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TABLE OF CONTENTS

ATTORNEY GENERAL

Opinions 4

RULES AND REGULATIONS 8

INSURANCE DEPARTMENT

Orders 15

LEGISLATIVE AUDIT

Orders 16

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

Editor **Jon Davidson**

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Charlie Daniels

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THE ARKANSAS REGISTER

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2005-124

Thompson, Robert
State Representative

RE: In light of ACA 24-8-211, may the Arkansas Judicial Retirement System Board of Trustees require Judge Goodson to continue making monthly contributions to the system? (Judge Goodson was eligible to retire as a member of Tier 1 effective January 1, 2005 based on reciprocal service.) **ANSWER:** Probably "yes." The history and purpose of the statute indicate that the board is not clearly wrong in concluding that the provision for a judge to cease contributions to AJRS when he or she is "certified as eligible for retirement" does not apply to one who is eligible for benefits based on reciprocity pursuant to A.C.A. 24-2-402. Cited statutes include 24-8-210, 24-8-212, 24-8-215. See opinion for discussion of history And purpose of 24-8-211.

Opinion No.: 2005-139

Devine, Marcus C.
Director, ADEQ

RE: Pursuant to provisions of ACA 25-19-105(c)(3)(B), may the individuals whose emails have been requested under the Freedom of Information Act determine whether his or her emails constitute a public record? Q2) What criteria should an individual use to determine which emails are public records and which emails are not? Q3) May each individual determine what information in the remaining email messages must be redacted or segregated and what criteria should be used to make that determination? Q4) If each individual may not make those determinations, would you please provide guidance on what process must be followed? Q5) Finally, is any electronic mail generated after the receipt of the FOIA request subject to that request? **ANSWER:** Q1-3) No, because the FOIA contemplates that the custodian, not the individual employees, will determine these matters. The individual employees are not authorized to make the necessary legal judgments in providing the requested records. Q4) The custodian probably has the practical option of obtaining the employees' fac-

tual input in making these determinations; and the Department may wish to develop a policy or procedure in this regard. Q5) No, as long as the agency complies with the applicable time period(s) in making available those public records that were in existence when the request was received.

Opinion No.: 2005-161

Madison, Sue
State Senator

RE: Does acceptance into the University of Arkansas apprenticeship program (Facilities Management Department) constitute a voluntary demotion and does ACA 21-5-211(b)(1)(C) apply to these employees? Q2) If so, does the law demand an 8% pay reduction or does it set an 8% cap on the pay reduction for an employee moving down two or more pay grades? **RESPONSE:** In my opinion, the question of whether acceptance into the apprenticeship program would constitute a voluntary demotion and thus whether A.C.A. 21-5-211(b)(1)(C) would apply is a question of fact dependent on whether the new position requires fewer qualifications than the prior position. With respect to your second question, it is my opinion that the plain and ordinary language of A.C.A. 21-5-211(b)(1)(C) contemplates a mandatory 6% reduction in salary and an additional discretionary reduction in pay not to exceed 8% total when an employee is demoted two or more grades.

Opinion No.: 2005-165

Faris, Steve
State Senator

RE: If a state employee has been a member of the National Guard or Armed Forces Reserves during his/her tenure with state government, is he or she eligible to purchase the credited service allowed by Act 1027 of 2005? Q2) If an individual has 15 years of compensated service in the Arkansas National Guard or Armed Forces Reserve, is he or she eligible to purchase one or three years of credited service? **RESPONSE:**1) Yes. 2) One year.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2005-170

Scroggin, Preston
State Representative

RE: Are 911 dispatch systems required through the Freedom of Information Act (FOIA) to provide citizen name and address lists to requesting fire departments for the area that the fire department serves? Q2) What types of contact information does State or Federal law prohibit a 911 dispatch system from providing to the fire department for the area served? **ANSWER:** Q1) "Yes," unless the particular lists at issue were obtained by the 911 system through automatic identification pursuant to the Arkansas Public Safety Communications Act of 1985 (A.C.A. 12-10-301-324), in which case the latter act, rather than the FOIA, provides for a fire department's access to this "subscriber information." See 12-10-303, 12-10-317, Op. 2003-043. Q2) The federal law question is outside the scope of an Attorney General opinion. As to state law, refer to response to Q1 (subscriber information is generally accessible by fire departments).

Opinion No.: 2005-174

Bright, Stephen D.
State Representative

RE: Does A.C.A. 11-10-509(a) apply to adjunct faculty at higher education facilities, or does it apply to K-12 employees only? **ANSWER:** It is also generally applicable to adjunct faculty at higher education facilities. See A.C.A. 11-10-220, defining "educational institutions."

Opinion No.: 2005-176

Dunn, David
State Representative

RE: Can Advertising and Promotion Commission funds be spent on public high school athletic facilities or donated to public school athletic booster clubs or fundraising efforts? **RESPONSE:** Only a finder of fact

acquainted with all of the pertinent circumstances in any particular case would be able to answer this question. As a general proposition, an advertising and promotion commission may expend funds to promote and encourage tourism and conventions. A.C.A. 26-75-606(c)(4). With respect to donating funds to a public school athletic booster club or fundraising effort, determining the nature of the organizations at issue and the relationship between their activities and the promotion of tourism and conventions would require undertaking a factual inquiry of the sort I am neither equipped nor authorized to conduct.

Opinion No.: 2005-182

Reep, Gregg
State Representative

RE: Are there any statutory or regulatory prohibitions (other than A.C.A. 26-52-311(c)) which would prohibit rental car companies from passing on various charges, fees, or taxes to their customers? **RESPONSE:** I have found no other statutory or regulatory provision (other than 26-52-311) that would prohibit the pass through of charges, fees or other types of taxes that rental car companies pay in the operation of their business.

Opinion No.: 2005-184

Chesterfield, Linda
State Representative

RE: If a school district does not meet the state requirements under the Omnibus Quality Education Act of 2003, and federal requirements under the No Child Left Behind Act, can the state come in and take over that district? Q2) Does this apply to the three districts in Pulaski County? **RESPONSE:** Q1) Assuming the statutory conditions have been met, I believe the answer to your first question is, generally, "yes." See the Arkansas Comprehensive Testing, Assessment, and Accountability Program Act, A.C.A. 6-15-401 through -439 (Repl. 1999 & West Supp. 2005 & Acts 2005, Nos. 1229 and 2197). Q2) I must decline to answer this question given the continuing effect of

ATTORNEY GENERAL OPINIONS

a consent decree to which the state is a party in a case styled Little Rock School District v. Pulaski County Special School District et al., Case No. 4:82CV0866WRW — a decree subject to ongoing monitoring by the United States District Court for the Eastern District of Arkansas, Western Division.

Opinion No.: 2005-187

Creekmore, Dawn
State Representative

RE: Are meetings of members of a local water association, established by the quorum court pursuant to Act 142 of 1975, subject to the open meetings requirement of the Freedom of Information Act (FOIA) in light of the fact that the members have not received any public funds (only private donations)? **RESPONSE:** If in fact the organization is one formed under Act 142 of 1975 (the “Public Facilities Boards Act”), in my opinion the answer is “yes” its meetings are subject to the FOIA.

Opinion No.: 2005-193

Adcock, Robert H.
Commissioner, AR State Bank

Opinion: With regard to accounts with multiple owners with right of survivorship, if each owner has the contractual right to withdraw the entire account at any time (including following the death of an owner), does the new Arkansas Uniform Simultaneous Death Act (Act 74 of 2005, ACA 28-10-201 —to 212) have any impact on withdrawals made by a surviving owner within 120 hours of the death of the first owner to die? Stated another way, if a surviving owner of such an account withdraws funds between the death of the first owner to die and the death of such a surviving owner (whose death occurs within 120 hours of the first owner to die), will the funds withdrawn by such surviving owner be subject to any rights of the estate or beneficiaries of the first owner to die? **RESPONSE:** No and No. The issue is a close one, however, and clarification of the new act by the Arkansas Supreme

Court after the effective date may be necessary to definitively resolve this issue.

Opinion No.: 2005-212

Stilley, Oscar
Attorney at Law

RE: Request for certification of popular name and ballot title for a proposed constitutional amendment requiring voter approval for tax increases, abolishing minimum millage requirements, and phasing out State income taxes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2005-215

George, Nathan V.
State Representative

RE: What can the county do to stop the development in Pope County of a firing range to be leased to the county? **RESPONSE:** To the extent that this question reflects the concerns of citizens opposed to the proposed project, I must note that I am statutorily barred from offering private legal advice. A.C.A. 25-16-701 (Repl. 2002). As a general proposition, the county is authorized to prohibit by ordinance any “unsafe” discharge of firearms. A.C.A. 14-16-504 and 14-54-1411 (Supp. 2003). I do not know whether the quorum court has enacted any such ordinance. Section 16-105-502 of the Code (Supp. 2003) further authorizes the construction of firing ranges that comply with local noise ordinances. I am likewise unaware of whether any such local ordinance applies.

Opinion No.: 2005-219

Ormond, Charles
State Representative

RE: Request for certification of the popular name and ballot title of a proposed constitutional amendment

ATTORNEY GENERAL OPINIONS

on lotteries and wagering. RESPONSE: Popular name certified as submitted; ballot title substituted and certified.

Opinion No.: 2005-233

Witherell, Stacey
Employment Services Manager, LR Human Resources

RE: Is the decision of the custodian of records, in response to an FOIA request, to release disciplinary records for the last six months for all city fire fighters (regarding reprimands, suspensions and firings and indicating the types of offenses, remedies, rank and length of service but with names redacted), consistent with provisions of the act? Q2) If the records are releasable with the names redacted, is the City required to notify the individuals whose records are released? RESPONSE: It is unclear whether the requestor is seeking statistical information or the actual underlying employee evaluation or job performance records. If the former has been requested, the requestor is entitled to any such statistical information if the City maintains it. If the City does not maintain such information, but the custodian can compile the information electronically with minimal cost and time,

the custodian "should" compile the information pursuant to ACA 25-19-109. If the request is for the actual underlying job performance records, however, in my opinion these records may only be released if the test for the release of such records has been met. 2) If the request is for statistical information only, notice is not required. Otherwise, notice is required.

Opinion No.: 2005-236

Schlumberger, Charles L.
Attorney, Quattlebaum Law Firm

RE: Is the decision of the custodian of records for the Pulaski County Special School District (PCSSD) to withhold release of records reflecting alleged disciplinary action taken against a PCSSD employee, on the ground that there is no compelling public interest in disclosure, consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: Without a review of the records in question I am unable to determine whether the test for the release of employee evaluation or job performance records has been met in this instance. My predecessors and I have consistently opined, however, that the public's interest in school employee misconduct affecting students is "heightened" and "particularly compelling."

ADOPTED RULES AND REGULATIONS

ARKANSAS TEACHER RETIREMENT SYSTEM

Docket No: 088.00.05-005E
Effective Date: 10/04/2005
Contact: Julie Cabe
Telephone: 501-682-1836

**Emergency Rule: Policy No. 10-2:
Conditions Under Which a Retirant May
Return to Covered Service Other than by
Rescinding Retirement**

BOARD OF HEARING INSTRUMENT DISPENSERS

Docket No: 050.00.05-001F
Effective Date: 10/01/2005
Contact: Stewart Bell
Telephone: 501-663-5869

**Rules regarding contact information,
surety bond requirements, examination
content and review, intern training
procedures, license renewal, standards
of practice and unethical contact**

COMMISSION FOR PUBLIC SCHOOL ACADEMIC FACILITIES & TRANSPORTATION

Docket No: 203.00.05-003F
Effective Date: 10/22/2005
Contact: Scott Smith
Telephone: 501-682-4227

**AFT 007: Rules for the Specifications
Governing School Bus Design**

Docket No: 203.00.05-014F
Effective Date: 10/22/2005
Contact: Mike Simmons
Telephone: 501-682-4264

**AFT 006: Rules Governing Maintenance
and Operations of Arkansas Public
School Buses and Physical Examinations
of School Bus Drivers**

Docket No: 203.00.05-015E
Effective Date: 10/12/2005
Contact: Dave Floyd
Telephone: 501-682-4261

**Emergency Rule: Rule Governing the
Academic Facilities Catastrophic
Program**

Docket No: 203.00.05-015F
Effective Date: 10/22/2005
Contact: Dave Floyd
Telephone: 501-682-4261

**Rule Governing the Academic Facilities
Catastrophic Program**

Docket No: 203.00.05-016E
Effective Date: 10/12/2005
Contact: Dave Floyd
Telephone: 501-682-4261

**Emergency Rule: Rules Governing the
Academic Facilities Immediate Repair
Program**

ADOPTED RULES AND REGULATIONS

Docket No: 203.00.05-016F
Effective Date: 10/22/2005
Contact: Dave Floyd
Telephone: 501-682-4261

Rules Governing the Academic Facilities Immediate Repair Program

EDUCATION DEPARTMENT

Division of Academic Accountability

Docket No: 005.19.05-005F
Effective Date: 10/02/2005
Contact: Bobbie Davis
Telephone: 501-682-1297

Rules Governing Highly Qualified Teachers Pursuant to the No Child Left Behind Act of 2001

Division of Fiscal & Administrative Services

Docket No: 005.01.05-003F
Effective Date: 10/02/2005
Contact: Scott Smith
Telephone: 501-682-4227

Rules Governing the Closing of Isolated Schools Following an Annexation or Consolidation of Public School Districts

Docket No: 005.01.05-005F
Effective Date: 10/02/2005
Contact: Scott Smith
Telephone: 501-682-4227

Rules Governing Administrative Consolidation or Annexation & Boards of Directors of Local School Districts

Docket No: 005.01.05-007F
Effective Date: 10/02/2005
Contact: Dr. Diana Julian
Telephone: 501-683-4800

Rules Governing Charter Schools

Docket No: 005.01.05-010E
Effective Date: 09/28/2005
Contact: Bobbie Davis
Telephone: 501-682-1297

Emergency Rule: Governing Waivers of the Earnings Limitations Under the Teacher Retirement System

Financial Services

Docket No: 005.04.05-002F
Effective Date: 10/22/2005
Contact: Patricia Martin
Telephone: 501-682-5124

Repeal of Rules Governing Arkansas Educational Financial Accounting and Reporting

Docket No: 005.04.05-003F
Effective Date: 10/02/2005
Contact: Bobbie Davis
Telephone: 501-682-1297

ADOPTED RULES AND REGULATIONS

Rules Governing Arkansas Educational Financial Accounting, Reporting and Training System

Docket No: 005.04.05-004F
Effective Date: 10/02/2005
Contact: Patricia Martin
Telephone: 501-682-5124

Repeal of Rules Governing a Uniform Budget and Accounting System

Transportation

Docket No: 005.17.05-001F
Effective Date: 10/22/2005
Contact: Patricia Martin
Telephone: 501-682-5124

Repeal of Rules Governing Transportation Aid Expenditures

Docket No: 005.17.05-002F
Effective Date: 10/22/2005
Contact: Patricia Martin
Telephone: 501-682-5124

Repeal of Rules for the Specifications Governing School Bus Design

Docket No: 005.17.05-003F
Effective Date: 10/22/2005
Contact: Patricia Martin
Telephone: 501-682-5124

Repeal of Rules Governing the School Transportation Formula

Docket No: 005.17.05-004F
Effective Date: 10/22/2005
Contact: Patricia Martin
Telephone: 501-682-5124

Repeal of Rules Governing Physical Examinations for School Bus Drivers

FINANCE & ADMINISTRATION

Alcoholic Beverage Control Division

Docket No: 006.02.05-002F
Effective Date: 10/01/2005
Contact: Milton Lueken
Telephone: 501-682-1105

Amendment to Sections 1.20(16), 1.34, 1.79(4), 2.13, 2.17.1

GAME AND FISH COMMISSION

Docket No: 002.00.05-010E
Effective Date: 09/26/2005
Contact: James Goodhart
Telephone: 501-223-6327

Emergency Rule: Hunting and Fishing Privileges for Hurricane Katrina Evacuees

Docket No: 002.00.05-011F
Effective Date: 10/06/2005
Contact: James Goodhart
Telephone: 501-223-6327

Approved 2005-2006 Waterfowl Code: Section 12.00 - Migratory Game Birds and Waterfowl Regulations

ADOPTED RULES AND REGULATIONS

Docket No: 002.00.05-012F
Effective Date: 10/09/2005
Contact: James Goodhart
Telephone: 501-223-6327

Aquatic Turtle Regulation Code Changes for 2006

HEALTH DEPARTMENT

Epidemiology

Docket No: 007.15.05-001F
Effective Date: 10/03/2005
Contact: Anna Styn
Telephone: (501) 661-2296

Regulations Pertaining to Communicable Disease

HEALTH SERVICES AGENCY

Docket No: 049.00.05-003F
Effective Date: 10/20/2005
Contact: Mary Brizzi
Telephone: 501-661-2501

HSC Regulation 001 - Changes to the Permit of Approval Rulebook

Docket No: 049.00.05-004F
Effective Date: 10/20/2005
Contact: Mary Brizzi
Telephone: 501-661-2501

HSC Regulation 200M - Changes to the Residential Care Facility (RCF) Bed Need Methodology

Docket No: 049.00.05-005F
Effective Date: 10/20/2005
Contact: Mary Brizzi
Telephone: 501-661-2501

HSC Regulation 400M - Changes to the Hospice Methodology

HUMAN SERVICES

County Operations

Docket No: 016.20.05-003F
Effective Date: 10/14/2005
Contact: Linda Greer
Telephone: 501-682-8257

MS 3336.9 - Revised to Drop the Income Cap for Income Trusts

Medical Services

Docket No: 016.06.05-056F
Effective Date: 11/01/2005
Contact: Dorothy Vance
Telephone: 501-683-2916

Occupational, Physical, Speech Therapy Services Provider Manual Update Transmittal #51

Docket No: 016.06.05-057F
Effective Date: 11/01/2005
Contact: Betty Reed
Telephone: 501-682-8363

Child Health Management Services Provider Manual Update Transmittal #63

ADOPTED RULES AND REGULATIONS

Docket No: 016.06.05-058F
Effective Date: 11/01/2005
Contact: Betty Reed
Telephone: 501-682-8363

Physician / Independent Lab / CRNA / Radiation Therapy Center Provider Manual Update Transmittal #97

Docket No: 016.06.05-059F
Effective Date: 11/01/2005
Contact: Will Taylor
Telephone: 501-682-8362

Rehabilitative Hospital Provider Manual Update Transmittal #51

Docket No: 016.06.05-060F
Effective Date: 11/01/2005
Contact: Will Taylor
Telephone: 501-682-8362

Hospital/Critical Access Hospital (CAH)/ End Stage Renal Disease (ESRD) Provider Manual Update Transmittal #68

Docket No: 016.06.05-061F
Effective Date: 11/01/2005
Contact: Nikki Wade
Telephone: 501-682-8292

Prosthetics Provider Manual Update Transmittal #72

Docket No: 016.06.05-062F
Effective Date: 11/01/2005
Contact: Will Taylor
Telephone: 501-682-8362

Hospital/Critical Access Hospital (CAH)/ End-Stage Renal Disease (ESRD) Provider Manual Update Transmittal #80

Docket No: 016.06.05-063F
Effective Date: 11/01/2005
Contact: Dorothy Vance
Telephone: 501-683-2916

Occupational, Physical, Speech Therapy Services Provider Manual Update Transmittal #49

Docket No: 016.06.05-064F
Effective Date: 11/01/2005
Contact: Betty Reed
Telephone: 501-682-8363

Development Day Treatment Clinic Services Provider Manual Update Transmittal #61

Docket No: 016.06.05-065F
Effective Date: 11/01/2005
Contact: Betty Reed
Telephone: 501-682-8363

Child Health Management Services Provider Manual Update Transmittal #58

ADOPTED RULES AND REGULATIONS

Docket No: 016.06.05-066F
Effective Date: 11/01/2005
Contact: Will Taylor
Telephone: 501-682-8362

Home Health Provider Manual Update Transmittal #62

Docket No: 016.06.05-079E
Effective Date: 9/30/2005
Contact: Carolyn Patrick
Telephone: 501-682-8359

Emergency Rule: DMS-2005-W-3 - Medical Treatment for Hurricane Katrina Evacuees

MOTOR VEHICLE COMMISSION

Docket No: 063.00.05-001E
Effective Date: 09/29/2005
Contact: Corey Kirkpatrick
Telephone: 501-682-1428

Emergency Rule 7: Off-Premise Sales, Displays and Events

PROFESSIONAL BAIL BOND COMPANY & BAIL BONDSMAN LICENSING BOARD

Docket No: 164.00.05-001F
Effective Date: 10/01/2005
Contact: Tommy Reed
Telephone: 501-682-9050

Rule 1 - Regulation of Bail Bond Business

Docket No: 164.00.05-002F
Effective Date: 10/01/2005
Contact: Tommy Reed
Telephone: 501-682-9050

Rule 2 - Regulation of the Education Program

PSYCHOLOGY BOARD

Docket No: 199.00.05-001F
Effective Date: 10/16/2005
Contact: Janet Welsh
Telephone: 501-682-6168

Board Rules

REAL ESTATE COMMISSION

Docket No: 076.00.05-001F
Effective Date: 01/01/2006
Contact: Bill Williamson
Telephone: 501-683-8014

Regulation 4.1 — Applications; Educations; Experience

Docket No: 076.00.05-002F
Effective Date: 10/20/2005
Contact: Bill Williamson
Telephone: 501-683-8014

Regulation 7.4 — Branch Office

ADOPTED RULES AND REGULATIONS

Docket No: 076.00.05-003F
Effective Date: 10/20/2005
Contact: Bill Williamson
Telephone: 501-683-8014

Section 15 - Real Estate Auction Definitions and Requirements

STATE BANK DEPARTMENT

Docket No: 003.02.05-003F
Effective Date: 09/29/2005
Contact: Candace Franks
Telephone: 501-324-9019

46-305.1 - Applications / Documents;
47-401.2 - Investment - Consumer Paper;
47-501.1 - Certificates of Reliance

STATE MEDICAL BOARD

Docket No: 060.00.05-004F
Effective Date: 10/03/2005
Contact: Peggy Cryer
Telephone: 501-296-1802

**Rule 28 - Educational License to Practice
Medicine in the state of Arkansas**



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

October 3, 2005

<u>Agency</u>	<u>Period Covered</u>
Arkansas Teacher Retirement System	6/30/04
Department of Arkansas Heritage	6/30/04
Department of Finance and Administration - Racing Division	6/30/04
Department of Parks and Tourism	6/30/04
Arkansas Appraiser Licensing and Certificate Board (Private)	6/30/04
Arkansas Cemetery Board (Private)	6/30/04
Arkansas Department of Economic Development (Private)	6/30/04
Arkansas State Board of Examiners in Counseling (Private)	6/30/04
Liquefied Petroleum Gas Board (Private)	6/30/04
Arkansas Motor Vehicle Commission (Private)	6/30/04
Arkansas State Board of Private Career Education (Private)	6/30/04
Mid-South Community College	6/30/04

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