
*President, AR State Board of Chiropractic*

**RE:** Can Arkansas' "Any Willing Provider" Law be reinstated in light of the recent U.S. Supreme Court Ruling in *Kentucky Association of Health Plans Inc., et al. v. Miller*? **RESPONSE:** Decline to respond due to pending litigation.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-200**

Edwards, Marilyn  
*State Representative*

**RE:** Q1) Does Act 330 of 2003 require law enforcement agencies to force the relocation of Level 3 and 4 sex offenders on property they rent if it is within 2,000 feet of a school or daycare facility, while allowing offenders who own their residences to remain? Q2) If the answer to Q1 is "yes," is basing the enforcement decision on whether the offender rents or owns the residence constitutionally acceptable? **RESPONSE:** Q1) No. Law enforcement officers have no such authority. Moreover, Act 330 is not an eviction statute. Q2) The classification created by Act 330 on the basis of property ownership could give rise to constitutional challenges.

**Opinion No.: 2003-202**

Argue, Jr., Jim  
*State Senator*

**RE:** Does Act 1768 of 2003 apply to teachers currently employed by a school district or only to teachers hired by a district after the effective date of the Act? Q2) A teacher has been employed by Arkansas School District "A" for three (3) years. When hired, the teacher was given experience credit for five (5) of the ten (10) years the teacher was previously employed by Arkansas School District "B". Would the teacher's experience for salary purposes with District "A" be eight (8) years or thirteen (13) years? Q3) If the answer to Q2 is 13 years, would the salary in the contract for 2003-2004 school year be the legal obligation of the school district if the contract was entered into prior to the effective date of Act 1768 and the teacher's salary was based upon 8 years experience? Does Act 1768 require the contract be amended to provide for a salary based on 13 years experience? Q4) If the answer to Q2 is 13 years, would District "A" be in compliance with Act 1768 if the District only gives experience credit for 8 years,

but the District's salary schedule provides a salary to the teacher that meets or exceeds the minimum salary required under ACA 6-17-1001 for a teacher with 13 years of experience? Q5) Would the application of Act 1768 be any different for a school district with teachers' contracts negotiated as a result of collective bargaining? **RESPONSE:** 1) Applies to all, including existing teachers; 2) thirteen years; 3) No, not if it is based upon less than the total years of experience; 4) No; 5) No.

**Opinion No.: 2003-206**

Blair, Buddy  
*State Representative*

**RE:** Does the City of Fort Smith have authority to purchase and sell real property without first holding public hearings or allowing open bidding? **RESPONSE:** Arkansas law does not require competitive bidding for the purchase or sale of real property by cities. However, it does require approval of such transactions by a majority vote of the city council at a public meeting.

**Opinion No.: 2003-208**

Faris, Steve  
*State Senator*

**RE:** Assuming that the \$10 increase for each fine set out in Malvern City Ordinance No. 00-09 to be paid into the municipal judge's retirement fund does not exceed five percent (5%) of all fines and forfeitures collected by the district court or city for violations of municipal ordinances or state laws, does the ordinance violate any of the provisions of ACA 24-8-318? **ANSWER:** Although it appears that there would be no violation of 24-8-318, the ordinance is contrary to 16-10-305, which established a uniform system of filing fees and court costs. See also 16-10-301 (intent). The Ordinance likely levies a court cost or fee, rather than a fine.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-209**

Ormond, Charles L  
*State Representative*

**RE:** Is it appropriate for the county to use 911 funds for the purchase of sign making equipment? Q2) If the answer to Q1 is "yes," and the 911 funds are used in making road signs for the county, is it permissible for 911 to refuse making signs for the city? **RESPONSE:** Q1) Yes, if the equipment is used exclusively for making signs that are necessary for the provision of 911 service in the area served by the county. Q2) The answer will depend on the arrangement between the city and the county concerning the provision of 911 service. Again, 911 funds must be used for purposes directly connected with the provision of 911 service.

**Opinion No.: 2003-214**

Hickinbotham, Boyd  
*State Representative*

**RE:** Can an individual who has been convicted of felony sexual assault on a minor be employed at a local senior citizens center as a janitor? **RESPONSE:** The answer will depend on the nature of the senior citizens' center, and whether it is an entity governed by a statute that prohibits such employment. As usually understood in common parlance, "senior citizens' centers" are not the type of entity that is subject to this type of prohibition.

**Opinion No.: 2003-215**

Taylor, Chaney, Jr.  
*State Representative*

**RE:** Does a city have legal authority to place a tax lien on a parcel of property and make an attempt to collect it on a property tax statement? **ANSWER:** This cannot be answered without knowing the exact pur-

pose of the lien, e.g., whether it is a lien that is imposed for the collection of a tax, or whether the lien enforces some other specific obligation of the property owner. See, e.g., A.C.A. 14-56-203 (lien for mandatory garage pick-up fee).

**Opinion No.: 2003-216**

Bell, Stewart  
*Exec Dir, Bd of Hearing Instr*

**RE:** Does the phrase "education equivalent" as it is used in ACA 17-84-304(d)(3)(B), imply that equivalent experience, (i.e., work experience) is an acceptable substitute for the education requirement for licensed dispensers of hearing instruments in Arkansas? **ANSWER:** No. The opinion overrules previous Attorney General Opinion 99-174.

**Opinion No.: 2003-217**

Higginbotham, Steve  
*State Senator*

**RE:** Do the provisions of Amend. 65, Sec. 4 (generally limiting the interest rate on revenue bonds issued thereunder to "the maximum authorized by Amend. 60"), actually place any limit upon the interest rate on multifamily mortgage revenue bonds issued thereunder if the federal usury override for first mortgage loans on residential real property set forth in 12 U.S.C. 1735f-7a is met with respect to the bonds, particularly in light of the language of Amend. 60 stating that its provisions "are not intended and shall not be deemed to supersede or otherwise invalidate any provisions of federal law applicable to loans or interest rates including loans secured by residential real property"? **RESPONSE:** The question of whether the preemption of 12 U.S.C. 1735f-7a applies to any given transaction will depend on numerous factual matters about the transaction and about the lender. Each case must be evaluated on the basis of its own facts.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-218**

Balfe, Robert C.  
*Pros Att'y, 19th Judicial District West*

**RE:** Are the 1967 and 1980 county court orders approving various agreements of Benton County property "facially invalid" or "lacking in subject matter jurisdiction" or otherwise invalid or void ad initio under either one or more of the following: a) Ark. Const. art. 12, Sec. 5; b) ACA 14-14-1202; c) ACA 14-16-110; or d) any other constitutional, statutory or legal provision? Q2) Can the present county judge vacate, revoke, or cancel the prior county court orders or leases? Q3) Are the 1967 and 1980 county court orders subject to any legal or equitable defenses including, but not limited to, statute of limitations, laches, estoppel, waiver, res judicata, and ratification with regard to the county's options in this matter? **RESPONSE:** Decline to answer. The county has been asked by the Division of Legislative Audit to justify the county's position that it is not delinquent in its tax obligation to the state. Providing this justification will entail assembling, presenting and interpreting a great deal of information regarding precisely what happened, when it happened and what it means. The opinions division of this office is neither equipped nor authorized to undertake any such intense fact-finding inquiry, nor can it perform the essentially judicial task of opining as to whether the county or the Division of Legislative Audit is justified in its position.

**Opinion No.: 2003-220**

Smith, Terry  
*State Senator*

**RE:** In light of the provisions of Section 1 of Act 520 of 2001, which appropriates \$1,800,000 for grants of \$100,000 each year of the biennium to nine community health centers, can more than \$900,000 be disbursed during any one year of the biennium since the biennium consists of two years — July 1, 2001 to June 30, 2002 and July 1, 2002 to June 30, 2003? **ANSWER:** No, based on the plain language of the appropriation, and in the absence of any other authority on the question.

**Opinion No.: 2003-221**

Jeffress, Jimmy  
*State Senator*

**RE:** Are Michael Ranft and William Pettis legally serving on the Arkansas Board of Acupuncture and Related Techniques since neither has ever been confirmed by the Arkansas Senate as required by ACA 10-2-113? **RESPONSE:** Yes, ACA 17-102-201 is the applicable statute and it only requires Senate confirmation of the "public" members of the board.

**Opinion No.: 2003-224**

Longstreth, Linda  
*Exec Dir, AR Prof Bail Bondsman Lic*

**RE:** Q1) Does a business engaging in the personal restraint business (interlock devices) create a conflict for a licensed bail bond company owner or for a licensed bail bondsman? Q2) Does a business engaging in the rental of electronic monitoring equipment (electronic ankle bracelets) create a conflict for a licensed bail bond company owner or for a licensed bail bondsman? **RESPONSE:** The answer to both questions will involve the extent of ownership interest in the interlock or monitoring company. Generally, such dual ownership interests are prohibited. See Oudin, 348 Ark. 48.

**Opinion No.: 2003-230**

Creekmore, Mike  
*State Representative*

**RE:** Is the enforcement of a sales tax on labor only work going to have a devastating impact on contractors? **RESPONSE:** Declined to answer. Revenue Division of Department of Finance and Administration has exclusive authority to issue advisory opinions on the sales tax law.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-240**

Milligan, Jimmy "Red"  
*State Representative*

**RE:** Does Section 2(b) of Act 1727 of 2003 require a countywide district court to hold court exclusively in the county seat? This is asked specifically with regard to the Marion County District Court, the successor court to the Municipal Court of Marion County, which was established in 1977 by an Agreement between Marion County and several cities, pursuant to A.C.A. 16-17-101. **ANSWER:** No, regarding the current Marion County District Court, based on the Agreement (which provides that the court may be held in Yellville and Flippin), and the absence of any current requirement that the court be held in a particular place. Act 1727 of 2003 (requiring that the court be located in the county seat) does not currently apply. In my opinion, the district courts established therein are not yet functional as contemplated by Act 1727. See 16-17-108 (the salary act). The answer may be different after January 1, 2005, however, when the judges who have been elected from the judicial districts established by Act 1727 (and pursuant to Ark. Const. Amendment 80) take office. This is not entirely clear from the language of Act 1727, and may require legislative or judicial clarification.

**Opinion No.: 2003-244**

Salmon, Mary Anne  
*State Senator*

**RE:** In light of the provisions of ACA 5-73-122 and 5-73-306, as amended by Act 1110 of 2003, is it currently lawful for a person with a concealed weapons permit, pursuant to 5-73-301 et seq., to carry a concealed weapon in a municipal park in Arkansas? Q2) If it is lawful for a person described in Q1 to carry a concealed weapon in city parks, may a Parks Commission authorize such a person to carry a concealed weapon in a city park for purposes other than those stated in ACA 5-73-122(a)(3)? Q3) If it is lawful for a

person described in Q1 to carry a concealed weapon in city parks, may a Parks Commission prohibit such a person to carry a concealed weapon in a city park pursuant to ACA 5-73-306(b)(1)? **RESPONSE:** Q1) It is currently lawful for a person who has a concealed handgun permit issued under the authority of A.C.A. § 5-73-301 et seq. to carry a concealed handgun in a municipal park in Arkansas unless the municipality has prohibited the carrying of handguns in the park by the posting of signs, as discussed in response to Question 3. See ACA 5-73-122, as amended by Act 1110 of 2003. Q2) Moot in light of previous response. Q3) Yes. ACA 5-73-306(b)(1) authorizes those controlling property to ban concealed handguns by posting signs announcing the ban. Law enforcement officers are exempt from any such ban.

**Opinion No.: 2003-245**

Emigh, Barry

**RE:** Request for certification of popular name and ballot title of proposed constitutional amendment permitting 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.: 2003-252**

Malone, Percy  
*State Senator*

**RE:** Does a county election commission have the authority to place on the ballot for a school election those positions on a school board the terms of which have not expired or which otherwise have not been determined by the school board to be submitted to the electors? **RESPONSE:** No. The commission does not have discretion. See ACA 6-14-111. The underlying issue of whether all board members must run will depend on various questions of fact that will determine the applicability of ACA 6-13-631.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2003-254**

Schulte, Susan  
*State Representative*

**RE:** Does the mayor's authority to appoint and remove department heads, pursuant to provisions of ACA 14-42-110, apply to the appointment or hiring of a "building official" for the City? Q2) Is it a conflict for a council member to vote on this issue if the council member is in the residential construction, development or home inspection business and has a monetary interest which may be affected by the "building official's" authority? **RESPONSE:** Q1) In my opinion, the city council, not the mayor, has the authority to appoint a "building official." ACA Sec. 14-56-202. Q2) Yes.

**Opinion No.: 2003-257**

Dean, Randy  
*Chief of Police*

**RE:** Is the decision of the custodian of records to release the attached internal investigation documents with the indicated redactions consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The arrest record is releasable. The suspension memo, the witness/victim statements, and the investigation report are releasable if there has been a final administrative resolution of the suspension. The probation memo is releasable. The question of whether and which information should be redacted is a question of fact that the custodian must determine, based on *McCambridge v. City of Little Rock*.

**Opinion No.: 2003-258**

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.: 2003-261**

Glover, Bobby  
*State Senator*

**RE:** Is the attached Cabot City Ordinance, which proposes to appoint a city building official and set the salary for that position, in conflict with provisions of ACA 14-42-110 or any other State law? **RESPONSE:** No. Although A.C.A. § 14-42-110 affords the mayor a general power of appointment of department heads, A.C.A. § 14-56-202, which more particularly addresses the issue raised here, makes it clear that the individual charged with the task of monitoring construction within the city will be appointed by the city council. See Opinion No. 254-254. Also, your description of the facts suggests that the building official would not qualify as a "department head."

**Opinion No.: 2003-270**

Weiss, Richard A.  
*Director, DF&A*

**RE:** Does the Director of the Department of Finance and Administration have the authority to modify the scope of a grant awarded by the Economic Development of Arkansas Fund Commission? Q2) If the answer to Q1 is "yes," would that authority allow for a retroactive amendment to the purpose of a grant when the funds have been spent? Q3) If the scope of a grant previously awarded by the Commission can be modified, what procedure should Chicot County follow based on the reasoning of Op. Att'y Gen. 2001-392? Q4) If the DF&A Director does not have the authority, does any agency have the authority? **RESPONSE:** Q1) No. Q2) Moot. Q3) Moot. Q4) No.

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# ADOPTED RULES AND REGULATIONS

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## ARKANSAS DEVELOPMENT FINANCE AUTHORITY

### *Multi-Family Housing*

Docket No.: 109.04.03--004  
Effective Date: 9/5/03  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **HOME Program Policy and Operations Manual**

Docket No.: 109.04.03--005  
Effective Date: 9/6/03  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **Compliance Monitoring Policies and Procedures Manual for the Low Income Housing Tax Credit Program**

Docket No.: 109.04.03--006  
Effective Date: 9/6/03  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **Compliance Monitoring Policies and Procedures Manual for the Home Program**

Docket No.: 109.04.03--007  
Effective Date: 9/5/03  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **Housing Credit Program 2004 Qualified Allocation Plan**

Docket No.: 109.04.03--008  
Effective Date: 9/5/03  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **2004 Guidelines for Allocating Multi-Family Tax Exempt Private Activity Volume Cap**

### *Single Family Housing*

Docket No.: 109.03.03--001  
Effective Date: 9/12/03  
Contact Person: Patrick Patton  
Telephone: (501) 682-5902

### **Home-To-Own Program Guide**

## BOARD OF PHYSICAL THERAPY

Docket No.: 071.00.03--001  
Effective Date: 9/9/03  
Contact Person: Alice Ryan  
Telephone: (501) 228-7100

### **Rules for the Board of Physical Therapy**

## DEPARTMENT OF COMMUNITY CORRECTION

Docket No.: 159.00.03--005  
Effective Date: 8/30/03  
Contact Person: Veter Howard  
Telephone: (501) 682-9568

### **AR 7.6 - Technical Violator Program**

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# ADOPTED RULES AND REGULATIONS

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## EDUCATION DEPARTMENT

*Office of Accountability*

Docket No.: 005.19.03--005  
Effective Date: Proposed  
Contact Person: Ron Tolson  
Telephone: (501) 682-4342

### **PROPOSED RULE: Governing Teacher Licensure By Reciprocity \*\*\***

Docket No.: 005.19.03--006  
Effective Date: Proposed  
Contact Person: Marcia Harding  
Telephone: (501) 682-2221

### **PROPOSED RULE: Child Find Section 3.01.2 General Responsibility to Conduct Child Find Special Education and Related Services \*\*\***

Docket No.: 005.19.03--007  
Effective Date: Proposed  
Contact Person: Marcia Harding  
Telephone: (501) 682-2221

### **PROPOSED RULE: Mediation and Hearings Section 10.01.38 and, Special Education and Related Services \*\*\***

## FINANCE & ADMINISTRATION

*Alcoholic Beverage Control Division*

Docket No.: 006.02.03--001  
Effective Date: 9/14/03  
Contact Person: Milton Lueken  
Telephone: (501) 682-1105

**Sections: 1.19(34), 1.20(16), 1.23, 1.26, 1.33(15), 1.35, 1.38.1, 1.60, 1.78(28), 1.79(32), 1.79(33), 1.81, 2.5.2, 3.19(10)B, 5.14, 5.15, 5.45, 5.47, 5.49, 5.56, 5.60, 5.65, 6.7**

*Revenue Division*

Docket No.: 006.05.03--003  
Effective Date: 8/29/03  
Contact Person: John Theis  
Telephone: (501) 682-7000

### **EMERGENCY RULE: Income Tax Rule 2003-4 -- Treatment of Employee Contributions to Employment-related Retirement Plans**

## GAME & FISH COMMISSION

Docket No.: 002.00.03--008  
Effective Date: 9/14/03  
Contact Person: James Goodhart  
Telephone: (501) 223-6327

### **2003 - 2004 Late Migratory Bird Hunting Regulations; Approved Hunter Education Certificate Requirements Code; 2004 Fishing Regulations**

## HEALTH DEPARTMENT

*Pharmacy Services*

Docket No.: 007.07.03--001  
Effective Date: 8/31/03  
Contact Person: C. C. Frazier, Jr.  
Telephone: (501) 661-2325

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# ADOPTED RULES AND REGULATIONS

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## List of Controlled Substances

### HIGHER EDUCATION

#### *Colleges & University Plans & Operations*

Docket No.: 008.02.03--002  
Effective Date: 8/29/03  
Contact Person: David McKinney  
Telephone: (870) 972-2945

## 2003-2004 Parking / Motor Vehicle Regulations for Arkansas State University

### HUMAN SERVICES

#### *Administrative Services*

Docket No.: 016.14.03--010  
Effective Date: 11/14/03  
Contact Person: Bill Tyler  
Telephone: (501) 682-9631

## DHS 1016 - Inclement Weather Policy

Docket No.: 016.14.03--011  
Effective Date: 11/14/03  
Contact Person: Bill Tyler  
Telephone: (501) 682-9631

## DHS 1073 - Communications

Docket No.: 016.14.03--012  
Effective Date: 11/14/03  
Contact Person: Bill Tyler  
Telephone: (501) 682-9631

## DHS 1084 - Employee Discipline

Docket No.: 016.14.03--013  
Effective Date: 11/14/03  
Contact Person: Bill Tyler  
Telephone: (501) 682-9631

## DHS 1086 - Employee Mediation / Grievance Procedure

#### *Children & Family Services*

Docket No.: 016.15.03--004  
Effective Date: 09/18/03  
Contact Person: Vivian Jackson  
Telephone: (501) 682-1577

## DCFS Family Services Policy and Procedures (FSPP) Manual, and the Family Services Forms (FSF) Manual

Docket No.: 016.15.03--005  
Effective Date: 09/18/03  
Contact Person: Vivian Jackson  
Telephone: (501) 682-1577

## Act 650 and Title IV-E; DCFS Forms: CFS-25, CFS-304, CFS-409, CFS-413, CFS-420, CFS-425, CFS-426, CFS-427, CFS-428A, CFS-428B, CFS-428C, CFS-429, CFS-431, CFS-432, CFS-433, CFS-434, CFS-467, CFS-468, CFS-470, and CFS-471

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# ADOPTED RULES AND REGULATIONS

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## *County Operations*

Docket No.: 016.20.03--006  
Effective Date: 09/15/03  
Contact Person: Linda Greer  
Telephone: (501) 682-8257

### **DCO-190: Non-Time Limited TEA Annual Reevaluation, for the Transitional Employment Assistance (TEA) program**

Docket No.: 016.20.03--007  
Effective Date: 09/14/03  
Contact Person: Linda Greer  
Telephone: (501) 682-8257

### **Weatherization Assistance Program**

Docket No.: 016.20.03--008  
Effective Date: 09/25/03  
Contact Person: Linda Greer  
Telephone: (501) 682-8257

### **FSC 03-13: Food Stamp Program - Simplified Reporting**

Docket No.: 016.20.03--009  
Effective Date: 09/15/03  
Contact Person: Linda Greer  
Telephone: (501) 682-8257

### **TEA 2220 - Citizenship and Alienage Requirement; TEA 2221 - Methods of Proving Citizenship and Alienage Status**

Docket No.: 016.20.03--010  
Effective Date: 10/1/03  
Contact Person: Linda Greer  
Telephone: (501) 682-8257

### **MS 26120-26180: Retroactive Coverage for ElderChoices & AAPD Waiver Medicaid**

Docket No.: 016.20.03--011  
Effective Date: 9/4/03  
Contact Person: Cathy Rowe  
Telephone: (501) 682-8726

### **Home Energy Assistance Program (HEAP) State Plan FY 2004 \*\*\***

## *Medical Services*

Docket No.: 016.06.03--018  
Effective Date: 11/1/03  
Contact Person: Suzette Bridges  
Telephone: (501) 683-4120

### **Official Notice DMS-2003-Q-5: ProDUR Early Refill Alert For Controlled Prescription Drugs**

Docket No.: 016.06.03--019  
Effective Date: 10/13/03  
Contact Person: Nikki Wade  
Telephone: (501) 682-8859

### **Section I -- All Medicaid Provider Manuals; Section II & III -- All Medicaid Provider Manuals \*\*\***

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# INSURANCE DEPARTMENT

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**03-020A**

*(Revocation Order)*

In the Matter of

**Billy Dean Mullins**

**03-020B**

*(Order)*

In the Matter of

**Billy Dean Mullins**

**03-021A**

*(Revocation Order)*

In the Matter of

**Cassandra Ann Kimble**

**03-023A**

*(Revocation Order)*

In the Matter of

**Helen Marie Markovich**

**03-024A**

*(Revocation Order)*

In the Matter of

**John Anthony Markovich**

**03-060**

*(Order of Suspension)*

In the Matter of the

Certificate of Authority of

**Colonial Casualty Insurance Company**

**03-061**

*(Order of Continued Suspension)*

In the Matter of the

Certificate of Authority of

**American Financial Security Life  
Insurance Company**

**03-062**

*(Consent Order)*

In the Matter of

**Terry R. Metheny**

**03-063**

*(Consent Order)*

In the Matter of

**Michelle Salena Leary**

**03-064**

*(Order of Cancellation)*

In the Matter of the

Certificate of Authority of

**Fremont Indemnity Company**

**03-065**

*(Order)*

In the Matter of the Merger of

**First Variable Life Insurance Company  
with and into Protective Life Insurance  
Company, with Protective Life Insurance  
Company Being the Surviving Company**

**03-067**

*(Order of Continued Suspension)*

In the Matter of the

Certificate of Authority of

**GHS Fire Insurance Company  
(Formerly Thurston Fire & Casualty  
Insurance Company)**

**03-068**

*(Order of Continued Suspension)*

In the Matter of the

Certificate of Authority of

**Highlands Insurance Company**

**03-069**

*(Order of Suspension)*

In the Matter of the

Certificate of Authority of

**National Warranty Insurance Company Risk  
Retention Group, A Cayman Islands Insurer**

**03-069A**

*(Corrective Order)*

In the Matter of the

Certificate of Authority of

**National Warranty Insurance Company Risk  
Retention Group, A Cayman Islands Insurer**

**03-070**

*(Emergency Suspension Order)*

In the Matter of

**Raymond V. Henderson**

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# INSURANCE DEPARTMENT

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**03-070A**

*(Order)*

In the Matter of

**Raymond V. Henderson**

**03-071**

*(Emergency License Suspension Order)*

In the Matter of

**Jim M. Hahaj**

**03-071A**

*(Order)*

In the Matter of

**Jim M. Hahaj**

**03-072**

*(Order of Continued Suspension)*

In the Matter of the

Certificate of Authority of

**Lutheran Benevolent Insurance  
Exchange, Inc., Succeeding to Instant  
Auto Insurance Company**

**03-073**

*(Cease and Desist Order)*

In the Matter of the Illegal Insurance Activities of

**Privilege Care "PEO" Professional Employer**

**Org.; Privilege Care, Inc., Privilege Care**

**Marketing Group, Inc.; Five Star Marketing**

**Group; Professional Industrial Trade Workers**

**Union (PITWU) Health and Welfare Fund, aka,**

**Privilege CarePITWU Health and Welfare Fund;**

**Privilege Care Employee Health and Welfare**

**Fund; Mark Maccarella; David Weinstein;**

**Don R. Smith; James M. Doyle; and Southern**

**Plan Administrators, Inc.**

**03-074**

*(Order of Suspension)*

In the Matter of the

Certificate of Authority of

**Equity Mutual Insurance Company**

**03-075**

*(Order of Continued Suspension)*

In the Matter of the

Certificate of Authority of

**The Home Insurance Company**

**03-076**

*(Order of Cancellation)*

In the Matter of the

Certificate of Authority of

**Reliance Insurance Company**

**03-077**

*(Order of Cancellation)*

In the Matter of the

Certificate of Authority of

**Northwestern National Casualty Company**

**03-078**

*(Order of Suspension)*

In the Matter of the

Certificate of Authority of

**Rapid Response Roadservice Motor Club**

**03-079**

*(Emergency License Suspension Order)*

In the Matter of

**Tommy Ray Brasher**

**03-079A**

*(Consent Order)*

In the Matter of

**Tommy Ray Brasher**

**03-080**

*(Order)*

In the Matter of

**Valeria D. Franklin**

**03-081**

*(Emergency License Suspension Order)*

In the Matter of

**Michael Joseph Roche**

**03-082**

*(Agreed Order)*

In the Matter of

**Benefit Plans of America, Inc. of Tuscaloosa, AL**

**03-083**

*(Adoption Order)*

In the Matter of the

Report of Examination of

**First Guaranty Insurance Company**

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# INSURANCE DEPARTMENT

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**03-084**

*(Consent Order)*

In the Matter of the

**Multi-State Examination of Monumental  
Life Insurance Company**

**03-085**

*(Order)*

In the Matter of the

**Arkansas Property and Casualty Guaranty Fund**

**03-087**

*(Consent Order)*

In the Matter of

**Charles David Wright, Sr.**

**03-088**

*(Consent Order)*

In the Matter of

**Lafayette Insurance Company**

**03-089**

*(Adoption Order)*

In the Matter of the

Report of Examination of

**Farmers Insurance Company, Inc. and  
Farmers Insurance Exchange**

**03-090**

*(Agreed Order)*

In the Matter of

**Southland National Insurance Corporation,  
of Tuscaloosa, AL**

**03-091**

*(Consent Order)*

In the Matter of

**Lawrence (NMN) Shelton**

**03-093**

*(Adoption Order)*

In the Matter of the

Report of Examination of  
**Selected Funeral and Life  
Insurance Company**

**03-094**

*(Order)*

In the Matter of

**Agents Mutual Insurance**

**03-095**

*(Emergency License Suspension Order)*

In the Matter of

**Steven E. Gwim**

**03-096**

*(Order)*

In the Matter of

**Kathryn Ann Hendrix**

**03-097**

*(Order)*

In the Matter of

**Ronald Mark Allison**

**03-098**

*(Consent Order)*

In the Matter of

**Sandra Kay Hunt**

**03-099**

*(Emergency Suspension Order)*

In the Matter of

**Gregory G. Polkowski**

**03-100**

*(Order)*

In the Matter of

the Illegal Activities of

**the Alliance Companies, Alliance Savings  
Company, Inc.**

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# ORDERS AND NOTICES

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## LEGISLATIVE AUDIT September 2, 2003

<b>Agency</b>	<b>Period Covered</b>
Department of Finance and Administration-Revenue Division - Office of Child Support Enforcement	6/30/02
Department of Education	6/30/02
Arkansas State Board of Acupuncture and Related Techniques	6/30/02
Arkansas State Board of Acupuncture and Related Techniques	6/30/03
Arkansas Treasurer of State	6/30/02
Department of Education - Arkansas School for the Deaf	6/30/02
Arkansas State Military Department	6/30/02
Arkansas State Medical Board (Private)	6/30/02
Arkansas Deaf and Hearing Impaired Telecommunications Services Corporations (Private)	6/30/02
Mid-South Health Systems, Inc. (Private)	6/30/02
Central Arkansas Planning and Development District, Inc. (Private)	6/30/02
Southeast Arkansas Economic Development District, Inc. (Private)	6/30/02
Department of Finance and Administration - Alcoholic Beverage Control - Administration Division	6/30/02
Department of Finance and Administration - Alcoholic Beverage Control - Enforcement Division	6/30/02

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# ORDERS AND NOTICES

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Department of Education - Arkansas State Library	6/30/02
University of Arkansas for Medical Sciences	6/30/02
University of Arkansas for Medical Sciences (Private)	6/30/02
Arkansas Beef Council	6/30/03
Arkansas Soybean Promotion Board	6/30/03



Secretary of State  
Charlie Daniels  
*Arkansas Register Division*  
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# ARKANSAS REGISTER

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