

The Arkansas Register



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TABLE OF CONTENTS

ATTORNEY GENERAL

Opinions 4

RULES AND REGULATIONS 13

INSURANCE DEPARTMENT

Orders 17

LEGISLATIVE AUDIT

Orders 21

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THE ARKANSAS REGISTER

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2004-196

Norton, James
State Representative

RE: Is it lawful for a public school district's board of education to adopt two salary schedules: a) one salary schedule applicable to certified staff members who much work a minimum of 190 days per Act 74 of the 2d Ex. Sess. of 2003; and b) a second salary schedule for certified staff members who work more than 190 days and whose salaries are calculated by multiplying their individually assigned "weighted" factors times their placements? Q2) Does the changing of a certified staff member's "weighted" factor (used to calculated his/her salary) after May 1 of the contract year constitute a change of a "term" of his/her contract? Q3) If the answer to Q2 is "yes," must a board of education obtain a certified staff member's permission to change his/her "weighted" factor for the new school year if the decision to do so is not made by May 1 of a contract year? **ANSWER:** Q1) No. See A.C.A. 6-20-2005 and Op. 95-153. See also 6-17-201, 6-17-204, and 6-17-2403. It is noted, however, that state law does not require or otherwise address the practice of weighting a salary schedule to calculate the salaries of those who are paid under a supplement to the salary schedule. Q2 & 3) The answer to these questions is unclear due to conflicting evidences of legislative intent under the statutes. See 6-17-1506(a)(1) (automatic renewal under the Teacher Fair Dismissal Act) and 6-17-201, 6-17-204, 6-20-2005 (regarding incorporation of salary schedule into each contract, as a part of personnel policies); Op. 92-097.

Opinion No.: 2004-206

Milligan, Jimmy "Red"
State Representative

RE: May a suburban improvement district levy an assessment against property within the district that is owned by a city of the second class? For purposes of this question, please assume that the lots are unimproved property, with the purpose of the sale

by the city is to attract residents to the city. **ANSWER:** This depends upon whether the particular property is exempt from ad valorem taxes (Ark. Const. Article 16, Section 5), a decision that lies in the first instance with the assessor. Public property used exclusively for public purposes is not subject to suburban improvement district assessments because there is no statute providing that such assessments will apply to city-owned property. See Opinion 95-348. Whether the particular undeveloped property is tax-exempt is a fact question. There is general authority for the proposition that vacant land being held for future use is taxable.

Opinion No.: 2004-210

Bright, Stephen D.
State Representative

RE: Can the State of Arkansas issue a promissory note or a bank guarantee, backed by the assets of the State, for collateral to fund any legal project for improvement of the infrastructure of the State? Q2) If the answer to Q1 is "yes," is the State constitutionally bound to refer the question to the people for a ballot vote? **RESPONSE:** It depends. It is impossible to answer these questions without reference to the facts of a particular transaction. The opinion sets out some applicable legal principles.

Opinion No.: 2004-214

Madison, Sue
State Senator

RE: Under Act 1719 of 2003 (A.C.A. 14-56-103), can a city council/municipality enact impact fees for roads, fire stations, and police protection? Q2) If so, could such a fee be considered a tax and therefore require a vote of the public? **ANSWER:** Q1) Yes. Q2) No, as to a development impact fee that has been assessed in compliance with 14-56-103. The statute that requires an election the in case of any tax that has not been authorized by law (A.C.A. 26-73-103) is inapplicable.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2004-223

Gibbons, David L.
Pros Attorney, 5th Judicial District

RE: Do provisions of the Arkansas Freedom of Information Act (FOIA) supersede the language in Section 21 of the attached lease agreement between Johnson County and the Johnson Regional Medical Center (JRMC) regarding open meetings because of either the maintenance tax support or the financial support of the ambulance of service? Q2) Will simple refusal by JRMC to accept the tax and/or ambulance support each year remove the applicability of the FOIA or would the tax or ambulance support or both have to be formally rescinded to remove the applicability of the FOIA? **RESPONSE:** Q1) The provisions of Section 21 of the lease agreement are inconsistent with the FOIA, and in the event of a legal challenge, the FOIA would prevail. This conclusion rests on a determination that the Medical Center is subject to the FOIA. Because it is the direct beneficiary of tax funds, it appears to be subject to the FOIA. Q2) No. The Medical Center cannot simply refuse to accept a tax enacted for a specific purpose. See Ark. Const., Art. 16, 11. It also cannot simply refuse the payment under the ambulance agreement. The tax must be repealed or re-levied for another purpose, and the ambulance agreement must be terminated in accordance with its terms. Even if these events took place, other facts of which I am unaware may nevertheless indicate that the Medical Center is subject to the FOIA.

Opinion No.: 2004-228

Taylor, Chaney, Jr.
State Representative

RE: Is a new subdivision created when two owners of a parcel of property not included on the original subdivision plat sell part of the non-platted property to a third party? Q2) Does the city have the legal authority to retroactively require the new property owners to comply with the city's subdivision regulations, including paving, curbing and guttering of the property used for ingress and egress? Q3) Or, in the alternative, is the street that was platted but not accepted

by the city a separate issue and who is responsible for bringing the platted street up to code specifications? **RESPONSE:** I am unable to provide an opinion in response to these fact-based questions which require the interpretation and application of local land use regulations. This matter must be handled locally through the interested parties and their counsel.

Opinion No.: 2004-229

Jeffrey, Robert N.
State Representative

RE: Does having accepted an appointment as deputy city attorney of an Arkansas city of the first class in and of itself, without doing anything else, constitute practicing law? Q2) Must a deputy city attorney of a first class city in Arkansas have an Arkansas law license as a prerequisite to serving in that capacity? Q3) Does it make any difference in answering the previous questions if the deputy city attorney only assists the city attorney personally and refrains from any official acts such as representation of the city in court, advising the city council or drafting or signing pleadings, ordinances or resolutions that might imply or require an Arkansas license to practice law? Q4) Does it make any difference in answering the previous questions if a deputy city attorney appointee without an Arkansas license has long been licensed in good standing to practice in another state and some federal courts and is applying for licensure by reciprocity from Arkansas? **RESPONSE:** Q1) Assuming the deputy city attorney has indeed done nothing other than accept employment, I do not believe he could accurately be described as having engaged in the practice of law in that position. By contrast, assuming the deputy undertakes activities traditionally associated with his position, I believe he would be practicing law. However, only a finder of fact acquainted with all the attendant circumstances can ultimately determine whether the deputy is practicing law. Q2) Assuming the deputy city attorney will be engaged in activities that qualify as practicing law, I believe the answer to this question is "yes." Q3) I am unable to answer this question, since you have not specified what sort of assistance the deputy would provide the city attorney.

ATTORNEY GENERAL OPINIONS

If that assistance amounts to practicing law, I believe the deputy must be licensed in Arkansas. Q4) I believe the answer to this question is "no." Regardless of whether an individual is licensed to practice in another state, he can practice in Arkansas only if he is licensed to do so or if a court has granted him leave as a matter of comity to pursue or to defend against a particular legal claim. Effective October 1, 2004, Rule XVI of the Rules Governing Admission to the Bar will permit a candidate licensed in another state to seek admission to the Arkansas Bar by reciprocity.

Opinion No.: 2004-230

Trusty, Sharon
State Senator

RE: Would it be a conflict of interest for an individual who is a board director of both a bank and a nonprofit corporation, which leases a municipal utility from a city, to act on any of the nonprofit corporation's financial affairs which involve the bank where he is a director? Q2) If the answer to Q1 is "yes," would a conflict of interest also exist for like members of a intermodal board, economic development board or any board receiving public funds? Q3) Does a lease between a city and a nonprofit corporation, which contains a perpetual rollover clause that automatically adds one year to the lease agreement as long as neither party object to the rollover, violate the ACA 14-199-701(c) provision concerning leasing between two parties for more than 80% of the economic life span of the utility system? Q4) Is it legal for a city of the first class, which owns a water and sewer system and leases that system to a private nonprofit corporation under ACA 14-199-701, to charge a franchise fee on the private nonprofit corporation pursuant to ACA 14-200-101, when the private nonprofit corporation is declared by ACA 14-199-701(b) to be an instrumentality of the city? Q5) Based on the same factual scenario in Q4, is it legal for a nonprofit corporation to pass along the franchise fee to the customers of the utility that are inside the city limits? **RESPONSE:** Q1) A director of a nonprofit corporation that leases a city-owned utility is subject to the statutory conflict-of-interest provisions applicable to public officials and

employees. He further owes fiduciary obligations both to the nonprofit corporation and any other organization he serves as a director, including any organization that contracts with the city or any instrumentality of the city. The dual service referenced in your request raises serious ethical concerns under both sets of obligations. Q2) This same conclusion applies to the dual service referenced in this question. Q3) Only a finder of fact familiar with the entire lease could opine on the effect of what you characterize as "a perpetual rollover clause." However, assuming the clause indeed conflicts with the provision of A.C.A. 14-199-701(c) limiting the term of a lease to 80% of the economic life span of the utility system, I believe the entire contract would be subject to challenge as failing to contain a material, enforceable contractual provision. Q4) As reflected in Ark. Op. Attorney Gen. No. 2003-196, I believe the answer to this question is "yes." See A.C.A. 14-200-101. Q5) As further reflected in my previous opinion, I believe the answer to this question is likewise "yes," subject to the condition that the utility may only pass on this fee to customers living within the municipality. See A.C.A. 14-200-101(a)(1)(D).

Opinion No.: 2004-231

Laverty, Randy
State Senator

RE: Under what circumstances, if any, may the Ten Commandments be displayed on the walls of a public courtroom? Q2) What elements would need to be contained in a public display of historical documents, including the Ten Commandments, for such a display to be permissible under the law? Q3) In particular, may a court display on its courtroom walls copies of historical documents, including some or all of the following: excerpts from Hammurabi's Code, the Ten Commandments, excerpts from the Hebrew Code, excerpts from the Magna Carta, the Mayflower Compact, excerpts from the Declaration of Independence, and the Bill of Rights? Q4) May a court display, along with such historical documents, artwork depicting landmarks in the history of law, such as Moses' presentation of the Commandments, King John's signing of the Magna Carta, the Pilgrims' sign-

ATTORNEY GENERAL OPINIONS

ing of the Mayflower Compact, and Jefferson's presentation of the Declaration of Independence? RESPONSE: Decline to answer because of pending litigation.

Opinion No.: 2004-233

Thomason, Chris
State Representative

RE: Can an ambulance service company providing emergency response and transport services to a municipality and/or a county under a franchise agreement, dispatch local ambulance units from an out of state communications center? RESPONSE: The described arrangement would not be permissible under the Arkansas Public Safety Communications Act of 1985, A.C.A. 12-10-301 et seq. (Repl. 1999 & Supp. 2003), which requires that a public entity, not a private corporation, field and process initial 911 calls.

Opinion No.: 2004-235

Scroggin, Preston
State Representative

RE: Do municipal fire departments fall under the same rules as rural volunteer fire departments? Q2) Can municipal fire departments set their boundaries using those that are set forth in the attached city codes? ANSWER: Q1) There is no general rule that the same rules apply, although there are specific ones that do apply to both. Q2) The particular boundaries and surrounding circumstances would have to be considered.

Opinion No.: 2004-238

Pate, Mark
State Representative

RE: Who is the immediate supervisor of an assistant to the clerk/treasurer of a city if there is no ordinance in place advising of the same? Q2) Does the

elected clerk/treasurer have full authority over the employee(s) in his office? Q3) Would there be a conflict if such an employee worked for anyone other than the clerk/treasurer? Q4) If a mayor/city council goes into executive session for an administrative action (non-punitive), is the decision from such a meeting valid if it does not fall under any other guidelines in A.C.A. 25-19-106(c)(1)? Q5) What is the recourse if a mayor/city council goes into executive session without publicly announcing the same in accordance with 25-19-106(2)(a)? Q6) What is the recourse if the city attorney was called into the executive session two (2) times, but does not fall under the auspices of 25-19-106(c)(1)? RESPONSE: Q1) In the absence of an ordinance addressing the issue, the supervisory authority over an assistant to the Clerk/Treasurer falls primarily upon the Clerk/Treasurer, subject to ultimate control of the city council or city board of directors. Q2) See Q1. Q3) In light of the response to Q1, a response to this question is unnecessary. Q4) In order to assure the validity of any decision that is made as a result of a city council's executive session, the session must be held in compliance with A.C.A. § 25-19-106. These requirements are discussed in the opinion. Q5) If a governing body fails to comply with the requirements of A.C.A. § 25-19-106 in holding an executive session, the aggrieved parties can petition for relief under A.C.A. § 25-19-107. The prosecutor can also seek criminal sanctions under A.C.A. § 25-19-104. Q6) See Response to Q5.

Opinion No.: 2004-241

McCune, Marc
Pros Attorney, 21st Judicial District

RE: Does the Crawford County Levee District #1 have authority to transfer ownership of a portion of the levee that contains a private water line and to change the boundary lines of the two adjacent districts (Crawford County and Van Buren District) by transferring authority of a portion of the levee to Van Buren Levee District #1? RESPONSE: The answer is unclear under state law. Although state law clearly authorizes the transfer of property by levee districts, and separately authorizes levee districts to acquire property, it is unclear whether a transfer of property from

ATTORNEY GENERAL OPINIONS

one district to another would be permissible if the effect of the transfer is to change the boundaries of both districts. The special act under which the Crawford County Levee District was created (and the subsequent amending act) recited specific boundaries for the district. It is unclear whether a transfer of property by the district's board that had the effect of changing those specifications would be in conflict with state law.

Opinion No.: 2004-242

Pate, Mark
State Representative

RE: Is a quorum court authorized to take control of a 911 dispatch center away from a sheriff, or does that authority lie with the county judge and/or an authorized board? **RESPONSE:** Assuming your question refers to a sheriff who acts as the "operating agency" for a "911 public safety communications center," the answer is "no," that authority lies with the county judge. See ACA 12-10-302 and 12-10-304.

Opinion No.: 2004-243

Dobbins, R. Dwayne
State Representative

RE: Can you be charged for public intoxication while you are in your yard/property? **RESPONSE:** It depends upon the facts surrounding the arrest, but in my opinion it is unlikely that such a charge would be upheld unless the facts show that the location was a place to which the public or substantial numbers of people have access. See ACA 5-71-212 and 5-71-101(6) and *Weaver v. State*, 326 Ark. 82, 928 Ark. 798 (1996).

Opinion No.: 2004-248

Norris, Larry B.
Director, Arkansas Dept. of Correction

RE: Are tapes of inmate telephone calls made from

the Arkansas Department of Correction (Varner Supermax), open to public inspection and copying under the Arkansas Freedom of Information Act or are such tapes covered by ACA 12-27-113, which restricts access to inmate records? Are audio recordings of inmate disciplinary hearings subject to release under the FOIA or is access to such recordings restricted by ACA 12-27-113? **RESPONSE:** Q1) The tape recordings can be withheld from disclosure only if (1) under the Department's established policy and practice, the tapes are a part of the inmate's "Institutional File and Inmate Jacket," under ACA 25-19-105(a)(1)(A) and ACA 12-27-113; or (2) their contents bring them within a specific exemption or within the constitutional right of privacy. Otherwise, they must be disclosed. Q2) Audio recordings of inmate disciplinary hearings can be withheld from disclosure under ACA 25-19-105(a)(1)(A) and ACA 12-27-113.

Opinion No.: 2004-253

Click-Horoda, Amy
Chair, Sebastian County Election

RE: In a city manager form of government, if a city director misses five consecutive meetings that position is declared vacant. If the board re-appointed the same city director to that position, can that city director run for that position when the next election occurs? **RESPONSE:** Yes. Amendment 29 does not apply to municipal officials. Two related points must be noted: First, the commission's role is ministerial in nature; it does not have the authority to refuse to place a properly certified name on the ballot. Second, state law does not appear to authorize the removal of a director as a result of absences.

Opinion No.: 2004-259

Bailey, Claire
Director, Dept. of Information

RE: In light of the provisions of A.C.A. 25-4-122(a)(1), 25-4-123(b) and 25-4-121(c), is the Department of Information Services (DIS) authorized to transfer amounts deducted for depreciation expenses for

ATTORNEY GENERAL OPINIONS

equipment acquisition in year end surplus calculation to the Information Technology Reserve Fund or otherwise segregate said funds from other operating funds of the agency? RESPONSE: Decline to answer because of pending litigation.

Opinion No.: 2004-261

Norris, Larry
Director, Arkansas Dept of Correction

RE: In order for an inmate to fall under A.C.A. 16-93-607(d), must the inmate be under the age of twenty-one (21) years merely at the time of the offense? Must the inmate also be under 21 at the time of the conviction? What is the operative time frame for eligibility under this section? Q2) Please assume the following facts to be true: An inmate is serving time in the Arkansas Department of Correction for a Class Y felony committed after April 1, 1983. The inmate meets the age requirement of 16-93-607(d), as discussed above. Given these facts, which provision controls the inmate's parole eligibility date: 16-93-607(c)(3) or 16-93-607(d)? RESPONSE: (Q1) I believe the inmate must be under the age of 21 at the time of his conviction. Q2) I believe the provisions of A.C.A. 16-93-607(d), which particularly addresses the parole eligibility of Class Y felons convicted before they turn 21, controls over the more general provisions of A.C.A. 16-93-607(c)(3), which addresses the parole eligibility of adult Class Y felons.

Opinion No.: 2004-262

Evans, David
State Representative

RE: If a candidate for public office realizes that he/she is not eligible to hold the office sought and withdraws from the race prior to the general election, does the party have the right to fill the vacancy, and what are the procedures if the party has that right? ANSWER: The answer will vary depending upon the particular circumstances. The answer is "no" regarding an unopposed candidate because death and serious illness are the only bases for filling the vacancy

in that instance. See A.C.A. 7-7-106 and Opinion 98-011. If this involves someone who was elected at the primary election, then the answer will depend upon the reason for his or her ineligibility. See 7-7-104 and 7-1-101 (24). A "vacancy in nomination" will arise following the withdrawal of such a candidate who moves out of the area from which elected or files for another office. Such a vacancy may be filled, at the party's option, either through a special election or a convention of delegates.

Opinion No.: 2004-264

Ormond, Charles L.
State Representative

RE: When the City of Perryville passed Ord. No. 000-006, was the 1974 agreement to establish a countywide court still in effect since the City of Perryville had never taken any action to withdraw from the agreement and was still actively participating in the municipal court of Perry County? Q2) If the answer to Q1 is "yes," was Ord. No. 000-006 sufficient to allow the City of Perryville to withdraw from the 1974 agreement when the city did not take any other action to withdraw from the agreement, did not notify any of the other participants in the agreement of the passage of that ordinance, did not notify any of the personnel of the court of the passage of the ordinance or an intent to withdraw from the agreement, continued to participate in the municipal/district court as of August 12, 2004, and has not to this date notified the court or any of the participating cities and incorporated towns of its intent to withdraw from the agreement or of its intent to form a separate city court? ANSWER: No opinion is possible in response to these questions concerning the proper interpretation of the agreement, which turns on the particular terms and the parties' intent.

Opinion No.: 2004-267

Prater, Sandra
State Representative

RE: If a citizen has multiple traffic violations such as traffic tickets, DUI, or failure to appear, and the

ATTORNEY GENERAL OPINIONS

violations are in more than one county, does that person have to pay a reinstatement fee for each violation or in each county? Q2) If that person's driver's license is reinstated for one of the offenses, is it reinstated regarding the other violations? RESPONSE: Q1) No. Regardless of the number of offenses or violations on a person's record, he can be required to pay the applicable reinstatement fees only once for the reinstatement of his driver's license. See Op. Att'y Gen. No. 2004-189. Q2) A person whose license has been suspended and who has been convicted of multiple offenses, any one of which could have provided a basis for suspension of the license, must satisfy all conditions associated with each offense for the reinstatement of his license.

Opinion No.: 2004-268

Jacobs, Phillip T.
State Representative

RE: What is the current state of Arkansas law regarding "exit polls?" RESPONSE: There is no Arkansas statute or case law expressly addressing exit polls. The applicable distance limitations for conducting such polls are discussed in Op. Att'y. Gen. 99-330 and include the generally-applicable six-foot limitation found in ACA 7-5-309(a)(4) and the restriction found in ACA 7-5-521 that prohibits certain persons from passing into the "part of the room where the machine is situated" in counties using voting machines.

Opinion No.: 2004-269

Hendren, Kim
State Senator

RE: Is Northwest Arkansas Community College considered "located" within the City of Rogers for the purposes of financial aid pursuant to ACA 14-58-504 and -505, because the College's district includes the City of Rogers, notwithstanding the physical location of the College's facilities in the City of Bentonville?

Q2) Are 14-58-504 and -505 constitutional under Art. 12, Sec. 5 of the Arkansas Constitution? RESPONSE: Q1) In my opinion, given the express terms of the statutes, I believe the answer to your first question is "no." Q2) Because the statutes envision grants of public funds to serve a public purpose beneficial to the granting municipality's citizens, I believe the statutes do not offend Ark. Const. art. 12, sec. 5.

Opinion No.: 2004-270

King, Barbara
State Representative

RE: How many votes are needed for the city council in a city of the first class to appoint someone to fill a vacant position on the council? Q2) Does the mayor of a city of the first class have veto power over an appointment to fill a vacant city council position? RESPONSE: 1) Assuming an eight-member council, four votes are required. See ACA 14-42-103 and 14-43-411. 2) Yes, but the council can override the veto with six votes.

Opinion No.: 2004-272

Murrell, Anita
Director, Arkansas Building Authority

RE: Is the custodian's decision to withhold information in response to a Freedom of Information Act request for names of current and former (back to 1998), ABA employees who have had access to the Arkansas State Crime Lab and have been terminated, re-assigned, disciplined, or submitted their resignations, consistent with provisions of the FOIA? RESPONSE: It depends. If there has been no "final administrative resolution," as the ABA contends, then responsive job performance records are not subject to disclosure. If there has been a "final administrative resolution," the question of release of the documents depends upon whether there is a compelling public interest in their disclosure.

ATTORNEY GENERAL OPINIONS

Opinion No.: **2004-273**

Madison, Sue
State Senator

RE: May a city enact an ordinance requiring that retrieval sites for vehicles towed non-consensually within the city limits be no greater than a certain number of miles from the city limits? Q2) Does a city have any right to regulate the prices charged for non-consensual tows within its city limits? **RESPONSE:** Q1) No. The legislature has expressly charged the law enforcement agency ordering a nonconsensual tow with the responsibility of drafting a written vehicle removal policy consistent with state law — a charge I believe would include determining which licensed towing service(s) will conduct the towing. A.C.A. 27-50-1207. Although the law enforcement agency might in its discretion consider distance in making this determination, I believe the determination remains the agency's to make. Q2) No. I believe it lies solely within the law enforcement agency's discretion to determine whether to consider rates in drafting its written vehicle removal policy.

Opinion No.: **2004-275**

Lavery, Randy
State Senator

RE: Does a school district have the authority to pay the medical bills for students who were injured on a school-sponsored field trip that was not covered by school-purchased insurance? **RESPONSE:** In my opinion, Ark. Const. art. 14, sec. 2 and art. 16, sec. 11 would preclude a school district from voluntarily discharging students' medical bills from any resource other than insurance unless it reasonably did so in order to compromise certain types of pending or impending legal claims.

Opinion No.: **2004-278**

Bradford, Jay
State Representative

RE: Request for review of the conclusion reached

in Op. 2004-185, in light of the 1997 revision to ACA 14-359-105, which was not specifically mentioned in the earlier opinion. Should ACA 14-359-105 be interpreted as requiring appointments to a municipal airport commission to be simply "subject to the approval of the council," and not requiring a 3/4 majority? **RESPONSE:** No. Act 1078 of 1997 did not amend in any way the applicable legislation relating to the size of the city-council majority required to approve a mayor's appointment of successor commissioners. Accordingly, as I concluded in Opinion No. 2004-185, the controlling legislation is Acts 1949, No. 53, sec. 4, which mandates that a mayor's appointment of successor commissioners be approved by a 3/4 majority of the city council.

Opinion No.: **2004-281**

Clemons, Booker T.
State Representative

RE: Pursuant to Arkansas law, are individuals occupying the positions of Chief of Police and/or Fire Departments considered civil servants subject to ACA 14-51-301, especially when the individual rose through the ranks of the department to the position of Chief of Police? Q2) If the Chief position were subject to ACA 14-51-301, would one be correct in believing that this temporary appointment could not exceed 60 days as designated in 14-51-301(8)(b), since an emergency was not declared? Q3) Would the interim Chief be ineligible for examination for advancement to the Chief position since he did not serve at least one year in the lower rank and was terminated during his probation period pursuant to ACA 14-51-301(4)(A)(ii), if the Commission should decide to fill the position from outside the department? Q4) In order to fill the Chief's position according to ACA 14-51-301, would I be correct in believing that the Commission has two options it may exercise: 1) to appoint a permanent replacement from within the ranks according to the rules and regulations, or 2) testing for the position and creating an eligibility list? Q5) Should the aforesaid ordinance become law, would the city council be infringing upon the Commission's authority to create qualifications for the positions and eligibility lists for the Chief to make necessary appointments there from?

ATTORNEY GENERAL OPINIONS

Q6) Would one be correct in assuming that the proposed ordinance as currently written is considered a promotion and not a new designation (title) of an old position, which would be usurping the authority of the Chief? RESPONSE: Decline to answer because of pending litigation.

Opinion No.: **2004-283**

Maxey, Danny H.
Chair, Pike Co Election Commission

RE: In light of the fact that the September 21st school election ballot erroneously listed the terms of two unopposed school board candidates as 5-year terms when it should have indicated that the terms were only to finish out the time remaining on the two vacated positions, will the terms actually be the un-

expired terms? Q2) Does the error have any impact on the legality or the validity of the election? RESPONSE: Q1) Yes. The term is governed by A.C.A. 6-13-611(c), which clearly provides that directors elected after the occurrence of a vacancy serve the unexpired term. Q2) No, because the error is not such as to render the results uncertain. An election contest would therefore fail.

Opinion No.: **2004-287**

King, Barbara
State Representative

RE: Q1) When the city council passes the ordinance as required by 14-40-1201, can the mayor veto the ordinance? ANSWER: Q1) No.

ADOPTED RULES AND REGULATIONS

BOARD OF ATHLETIC TRAINING

Docket No.: 191.00.04--001
Effective Date: 1/1/05
Contact Person: Nancy Worthen
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Revision to Athletic Training Rules and Regulations

DEPARTMENT OF LABOR

Docket No.: 010.13.04--001
Effective Date: 11/1/04
Contact Person: Ron Baker
Telephone: (501) 682-4547

Amendments to Regulation: Regulation 6 - Qualification for Examination; Regulation 7 - Licenses; Regulation 9 - Electrical Civil Money Penalties

EDUCATION DEPARTMENT

General Education Division

Docket No.: 005.15.04--003
Effective Date: 9/26/04
Contact Person: Bobbie Davis
Telephone: (501) 682-1297

ADE 195: Rules Governing Incentives for Teacher Recruitment and Retention in High Priority Districts with an Average Daily Membership of 1000 or Fewer

GAME & FISH COMMISSION

Docket No.: 002.00.04--009
Effective Date: 10/14/04
Contact Person: James Goodhart
Telephone: (501) 223-6327

Approved 2004 - 2005 Waterfowl Code & 2004 - 2005 Late Waterfowl Seasons Codes

HEALTH SERVICES AGENCY

Docket No.: 049.00.04--005
Effective Date: 10/3/04
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

HSC Regulation 200M Residential Care Facility Methodology

HUMAN SERVICES

Developmental Disabilities Services

Docket No.: 016.05.04--001
Effective Date: 10/17/04
Contact Person: Pam Fowler
Telephone: (501) 682-4747

DDS Policy # 1089 -- Criteria for Expansion of DDS Services

ADOPTED RULES AND REGULATIONS

Medical Services

Docket No.: 016.06.04--023
Effective Date: 10/11/04
Contact Person: Tom Show
Telephone: (501) 682-2483

State Plan Transmittal #2004-006 -- Private Duty Nursing

Docket No.: 016.06.04--042
Effective Date: 10/11/04
Contact Person: Will Taylor
Telephone: (501) 682-8362

State Plan Amendment #2004-009 and Personal Care Update #56

Docket No.: 016.06.04--044
Effective Date: 10/22/04
Contact Person: Dorothy Vance
Telephone: (501) 683-2916

Official Notice DMS-2004-W-2 -- New Coverage for Unborn Children in Aid Category 61

Docket No.: 016.06.04--057
Effective Date: 11/1/04
Contact Person: Renita Honorable
Telephone: (501) 682-8577

Children's Services Respite Care Update Transmittal # 5

Docket No.: 016.06.04--058
Effective Date: 11/21/04
Contact Person: Dorothy Vance
Telephone: (501) 683-2916

Official Notice DMS-2004-AR-3, DMS-2004-C-5, DMS-2004-F-3, DMS-2004-I-2, DMS-2004-L-6, DMS-2004-KK-5, DMS-2004-FF-3, DMS-2004-R-6, DMS-2004-EE-2, DMS-2004-Y-4, DMS-2004-YY-6, and revised form DMS-640

Docket No.: 016.06.04--059
Effective Date: 11/1/04
Contact Person: Betty Reed
Telephone: (501) 682-8363

Official Notice DMS-2004-KK-9 and DMS-2004-R-12

Docket No.: 016.06.04--060
Effective Date: 11/1/04
Contact Person: Will Taylor
Telephone: (501) 682-8362

Personal Care Update #57

Docket No.: 016.06.04--063
Effective Date: 11/1/04
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Rehabilitative Services for Persons with Mental Illness (RSPMI) Update #50

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.04--068
Effective Date: 10/1/04
Contact Person: Betty Reed
Telephone: (501) 682-8363

Emergency Rule: Official Notice DMS-2004-R-16 -- Home Dialysis - Physician's Professional Services

Docket No.: 016.06.04--075
Effective Date: 10/1/04
Contact Person: Randy Helms
Telephone: (501) 682-1857

Clarification on Cost Reporting Categories

Docket No.: 016.06.04--076
Effective Date: 10/9/04
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Arkansas Medicaid State Plan Amendment #2004-010 and Official Notice DMS-2004-N-2

Docket No.: 016.06.04--077
Effective Date: 10/18/04
Contact Person: Randy Helms
Telephone: (501) 682-1857

Minimum Occupancy Requirements

Docket No.: 016.06.04--079
Effective Date: 10/15/04
Contact Person: Betty Reed
Telephone: (501) 682-8363

Emergency Rule: Official Notice DMS-2004-A-8; DMS-2004-AR-7; DMS-2004-G-4; DMS-2004-CA-7; DMS-2004-II-5; DMS-2004-L-16; DMS-2004-KK-12; DMS-2004-R-17; DMS-2004-OO-5 -- Influenza Virus Vaccine, for Intranasal Use

PUBLIC SERVICE COMMISSION
Utilities Division

Docket No.: 126.03.04--002
Effective Date: 10/4/04
Contact Person: Diana Wilson
Telephone: (501) 682-5782

Arkansas Gas Pipeline Code

REHABILITATION SERVICES

Docket No.: 165.00.04--002
Effective Date: 10/21/04
Contact Person: Dale Turrentine
Telephone: (501) 296-1620

Policy and Procedure Manual: Section V - Economic Need and Comparable Benefits; Section VI - Provision and Authorization for Services

ADOPTED RULES AND REGULATIONS

SOIL & WATER CONSERVATION COMMISSION

Docket No.: 138.00.04--006
Effective Date: 10/4/04
Contact Person: Crystal Phelps
Telephone: (501) 682-3905

**Title 19 - Poultry Feeding Operations
Registration; Title 20 & 21 - Certified
Nutrient Planners & Certified Nutrient
Applicators; Title 22 - Nutrient Surplus
Areas**

STATE PLANT BOARD

Docket No.: 003.11.04--010
Effective Date: 12/31/04
Contact Person: Terry Walker
Telephone: (501) 225-1598

Blackberry Certification Program

WATER WELL CONSTRUCTION COMMISSION

Docket No.: 096.00.04--001
Effective Date: 1/1/05
Contact Person: Crystal Phelps
Telephone: (501) 682-3905

**Rule 3.10 - Apprenticeship Program &
Rule 6.7 - Public and Semi-Public Wells**

WORKFORCE EDUCATION

Docket No.: 172.00.04--003
Effective Date: 10/30/04
Contact Person: Peggy Wakefield
Telephone: (501) 682-1500

**Program Policies and Procedures for
Career and Technical Education -
Secondary Programs Adult Skill**

WORKFORCE INVESTMENT BOARD

Docket No.: 181.00.04--003
Effective Date: 10/10/04
Contact Person: Mike Kennedy
Telephone: (501) 682-3142

Sanctions Policies

*** **Corrections:** August 2004 issue - Board of Examiners of Alcoholism and Drug Abuse Counselors rule # 201.00.04-002 was incorrectly listed as Alcohol and Drug Abuse Council rule #180.00.04-001
July 2004 issue - Motor Vehicle Commission rule # 063.00.04-001 was incorrectly listed as a Final rule; should have been listed as Proposed rule

INSURANCE DEPARTMENT

04-017C

Consent Order

In the Matter of

Charlotte Kay Johnson

04-029A

Order

In the Matter of

Marty D. Simpson

04-030A

Order

In the Matter of

Derrick Lamont Gunn

04-035A

License Revocation Order

In the Matter of

Janet Kay James

04-036A

Revocation Order

In the Matter of the License of

Larry Walker

04-046

Order

In the Matter of the Certificate of Authority of
Colorado Western Insurance Company

04-047

Order of Continued Suspension

In the Matter of the Certificate of Authority of
The Home Insurance Company

04-048

Continuing Order of Suspension

In the Matter of the Certificate of Authority of
Imperial Casualty & Indemnity Company

INSURANCE DEPARTMENT

04-049

Order of Continued Suspension
In the Matter of the Certificate of Authority of
Equity Mutual Insurance Company

04-050

Order of Continued Suspension
In the Matter of the Certificate of Authority of
American Financial Security Life Insurance Company

04-051

Emergency License Suspension Order
In the Matter of
Bradley Dee Tomlinson

04-051A

Consent Order
In the Matter of
Bradley Dee Tomlinson

04-052

Consent Order
In the Matter of
Jeffrey Ray Johnson

04-053

Adoption Order
In the Matter of the Report of Examination of
Memorial Life Insurance Company of America

04-054

Consent Order
In the Matter of
Nationwide Mutual Fire Insurance Company

04-055

Adoption Order
In the Matter of the Report of Examination of
United Healthcare of Arkansas, Inc.

INSURANCE DEPARTMENT

04-056

Order

In the Matter of

Gregg Insurance Company

04-057

Consent Order

In the Matter of

Diamond State Insurance and Ronda Kersey

04-058

Adoption Order

In the Matter of the Report of Examination of

Jackson Griffin Insurance Company

04-060

Cease and Desist Order

In the Matter of the Illegal Activities of

Paysource, Inc.

04-061

Order of Suspension

In the Matter of the Certificate of Authority of

U.S. International Reinsurance Company

04-062

Order of Continued Suspension

In the Matter of the Certificate of Authority of

Highlands Insurance Company

04-063

Emergency License Suspension Order

In the Matter of

Katisha Lynn Crain

04-064

Consent Order

In the Matter of

Sosnowy Investment Management Co., Inc. & John K. Sosnowy

INSURANCE DEPARTMENT

04-065

Adoption Order

In the Matter of the Report of Examination of
American Life and Annuity Company

04-066

Consent Order

In the Matter of
Michael Glenn Wood

04-067

Adoption Order

In the Matter of the Report of Examination of
American Service Life Insurance Company

04-068

Order of Suspension

In the Matter of the Certificate of Authority of
Frontier Insurance Company

04-069

Adoption Order

In the Matter of the Report of Examination of
Home Mutual Fire Insurance Company, A Farmers Mutual Aid Association

04-070

Adoption Order

In the Matter of the Report of Examination of
Arkansas Bankers Life Insurance Company

04-071

Adoption Order

In the Matter of the Report of Examination of
Community Bank Life and Health Insurance Company, Inc.

04-072

Consent Order

In the Matter of the
**Millennium Multiple Employer Welfare Benefit Plan &
Millennium Marketing Group, L.L.C.**

ORDERS AND NOTICES

LEGISLATIVE AUDIT September 27, 2004

Agency	Period Covered
Arkansas Department of Correction	6/30/03
Department of Education	6/30/03
Department of Arkansas Heritage	6/30/03
Arkansas Department of Emergency Management	6/30/03
Arkansas Department of Correction Report of Certification of Consumption of Farm Produce	6/30/03
Department of Finance and Administration - Revenue Division - Miscellaneous Tax Section	6/30/03
Department of Finance and Administration - Alcohol Beverage Control - Administration Division	6/30/03
Department of Finance and Administration - Alcohol Beverage Control - Enforcement Division	6/30/03

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