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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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Secretary of States’ office
Arkansas Register
026 State Capitol
Little Rock, AR 72201
(501) 682-3527
register@sos.arkansas.gov
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
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
the presence of the word “auction” in an online consignment store require that entity to obtain an auctioneers 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.
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.
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

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## INSURANCE DEPARTMENT

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**Emergency Rule: Rule 85 - Recoupment**

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**Rule 13: Long-Term Care Insurance**

**NATURAL RESOURCES COMMISSION**

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

**Title II - Rules Governing Conservation Districts**

**OIL AND GAS COMMISSION**

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**Title III - Rules for the Utilization of Surface Water**

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

**STATE PLANT BOARD**

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**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
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**

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<td>Workers’ Compensation Commission</td>
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<td>West Central Arkansas Planning and Development District (Private)</td>
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<td>Office of Prosecutor Coordinator</td>
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<td>Arkansas State University</td>
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<tr>
<td>Northwest Technical Institute</td>
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Secretary of State
Charlie Daniels
Arkansas Register Division
State Capitol Building, Room 026
Little Rock, AR 72201-1094

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