

The Arkansas Register



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ATTORNEY GENERAL OPINIONS

Opinion No.:2003-386

Beene, Linda
Director, AR Dept of Higher Education

RE:If ADHE could demonstrate that the determination of the Rule 8(1) was dependent on whether or not the programs offered were in the academic marketplace and not whether or not the institution is a “religious institution”, would Rule 8(1) violate the U.S. and Arkansas Constitutions? **RESPONSE:** Decline to answer due to pending litigation.

Opinion No.:2003-387

Murrell, Anita M.
Director, Arkansas Building Authority

RE:Are “guaranteed maximum price” capital improvement contracts permissible pursuant to provisions of A.C.A. 19-4-1415? **RESPONSE:** Yes, as you have described such contracts.

Opinion No.:2004-002

Lamoureux, Michael
State Representative

RE:For purposes of Amendment 80 and Sec. 4 of Amend. 29, is a May election of a judge considered to be a “general election”? **RESPONSE:** Yes. Both preferential primary elections and general judicial elections are held in May. ACA 7-7-203. Accordingly, for purposes of calculating the length of a judicial appointee’s term using the formulas set forth in Amendment 29, one must use this May date as the reference point, not the date of the general election for other officials. An exception to this rule applies to district judge appointees, who will serve until December 31, 2004. Ark. Const. amend. 80(A)(3). The general election for all district judge positions will occur in May 2004.

Opinion No.:2004-007

Jeffress, Jimmy
State Senator

RE:Can a former sheriff who meets all the requirements of A.C.A. 12-9-112, have full law enforcement authority without being certified by the State? This would include all law enforcement powers similar to that of an elected sheriff. **RESPONSE:** Generally “yes.”

Opinion No.:2004-011

Scroggin, Preston
State Representative

RE:In light of provisions of ACA 14-235-206(2) and (3)(A), can the city council dissolve the sewer committee when there are continuous vacancies and no regular meeting? Q2) Can the city council serve as the sewer committee with an appointed superintendent? **RESPONSE:** Q1) No. A city council may dissolve a sewer committee established pursuant to subchapter 2 of chapter 235 of title 14 of the Code only if it does so in conjunction with establishing a sanitary board pursuant to A.C.A. §§ 14-235-208 and -209. Q2) I believe city council members would be prohibited from serving on a sewer committee pursuant to the common-law doctrine of incompatibility.

Opinion No.:2004-013

Longstreth, Linda
Ex Dir, AR Prof Bail Bondsman

RE:Are the provisions of ACA 17-19-101 (bail bondsman licensing statute), regarding a residency requirement for professional bail bondsmen, constitutional? **ANSWER:** Yes, because the bail bond business does not implicate a constitutionally protected fundamental right or privilege. See A.L.R.4th 355.

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Opinion No.:2004-015

Baker, Gilbert
State Senator

RE:In calculating prior years of teaching “in any school district,” is a school district limited to crediting only service in other public schools or can the school district count service in a private school? **RESPONSE:** Yes. The term “school district” refers only to public school districts.

Opinion No.:2004-016

Baker, Gilbert
State Senator

RE:Does a municipality have the authority to propose to its electors a ballot measure which would impose a municipal sales tax, but would exclude such tax being imposed upon food? **RESPONSE:** The answer will depend upon the statutory authority under which the sales tax in question was levied. Some sales tax statutes are tied to the state Gross Receipts tax, which currently includes food items. Others do not.

Opinion No.:2004-018

Courtway, Tom
Interim Director, AR Dept of Education

RE:Is the entire “Notice of Intent to Home School” Form subject to disclosure under the Freedom of Information Act? Q2) If the answer to Q1 is “no,” is the information contained in the “Educational Qualifications of Parent/Teacher(s)” portion of the Form subject to disclosure under the FOIA? Q3) If the answer to Q2 is “yes,” is the Department required to collect this information and make it available to the requestor in another medium other than the form? **RESPONSE:** Q1) No. See Opinion 85-195 and Federal Educational Rights & Privacy Act, 20 U.S.C 1232g (FERPA). However, any compilation of this information produced in accordance with ACA 6-15-503 may be disclosable. Q2) No, although any

separate statistical compilations based upon that portion of the form may be subject to disclosure. In the unlikely event a compilation contains the names of the parent/teachers, I believe the custodian should redact these names pursuant to FERPA and A.C.A. § 25-19-105(b)(2). Q3) . No provision of the FOIA imposes any such requirement. Indeed, A.C.A. § 25-19-105(d)(2) provides: “A custodian is not required to compile information or create a record in response to a request made under this section.”

Opinion No.:2004-019

Raley, Melinda
Deputy City Attorney

RE:Request for approval of two interlocal cooperation agreements between the City of Little Rock and Sheridan, and the City of Little Rock and Grant County for ambulance service. **RESPONSE:** The submitted agreements are not subject to the Interlocal Cooperation Act and do not require the AG’s approval.

Opinion No.:2004-022

Medley, Jim
State Representative

RE:Is the Hardscrabble County Club in Fort Smith legally obligated to pay sales tax on golf course green fees, golf tournament entry fees, tennis guest fees and the renovation assessment fee? **RESPONSE:** Refer to the Revenue Division of DF & A.

Opinion No.:2004-023

Herzfeld, Robert L., Jr.
Pros. Attorney, 22nd Judicial District

RE:In response to a Freedom of Information Act request for “a copy of the [Saline County Tax Assessor’s] database and all associated files (pictures, etc.) that are available via the public access terminals . . . In Microsoft Access format,” is the

ATTORNEY GENERAL OPINIONS

assessor required, under A.C.A. 25-19-109(a)(1), to furnish it by hiring it done by a private contractor? Q2) If the answer to q1 is "yes," and in light of current security concerns, is the requester entitled to pictures, drawings, and appraiser's notes regarding whether taxpayers were at home at specific times of the day? Q3) If the answer to q1 is "yes," must the home addresses of nonelected state employees, nonelected municipal employees, and nonelected county employees be deleted although the assessor is not their employer? Q4) If the answer to q1 is "yes," may the contractor delete certain proprietary files, i.e., the data dictionary? Q5) If the answer to q1 is "yes," does A.C.A. 25-19-109(b)(2) mean that the assessor may charge for the lowest price of the private contractor or does it mean the lowest paid employee of the private contractor? ANSWER: Q1) If the data is not "readily convertible" to the requested format, there is no obligation to comply with the request, although the custodian may at his discretion comply. See 25-19-109. This presents a factual question. The Report of the Electronic Records Study Commission refers in this regard to "mundane conversions" and cases where it is "relatively easy and cost-free to ... convert" the records. Q2) If 25-19-109 applies, the requester is not entitled to this information, but in my opinion the assessor might provide it or not provide it, at his discretion. If 25-19-105 (b) (2) (B) applies because the data can in fact be readily converted, then this information must be provided because there are no applicable exemptions. Q3) This might implicate the constitutional privacy right, as to unlisted addresses. Q4) If this constitutes "software acquired by purchase, lease, or license," it cannot be released. See 25-19-103 (a) (5) (B). Q5) The statute refers, to agency personnel, not an employee of the contractor. A question may remain, however, regarding the particular contractor charge. The charge would be permissible if it did not exceed the amount that would be charged by a contractor with comparable ability to perform the task. This requires some price comparison.

Opinion No.:2004-024

Moore, Thomas
State Representative

RE:Request for clarification of Op. 2001-305, as follows: Q1) Can the automation fund for the Arkansas Collectors be used to give salary (merit) increases to employees in the Collector's Office to offset administrative costs? Q2) If the answer to q1 is "yes," can the Collector give his employees an average of 7.53% merit increase in their salaries? Q3) If the answers to q1 and 2 is "yes," can the members of the Quorum Court Finance Committee deny the Collector's request for an appropriation for this purpose? Q4) Would the AG's office consider a 7.53% merit increase reasonable? **RESPONSE:** Q1) Only if the quorum court approves this use and appropriates the funds for it. Q2) Yes, but it can be effective only if the quorum court approves it. Q3) The Finance Committee can advise the full quorum court to refuse the request, but the full quorum court must make the ultimate decision. Q4) I cannot answer this question because it requires a determination of fact, which I am not authorized to make.

Opinion No.:2004-028

Buttry, James A.
Friday Eldredge & Clark

RE:Request for approval of a revised interlocal cooperation agreement between Independence County and Clarksville, Arkansas whereby the city would agree to purchase power produced by county-owned facilities. **RESPONSE:** Approved as submitted.

Opinion No.:2004-029

Kenney, Mike
State Representative

RE:Is it constitutional for a sales tax to be used to fund a school district's construction bond? **RESPONSE:** So long as a city is acting under its

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statutory authority, the Arkansas Constitution would not prohibit such a use. Section 26-73-114 of the Code authorizes a city or county to levy a sales and use tax to be used by a school district for any purpose to which it could devote its "general funds." Although the term "general funds" is vague and confusing, I believe the context of A.C.A. § 26-73-114 suggests a legislative intent to allow the use of sales tax revenues to assist a local school district in retiring its bonded indebtedness. However, I doubt that the legislature intended to authorize a city to levy a sales tax that will be irrevocably dedicated as the sole revenue source to retire a school district's bonded indebtedness. Although the Code contains provisions expressly precluding the abolishment of sales taxes committed to the retirement of bonded indebtedness, no such provision applies to the tax authorized at A.C.A. § 26-73-114, which I do not believe was intended to authorize city voters to pledge sales tax revenues as the exclusive collateral securing a school district bond issue. Consequently, as a practical matter, it strikes me as highly unlikely that a school district could successfully market bonds secured only by a sales tax that the voters might revoke at their discretion.

Opinion No.:2004-030

Del Rio, Becky
Chair, AR Board of Examiners Speech Path

RE: Does the Arkansas Board of Examiners in Speech-Language Pathology and Audiology (Board) have authority to pursue possible violations of the Board's rules and regulations by any person practicing at a facility that is exempt from state licensure, if that person is currently licensed by the Board? **RESPONSE:** Yes. Any person who maintains a license is subject to regulation by the Board, regardless of where the person practices.

Opinion No.:2004-031

Del Rio, Becky
Chair, AR Board of Examiners Speech Path

RE: Is the use of the title "Audioprosthologist" misleading and consequently a violation of any part of the Arkansas Board of Examiners in Speech-Language Pathology and Audiology licensing law (ACA 17-100-101 et seq.), specifically that section that states "[n]o person shall practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter"? **RESPONSE:** No. No person, however, can practice audiology without a license.

Opinion No.:2004-032

Johnson, Bob
State Senator

RE: Do the laws for salvage and lost property in waterways under ACA 27-102-101 through 27-102-110 apply to logs located in the Ouachita River? Q2) Does ACA 22-5-801 through -815 take precedence or have any bearing over the salvage laws and operations for recovery of logs in this case? Would the situation be different if the recovery involved a car, boat or motor? Q3) Must an individual have specific permits from the state in order to remove the logs from the river? **RESPONSE:** Q1) I believe the salvage laws set forth at ACA 27-102-101 through -110 would apply if the owner's logs were lost on the river. However, the Abandoned Shipwreck Act of 1987, 43 U.S.C. 2101 et seq. would supersede state law and vest title of the logs in the state if the logs were lost in the course of being transported on a vessel that foundered and the logs subsequently became "embedded" in the river. I do not know what happened in this case. Q2) With respect to the first part of this question, I do not believe A.C.A. §§ 22-5-801 through -815, which deal with the severance by lease and permit of government resources from waterways and other government property, bear in any way on the state's salvage laws. With respect to the second part of this question, this

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subchapter of the Code has nothing to do with the recovery of a car, boat or motor. Q3) I cannot answer this question without knowing more facts. If the owner had severed the logs from the riverbank, A.C.A. §§ 22-5-801 through -815 would have required him to obtain a permit to do so. By contrast, unless the Abandoned Shipwreck Act dictated otherwise, if he had obtained the logs elsewhere and simply lost them on the river, he would not need a permit to recover them.

Opinion No.:2004-033

Schulte, Susan
State Representative

RE:Can the Lonoke County Quorum Court legally, by ordinance, place on the ballot to the electors of Lonoke County an option to re-allocate the current use of a county wide sales tax? Q2) If the quorum court does not provide this option to the electors of the county, can the qualified electors by referendum petition present this issue to the electors in Lonoke County? ANSWER: Q1) Yes, pursuant to A.C.A. 26-74-208, with respect to revenues that are collected after the expiration of the challenge period under 26-74-209 (This is in accordance with the statute, The change in use cannot apply to taxes that have already been collected without offending Ark. Const. article 16, section 11, which prevents the legislature from diverting, or authorizing the diversion of sales tax revenues). Q2) No. The question is whether the electors could by an initiative petition under Ark. Const. amendment 7 place the issue on the ballot. The answer is "no" because this is not authorized under the statute and initiative provisions of amend, 7 are inapplicable. There is no "local legislation" so as to invoke amend. 7. The quorum court does not exercise legislative authority when it refers to the voters a change in use of designated sales tax revenues.

Opinion No.:2004-034

Herzfeld, Robert L.
Pros Attorney, 22nd Judicial District

RE:Q1) Does the prosecuting attorney for the county in which an original conviction occurred have standing to file suit to enjoin or void the granting of executive clemency based upon the Governor's failure to follow the procedures described in ACA 5-4-607? Q2) If the answer to q1 is "no," what person or official does have standing, and does any official have a duty to take action? Q3) Would jurisdiction for a petition as described in q1 be proper in the county wherein the original conviction occurred? If not, what would be the proper jurisdiction? Q4) What is the proper form for bringing action; i.e., should the petitioner request a restraining order or should the petitioner seek to have the illegal clemency voided, or seek some other relief? Q5) If the recipient of the clemency has been released from state custody, what is the proper procedure for bringing the recipient back into custody assuming the clemency is voided? RESPONSE: I cannot answer these questions due to imminent litigation of these issues.

Opinion No.:2004-035

Jones, Terry D.
Pros. Attorney, 4th Judicial District

RE:Do the provisions of A.C.A. 16-17-133 and 9-27-330, regarding the sentencing options for juvenile offenders conflict? Q2) If the answer to q1 is "yes," which statute would prevail? Was it the Legislature's intent to bestow special powers to the District Courts by this statute? RESPONSE: Q1) No. The statutes independently address the respective sentencing authority of district and circuit judges. I do not consider it a "conflict" that a district judge may under certain specified circumstances sentence a juvenile to a longer period of incarceration than may a circuit judge in adjudicating a juvenile delinquent. Q2) Moot.

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Opinion No.:2004-039

Campbell, Denele
Exec Dir, ARDPark, Inc.

RE:Request for certification of popular name and ballot title for a proposed constitutional amendment authorizing the medical use of marijuana, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to an ambiguity in the text of the proposed measure.

Opinion No.:2004-041

Jones, Steven B.
State Representative

RE:Is it permissible for a member of the House of Representatives to sponsor a bill that benefits the agency they run? Q2) Does the attached bill, HB 1194, create a monopoly for the Area Agency on Aging (AAA)? **RESPONSE:** Q1) With respect to the facts giving rise to your question, the Arkansas Ethics Commission, not this office, is the appropriate entity to investigate whether any ethical breach has occurred. My inquiries reveal that an individual whom I assume is your constituent has indeed filed a complaint with the Ethics Commission regarding this incident. Q2) I am likewise unable to answer your second question, which raises intensely factual questions regarding the possible anticompetitive effects of the legislation.

Opinion No.:2004-042

Prater, Sandra
State Representative

RE:Who bears the cost of complying with A.C.A. 14-284-225 by removing fire protection district property from the assessment rolls following annexation of the property by a municipality? Q2) If the annexation is appealed and overturned, who bears the cost of placing these properties back on the district's assessment rolls? **ANSWER:** There is no indication that any additional costs will be incurred in complying with this

Code section. The district and its assessors, the county clerk, and the county collector all have a roll in insuring that the property is no longer "assessed, taxed, or required to pay fees" after the annexation.

Opinion No.:2004-043

King, Barbara
State Representative

RE:Does the phrase "for other purposes," as it is used in Sections 1(A) and 1(B) of Act 435 of 2003 (an appropriation act), restrict the expenditure of appropriated funds, or can the City of Lakeview spend the funds on any program or project administered by the City? **ANSWER:** The "other purposes" are limited, in my opinion, to those having a direct connection with the enumerated purposes, i.e., "repair of roads" and "equipping the ball park." This follows from the principle of statutory interpretation "noscitur a socii" ("it is known from its associates").

Opinion No.:2004-044

Dangeau, LeRoy
State Representative

RE:Q1) When two districts consolidate and have two different millage rates, current law allows a new millage rate to be put to the ballot at the next school election. What happens if the voters from both districts turn down the millage? Q2) What happens if the voters in one district approve the millage, but the others do not? **RESPONSE:** Q1) If the voters in a newly consolidated school district reject a proposed millage over and above the uniform rate of tax, the current millages will remain in effect. Ark. Const. amend. 74, § (c)(1); A.C.A. § 26-80-111(b), as amended by Act 105 of the Second Extraordinary Session of 2004. Q2) Once two districts have been consolidated, a majority vote of the electors residing within the consolidated district will determine whether the millage has been approved. It is not the case, as this question implies, that votes cast in each what had been distinct districts before consolidation will be considered separately following consolidation.

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Opinion No.:2004-045

Womack, Shawn
State Senator

RE:Is it your opinion, based upon the language of the consent decree issued under U.S. Dist. Court Case No. 98-3065, that the boys and girls games have to be alternated? Or is it simply an option, as stated in the Consent Decree, that the games be alternated to provide males and females an equal opportunity to play at the most desirable game time? **RESPONSE:** I cannot comment on a facially valid court order. Advice regarding compliance must come from the parties' counsel, or from the court itself.

Opinion No.:2004-046

Bookout, Jerry
State Senator

RE:Do counties and cities have the ability, under current law, to enter into an interlocal agreement for the purpose of requiring a business to pay personal property tax in order to obtain a privilege or business license from a city? **RESPONSE:** No. The Interlocal Cooperation Act, A.C.A. §§ 25-20-101 through -108 (Repl. 2002 & Supp. 2003), and A.C.A. § 14-14-910(a) (Repl. 1998), both of which authorize interlocal agreements, authorize such agreements only if one or the other political subdivisions involved would have been authorized to undertake the contemplated activity alone. Although the General Assembly has enacted specific legislation conditioning the registration of vehicles upon the payment of personal property taxes, see A.C.A. §§ 26-26-706 and -1401, it has not chosen to do so with respect to the issuance of business licenses. I do not believe the General Assembly has indirectly authorized political subdivisions to do so by interlocal agreement.

Opinion No.:2004-047

Lamoureux, Michael
State Representative

RE:Must a suspect who was never charged with a crime in a criminal investigation petition a court, pursuant to Rule 15.2 of the A.R.Cr.P., to receive an order releasing property being held by the police? **RESPONSE:** This question cannot be answered in the abstract without reference to all the facts. The opinion cites some relevant case law applying to various factual scenarios.

Opinion No.:2004-049

Lamoureux, Michael
State Representative

RE:What effect does an order of expungement or order to seal have on an arrest report? Q2) Can the order of expungement or order to seal legally require the custodian of the arrest report to "seal" or remove from availability to the public the arrest report subject of the order of expungement or order to seal? Q3) Would the expunged or sealed reports be exempt from subsequent FOIA requests? **RESPONSE:** Unless a law specifically provides otherwise, the expungement and sealing of an arrest report will sharply restrict its disclosure and enable the arrestee to represent that no such report exists. Q2) Yes. See A.C.A. 16-90-901(a)(1). Q3) Yes, although certain individuals and agencies might access the sealed report pursuant to A.C.A. 16-90-903. Sections 25-19-105(a)(1) and 25-19-105(b)(8), which are contained in the Arkansas Freedom of Information Act, A.C.A. § 25-19-101 et seq. (Repl. 2002 & Supp. 2003), exempt public records from disclosure if some other law or a court order so provides.

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Opinion No.:2004-051

Lamoureux, Michael
State Representative

RE:Q1) If a municipal police department collects money on a traffic citation in advance of the designated court date and holds the money as bail on the traffic citation, would ACA 14-52-111 apply and the defendant have to pay the \$20 fee? Q2) Can 14-52-111 apply to all traffic citations found in Title 27 of the Arkansas Code when the bail is collected in advance of the court date? **RESPONSE:** Q1) The answer depends on whether the department was actually collecting payment of the fine, or just an amount to assure the appearance of the defendant. If the amount collected is actually just payment of the fine, ACA 14-52-111 would not apply and the defendant could not be charged with the \$20.00 fee. Q2) ACA 14-52-111 applies to all traffic citations in which bail is taken, as that phrase is defined in Arkansas law.

Opinion No.:2004-052

Lamoureux, Michael
State Representative

RE:In AGO 2003-019, it was opined that the cost of mileage could be obtained from a defendant convicted in court when, presumably, an officer had to transport a defendant from one jurisdiction to another jurisdiction in order for the defendant to be tried and convicted. How would the rate be set for the court to follow in order to compute the mileage due the city? **RESPONSE:** State law does not address this question. It must be determined on a case-by-case basis.

Opinion No.:2004-053

Evans, David
State Representative

RE:The Concord (29.80 mills) and Wilburn (34.92 mills)

School Districts are contemplating consolidation under HB 1109. What is the status of the two districts' millages and would they actually be affected at this time? **RESPONSE:** This question is answered in Opinion 2004-044, issued simultaneously herewith.

Opinion No.:2004-054

Herzfeld, Robert L., Jr.
Pros. Attorney, 22nd Judicial District

RE:Considering that there is a statewide non-partisan election held concurrently with the preferential primary, (A.C.A. 7-10-102) and that the State of Arkansas now funds preferential primaries, can a quorum court place the issue of a temporary sales tax and bond issuance for jail construction on the ballot this May 8, 2004? **ANSWER:** An argument can be made in favor of this, provided a separate ballot is used, but the issue may need to be addressed judicially. See Op. 96-089. The question is whether any voters will be disenfranchised by holding the special election on the sales tax on the same day as the preferential primary. The State Board of Election Commissioners should also be consulted.

Opinion No.:2004-056

Jeffress, Gene
State Senator

RE:Can a school district dispose of school property located within the boundaries of the municipality by donating the property to the municipality for public use? Q2) Can a municipality accept school property that is no longer in use (buildings and land) donated to it by a school district? **RESPONSE:** Q1) No. Ark. Const. art. 14, § 3. Q2) Moot. However, I will note that the school district could sell the property to the municipality for adequate consideration, including consideration in the form of a "public advantage" that promotes a "general, suitable and efficient system of free public schools." Ark. Const. art 14, § 1.

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Opinion No.:2004-058

Wilkins, Terry D.
Lieutenant, NLR Police Department

RE:Employee objects to the release of his personnel file in response to a Freedom of Information Act (FOIA) request. **RESPONSE:** The opinion sets forth the standards the custodian must apply in deciding what documents to produce.

Opinion No.:2004-059

Jeffress, Jimmy
State Senator

RE:Q1) Does it make a difference if those wishing to detach their land subsequent to an annexation proceeding have had no utility services provided to their annexed land while other landowners have had utility services provided? Q2) If the first landowner is allowed to detach his property, can the other two landowners “piggy back” with the first landowner and have their land detached as well? Q3) Does the language contained in ACA 14-40-608 mean that in order to invoke the detachment statute, only one person must have owned “all the lands originally annexed,” or can one or more individual landowners petition to detach their separate parcels, as long as they meet the other criteria of the detachment statute? **RESPONSE:** The plain language of the statute seems to indicate that all of the parcels for which detachment is sought must have been owned by the same person at the time of annexation. If this reading is correct, the first two questions are moot. However, this reading seems to be at odds with other rules of statutory interpretation, as discussed in the opinion. Legislative clarification is warranted.

Opinion No.:2004-060

Jones, Steve
State Representative

RE:Is there any action that property owners can take

to stop an adjacent property owner from excavating the dirt on his property to sell as landfill? **RESPONSE:** Declined to answer based on statutory prohibition against private practice of law and suggested private counsel.

Opinion No.:2004-061

Martin, Harold G.

RE:Request for certification of the popular name and ballot title of a proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, authorizing the General Assembly to operate lotteries, authorizing for-profit gambling as specified, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.:2004-062

Emigh, Barry Lee

RE:Request for certification of popular name and ballot title of a proposed constitutional amendment permitting the operation of bingo and raffles by non-profit organizations, authorizing state-operated lotteries, permitting local option for-profit gambling as specified, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.:2004-063

House, Don R.
State Representative

RE:Q1) What restrictions does Arkansas State law place on paramedics to prohibit them from administering care within the scope of their training in a hospital emergency department? Q2) Are paramedics restricted from using their skills in a hospital as a continuation of the initial care given outside the hospital? Can paramedics provide

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services to patients with whom they did not initiate treatment outside the hospital? Q3) Does Arkansas State law restrict paramedics from administering care within the scope of their skills in a hospital emergency department under the supervision of a physician employed by the hospital? RESPONSE: Q1) The permissible scope of practice for paramedics is set forth in Section VII of the Board of Health's Rules and Regulations Pertaining to Medical Services. Q2) The Rules and Regulations permit each hospital to make this determination. Q3) See response to Q.1.

Opinion No.:2004-065

Clemons, Booker T.
State Representative

RE:What Arkansas statutes, if any, require Missionary Baptist Churches to designate officers (trustees) of the church in order to hold title to property? **RESPONSE:** I am statutorily prohibited from the private practice of law. The Arkansas statutes that address this matter are ACA 18-11-201 and -202. Private counsel should be consulted for legal advice.

Opinion No.:2004-066

Evans, David
State Representative

RE:Do provisions of ACA 12-12-505, as amended by Act 758 of 2003, requiring private facilities to pay up to \$10 per person for each Central Registry check, but exempting non-profit organizations from the fee, discriminate against private facilities? **RESPONSE:** No. It is possible to hypothesize a rational basis for an economic classification of this nature.

Opinion No.:2004-067

Dees, Joyce
State Representative

RE:Pursuant to provisions of a broiler contract between

a constituent and Tyson Poultry, should the constituent be considered a Tyson employee and therefore entitled to a range of pay and benefits? **RESPONSE:** I cannot respond to this question, because I am not authorized to construe the provisions of private contracts and because the issues are the subject of pending litigation. Moreover, the answer would require determinations of fact, which I am not authorized to make.

Opinion No.:2004-069

Jones, Steven B.
State Representative

RE:Is it legal for a city council member, who is also a volunteer fire fighter for the city, to receive the stipend that is paid to all fire fighters for attending fire department meetings? **RESPONSE:** Yes, assuming that the fire fighter in question is not the fire chief or a highly paid member of the department. See ACA 14-42-115.

Opinion No.:2004-072

Martin, Marie

RE:Request for certification of the popular name and ballot title of a proposed constitutional amendment to ratify the Equal Rights Amendment to the United States Constitution proposed by Congress in 1972. **RESPONSE:** Popular name and ballot title rejected because ratification of an amendment to the United States Constitution does not fall within the power of initiative under Amendment 7 to the Arkansas Constitution. This is contrary to the ratification clause of Article V of the U. S. Constitution. See opinion for discussion.

Opinion No.:2004-074

Trotter, Scott C.
Attorney at Law, Perkins & Trotter

RE:Request for certification of popular name and ballot

ATTORNEY GENERAL OPINIONS

title of proposed constitutional amendment to allow the medical use of marijuana, and for other purposes. RESPONSE: Popular name certified as submitted; ballot title certified as revised.

Opinion No.:2004-077

Jeffress, Jimmy
State Senator

RE:Since Act 60 of the Special Session of the Legislature states in part, under Sec. 6-13-1603, regarding "Administrative reorganization" (see attachment detailing 6-13-1603), and since the attorney for the Department of Education is interpreting that all such joining shall be by annexation, which shall have dominion — Act 60 or the Department of Education? RESPONSE: I cannot opine as to whether a verbal representation of a state employee

conflicts with an act of the General Assembly. As a general rule, an administrative regulation cannot be contrary to a statute. It is impossible to analyze the issue, however, without reference to any pertinent regulation.

Opinion No.:2004-081

Shafer, Robert S.
Friday Law Firm

RE:Request for certification of the popular name and ballot title of a proposed constitutional amendment to provide that marriage consists only of the union of one man and one woman, and for other purposes. RESPONSE: Popular name and ballot title certified as submitted.



ADOPTED RULES AND REGULATIONS

DEPARTMENT OF LABOR

Board of Electrical Examiners

Docket No.: 010.13.03--001
Effective Date: 4/1/04
Contact Person: Ron Baker
Telephone: (501) 682-4547

Administrative Regulations

EDUCATION DEPARTMENT

Administrative Services

Docket No.: 005.01.04--001
Effective Date: 3/4/04
Contact Person: Scott Smith
Telephone: (501) 682-4227

Emergency Rule: Governing Administrative Consolidation or Annexation of Public School Districts

Office of Accountability

Docket No.: 005.19.03--008
Effective Date: 3/6/04
Contact Person: Annette Barnes
Telephone: (501) 682-4393

Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts

Docket No.: 005.19.04--003
Effective Date: 3/19/04
Contact Person: Barbara Patty
Telephone: (501) 682-1146

ADE 166: Rules Governing Eligibility and Financial Incentives for National Board for Professional Teaching Standards

School Improvement & Restructuring

Docket No.: 005.22.03--001
Effective Date: 3/6/04
Contact Person: Ann Biggers
Telephone: (501) 682-4224

ADE 163: Rules Governing Arkansas Governor's School Site Selection

GAME & FISH COMMISSION

Docket No.: 002.00.04--002
Effective Date: 3/22/04
Contact Person: James Goodhart
Telephone: (501) 223-6327

3.16 - Licenses, Permits, Stamps, Tags, Costs and Expiration Dates

HUMAN SERVICES

Medical Services

Docket No.: 016.06.03--038
Effective Date: 3/1/04
Contact Person: Tommy Wingard
Telephone: (501) 682-6117

Section 901.4: Plans and Specifications - Level II Assisted Living

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.03--040
Effective Date: 3/1/04
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Official Notice DMS-2003-E-10

Docket No.: 016.06.04--001
Effective Date: 4/1/04
Contact Person: Tommy Wingard
Telephone: (501) 682-6117

Rules for Nursing Homes

Docket No.: 016.06.04--002
Effective Date: 4/1/04
Contact Person: Tommy Wingard
Telephone: (501) 682-6117

Rule for Large (16 Beds and Over) Intermediate Care Facilities (ICF) for the Mentally Retarded (MR)

Docket No.: 016.06.04--015
Effective Date: 2/19/04
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Emergency Rule: Official Notice DMS-2004-E-1 -- Supernumerary Teeth

Docket No.: 016.06.04--016
Effective Date: 2/27/04
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Emergency Rule: Targeted Case Management Update Transmittal #45

Docket No.: 016.06.04--017
Effective Date: 2/27/04
Contact Person: Betty Reed
Telephone: (501) 682-8363

Emergency Rule: Official Notice DMS-2004-A-1, DMS-2004-AR-1, DMS-2004-HH-1, DMS-2004-C-2, DMS-2004-G-1, DMS-2004-L-4, DMS-2004-SS-1, DMS-2004-KK-2, DMS-2004-R-3, DMS-2004-QQ-1, DMS-2004-Y-2, DMS-2004-YY-3, DMS-2004-OO-1

Docket No.: 016.06.04--018
Effective Date: 2/17/04
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Emergency Rule: Elderchoices -- Provider Manual Update Transmittal #42

Docket No.: 016.06.04--020
Effective Date: 2/17/04
Contact Person: Randy Helms
Telephone: (501) 682-1857

Minimum Occupancy Rule Change

Services for the Blind

Docket No.: 016.10.03--003
Effective Date: 3/7/04
Contact Person: Jim Pearson
Telephone: (501) 682-2326

ADOPTED RULES AND REGULATIONS

DSB VOP Policy: Services for the Blind - Vendor Operating Procedures

Docket No.: 016.10.04--001
Effective Date: 3/11/04
Contact Person: Lyndel Lybarger
Telephone: (501) 682-5463

DSB Physical Restoration Policy

LIVESTOCK & POULTRY COMMISSION

Docket No.: 125.00.03--006
Effective Date: 3/1/04
Contact Person: Karen Gray
Telephone: (501) 907-2411

Scrapie Control Regulation

Docket No.: 125.00.03--007
Effective Date: 3/1/04
Contact Person: Karen Gray
Telephone: (501) 907-2411

Arkansas Health Requirements Governing the Entry of Livestock, Poultry, and Exotic Animals

Docket No.: 125.00.03--008
Effective Date: 3/1/04
Contact Person: Karen Gray
Telephone: (501) 907-2411

Exhibition Health Requirements for Livestock, Poultry, and Exotic Animals

Docket No.: 125.00.03--009
Effective Date: 3/1/04
Contact Person: Karen Gray
Telephone: (501) 907-2411

List of Reportable Diseases in Arkansas

PHARMACY BOARD

Docket No.: 070.00.04--001
Effective Date: 2/28/04
Contact Person: Charles Campbell
Telephone: (501) 682-0190

Regulation 02 - Pharmacists

Docket No.: 070.00.04--002
Effective Date: 2/28/04
Contact Person: Charles Campbell
Telephone: (501) 682-0190

Regulation 11 - Criminal Background Checks

STATE CHIEF INFORMATION OFFICER

Docket No.: 200.00.03--005
Effective Date: 3/11/04
Contact Person: Gary Underwood
Telephone: (501) 682-3636

Personnel Security

ADOPTED RULES AND REGULATIONS

Docket No.: 200.00.03--006
Effective Date: 3/11/04
Contact Person: Gary Underwood
Telephone: (501) 682-3636

**Administration of Subdomains of the
arkansas.gov and ar.gov domains**

STATE POLICE

Docket No.: 130.00.04--001
Effective Date: 3/19/04
Contact Person: Alice Eastwood
Telephone: (501) 618-8810

Rules for Commercial Driver's License

TITLE INSURANCE AGENTS LICENSING BOARD

Docket No.: 193.00.03--001
Effective Date: 3/14/04
Contact Person: Catherine Leonard
Telephone: (501) 682-3630

Arkansas Title Insurance Agents Licensing Act

INSURANCE DEPARTMENT

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

ORDERS AND NOTICES

LEGISLATIVE AUDIT March 1, 2004

Agency	Period Covered
Arkansas Public Employees Retirement System	6/30/03
State Bank Department - Two-Year Period Ended	6/30/03
Arkansas Dietetics Licensing Board - Two-Year Period Ended	6/30/03
Arkansas Board of Dispensing Opticians - Two-Year Period Ended	6/30/03
Department of Finance and Administration	6/30/03
Office of Information Technology - Two-Year Period Ended	6/30/03
Liquefied Petroleum Gas Board - Two-Year Period Ended	6/30/03
Arkansas State Board of Podiatric Medicine - Two-Year Period Ended	6/30/03
Arkansas State Board of Sanitarians - Two-Year Period Ended	6/30/03
Arkansas Veterans Child Welfare Service - Two-Year Period Ended	6/30/03
Arkansas State Police Retirement System	6/30/03
Arkansas Judicial Retirement System	6/30/03
East Arkansas Planning and Development District, Inc. (Private)	6/30/03
Southeast Arkansas Economic Development District, Inc. (Private)	6/30/03
West Central Planning and Development District, Inc. (Private)	6/30/03
Health Resources of Arkansas, Inc. (Private)	6/30/03

ORDERS AND NOTICES

Health Resources of Arkansas, Inc. (Private)	6/30/03
Arkansas Revenue Department Building Commission - Two-Year Period Ended	6/30/03
State Board of Collection Agencies - Two-Year Period Ended	6/30/03
Disabled Veterans Service Office - Two-Year Period Ended	6/30/03
Arkansas Department of Environmental Quality	6/30/02
Arkansas Commission on Law Enforcement Standards and Training	6/30/02 & 03
Arkansas Tobacco Control Board - Two-Year Period Ended	6/30/03
North Arkansas College	6/30/03
Southern Arkansas University	6/30/03
Southern Arkansas University - Tech	6/30/03
Garland County Community College	6/30/03
Quapaw Technical Insititute	6/30/03
Department of Correction	6/30/02

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