

The Arkansas Register



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Secretary of State
State Capitol, Room 026
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Charlie Daniels***

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2005-217

Oliver, Steve
Pros Attorney, 18th Judicial District East

RE: Would it be a violation of Arkansas' gambling statutes for a business to sponsor a casino night or party (for charitable or entertainment purposes), providing tables, dealers and chips for a fee, but allowing no participant to win prizes, money or anything of value? **RESPONSE:** In my opinion, the question you have posed is factually specific and will require the discretion of an appropriate official to make a definitive determination. With respect to the legal standards that may be applicable in this situation, however, if there is no deviation or addition to the factual scenario described, it is unlikely to constitute a violation of the Constitutional prohibition on lotteries, the general prohibition on gambling on games of cards or on games of hazard or skill, or on the use of gambling devices or gaming tables. Whether anything used in the situation you have described is a "per se" gambling device without regard to its use is a question that I cannot address beyond setting forth the legal standard below. Additionally, I am unable to determine whether Act 1170 of 2005 would apply to this situation from your request for an opinion. Additional facts would be required to reach a definitive conclusion on any of the issues that you have presented and this office is neither authorized nor equipped to act as a finder of fact. I feel compelled to reiterate that any deviation from the scenario described may result in a different analysis or potential violation of the above-referenced prohibitions. Furthermore, while I appreciate your constituent's desire to comply with all applicable laws, I must note that this office is statutorily prohibited from offering private legal advice. See opinion for full analysis.

Opinion No.: 2005-223

Everett, Curren
State Representative

RE: Is the attached Fulton County Ordinance, enacted to establish a comprehensive land use and management plan for the county, valid and enforceable since the plan was adopted by reference in the ordinance and not published? Q2) Is the ordinance and comprehensive land use and management plan valid and enforceable as a proper exercise of the county's legislative authority? **RESPONSE:** Q1) The Ordinance is unenforceable by reason of the failure to set forth the Land Use Plan in full in the published Ordinance. The plan is not a "code" or a budget such that it can be adopted by reference. See A.C.A. 14-14-807; 14-14-903; and 14-14-905, 14-14-908 and 14-14-909 (county publication requirements) Q2) This would entail interpreting the Ordinance to ascertain the original intent, particularly as to the precise role or function of the "Land Use Committee" in light of state law authorizing a county planning board. See 14-17-203, 14-17-205, and Op. 1999-022.

Opinion No.: 2005-224

Walters, Shirley
State Representative

RE: Does the City of Waldron have authority to impose a sales tax to fund a contract for services with a private entity (the Scott County Boys and Girls Club)? **RESPONSE:** Only a finder of fact acquainted with all the attendant circumstances could provide a definitive answer to this question. It is unclear from the deputy city attorney's question whether the Waldron City Council, seeking to fund a service contract with a Girls' and Boys' Club, is proposing to fund such a contract

ATTORNEY GENERAL OPINIONS

by levying a local sales tax under a subchapter of the Arkansas Code that authorizes such a tax solely for the purpose of financing capital improvements. It is further unclear whether the city council intends to devote any of the tax proceeds to capital improvements. However, purely as a matter of law, I will opine that a city cannot devote any portion of a levy to funding a service contract if the levy occurred pursuant to a subchapter of the Code that authorized levying a sales tax only to fund capital improvements. Having offered this conclusion, I will further note that subchapter 2 of title 26, chapter 75 of the Arkansas Code authorizes a city council, with voter approval, A.C.A. 26-75-208 (Supp. 2005), to levy a sales tax to be devoted to capital improvements, otherwise authorized municipal services or both. The Code expressly authorizes levying a sales tax to provide municipal services. A.C.A. 26-75-217(a) (Repl. 1997) and A.C.A. 26-75-201(c)(2) (Supp. 2005). This tax is commonly known as the "operating penny," which a city may expend in any manner that it might expend general funds. The Arkansas Supreme Court has further expressly held that "operating penny" revenues may also be devoted to financing capital improvements. Although these statutes would appear to authorize a tax of the sort described in your request, only a finder of fact acquainted with the details of the levying ordinance and the ballot could determine whether an effort by the Waldron City Council to levy a sales tax to finance a particular service contract would pass muster. Finally, I question whether any subchapter of the Arkansas Code other than that containing the "operating penny" provisions would support levying a sales tax to fund services of the sort described in your request.

Opinion No.: 2005-228

Ray, Leveta

Exec Dir, AR State Board of Accountancy

RE: Would the use of the last four digits of an individual's social security number in combination with the person's birth date to form a unique identifier for use in a national accountancy licensee database be

in violation of provisions of ACA 17-1-104 or other applicable state or federal laws or regulations?

RESPONSE: With respect to potential federal law implications, I recommend that you contact the United States Attorney's Office for the Eastern District of Arkansas. With respect to state law issues, in my opinion the process described in your request for an opinion, applying a "hash function" to a portion of an individual's social security number in addition to his or her date of birth, and disseminating or publishing the resulting number does not appear to violate any state law. In addition to A.C.A. 17-1-104 (Repl. 2001), Act 1295 of 2005, now codified at A.C.A. 4-86-107 (Supp. 2005), is also implicated.

Opinion No.: 2005-230

Salmon, Mary Anne

State Senator

RE: Are the responses to the questions posed in Op. Attorney Gen. 2001-260, regarding the issuance of concealed-carry handgun permits to persons with expunged felony convictions still correct? Q2) If yes, would the State Police have authority to deny issuance of a concealed handgun license to a person based solely on the existence of a felony conviction that was expunged prior to March 13, 1995? **RESPONSE:** 1) Generally "yes." 2) This may depend upon the facts of a particular case. See opinion for full analysis.

Opinion No.: 2005-241

Luker, Jim

State Senator

RE: Questions on Arkansas' authority to regulate consignment stores that list items on eBay or similar online market places for consumers, as follows: Q1) Whether a business, individual, or individual acting as a trading assistant who aids an owner of goods listing his goods for sale on eBay is required by the Arkansas Auctioneers Act, ACA 17-17-101 et seq., to obtain a license as an "auction house?" Q2) Does

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the presence of the word “auction” in an online consignment store require that entity to obtain an auctioneer’s license, even if it would not otherwise be deemed to be holding auctions? Q3) Does the presence of the word “auction” in a trade-marketed business name constitute “holding oneself out as an auctioneer” even if it would not otherwise be deemed to be holding auctions? RESPONSE: 1) In my opinion the answer is “yes.” I cannot conclude, under the applicable standard, that the Board’s conclusion in this regard is “clearly wrong.” 2) The answer will depend upon the particular facts. 3) The answer will depend upon the particular facts.

Opinion No.: 2005-243

Harris, Eric
State Representative

RE: Does Act 1264 of 2005 exempt the Department of Education or any educational institution in this state from compliance with the act? Q2) Is the Department of Education or any educational institution in this state exempt from compliance with Act 1264 of 2005 on the basis of any other state law? Q3) Does Act 1264 of 2005 limit compliance to new construction? Q4) Does any other state law limit compliance with Act 1264 of 2005 to new construction? RESPONSE: In my opinion, there are neither any exemptions contained in Act 1264 of 2005, now codified at A.C.A. 2-16-109 (Supp. 2005), for the Department of Education or any other education institution nor is there any applicable state law to provide such an exemption. Furthermore, Act 1264 of 2005 applies to all purchase of turf under the conditions set forth in subsection (b) from August 12, 2005 onward regardless of whether it is for new construction or for maintenance of an existing facility. I have not found any other state law that would limit compliance with Act 1264 of 2005 to new construction.

Opinion No.: 2005-244

Bradford, Jay
State Representative

RE: Can a city allow a local housing authority to purchase gasoline from the city through the city’s contract with a gasoline provider if the contract itself has no prohibitions against such? RESPONSE: Assuming the city’s contract with the gasoline provider indeed contained no proscription against any such resale, I believe the answer to your question would be “yes.” See A.C.A. 14-169-227(a) (Repl. 1998). However, I must stress that only a finder of fact could determine that the contract in question did not prohibit such a transaction.

Opinion No.: 2005-246

Green, Rick
State Representative

RE: Pursuant to ACA 6-17-114, must a 40-minute planning period be given every day or may a 200-minute planning period be given in a single day? Q2) If a 40-minute planning period is not given each day, is the teacher entitled to compensation? Q3) Please expound upon and clarify the provisions set out in ACA 6-17-114(a)(2)(B). RESPONSE: Q1) I do not interpret the statute to require that the planning time be given every day. It theoretically could be given in a single day, although it would be necessary to bear in mind the six-hour school day when providing such planning time to each teacher as the statute requires (see A.C.A. 6-16-102). Q2) This question is rendered moot. Q3) I cannot expound upon or clarify this subsection without knowing what particular aspects of the statute prompt the request for clarification.

ATTORNEY GENERAL OPINIONS

Opinion No.: 2005-263

Haltom, Brent

Pros Attorney, 8th Judicial District South

RE: Was the transfer of interest earned from bonds into the county general fund contrary to state law in light of the fact that the bonds were issued to construct a new county jail according to the ballot title approved by the electorate? **RESPONSE:** No, for the reasons set forth in Ark. Op. Att'y Gen. No. 2005-264.

Opinion No.: 2005-264

Harrelson, Steve

State Representative

RE: Was the Miller County Quorum Court correct in using the interest from the sale of bonds to construct a county jail (in accordance with the passage of a ballot issue and subsequent county ordinance) for other expenses, such as the General County Road Fund rather than use it for the building of the jail? **RESPONSE:** No, given that no legislation authorizes separating interest from principal under the circumstances described in your request. See *Hartwick v. Thorne*, 300 Ark. 502, 780 S.W.2d 531 (1989); *Miles v. Gordon*, 234 Ark. 525, 353 SW2d 157 (1962).

Opinion No.: 2005-285

Maxwell, Dub

Sponsor, Lost Cherokee of Arkansas

RE: Request for certification of the popular name and ballot title for a proposed constitutional amendment to recognize the "Lost Cherokee of Arkansas" as an Indian tribe within the State of Arkansas and to empower it with various rights. **RESPONSE:** Submission rejected on the grounds that it does not

fall within the power of the initiative under Arkansas Constitution, Amendment 7. See full text for analysis.

Opinion No.: 2005-291

Copley, Stephen

Sponsor, Give Arkansas a Raise Now

RE: Request for certification of the popular name and ballot title of a proposed constitutional amendment to raise the Arkansas minimum wage. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2005-302

Pritt, Drew

RE: Request for certification of the popular name and ballot title of a proposed constitutional amendment for the election of a state superintendent of education, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.: 2005-303

Pritt, Drew

RE: Request for certification of the popular name and ballot title of a proposed constitutional amendment for the creation of the Arkansas Hope Education Lottery, and for other purposes. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the text of the proposed measure.

ADOPTED RULES AND REGULATIONS

BOARD OF NURSING

Docket No: 067.00.05-001F
Effective Date: 01/13/2006
Contact: LouAnn Walker
Telephone: (501) 686-2704

**Chapter 2 - Licensure; Chapter 5 -
Delegation**

CONTRACTORS LICENSING BOARD

Docket No: 033.00.05-001F
Effective Date: 12/31/2005
Contact: Greg Crow
Telephone: 501-372-4661

**224-25-5: Classification & Experience —
(5) Light Building**

FINANCE & ADMINISTRATION

Office of Procurement

Docket No: 006.27.05-001F
Effective Date: 12/26/2005
Contact: Jerry Hester
Telephone: 501-371-6053

**Rule 2005-5: Development of
Regulations to Implement Changes in the
Arkansas State Procurement Law**

GAME & FISH COMMISSION

Docket No: 002.00.05-014F
Effective Date: 12/22/2005
Contact: James Goodhart
Telephone: 501-223-6327

**Non-Fishing Annual Fishing License Fee
Increase; Prohibition of the Importation
of Cervid Carcasses, Parts and Products
Ratification Approval; 2006 Fisheries
Regulations — Modification of Codes
1.00-C and 19.01**

HUMAN SERVICES

Administrative Services

Docket No: 016.14.05-011F
Effective Date: 01/15/2006
Contact: Joe Franklin
Telephone: 501-682-9631

DHHS Policy 5006 - Email Usage

Medical Services

Docket No: 016.06.05-073F
Effective Date: 01/09/2006
Contact: Debra Garrison
Telephone: 501-682-5424

State Plan Amendment #2005-008

ADOPTED RULES AND REGULATIONS

Docket No: 016.06.05-080F
Effective Date: 02/01/2006
Contact: Carolyn Patrick
Telephone: 501-682-8359

DMS-2005-RC-1: Health Care Provider - Children's Services Respite Care

Docket No: 016.06.05-081F
Effective Date: 02/01/2006
Contact: Dorothy Vance
Telephone: 501-683-2916

ElderChoices Update Transmittal #59

Docket No: 016.06.05-082F
Effective Date: 02/01/2006
Contact: Betty Reed
Telephone: 501-682-8363

Physician/Independent Lab/CRNA/Radiation Therapy Center Update #105

Docket No: 016.06.05-103E
Effective Date: 12/19/2005
Contact: Becky Murphy
Telephone: (501) 682-8096

Emergency Rule: Rehabilitative Services for Persons with Mental Illness Provider Manual Update Transmittal #64

Docket No: 016.06.05-111E
Effective Date: 12/20/2005
Contact: Betty Reed
Telephone: 501-682-8363

Emergency Rule: Alternatives for Adults with Physical Disabilities Waiver Provider Manual Update #31

Docket No: 016.06.05-112E
Effective Date: 12/20/2005
Contact: Betty Reed
Telephone: 501-682-8363

Emergency Rule: Physician/Independent Lab/CRNA/Radiation Therapy Policy Update #107; Hospital/Critical Access/End-Stage Renal Disease Policy Update #88; Pharmacy Update #83; Official Notice DMS-2005-KK-3

Docket No: 016.06.06-002E
Effective Date: 01/12/2006
Contact: Becky Murphy
Telephone: (501) 682-8096

Emergency Rule: Official Notice DMS-2006-Q-1 — Prescription Drug Coverage for Dual Eligibles Covered by Medicare

INSURANCE DEPARTMENT

Docket No: 054.00.05-004E
Effective Date: 12/30/2005
Contact: Mary Coney
Telephone: 501-371-2820

Emergency Rule: Rule 23 - Property, Casualty, Surety and Marine Rate and Form Filings

ADOPTED RULES AND REGULATIONS

Docket No: 054.00.05-006E
Effective Date: 12/19/2005
Contact: Mary Coney
Telephone: 501-371-2820

Emergency Rule: Rule 85 - Recoupment

Docket No: 054.00.05-007F
Effective Date: 01/01/2006
Contact: Booth Rand
Telephone: 501-371-2820

Rule 13: Long-Term Care Insurance

NATURAL RESOURCES COMMISSION

Docket No: 138.00.05-005F
Effective Date: 12/26/2005
Contact: Edward Swaim
Telephone: 501-682-3965

Title I - Rules of Organization and General Operation of the Arkansas Natural Resources Commission

Docket No: 138.00.05-006F
Effective Date: 12/26/2005
Contact: Edward Swaim
Telephone: 501-682-3965

Title II - Rules Governing Conservation Districts

Docket No: 138.00.05-007F
Effective Date: 12/26/2005
Contact: Edward Swaim
Telephone: 501-682-3965

Title III - Rules for the Utilization of Surface Water

Docket No: 138.00.05-008F
Effective Date: 12/26/2005
Contact: Edward Swaim
Telephone: 501-682-3965

Title IV - Rules for the Protection and Management of Ground Water

OIL AND GAS COMMISSION

Docket No: 178.00.06-001F
Effective Date: 01/23/2006
Contact: Lawrence Bengal
Telephone: 870-862-4965

B-2 - Proof of Financial Responsibility Required to be Furnished

STATE PLANT BOARD

Docket No: 003.11.05-006F
Effective Date: 03/01/2006
Contact: Darryl Little
Telephone: 501-225-1598

Circular 15 - Official Standards for Seed Certification in Arkansas

ADOPTED RULES AND REGULATIONS

Docket No:	003.11.05-007F
Effective Date:	01/01/2006
Contact:	Darryl Little
Telephone:	501-225-1598

Agricultural Consultant Regulations



INSURANCE DEPARTMENT

05-018A

Consent Order

In the Matter of

Timothy Newkirk - Arkansas Non-Resident Producer License

05-063

Adoption Order

In the Matter of the Report of Examination of
Griffin Leggett Burial Insurance Company

05-064

Order

In the Matter of the Application for Approval of the Acquisition of
**Control of Gregg Insurance Company by First Guaranty Insurance Company and
Assumption Reinsurance Agreement**

05-065

Consent Order

In the Matter of

Western and Southern Life Insurance Company Market Conduct Examination

05-066

Consent Order

In the Matter of

Lucy Irene McCarley

05-067

Cease and Desist Order

In the Matter of the Illegal Insurance Activities of
**Unimed, Professional Liability Insurance Company, LTD; PLIC Claims Management,
Inc.; Medical Risk Associates, RPG, LTD. and William Ledee, III**

05-068

Order of Continued Suspension

In the Matter of the Certificate of Authority of
First Citizens Life Insurance Company

05-069

Order

In the Matter of the Application for Approval of the Acquisition of
**Memorial Insurance Company of America by Southern Security Life Insurance
Company**

ORDERS AND NOTICES

LEGISLATIVE AUDIT

January 3, 2006

Agency	Period Covered
Arkansas State Board of Nursing	6/30/04
Arkansas Highway Employees Retirement System	6/30/05
Arkansas Public Employees Retirement System	6/30/05
Arkansas State Police Retirement System	6/30/05
Arkansas Judicial Retirement System	6/30/05
Workers' Compensation Commission	6/30/05
Arkansas State Board of Public Accountancy (Private)	6/30/05
West Central Arkansas Planning and Development District (Private)	6/30/05
Western Arkansas Planning and Development District (Private)	6/30/05
Office of Prosecutor Coordinator	6/30/05
Arkansas State University	6/30/05
Northwest Technical Institute	6/30/05

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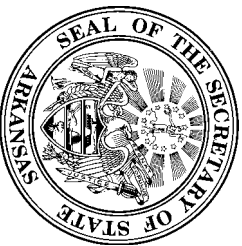
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