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THE ARKANSAS REGISTER

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ATTORNEY GENERAL OPINIONS

Opinion No.:2004-188

Jegley, Larry
Prosecuting Attorney, 6th Judicial District

RE:Q1) Are the provisions of A.C.A. 5-65-208(a) mandatory? Or, does the suspect's refusal under 5-65-205 essentially nullify the testing provisions of 5-65-208? Q2) If subsection -208 is not nullified by -205, what action should police take to enforce -208's provisions? Q3) If the response to Q2 states that force is permitted with or without a warrant, are there any civil liability issues for police agencies enforcing the requirements of 5-65-208, assuming it is mandatory? Q4) If -208 is mandatory, may the investigating officers and prosecutors use the -208 test results to prosecute criminal offenses or is the purpose of this particular law solely for gathering statistics? Q5) Are formal charges under -205 still permitted? What is the sanction for refusal to submit other than license seizure and administrative action? **RESPONSE:** Q1) The provisions of ACA 5-65-208(a) are mandatory. It is not clear under state law whether a driver's refusal would nullify these provisions, but it is my opinion that if a court were faced with the question, it would hold that a refusal does not nullify them. See opinion for further discussion. Q2) The police must comply with the 4th Am. Q3) The answer depends on the type of liability in question. Police officers are entitled under the law to a certain limited immunity. See opinion for discussion. Q4) The law does not clearly answer this question and legislative clarification is needed. The plain language seems to indicate that the results cannot be used in this manner, but this conflicts with other relevant statutes. See opinion for discussion. Q5) Yes. Regarding sanctions, see ACA 5-65-205, -402, and 5-4-201.

Opinion No.: 2004-191

Knickrehm, Kurt
Director, AR Dept of Human

RE:Q1) Does a State District Court Judge have the authority to acquit a criminal defendant on the grounds

of mental disease or defect? Q2) Does a State District Court Judge have the authority to suspend a criminal proceeding because such court determines the defendant lacks fitness to proceed and that the proceeding should be suspended? Q3) Does a State District Court Judge have the authority to order a defendant into the custody of the Department of Human Services pursuant to A.C.A. 5-2-310? **RESPONSE:** Q1) Yes. See opinion for discussion. Q2) The district judge not only has the authority to suspend the proceeding, but is required to do so under constitutional principles. Q3) Yes.

Opinion No.: 2004-203

Bradford, Jay
State Representative

RE:In a city of the first class, is it permissible for an alderman to temporarily reside outside of his ward (renting) while the home he is building in the ward he represents is under construction? **RESPONSE:** I am unable definitively to answer this question, which involves making a factual determination as to whether the alderman might reasonably be described as maintaining his domicile in the ward he represents, as he is required to do pursuant to A.C.A. 14-43-309 and -310 (Repl. 1998).

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

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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.: 2004-207

Thyer, Chris
State Representative

RE:Can the Claims Commission pay a portion of a settlement to an annuity company directly rather than paying all settlement money to the claimants directly? **RESPONSE:** I am unable to offer an opinion, as the matter is in litigation, would require review of all the related documents and the claim would in any event require an appropriation from the General Assembly.

Opinion No.: 2004-208

Dickinson, Tommy
State Representative

RE:May an Arkansas rural electric cooperative corporation that is not a member of a generation or transmission cooperative participate in an interlocal agreement with Arkansas municipal electric utilities to form an Arkansas Municipal Electric Utility Consolidated Authority (AMECA)? **RESPONSE:** Although the pertinent legislation is confusing and would benefit from legislative clarification, I believe an Arkansas rural electric cooperative corporation that is not a member of a generation or transmission cooperative may participate in an interlocal agreement with Arkansas municipal electric utilities to form an Arkansas Municipal Electric Utility Consolidated Authority (an "AMECA"). As you note in your request, the Arkansas Municipal Electric Utility Interlocal Cooperation Act of 2003, enacted by Acts 2003, No. 366, sec. 1 and codified at A.C.A. 25-20-401 et seq.

(Supp. 2003), provides for the formation by interlocal agreement under the Interlocal Cooperation Act, A.C.A. 25-20-101 et seq. (Repl. 2002 & Supp. 2003), of an AMECA comprising "any two (2) or more municipal electric utilities." A.C.A. 25-20-402(1) and -403(a)(1). A problem exists inasmuch as the Interlocal Cooperation Act, as amended by Acts 2003, No. 366, Sec. 2, does not include a rural electric cooperative that is not a member of a generation or transmission cooperative within its definition of a "public agency" authorized to participate in an interlocal agreement. I consider this exclusion a legislative oversight that would benefit from clarification during the next legislative session.

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.: 2004-213

Robinson, Charles L.
Legislative Auditor

RE:May the Altheimer School District donate school land or buildings to a municipality or county without adequate consideration? Q2) If the Altheimer School District did not receive monetary payment or other substantive consideration for the transfers, are the transfers legal? Q3) If the Altheimer School District may donate land or buildings to a municipality or county, must the transfer be for a "school purpose" or will a transfer for any "public purpose" suffice?

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RESPONSE: Q1) No. Ark. Const. arts. 14, 3 and 16, 1. See Ark. Ops. Att'y Gen. Nos. 2004-056 and 2001-102. Q2) No, if by "substantive" you mean "adequate." Q3) Any conveyance of school district property, whether or not supported by monetary consideration, must serve a distinct "school purpose" that amounts to a "public advantage" to the school district members.

Opinion No.: 2004-215

Bradford, Jay
State Representative

RE:What is the penalty for a violation of A.C.A. 14-42-107, which prohibits city council members, officials and employees from doing business with the city unless specifically provided for by ordinance? Q2) Does the AG's analysis in Op. 87-266 still hold, or do the penalty provisions of the Arkansas Criminal Code now apply to make it a "violation" punishable by a \$100 fine and double any monetary gain as provided in A.C.A. 5-4-201? RESPONSE: Q1) Assuming a complaint alleged no violation other than a breach of A.C.A. 14-42-407, I believe the only available "penalty" would be the civil remedies set forth in the Local Fiscal Management Responsibility Act, A.C.A. 14-77-101 et seq., which was enacted pursuant to Acts 1991, No. 724. However, the separate possibility exists that a breach of A.C.A. 14-42-107 might, depending on the facts, also constitute a violation of the ethics and conflict of interest provisions set forth at A.C.A. 21-8-304, in which case the proscribed conduct would constitute a Class B misdemeanor pursuant to A.C.A. 21-8-302. Again depending upon the facts, the proscribed conduct might further amount to the separate criminal offense of abuse of office as defined at A.C.A. 5-52-107, which is likewise classified as a Class B misdemeanor. I should stress, however, that liability under these criminal statutes must be independently established, since conduct in breach of A.C.A. 14-42-407 does not necessarily entail any corollary criminal liability. A conviction under either of the above referenced criminal statutes would support removing an alderman from office pursuant to A.C.A.

16-118-105 if the misdemeanor were deemed to involve deceitfulness, untruthfulness, or falsification amounting to an "infamous crime" that would mandate disqualification under Ark. Const. art 5, sec. 9. Q2) The analysis of the predecessor statute to A.C.A. 14-42-107 offered in Ark. Op. Att'y Gen. No. 87-266 is correct in concluding that the statute does not authorize any criminal sanctions. This conclusion is likewise correct as to A.C.A. 14-42-107. However, since the enactment of the Local Fiscal Management Responsibility Act in 1991, my predecessor's conclusion that no civil remedies exist is no longer correct.

Opinion No.: 2004-216

Bradford, Jay
State Representative

RE:Since the City of Pine Bluff has implemented an ordinance which prohibits city police officers from participating in off-duty employment which "represents a threat to the status or dignity of the law enforcement profession," including "any employment involving the sale, manufacture or transport of alcoholic beverages as the principal business," would officers working security at nightclubs represent a conflict of interest [or violation] of this ordinance? RESPONSE: I cannot construe the provisions of a local ordinance in this regard. That is a proper task for local officials.

Opinion No.: 2004-218

Walters, Shirley
State Representative

RE:Where and how should the tax imposed on wrecker and towing services by Act 107 of 2003 (2d Ex. Sess) be collected? RESPONSE: Decline to answer in deference to DF&A advisory capacity.

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Opinion No.: 2004-220

Wilkins, Hank
State Senator

RE: Does the language of the racial profiling policies adopted by every state, county and city law enforcement agency in the State of Arkansas comply with the provisions of Act 1207 of 2003? **RESPONSE:** Unable to answer as it would involve the construction of local policies. In addition, the Attorney General has not been invested with regulatory authority under the Act.

Opinion No.: 2004-221

Bradford, Jay
State Representative

RE: Q1) Can an alderman, who was appointed to complete the term of an elected alderman which ended in December of 2002, continue to serve after the expiration of that term provided no qualified elector, including the present alderman, filed for election? Q2) Is an appointment to fill a vacancy valid in a situation in which an elected alderman holds over after the expiration of the term to which he was elected, and then later resigns during his hold-over period? **RESPONSE:** Q1) Yes. See Ark. Const., Art. 19, 5. Q2) Yes, if the appointment was made in compliance with A.C.A. 14-44-104.

Opinion No.: 2004-222

Thomas, Lindbergh
State Representative

RE: Pursuant to provisions of A.C.A. 6-13-1405(a)(5), as amended by Act 60 of the 2003 (2d Ex. Sess.), is the former Dumas School District considered an "affected district," and, if not, does Arkansas law require that the interim board of the new consolidated school district be made up entirely of board members from the board of directors of the former Gould School

District? Q2) Assuming that the Dumas School District qualifies as an "affected district," does the proportionate requirement set forth in A.C.A. 6-13-1405(a)(5)(ii) mandate that one, but not more than one, of the board members on the interim board of the consolidated Dumas-Gould School District should come from the former Gould School District? Q3) Does Arkansas law prohibit the interim board of the consolidated Dumas-Gould School District from consisting of six (6) board members? Q4) If the proportionate requirement set forth in 6-13-1405(a)(5)(C)(ii) and 6-13-1406(b)(1) precludes the interim board from having more than one member from the former Gould School District, what is the proper procedure for selecting the seventh (7th) board member? Q5) Since the six (6) member interim board of the consolidated Dumas-Gould School District currently consists of five (5) board members from the former Gould School District, is this a legally constituted interim board under Arkansas law and, if not, would its actions nevertheless be deemed legal and binding under the concept of a de facto board or other principles of law? **RESPONSE:** Q1) I believe the former Dumas School District is an "affected" district for purposes of determining the composition of the board. Q2) I believe the board should comprise four members from the former Dumas School District and one member from the former Gould School District. Achieving this end would entail reducing the former Dumas School District's representation on the interim board by one member pursuant to the procedure set forth at A.C.A. § 6-13-606. Q3) A.C.A. § 6-13-1406(f) mandates that the new board have an odd number of members. Q4) I believe it would offend the proportionality requirement set forth at A.C.A. § 6-13-1405(a)(5)©(ii) if the board were increased by one member of the former Gould School District. I further believe it would be impermissible to appoint any other individual to serve as a seventh member of the interim board, given that the entire board of the former Dumas School District currently serves on the interim board and A.C.A. § 6-13-1405(a)(5)©(i) mandates that all interim board members have been board members of the former districts. The only option, then, would appear to be to reduce the interim board by one member pursuant to A.C.A. § 6-13-606. Q5) I do not believe the current Dumas Interim School Board is duly constituted under Arkansas law. However, I do

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believe the actions of the board are legally binding under the doctrine of de facto office holding.

Opinion No.: 2004-224

Stovall, Bill H., III
State Representative

RE: Are the volunteer fire department dues to be raised under A.C.A. 14-20-108 considered "assessments" or "taxes"? Q1a) If the dues are considered taxes, then how can the quorum court implement dues without an election? Q1b) If the dues are "assessments," then would the penalty for delinquent taxes apply? Q2) Does the collection of these dues, as proscribed by A.C.A. 14-20-108(a)(1)(B)(i)(c), include the penalties associated with non-payment of real estate taxes (i.e., 26-36-202), as well as certification to the Land Commissioner if the dues are not paid (see 26-37-101 et seq.)? Q2a) If the dues are treated in the same manner as real estate taxes, then does 26-35-601 apply to fire dues as well? Q2b) Does this language also apply to dues assessed under 14-20-108(a)(1)(A)? Q2c) Are there any other penalties that would apply for non-payment and, if so, under which code sections? **ANSWER:** Q1(a) and (b): These dues are neither governmental taxes or assessments. See Opinion 2002-032 (the statute only addresses matters pertaining to collection of the dues, and not the establishment thereof). Q2(a) Probably yes as to penalties, but no as to certification procedures. The dues do not become a lien against the property. Q2)b) No. Q2c) No.

Opinion No.: 2004-227

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

RE: Does the prosecuting attorney of a judicial district have the authority to prosecute, over the objection of a city attorney, circuit court appeals for violations of state misdemeanor laws which occurred within the city limits and which were originally prosecuted by

the city attorney in district court? **RESPONSE:** Yes. See 16-21-150; 16-21-103; 16-21-115. See opinion for further discussion. In connection with this issue, prosecutors and city attorneys should be mindful of double jeopardy principles.

Opinion No.: 2004-232

Broadway, Shane
State Senator

RE: Are the attached telephone card scratch games, which are apparently being sold in certain convenience stores in Arkansas, constitutional? **RESPONSE:** I must decline to address this question, which relates to a matter that is under investigation and upon which litigation appears to be imminent.

Opinion No.: 2004-234

Jones, Terry
Prosecuting Attorney, 4th Judicial District

RE: Q1) In light of the recent decision in *Landers v. Jamerson*, 33 S.W.3d 140 (2003), can police still seize stolen property (or property that was used in a crime) that is in a pawn shop or must the police obtain a search warrant first? Q2) If police have seized property from a pawn shop, can the police return it to the rightful owner after the criminal case is completed or do the police return it to the pawn shop? Q3) Is a conviction enough proof to allow the property to be returned to the rightful owner or is a separate hearing required? Q4) What does a rightful owner of stolen property have to do to get his property back from a pawn shop? Q5) What prevents the police from arresting pawn shop owners who are in possession of stolen property but refuse to release the property? Does holding the stolen property put pawn shop owners in a position of following *Landers* and risking arrest? **RESPONSE:** Q1) Yes, under the appropriate circumstances. The question of whether they must obtain a warrant will depend upon the facts of each case. The *Landers* decision did not impact the ability of police to seize

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property; it impacted the disposition of seized property. Q2) The disposition of seized property is governed by Rule 15 of the Arkansas Rules of Criminal Procedure. See also A.C.A. 5-5-101 (Supp. 2003). Q3) A separate hearing is required. Q4) See response to Q2. Q5) Because police can seize property under appropriate circumstances, as discussed in response to Q1, this scenario need not transpire.

Opinion No.: 2004-236

Wright, Wm. Randal

Prosecuting Attorney, 8th Judicial District North

RE:In light of the repeal of A.C.A. 19-4-1707(d), is it now permissible for one person to be a part time deputy prosecuting attorney and a part time attorney for the Office of Child Support Enforcement at the same time? **RESPONSE:** If the question is whether a part-time deputy prosecuting attorney can enter into a professional services contract to provide services to the Office of Child Support Enforcement, the answer is still "no." See ACA 19-11-1004(c) (1). If the question is whether a part-time deputy prosecuting attorney can enter into concurrent employment with the Office of Child Support Enforcement the answer will depend upon compliance with ACA 19-4-1604.

Opinion No.: 2004-237

Argue, Jim

State Senator

RE:Pursuant to the provisions of A.C.A. 12-12-104, regarding the retention of physical evidence in sex offense prosecutions, and the statutory definitions for "sex offense" and "violent offense," as amended and/or repealed by legislation enacted during the 84th General Assembly, what are the applicable definitions of "sex offense" and "violent offense" for purposes of a law enforcement agency's compliance with A.C.A. 12-12-104? **RESPONSE:** The applicable definitions are those that were in effect in 2001 at the time of the enactment of A.C.A. 12-12-104. However, because

these statutory definitions are no longer a part of the Arkansas Code, an amendment of A.C.A. 12-12-104 to clarify the applicable definitions of these terms is advisable.

Opinion No.: 2004-239

Childers, Marvin

State Representative

RE:Pursuant to provisions of A.C.A. 7-5-405 et seq., is the attached document a permissible method of applying for an absentee ballot? Q2) Does Arkansas law permit parties and campaigns to distribute absentee ballot applications similar to the attached document? **ANSWER:** Q1) Section 7-5-405 does not apply to the submitted document because this provision only applies to absentee ballot application forms that are prescribed by the Secretary of State and furnished by the county clerk. It is likely authorized, however, by A.C.A. 7-5-403, which provides for absentee ballot applications by letter, post card, or facsimile written request, in lieu of the form under 7-5-405, as long as it contains sufficient information. Q2) The authority under 7-5-405 (c) for distribution of blank absentee ballot applications by any person does not apply to the submitted document. But there is nothing to prohibit the preparation and distribution of this document by a political party or campaign.

Opinion No.: 2004-244

Baker, Gilbert

State Senator

RE:Are counties authorized to pass ordinances which would prohibit individuals from discarding items like junk cars and appliances on their property which could be construed as a nuisance or public menace? **RESPONSE:** Although the legality of any particular ordinance will depend largely upon the language of that ordinance, counties do generally have the authority to enact ordinances regulating discarded items and other activities that may affect the public's

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health and safety. See ACA 14-14-801(b)(3); 14-14-802(b)(2)(E)(i);(F);(H); 14-17-206; 14-20-109; 8-6-212; Ops. Att’y Gen. Nos. 96-028; 90-038. Counties must do so in a manner that is consistent with state and federal law and constitutional principles. See Op. Att’y Gen. No. 2001-132.

Opinion No.: 2004-245

Jeffress, Jimmy
State Senator

RE:Are eight-liner machines that dispense gift certificates as representations of value redeemable for non-cash merchandise prizes, toys or novelties legal in the State of Arkansas? If so, what restrictions would apply? **RESPONSE:** The answer will depend on various factual matters. The pertinent precedent is discussed in the opinion.

Opinion No.: 2004-246

Laverty, Randy
State Senator

RE:In light of the fact that some newly consolidated school districts cross county lines, specifically the Ozark Mountain District which has substantial area in three different counties, should all candidates for school board file their petitions in Searcy County (the headquarters of the district) even if the candidates reside in another county and the zone he wishes to run in lies completely in another county? Q2) If the answer to q1 is “no,” in which county does a candidate file when the zone lies in two counties? Q3) If the answer to q1 is “yes,” should a candidate who timely filed a petition in Newton or Marion Counties, but not Searcy County, be placed on the ballot anyway? Q4) If the answer to q3 is “yes,” what steps should the county clerk of each county and the appropriate election commission take to accomplish this result? Q5) If the answer to q3 is “no,” and if no candidate legally files for a position in a given zone, is there a

vacancy in such a position? Q6) If there are no legal candidates for a majority of the positions on the board so that the board is composed only of a minority of its members, are vacancies filled by the quorum court pursuant to A.C.A. 6-13-611(b)? Q7) If the answer to q5 is “yes,” which county’s quorum court fills those vacancies? Q8) Should early voting be held in all three county clerk’s offices or just in Searcy County? Q8a) Who decides where early voting should be held — the election commission of Searcy County, or each county clerk? **RESPONSE:** 1) Unclear under current law; 2)Unclear under current law; 3) Yes; 4) the county clerks of Newton and/or Marion County should certify the petitions to the Searcy County Board of Election Commissioners under ACA6-14-111; 5) Unnecessary to answer; 6) Unnecessary to answer; 7) Unnecessary to answer; 8) Again, the issue is somewhat unclear, but because the Searcy County Election Commission is to conduct the election pursuant to ACA 6-14-106, it is authorized to designate polling locations for early voting under ACA 7-5-418.

Opinion No.: 2004-247

Walters, Shirley
State Representative

RE:The Waldron School District must soon hold their annual School Election which includes a recurring millage issue which is unchanged from last year. They would like to conduct the annual election by “absentee and early voting only” if possible. Does the recurring millage issue prohibit the district from conducting the election by “absentee and early voting only” if all other requirements of A.C.A. § 6-14-102 are met? **RESPONSE:** Yes. A.C.A. § 6-14-102(c)(2) is unambiguous in setting forth two conditions for conducting a school election by absentee ballot and early voting: (1) that no more than one individual has presented to the county board of election commissioners a petition supporting his candidacy or else has provided timely notice of his write-in candidacy; and (2) that no other ballot issues will be submitted to the electors. Because the voters will be faced with an unspecified, “recurring millage issue which is unchanged from last year,” the second

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condition has not been met. The fact that the voters have apparently been faced with this issue before does not render it anything other than a “ballot issue to be submitted to district electors for consideration” — a condition that A.C.A. § 6-14-102(c)(2) expressly declares will preclude conducting the election exclusively by absentee ballot and early voting.

Opinion No.: 2004-249

Evans, David
State Representative

RE:Is it legal for an elected alderman for the City of Kensett to also hold the position of fire chief pursuant to ACA 14-42-115 if he receives no more compensation than any other volunteer firefighter in the department? The opinion requests clarification of Op. Att’y Gen. 2004-069 in this regard. **RESPONSE:** Yes. The emergency clause indicates that ACA 14-42-115 was intended to apply to fire chiefs who are not highly compensated. However, this individual, in his role as alderman, should abstain from participation in decisions affecting the fire department in instances giving rise to common law conflicts of interest.

Opinion No.: 2004-250

Hendren, Kim
Senator

RE:Under the authority of A.C.A. 14-58-501 and/or 25-20-101 et.seq. can the City of Gravette reduce, in half, the fee for water and sewer services it will charge the Gravette School District? Q2) Will reducing the Gravette School District’s water and sewer rate violate the City of Gravette’s responsibility to the bonds that have been financed specifically for the city water and sewer service system? Q3) Is the reduction of a water and sewer and [sic] rate considered financial aid under Arkansas Code Annotated 14-58-501? Q4) Is an incorporated town a “public agency” under the definition of Arkansas Code Annotated 25-20-103? **RESPONSE:** Q1) Unless the city is precluded from

doing so by the provisions of the bond indenture, I believe that the city council probably may by resolution cut the school district’s sewer rate as a form of financial aid pursuant to A.C.A. § 14-58-501. However, under the statute, any grant of financial aid to a school district may be made only on an annual basis. Accordingly, I believe it would be impermissible for the city to agree to charge the school district a reduced rate for what you term “a set period of time” exceeding one year at a time. Moreover, it is not entirely clear that such indirect financial aid falls within the parameters of the statute. The city’s waterworks and sewer commission has exclusive control over the school district’s water rate, and I do not believe the commission is statutorily authorized to adjust a water rate in order to provide financial aid to a school district. Accordingly, I believe the commission is obligated to charge the school district the fair market rate for providing water. Although it is inconvenient, I believe the only permissible way to implement a credit against this rate would be for the city council by annual resolution to return to the school district some portion of the amounts collected for water services. I do not believe the Interlocal Cooperation Act, A.C.A. § 25-20-101 et seq., which authorizes joint undertakings between or among public agencies, applies to an indirect grant of financial aid of the sort described in your request. Q2) I am unable to answer your second question, since I am unauthorized to make a factual determination regarding the city’s obligations to bondholders under the bond indenture. The city should consult with its bond counsel regarding whether it might grant a rate credit to the school district without violating its obligations under the indenture. Q3) I believe a reduction in the sewer rate is in all likelihood a form of financial aid under A.C.A. § 14-58-501. As noted above, I do not believe the waterworks and sewer commission is authorized to reduce the water rate in order to provide financial aid to the school district. However, I believe the city council might by annual resolution reimburse to the school district as a form of financial aid a portion of revenues collected for water services. Q4) Yes, although I am uncertain why you are inquiring about the status of an incorporated town, since Gravette is a city of the second class.

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Opinion No.: 2004-251

Stephen Tabor
Prosecuting Attorney

RE:Are "Quick-Call phone cards", which are sold with two minutes of telephone time with a game piece attached through which individuals can win a cash prize, legal? **RESPONSE:** I must decline to respond to this question, which relates to a matter that is currently under investigation and upon which litigation appears imminent.

Opinion No.: 2004-254

Bright, Stephen D.
State Representative

RE:Q1) Is the Maumelle City Private Pension Trust, as created by Maumelle City Ord. No. 166 of 1991, legal under Arkansas laws concerning the creation and funding of municipal pension funds? Q2) If the answer to Q1 is "no," can the City of Maumelle remedy the same by submission of the ordinance to the voters for approval? Q3) If the pension trust is illegal, what recourse do employees of the City of Maumelle have presently for benefits which are due immediately? **RESPONSE:** I must decline to answer these questions because they raise issues that are the subject of litigation that is pending, on remand from the Ark. S. Ct., before the Arkansas Co. Circuit Court. See *Gonzales v. City of DeWitt*.

Opinion No.: 2004-255

Leslie, Anita
c/o Booneville Human Development

RE:Is release of the names, race, job title, hourly wage, and annual salary for all employees of the Human Development Center in compliance with a request for this information under the Arkansas Freedom of Information Act (FOIA) consistent with provisions of

the Act? Q2) Should the requestor be required to tell the agency why he wants this information? **RESPONSE:** Q1) Yes. Q2) No.

Opinion No.: 2004-256

Wilson, Baugh & Holt
c/o Jonesboro Human Development

RE:Is the release of an employee's personnel information, i.e., name, race, job title, hourly wage and annual salary, in response to a Freedom of Information Act (FOIA) request, an invasion of the personal privacy of a public employee? **RESPONSE:** No.

Opinion No.: 2004-257

Laverty, Randy
State Senator

RE:Can a fire chief and his officers make a request pursuant to A.C.A. 14-20-108 for the levy of volunteer fire department dues without the approval of the board of directors of the fire department? The statute states that the request must be signed by the fire chief and "all other officers of the department." **ANSWER:** Probably not when it is realized that this provision applies to a private, subscription fire department formed as a nonprofit corporation.

Opinion No.: 2004-258

Pigott, Belinda
c/o Booneville Human Development

RE:Is the release of an employee's personnel information, i.e., name, race, job title, hourly wage and annual salary, in response to a Freedom of Information Act (FOIA) request, an invasion of the personal privacy of a public employee? **RESPONSE:** No.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2004-260

Manley, Lynde
City Clerk

RE: Is the decision of the custodian of records to deny a Freedom of Information Act (FOIA) request for a complete copy of the personnel file of the City Police and Fire Chief consistent with provisions of the Act?
RESPONSE: The decision is correct as to the release of the requestor's own files to him. As to the files of the other individual, the answer will depend on the particular records in the file. The applicable law is discussed.

Opinion No.: 2004-265

Alstadt, Richard

RE: Is the decision of the custodian of records to deny my Freedom of Information Act (FOIA) request for a complete copy of the personnel file of one of my fellow employees, consistent with provisions of the Act?
RESPONSE: The answer depends on the contents of the file. Opinion No. 2004-260, which was issued to the custodian of the records in the same case and which reviews the applicable tests, is enclosed.



ADOPTED RULES AND REGULATIONS

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

Executive Division

Docket No.: 109.00.04--001
Effective Date: 9/5/04
Contact Person: Patrick Patton
Telephone: (501) 682-5902

HOME Program Policy and Operations Manual

Multi-Family Housing

Docket No.: 109.04.04--001
Effective Date: 9/5/04
Contact Person: Patrick Patton
Telephone: (501) 682-5902

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

Docket No.: 109.04.04--002
Effective Date: 9/5/04
Contact Person: Patrick Patton
Telephone: (501) 682-5902

2005 Guidelines for Allocating Multi- Family Tax Exempt Private Activity Volume Cap

Docket No.: 109.04.04--003
Effective Date: 9/5/04
Contact Person: Patrick Patton
Telephone: (501) 682-5902

Housing Credit Program 2005 Qualified Allocation Plan

Single Family Housing

Docket No.: 109.03.04--001
Effective Date: 9/5/04
Contact Person: Patrick Patton
Telephone: (501) 682-5902

Home-To-Own Program Guide

ECONOMIC DEVELOPMENT

Docket No.: 168.00.04--001
Effective Date: 10/1/04
Contact Person: Susan Recken
Telephone: (501) 682-7334

2004 Arkansas Energy Code for New Building Construction

FINANCE & ADMINISTRATION

Child Support Enforcement

Docket No.: 006.25.04--001
Effective Date: 9/28/04
Contact Person: Paula Phillips
Telephone: (501) 682-6079

Policy Manual - Revised 2004

ADOPTED RULES AND REGULATIONS

Revenue Division

Docket No.: 006.05.04--003
Effective Date: 9/19/04
Contact Person: Shelby McCook
Telephone: (501) 682-1515

Financial Management Guide

Docket No.: 006.05.04--004
Effective Date: 9/19/04
Contact Person: Shelby McCook
Telephone: (501) 682-1515

State Vehicle Fleet Management Guide

Docket No.: 006.05.04--005
Effective Date: 9/12/04
Contact Person: Linda Holmstrom
Telephone: (501) 682-7751

Regulation 2004-5: Exemptions from Tax - Textbooks and Other Instructional Materials

FIRE & POLICE PENSION REVIEW BOARD

Docket No.: 137.00.04--002
Effective Date: 9/25/04
Contact Person: David Clark
Telephone: (501) 682-1745

Procedure for Increasing Benefits from Local Pension Funds

Docket No.: 137.00.04--003
Effective Date: 9/25/04
Contact Person: David Clark
Telephone: (501) 682-1745

Definition of "Actuarial Soundness"

GAME & FISH COMMISSION

Docket No.: 002.00.04--008
Effective Date: 9/12/04, 1/1/05, 9/2/04
Contact Person: James Goodhart
Telephone: (501) 223-6327

2004 - 2005 Early Migratory Bird Hunting Seasons; Miscellaneous Codes 10.09 - Ammunition Prohibited for Taking Fur-Bearers, & 19.05 - Littering Streams and Public Hunting Lands Prohibited; 2005 Fishing Regulations; & Emergency Rule: 2004 - 2005 Late Waterfowl Hunting Seasons

HEALTH DEPARTMENT

Protective Health Codes

Docket No.: 007.24.04--002
Effective Date: 9/2/04
Contact Person: Jerry Duncan
Telephone: (501) 661-1642

Rules pertaining to Plumbers License Fee, Expiration, Renewal, Journeyman, and Master Plumber Qualifications

ADOPTED RULES AND REGULATIONS

Docket No.: 007.24.04--003
Effective Date: 9/2/04
Contact Person: Jerry Duncan
Telephone: (501) 661-1642

2003 Arkansas Plumbing Code

HIGHER EDUCATION

Colleges & University Plans & Operations

Docket No.: 008.02.04--002
Effective Date: 8/29/04
Contact Person: Thomas Pennington
Telephone: (479) 964-0824

2004 - 2005 Arkansas Tech University Parking and Traffic Regulations

HUMAN SERVICES

County Operations

Docket No.: 016.20.04--008
Effective Date: 10/1/04
Contact Person: Linda Greer
Telephone: (501) 682-8257

Form DCO-66: Family Planning Assistance Annual Renewal

Docket No.: 016.20.04--009
Effective Date: 10/1/04
Contact Person: Linda Greer
Telephone: (501) 682-8257

MS 26120 - 26185 -- Adding Retroactive Coverage to ElderChoices

Medical Services

Docket No.: 016.06.04--045
Effective Date: 9/13/04
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Official Notice DMS-2004-W-1

Docket No.: 016.06.04--046
Effective Date: 10/1/04
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

Hyperalimentation Provider Manual Update #58

Docket No.: 016.06.04--047
Effective Date: 10/1/04
Contact Person: Betty Reed
Telephone: (501) 682-8363

Physician / Independent Lab / CRNA / Radiation Therapy Center Update #86

Docket No.: 016.06.04--048
Effective Date: 10/1/04
Contact Person: Betty Reed
Telephone: (501) 682-8363

Official Notice DMS-2004-A-3; DMS-2004- CA-5; DMS-2004-L-11; DMS-2004-R-9; DMS-2004-EE-3

ADOPTED RULES AND REGULATIONS

Docket No.: 016.06.04--051
Effective Date: 10/1/04
Contact Person: Dorothy Vance
Telephone: (501) 683-2916

**Official Notice DMS-2004-NN-2 -
Retroactive Eligibility**

Docket No.: 016.06.04--052
Effective Date: 10/1/04
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

**Rehabilitative Services for Persons with
Mental Illness (RSPMI) Update Transmittal
#49**

Docket No.: 016.06.04--062
Effective Date: 9/1/04
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Emergency Rule: Prosthetics Update #60

Services for the Blind

Docket No.: 016.10.04--002
Effective Date: 8/30/04
Contact Person: Lyndel Lybarger
Telephone: (501) 682-5463

Miscellaneous VR Policy

**PRIVATE INVESTIGATORS &
SECURITY AGENCIES BOARD**

Docket No.: 055.00.04--001
Effective Date: 8/24/04
Contact Person: Ricky Briggs
Telephone: (501) 618-8600

Emergency Rule: Background Fees

INSURANCE DEPARTMENT

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

ORDERS AND NOTICES

LEGISLATIVE AUDIT August 30, 2004

Agency	Period Covered
Department of Workforce Education - Arkansas Rehabilitation Services	6/30/03
Arkansas Livestock Show Association	6/30/03
Department of Finance and Administration - Revenue Division - Individual Income Tax Section	6/30/03
Department of Finance and Administration - Revenue Division - Sales and Use Tax Section	6/30/03
Arkansas Workforce Investment Board - Two-Year Period Ended	6/30/03
Governor's Mansion and Mansion Commission	6/30/03
Office of the Lieutenant Governor	6/30/03
State Board of Examiners of Alcoholism and Drug Abuse Counselors - Three-Year Period Ended	6/30/04
Department of Finance and Administration - Revenue Division - Office of Field Audit - Collection Section	6/30/03
Department of Finance and Administration - Revenue Division - Corporation Income Tax Section	6/30/03
Department of Finance and Administration - Revenue Division - Motor Fuel Tax Section	6/30/03
Arkansas Prosecuting Attorney's Association	12/31/03
Arkansas Title Insurance Agents' Licensing Board - Two-Year Period Ended	6/30/03

ORDERS AND NOTICES

Northwest Arkansas Economic Development District, Inc. (Private)	6/30/03
Department of Aeronautics	6/30/03
Assessment Coordination Department	6/30/03
Department of Education - Arkansas School for the Blind	6/30/03
Arkansas Crime Information Center	6/30/03
Department of Education - Arkansas School for the Deaf	6/30/03
State Board of Disease Intervention Specialists Two-Year Period Ended	6/30/03
State Board of Registered Interior Designers Two-Year Period Ended	6/30/03
Judicial Discipline and Disability Commission - Two-Year Period Ended	6/30/03
Department of Labor	6/30/03
State Board of Registration for Professional Geologists Two-Year Period Ended	6/30/03
Office of Prosecutor Coordinator	6/30/03
Arkansas Public Service Commission	6/30/03
Arkansas Fair Housing Commission - Three-Year Period Ended	6/30/04
Arkansas Soybean Promotion Board	6/30/04
Arkansas Beef Council	6/30/04
Arkansas Abstractors Board of Examiners Two-Year Period Ended	6/30/03

Secretary of State
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Arkansas Register Division
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Little Rock, AR 72201-1094

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ARKANSAS REGISTER

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