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Secretary  
Of State

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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

## Opinion No.: 2001-166

David Malone  
*State Senator*

**RE:**Is it a violation of the Freedom of Information Act (FOIA) for a justice of the peace to telephone another justice and actively lobby for a particular vote on a matter pending before the court? Q2) Would the answer to Q1 be different if the JP was notified by the county attorney that such action would be a violation of the FOIA? Q3) If the above action is a violation of the FOIA, would this conduct affect the subsequent vote on the ordinance that was discussed? Q4) Would the ordinance in question be void under these circumstances? Q5) If the ordinance involved a tax or fee, would the implementation of this ordinance constitute an illegal exaction? Q6) Would the conduct by the JP constitute misfeasance of malfeasance such that he would be subject to removal from office? **RESPONSE:** I cannot answer these questions because the FOIA issue turns on whether there was a "meeting," and until the court or the legislature addresses the matter, there is no hard and fast rule that two members of a governing body either do or do not always make a meeting. See Op. Nos. 2001-065 & 2000-096. These are matters for the county attorney.

## Opinion No.: 2001-258

Terry Smith  
*State Senator*

**RE:**May a parent or parents acting as the parent or legal guardian be informed by library personnel of their child's currently checked out library materials pursuant to ACA 13-2-704? May the library give those parents information regarding what their children have from the library? Q2) Pursuant to provisions of ACA 13-2-704, is it legal for a library automation system to allow anyone holding a properly bar-coded library card to electronically access that cardholder's account stating what is checked out to that patron? Is the library's computer system considered to be the "library" when the parent enters the child's barcode? May the library allow the parent to obtain a printout of

library materials checked out by the child if the parent initiates the electronic query? **RESPONSE:** The plain language of the statute does not allow parents access to this information. However, individual libraries can have policies requiring parents to be the "patron" on behalf of the child. This statute raises constitutional questions related both to parents' constitutional right to control their children, and to children's constitutional right to privacy as against their parents.

## Opinion No.: 2001-269

Arthur Boutiette  
*Director, Disability Determin'n for SSA*

**RE:**If the Arkansas Disability Determination for Social Security Administration (DDSSA), a 100% federally funded state agency subject to the general appropriation laws of the State were to construct a wellness center on existing leased premises for the exclusive use of DDSSA employees, would any agency employee injured in the facility be covered under the Arkansas Workers' Compensation Act? Q2) If an injured employee is not eligible for Workers' Compensation benefits, would the employee have a valid claim before the State Claims Commission provided the employee's private health care insurance denied coverage? Q3) Would allowing such use of state leased premises be within the scope of the agency director's official duties as an agent of the state? Q4) If an injured employee is unable to secure reimbursement from either Workers' Compensation, private insurance, or the State Claims Commission, could that employee pursue a remedy against the agency director personally for allowing a state office facility to be used for a non-state related function, e.g., exceeding the scope of his authority?

## Opinion No.: 2001-280

David Malone  
*State Senator*

**RE:**Q1) Is a city authorized to contract for construction management on a city building project without passing an ordinance pursuant to ACA 19-11-801 to define

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# ATTORNEY GENERAL OPINIONS

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construction management as a professional service? Q2) If the answer to Q1 is "yes," can the city consider price as one factor in selecting applicants for construction management? Q3) If the city chose to define construction management as a professional service, would the city be barred under ACA 19-11-801(a) from considering price until after the initial selection of the top construction management person or firm had been completed? RESPONSE: Q1) The issue of whether construction management in fact constitutes a "professional service." The opinion addresses the various scenarios under which this type of service can be procured. Q2) If this service is being procured through a bidding procedure, price can be considered. Q3) Yes.

**Opinion No.: 2001-281**

Randy Minton  
*State Representative*

**RE:**Pursuant to provisions of ACA 14-234-108, what length of contract can the City of Cabot enter into with Community Water Service, a 501-C-12 non-profit rural water provider? Q2) What type of rate guarantees can the City expect and for what term under ACA 14-234-108(b)(2)? Q3) Can the City of Cabot, as a municipality, be part of a joint venture with Community Water Service? RESPONSE: Your questions are insufficiently detailed to enable me to answer. However, I can and will opine that if Community Water Service is a private, nonprofit corporation, A.C.A. § 14-234-108 will not apply. Beyond this, I can only recommend that the City of Cabot refer its questions to its city attorney, who can doubtless provide answers based on full knowledge of the pertinent facts.

**Opinion No.: 2001-284**

Robert White  
*State Representative*

**RE:**Pursuant to provisions of ACA 27-117-105, can a planned runway that is approved for airspace utilization protection and future construction by the

Federal Aviation Administration (FAA) be considered a runway? Q2) Will the proposed attached zoning ordinance for the City of Camden Airport violate provisions of ACA 27-117-105 or 14-363-201, if enacted? RESPONSE: Q1) Unless preemptive federal law dictates otherwise, "no." The statutory term "runway" cannot be read to mean "proposed runway." Q2) No. ACA 14-363-201 authorizes zoning regulation in the area of a proposed runway.

**Opinion No.: 2001-288**

M. Olin Cook  
*State Representative*

**RE:**Pursuant to provisions of ACA 14-143-101 through -129, does the Russellville River Valley Intermodal Facilities Authority have to obtain approval from the Russellville Planning Commission and/or the Russellville City Council in order to subdivide land now owned or thereafter acquired by the Authority and develop that land for use by the Authority and/or for sale or lease to third parties? RESPONSE: Assuming the city intends to exercise its territorial jurisdiction within the area reflected in its planning area map, the answer to this question is "yes." See ACA 14-56-417.

**Opinion No.: 2001-289**

Gary Hunter  
*State Senator*

**RE:**If a school district allows its staff to switch to an individual health insurance plan and still wants to contribute funds toward those policies, will that district lose any part of its funding? RESPONSE: Probably not, but the district may well subject itself to a legal challenge. I have previously opined that state law contemplates only one publicly funded health insurance program, under A.C.A. 1-5-401 et. seq. Op. 99-028. See also 21-5-405 regarding the use of state funds intended to partially defray the cost of health insurance for school employees.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-291**

John E. Brown  
*State Senator*

**RE:** Does the county judge's selection of a member for the board of the Benton County Rural Development Authority require the approval of the members of the Benton County Quorum Court to be effective? **RESPONSE:** Yes. I believe the Authority constitutes an "administrative board" as that term is defined at ACA 14-14-705. Pursuant to the statute and Ark. Const. amend. 55, the quorum court must confirm board appointments.

**Opinion No.: 2001-292**

Dean Elliott  
*State Representative*

**RE:** Are provisions of the attached Pulaski County Ordinance, which specifies changes to be made in the hiring of the county attorney, constitutional? (The ordinance would require Quorum Court confirmation of the County Judge's appointment of a county attorney.) **RESPONSE:** Probably not, because the county judge has exclusive authority to hire county employees under Ark. Const. Amendment 55, and the legislation authorizing counties to establish the "office of county civil attorney" (A.C.A. 16-21-114) does not clearly establish the position of county attorney as a county office outside the county judge's hiring authority. Compare 14-14-705 (administrative boards).

**Opinion No.: 2001-294**

Brenda Gullett  
*State Representative*

**RE:** Does the warning required by ACA 12-12-702 apply to civil and administrative matters or just criminal matters? Q2) If it does apply to civil and administrative matters, who is responsible for appointing an attorney for the indigent employee and paying the cost thereof?

Q3) Is this warning reconcilable with the Garrity warning? **RESPONSE:** These questions have been addressed and resolved in a federal district court. Although I am statutorily obliged to render my opinion to members of the legislature and various state officials regarding certain matters of state law, as a matter of policy I steadfastly refrain from questioning rulings entered by courts of competent jurisdiction.

**Opinion No.: 2001-295**

Riggs, Argue and Walker  
*State Senators*

**RE:** Pursuant to provisions of Ark. Const. art. 14, Sec. 2 and Amendments 74 and 78, may any part of the twenty-five (25) mills established by Amendment 74 as the uniform rate of ad valorem property tax to be used solely for the maintenance and operation of the schools be legally diverted to support a redevelopment district? **RESPONSE:** The answer is not entirely clear. Some question exists as to whether the uniform rate of tax is included within the language used in Amendment 78 and its enabling legislation. The General Assembly is invested with some discretion to adopt enabling legislation, however, and may amend the statutory scheme to clarify the matter as it sees fit. See opinion for full discussion.

**Opinion No.: 2001-297**

Chaney Taylor  
*State Representative*

**RE:** Q1) In light of the conclusions reached in Op. Att'y Gen. 2001-259, did all municipal judges become district judges on July 1, 2001, pursuant to Ark. Const. Amendment 80 and Act 1693 of 2001? Q2) If the answer to Q1 is "no," then why would any municipal judge be subject to Amendment 29? Q3) If the answer to Q1 is "yes," then why would all parts of Amend. 29 not apply, including the length of service of an appointee, since Amend. 80, Sec 19(A)(3) states that vacancies in the office of municipal, not district, judge shall be filled for a term ending 12/31/2004? Q4) What

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# ATTORNEY GENERAL OPINIONS

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is the length of a term for an appointed district judge? RESPONSE: Opinion 2001-259 stated that district court judge vacancies are filled pursuant to Amendment 29 and the appointee may not succeed himself. It also indicates that the appointee serves until December 31, 2004. The answers to the questions are: 1) Yes. 2) Unnecessary to answer. 3) Because Amendment 80, sec. 19 (A)(3) is the more specific provision and it provides that persons appointed to fill vacancies in municipal judgeships serve until December 31, 2004. The fact that this section says "municipal" judges instead of "district" judges does not mean it is not the applicable provision. To read it as inapplicable to "district" judges would render it meaningless. 4) December 31, 2004.

## Opinion No.: 2001-300

Mike Beebe  
*State Senator*

**RE:** May an Arkansas county enter into a long-term (25 year) agreement with the Arkansas Department of Correction ("DOC") to house inmates where the DOC would pay to the county a minimum per diem per inmate housed at a facility under the exclusive control of the sheriff of the county? Q2) May the contract provide for minimum occupancy guaranteed from the DOC? Q3) If Arkansas law does not allow for a contract with a 25-year term, then what is the maximum term for which a county could enter into such an agreement with the DOC? Q4) May an Arkansas county enter into a lease/purchase agreement with a private contractor which builds a jail at its sole expense and leases the facility to the county? Q5) If a county can enter into such a lease/purchase agreement with a private contractor, what is the maximum term, including multiple renewal terms, for which a county may enter into such a lease? Q6) May the lease agreement require the Arkansas county to purchase the facility from the private contractor in the event the Arkansas county fails to exercise one or more of its options to renew the lease? Q7) At the end of the lease may the private contractor

transfer title to the facility to the county upon payment of a nominal amount of money? RESPONSE: Q1) I believe the term of any such agreement would be limited to twenty years under the Corrections Cooperative Endeavors and Private Management Act, A.C.A. §§ 12-50-101 through 111. Moreover, I do not believe the state can absolve itself of responsibility by delegating "exclusive control" over inmates to a sheriff. Q2) & Q3) I believe a county could negotiate a minimum-occupancy guarantee for DOC inmates subject to the 20-year term restriction so long as the contract did not unconstitutionally purport to commit the legislature to appropriate funds for any period in excess of two years in derogation of Ark. Const. art. 5, 29. Q4) I believe a lease-purchase agreement of the sort described might qualify as a permissible revenue bond under Ark. Const. amend. 65 if supported solely by non-tax revenues of the county. However, assuming the agreement could not be structured to comply with Amendment 65, a finder of fact might well determine that the lease-purchase agreement was actually an interest-bearing conditional sales contract in violation of Ark. Const. arts. 12, § 4 and 16, § 1. Q5) If the lease-purchase agreement were constitutionally authorized, I believe the DOC and the county could contractually commit themselves only for a period of twenty years, including renewals. A.C.A. § 12-50-106(d). However, this restriction does not rule out the possibility of negotiating a new contract once the original contract expires. Q6) I believe it would be impermissible to obligate the county to purchase the facility if it declined to commit to a lease term exceeding twenty years. Any such provision would in itself constitute a commitment beyond the statutorily authorized term. However, so long as the agreement did not constitute an impermissible conditional sales contract or obligate the parties for a term exceeding twenty years, I believe it could contain a conditional obligation to buy the facility upon expiration of the lease. Only a finder of fact could determine the permissibility of such an arrangement after reviewing the actual agreement. Q7) I believe an arrangement to purchase the facility for a nominal sum upon termination of the lease raises the constitutional concerns discussed in my response to your fourth question.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-301**

Jim Lendall  
*State Representative*

**RE:**Can the Little Rock Parks and Recreation Department prohibit authorized food vendors in its River Market area from feeding homeless people for free? Q2) What are the limits that the City of Little Rock can place on the occupancy or the peaceful presence of homeless people in the public areas of the River Market? **RESPONSE:** 1) This would depend upon all the facts regarding a particular prohibition and the grounds on which it is contested.. Some plaintiffs have made successful claims that restricting homeless feeding programs violated their religious rights. These are the only applicable cases I have found discussing this issue. 2) Generally speaking the City may make take police action to enforce valid laws against such persons, but may not punish their mere peaceful presence or take action solely based upon their status as homeless persons.

**Opinion No.: 2001-305**

Jim Bob Duggar  
*State Representative*

**RE:**Can the county quorum court pass an ordinance or implement a county personnel policy that regulates an elected county official as an employee? Q2) Can the county quorum court or the county judge regulate the county collector in an appropriate decision to choose a computer software system for an automated accounting and record keeping system under Act 1215 of 2001 (A.C.A. 21-6-305)? Q2b) Does ACA 14-14-1105, or any other law, give the county judge the right to choose a computer system for an elected county collector other than an appropriate system chosen by that elected collector? Q3) Can the county quorum court, by ordinance or the administrative power of the county judge, require an elected county official to make all computer-related purchases (i.e., peripheral devices, hardware, software, and data installation) through the county computer administrator? Q4) Can the county quorum court or

the county judge deny access to any part of the collector's computer without his approval? Q5) Are the emails of elected county officials subject to the Arkansas Freedom of Information Act (FOIA)? Q5b) Are county employee's emails subject to the FOIA? Q5c) Can emails received on a county computer by an elected county official or county employee be forwarded at his or her discretion or do they need permission from the sender? **RESPONSE:** Q.1: No. A.C.A. 14-14-1105. Q.2a & b: This may depend upon the particular regulation and/or action of the county judge. As a general matter, the quorum court regulates the amount of money that can be spent. The actual choice of system is, however, up to the county collector. The county judge must authorize and approve all expenditures. Ark. Const. amend. 55, sec 3 and 14-14-1102. Q.3: No, as to an automation system for the collector under Act 1215. Separation of powers would likely prevent the quorum court from doing this, and the county judge requiring it would be contrary to Act 1215, which gives the collector the authority to direct expenditures. This would not be authorized as a reassignment of functions under 14-14-702, because it would probably constitute a "revision" or "separation" of the office of collector, which requires a vote. Q.4: I cannot speculate in the absence of specific facts. Q.5: Yes, as to e-mails that relate to official functions, in the absence of an exemption. See Op. 99-018. There is no general requirement that the sender's permission must be obtained before forwarding e-mails, although this could presumably be addressed by an office policy.

**Opinion No.: 2001-306**

Henry "Hank" Wilkins  
*State Senator*

**RE:**Pursuant to the attached Civil Service Rules and Regulations for the City of Pine Bluff, does the Pine Bluff Police Department have authority to fill a newly created position from outside the Department? **RESPONSE:** If the rules were intended to limit the position to applicants inside the department, it appears to conflict with state law. See ACA 14-51-301 and *Amason v. City of El Dorado*, 281 Ark. 50.



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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-307**

Steve Oliver  
*Pros. Attorney, 18th Judicial District East*

**RE:**In light of the provisions of ACA 5-66-114, could The Daily Racing Form distribute the attached Stone Cold Lock Report (a tip sheet) in Garland County without violating any Arkansas laws? **RESPONSE:** No. As its name suggests, the Stone Cold Lock report is a tip sheet that analyzes various upcoming college and professional football games, reports the point spreads and predicts scores. In my opinion, the publication is obviously designed to inform those intending to bet on football games. Accordingly, I believe that to disseminate this publication would be "to receive or transmit information in the State of Arkansas relating to football . . . for the purpose of gaming" — a violation of A.C.A. § 5-66-114(a). I do not believe the publication disseminates this information "as news, entertainment, or advertising medium," in which case subsection (a)(1), doubtless in recognition of First Amendment mandates, would authorize its distribution.

**Opinion No.: 2001-308**

Ray Simon  
*Director, AR Dept of Education*

**RE:**Does the State Board of Education have the authority to sell or redistribute property attained when Gateway Charter School surrendered its charter pursuant to provisions of ACA 6-23-506, to new or existing public charter schools, public school districts, educational cooperatives, or the Department of Education (DOE), and if so, what legal procedure should the State Board follow in selling or distributing such property? Q2) What is the legal interpretation of the meaning of the language "net assets" as it is used in ACA 6-23-506 as it applies to the property in question? Q2b) Is the sponsoring entity, Ozarks Unlimited Resources Cooperative, entitled to claim ownership to any of the property or any of the proceeds derived from a sale of the property in order to satisfy a negative balance occurring on its financial

books with regard to the charter school? **RESPONSE:** Q.1: Perhaps "yes" with regard to computer equipment. See 25-34-101 et seq.; 25-34-103, 25-34-104, 25-34-105, 25-34-107. As for other property in Gateway's inventory, the answer is "no." The State Board lacks authority to sell or redistribute the property because this must be in accordance with 19-4-1503 and 25-8-106 (Marketing and Redistribution within DF&A). Q.2: This means the excess of assets over liabilities in connection with charter school property purchases with public funds. Because there was no debt associated with any of the property, it is all deemed the property of the state, and the sponsoring entity has no claim to it or to the proceeds from a sale.

**Opinion No.: 2001-310**

Larry Prater  
*State Representative*

**RE:**Q1) Pursuant to provisions of Act 1045 of 2001, how much of the collected fee monies should go into the County Clerk's Cost Fund? Q2) Does the county quorum court have any authority to decide what portion of the monies should be deposited into the fund? **RESPONSE:** All of the monies go into the fund. The quorum court does not decide this. See ACA 16-14-105.

**Opinion No.: 2001-311**

Steve Napper  
*State Representative*

**RE:**Are provisions of the attached Washington County ordinances concerning the selection process for county attorney constitutional? **RESPONSE:** Probably not, in light of the exclusive authority of the County Judge to hire county employees, under Ark. Const. Amendment 55. See also Opinion 2001-292. The two older ordinances are likely constitutional, assuming that they provided for hiring the county attorney through a personal services contract.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-312**

Jimmy "Red" Milligan  
*State Representative*

**RE:**Do provisions of the proposed resolution authorizing formation of a public benefit corporation by the City of Flippin and two other Arkansas cities for the purpose of operating a tourist railroad violate any Arkansas laws? **RESPONSE:** A municipality is authorized to form a public benefit corporation under the Arkansas Nonprofit Corporation Act of 1993, ACA 4-33-101 through -1707. However, I believe the provision of the proposed resolution purporting to grant this corporation \$6,000 offends Ark. Const. art. 12, section 5. The city would be justified in contributing funds to the corporation only in consideration of contractual services that serve a proper public purpose. I fail to understand why the cities are not pursuing this project through the Interlocal Cooperation Act, ACA 25-10-101 through -107, which would enable them to expend money in pursuit of a public purpose without facing the constitutional pitfall of giving public funds to a private corporation.

**Opinion No.: 2001-313**

Jay Bradford  
*State Representative*

**RE:**Q1) Is there a statute of limitations on refunds of a local supplemental tax (authorized by ACA 3-9-223) that may have been erroneously charged to private establishments? Q2) Are such establishments due a refund? Q3) What is the refund procedure for cities? Q4) If the tax was built into the price of the alcoholic beverage sold to the customer, would this make a difference in whether a refund may or may not be due? **RESPONSE:** Q1) The law is unclear. Given current case law, plausible arguments could be made that such actions may not be limited, that they are subject to a 3-year limitations period of ACA 16-56-105, or that they are subject to the 5-year limitations period of ACA 16-56-115. Q2) Whether any establishment is entitled to a refund will depend on the facts of the case. An action of this nature must overcome the voluntariness doctrine.

Q3) A refund action under these circumstances must proceed under common law. Private counsel should be consulted. Q4) These particular facts would not change the generally applicable principles discussed in response to the previous questions.

**Opinion No.: 2001-314**

Preston Scroggin  
*State Representative*

**RE:**Q1) What personal information about customers (name, address, social security number, telephone number or driver's license number) is a community water association required to give from their databanks upon a request from another business, association or individual? Q2) If the association must give information, may they charge for this service? **RESPONSE:** If the association is subject to the FOIA, most of its records will be subject to disclosure. Some specific information may be exempt under federal law.

**Opinion No.: 2001-315**

Stacey Witherell  
*Employee Service Mngr, LR Human Resources*

**RE:**Is the decision of the custodian of records to withhold documents in an employee's personnel file regarding qualifications for her current position, complaints received on the employee and any resulting disciplinary actions, consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The answer will depend on the nature of the records. The applicable tests for disclosure of the various types of records are set forth in the opinion.

**Opinion No.: 2001-317**

Mike Creekmore  
*State Representative*

**RE:**Does a judge or county municipal court have

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# ATTORNEY GENERAL OPINIONS

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authority to legislate laws that make it mandatory for a law enforcement officer to impound a vehicle when such offenses are found during a traffic violation? RESPONSE: As reflected in Ark. Op. Att’y Gen. No. 2001-320, which I am issuing simultaneously herewith in response to your companion request addressing various specific charges, a municipal judge is empowered in certain instances to order the impoundment of vehicles. Moreover, although the legislature does not appear to have expressly authorized a municipal judge to issue a standing order dictating that vehicles automatically be impounded upon issuance of specified traffic-related misdemeanor charges, the Arkansas Supreme Court has acknowledged such orders and invoked their entry as support for police impoundment and inventory searches of vehicles. Nevertheless, some legislative or judicial clarification regarding the basis for such orders appears warranted. See companion Opinion No. 2001-320.

## Opinion No.: 2001-318

Mary Anne Salmon  
*State Representative*

RE: Is it lawful for a fire protection district established in 1993 under authority of Act 35 of 1979 to make an assessment of benefits to properties in the district based exclusively on the assessed value of each property as shown on the ad valorem tax books of the county rather than making an assessment based on the benefits which will accrue to the property as a result of the services provided by the district? Q2) If the answer to Q1 is “yes,” should the district assessment against a property be increased or reduced when the assessed value of the property for ad valorem tax purposes is increased or reduced? Q3) Is it lawful for a fire protection district to assess the benefits on some property based solely on the assessed value of the property and to assess the benefits to other properties on another basis? RESPONSE: Q.1: Generally, yes. Q.2: See 14-284-214 regarding a reassessment due to a change in improvements. Generally, however, this is a matter for the assessors of the district. Q.3: Yes, unless

there is no rational basis for the different treatment, i.e., the different basis for the assessment is arbitrary.

## Opinion No.: 2001-320

Mike Creekmore  
*State Representative*

RE: By the order of a county municipal court or a judge, do local police officers have the legal right to impound a vehicle that: Q1) is not covered by insurance? Q2) has expired tags? Q3) is being operated by a person who has an expired driver’s license? RESPONSE: Q1) No. See ACA 27-22-104 and Ark. Op. Att’y Gen. No. 2001-161. Q2) The statutory and case law conflict. See ACA 27-14-314 (court may order impoundment only after two convictions for driving with expired tags); *State v. Sullivan*, 340 Ark. 315, 11 S.W.3d 526 (2000) (officer may impound a vehicle for failure to show proof of registration). Q3) Although the statutes do not expressly authorize impoundment for driving without a license, an officer can in theory arrest an individual for solely this offense, Ark. R. Crim. P. 4.1(a)(3), and impound the vehicle attendant thereto. Moreover, case law suggests that not having a license renders one “legally unable” to drive and hence warrants impoundment. *Thompson v. State*, 333 Ark. 92, 966 S.W.2d 901 (1998). Finally, with respect to the general question of whether a municipal judge can mandate impoundment, neither the legislation setting forth the power of a municipal court, A.C.A. § 16-17-704, nor the legislation addressing the removal of unattended vehicles, A.C.A. §§ 27-50-1201 through -1211 (Repl. 1994 & Supp. 2001), appears to afford a municipal judge express authority to issue such orders. Nevertheless, the Arkansas Supreme Court has acknowledged with apparent approval the existence of such orders as the basis for the written vehicle removal policy each law enforcement agency is required to adopt pursuant to A.C.A. § 27-50-1207(a)(1) (Supp. 2001). See *Benson v. State*, 342 Ark. 684, 689, 30 S.W.3d 731 (2000). For a general discussion of municipal court authority to order impoundment, see companion Opinion No. 2001-317.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-321**

Dwight Fite  
*State Representative*

**RE:**If a person wins an elected position on a school board and later learns he lives in a different school district, may he continue to serve as a board member, with the results of the election standing, if he moves back into the district in which he was elected? **RESPONSE:** It depends upon whether any action is taken to remove him from his office during his period of ineligibility. The school board may remove him under ACA 6-13-613(f) while his ineligibility exists. If he is not removed during his period of ineligibility, however, and regains the requisite residence, he may thereafter defend himself in any removal proceeding. During the interim period, his actions would be valid as those of an officer "de facto."

**Opinion No.: 2001-322**

Dick Barclay  
*Director, AR Dept of Finance & Admin.*

**RE:**In light of the provisions of Act 1410 of 2001 and the State Procurement Law, as amended by Act 1237 of 2001, may employees of the Department of Finance and Administration purchase agency surplus computer equipment and electronics? **RESPONSE:** No. Employees of DF&A are governed by the State Procurement Law (ACA 19-11-201), which is more specific to them than is the Computer and Electronic Solid Waste Management Act (ACA 25-34-101 et seq.).

**Opinion No.: 2001-325**

*State Senator*

**RE:**Q1) Pursuant to provisions of Acts 1185 and 1155 of 1999, if a county reappraises with an "in house" procedure and this procedure was approved by the Assessment Coordination Division, would state funds

have to be used as designated in the plan of reappraisal, e.g., for equipment, salaries, etc.? Q2) If a county's reappraisal plan contains designated expenditures for employees, as mentioned within Act 1155, would the quorum court be bound to that salary designated within the reappraisal plan, if state funding was being used? Q3) Assume the ACD's funding directions for a countywide appraisal designates categories for salaries or equipment. Then assume that the county quorum court fails to use the funds as directed by ACD. What happens to the remainder of the funds? Does the county board of equalization have the authority to spend the funds in a different manner from that designated by ACD? **RESPONSE:** Counties are not prohibited from changing the way they spend monies received from the state reappraisal fund, but any change must be approved by ACD, and the monies must be spent in connection with the reappraisal.

**Opinion No.: 2001-326**

Larry Prater  
*State Representative*

**RE:**Does the county clerk count as a member of the County Intergovernmental Cooperation Counsel for quorum purposes? Q2) How many votes are necessary to pass a resolution to appropriate Act 833 funds? Q3) If a majority is required to pass such a resolution, is it a simple majority of those present or a simple majority of the full Council? Q4) If a two-thirds majority is required to pass such a resolution, is it a two-thirds majority of those present or a two-thirds majority of the full Council? Q5) Does the county clerk count as a member of the Counsel for purposes of establishing either a simple majority or a two-thirds majority for passage of a resolution to appropriate Act 833 funds? **RESPONSE:** 1) Yes. 2) Assuming a quorum is present, a simple majority of those present and voting on the measure is required. 3) A majority of the full council is not required. 4) Unnecessary to answer. 5) Unclear. Legislative clarification is indicated.

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# ATTORNEY GENERAL OPINIONS

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**Opinion No.: 2001-329**

James A. Buttry  
*Friday, Eldredge & Clark*

**RE:**Request for approval of an interlocal cooperation agreement between the City of Mountain Home, the Mountain Home Sewer Improvement District No. 4, and the Arkansas Soil and Water Conservation Commission to construct, equip, operate and maintain a sewer collection and transportation system to serve the owners of real property located within the District. **RESPONSE:** Approved as submitted.

**Opinion No.: 2001-331**

Stephen Lisle  
*Lowell City Attorney (Lisle Law Firm, PA)*

**RE:**Was the decision of the custodian of records to release some documents and disclose others as they relate to the pending termination and resignation of the former Lowell City Planning Director, consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The various records (including arrest records, letters, payroll records, etc) are addressed individually. See opinion for analysis.

**Opinion No.: 2001-332**

Don R. House  
*State Representative*

**RE:**Are the Lawrence Memorial Hospital and Lawrence Hall Nursing Center considered as having charitable immunity under the laws of the State of Arkansas? **RESPONSE:** If these entities are organized and operated pursuant to ACA 14-263-104 et seq., governmental immunity may well apply. Determining whether charitable immunity applies will entail considering the factors set forth in *George v. Jefferson Hospital Ass'n Inc.*, 337 Ark. 206, 211-12,

987 S.W.2d 710 (1999). If these are nonprofit corporations, the directors are afforded qualified immunity under ACA 16-120-101 et seq. Directors of county hospital boards are afforded immunity under ACA 14-263-104(e).

**Opinion No.: 2001-333**

Danny Ferguson  
*State Representative*

**RE:**Q1) Should a local cable television company be considered a utility? Q2) Does cable television upgrading from coaxial to fiber optics fall under the heading of "other improvement or structure on real or private property" as defined by A.C.A. 17-25-101? Q3) Should a company hired to install the fiber optics be considered a contractor? Q4) Do provisions of A.C.A. 17-25-101 et seq. require a cable company's contractor to be licensed? **RESPONSE:** Q1) The answer is unclear under current law, but that lack of clarity may not matter in light of the fact that work done for a cable company may be considered "contracting" within the broader language of the statute. Q2) Yes. Q3) Yes, unless exempt. Q4) Yes, unless exempt.

**Opinion No.: 2001-339**

Mike Medlock  
*Pros Attorney, 21st Judicial District*

**RE:**The Crawford County Intergovernmental Cooperative Council (established pursuant to ACA 14-27-102) consists of nine mayors and the county judge. Since only 7 mayors, the county judge and the county clerk were present at a recent meeting, would the vote on a question that resulted in 4 "yeas," 3 "nos," and one abstention pass or fail? **RESPONSE:** The measure passed. Only seven members voted. The county judge abstained and the county clerk, for one reason or another, did not vote. A majority of those

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# ATTORNEY GENERAL OPINIONS

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present and voting is required for passage and abstentions are excluded in determining the total number. A majority of seven is therefore four and the measure passed. See also Opinion 2001-326.

**Opinion No.: 2001-343**

Jeff Harper  
*Springdale City Attorney*

**RE:**Is the decision of the custodian of records to release records relating to the disciplinary action imposed upon a firefighter as a result of an internal investigation consistent with provisions of the Freedom of Information Act (FOIA)? **RESPONSE:** The custodian's decision to release the records in question is generally consistent with the FOIA.

**Opinion No.: 2001-346**

Miriam (Peggy) Hays  
*Reverend*

**RE:**Request for certification of popular name and ballot title of proposed initiated measure to amend the Arkansas law regarding cruelty to animals and establish the criminal offense of aggravated cruelty to animals. **RESPONSE:** Popular name and ballot title rejected due to ambiguities in the text of the measure.

**Opinion No.: 2001-368**

Bill Lowe  
*Human Resource Admin, DOC*

**RE:**Under provisions of the Freedom of Information Act (FOIA), is the custodian of records required to release the job application, resume and other supporting documentation of a successful job applicant who objects to said release to an unsuccessful applicant? **RESPONSE:** The applicable tests for the release of the requested information are set forth in the opinion.

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# ADOPTED RULES AND REGULATIONS

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## BOARD OF LANDSCAPE ARCHITECTS

Docket No.: 115.00.01--001  
Effective Date: 1/1/02  
Contact Person: Liz Frazier  
Telephone: (501) 682-3171

### Board of Landscape Architects Rules

## CAPITOL ZONING COMMISSION

Docket No.: 034.00.01--002  
Effective Date: 12/23/01  
Contact Person: Randy Jeffery  
Telephone: (501) 324-9644

### Emergency Amendment: Master Plan for the Governor's Mansion Area \*\*\*

## DEPARTMENT OF COMMERCE

### *State Plant Board*

Docket No.: 003.11.01--007  
Effective Date: 1/1/02  
Contact Person: Mike Thompson  
Telephone: (501) 224-1598

### Revisions to the Pesticide Use and Application Act Regulations

## ECONOMIC DEVELOPMENT

Docket No.: 168.00.01--001  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## AR Economic Development Act

Docket No.: 168.00.01--002  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## AR Enterprise Zone Act (Advantage Arkansas)

Docket No.: 168.00.01--003  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## AR Biotechnology & Development Act

Docket No.: 168.00.01--004  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## AR Economic Development Incentive Act (Create Rebate)

Docket No.: 168.00.01--005  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## AR Emerging Technology Development Act

Docket No.: 168.00.01--006  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

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# ADOPTED RULES AND REGULATIONS

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## **Arkansas Tourism Development Act**

Docket No.: 168.00.01--007  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## **Manufacturer's Investment Tax Credit Act - Paper/Allied**

Docket No.: 168.00.01--008  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## **Small Business Loan Program**

Docket No.: 168.00.01--009  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## **Bond Guaranty Program**

Docket No.: 168.00.01--010  
Effective Date: 12/20/01  
Contact Person: Dori Wong  
Telephone: (501) 682-1124

## **Economic Investmentment Tax Credit (InvestArk)**

## **EDUCATION DEPARTMENT**

### *Office of Accountability*

Docket No.: 005.19.01--013  
Effective Date: 11/30/01  
Contact Person: Annette Berry  
Telephone: (501) 682-5124

## **ADE 131: Identifying and Governing Self-Construction Projects by Public Education Entities**

Docket No.: 005.19.01--014  
Effective Date: 12/5/01  
Contact Person: Ron Tolson  
Telephone: (501) 682-4342

## **Emergency Rule: ADE 132 - Governing Applying to Add an Additional Area of Certification to an Existing Arkansas Certificate**

Docket No.: 005.19.01--015  
Effective Date: 12/15/01  
Contact Person: Ron Tolson  
Telephone: (501) 682-4342

## **ADE 133 - Governing the Adding of an Additional Area of Licensure or Endorsement and Probationary route to Certification**

### *Instructional Services*

Docket No.: 005.05.01--001  
Effective Date: PROPOSED  
Contact Person: Gayle Potter  
Telephone: (501) 682-4558



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# ADOPTED RULES AND REGULATIONS

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**PROPOSED RULE: Comprehensive Plan for Consistency and Rigor in Course Work \*\*\***

Docket No.: 005.05.01--002  
Effective Date: 11/16/01  
Contact Person: Gayle Potter  
Telephone: (501) 682-4558

**PROPOSED RULE: Uniform Grading Scales for Public Secondary Schools and for Optional Use in Public Elementary Schools \*\*\***

**FINANCE & ADMINISTRATION**

*Revenue Division*

Docket No.: 006.05.01--004  
Effective Date: 12/10/01  
Contact Person: Laura Shook  
Telephone: (501) 682-7751

**Emergency Regulation 2001-1: Standard Mileage Rates for Income Tax Purposes**

**GAME & FISH COMMISSION**

Docket No.: 002.00.01--009  
Effective Date: 11/19/01 - 11/29/01  
Contact Person: James Goodhart  
Telephone: (501) 223-6327

**Emergency Rule: Choctaw Island WMA Closure; 2002 Spring Turkey Season Approvals; Steve N. Wilson/Raft Creek Bottoms WMA Closure**

**HEALTH DEPARTMENT**

*Community Health Services*

Docket No.: 007.02.01--001  
Effective Date: 12/24/01  
Contact Person: Marcell Jones  
Telephone: (501) 661-2167

**Records Maintenance Fee (RMF)**

*Health Facilities Services*

Docket No.: 007.05.01--002  
Effective Date: 12/17/01  
Contact Person: Renee Mallory  
Telephone: (501) 661-2167

**Rules for Home Health Agencies**

*Emergency Medical Services & Trauma Systems*

Docket No.: 007.28.01--001  
Effective Date: 12/7/01  
Contact Person: David Moskowitz  
Telephone: (501) 661-2252

**Rules for Emergency Medical Services**

**HUMAN SERVICES**

*Administrative Services*

Docket No.: 016.14.01--025  
Effective Date: 1/1/02  
Contact Person: Brenda Jackson  
Telephone: (501) 682-6250

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# ADOPTED RULES AND REGULATIONS

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## Social Services Block Grant Program Manual - SBG 02-1

Docket No.: 016.14.01--026  
Effective Date: 1/1/02  
Contact Person: Brenda Jackson  
Telephone: (501) 682-6250

## Comprehensive Services Program Plan (CSPP)

### *Medical Services*

Docket No.: 016.06.01--064  
Effective Date: 12/6/01  
Contact Person: Will Taylor  
Telephone: (501) 682-8362

## DMS-2001-L-7, DMS-2001-Y-4 -- Occupational, Physical and Speech Therapy in the Outpatient Hospital and the Outpatient Rehabilitative Hospital

Docket No.: 016.06.01--065  
Effective Date: 11/30/01  
Contact Person: Betty Reed  
Telephone: (501) 682-8363

## Emergency Rule: State Plan Amendment #2001-033

Docket No.: 016.06.01--066  
Effective Date: 12/14/01  
Contact Person: Randy Helms  
Telephone: (501) 682-1857

## Add-on Payment for Installing Emergency Generators \*\*\*

Docket No.: 016.06.01--067  
Effective Date: 12/17/01  
Contact Person: Binnie Alberius  
Telephone: (501) 682-8361

## State Plan Transmittal #2001-022 & Official Notice DMS-2001-BB-1, DMS-2001-CC-1

Docket No.: 016.06.01--068  
Effective Date: 1/1/02  
Contact Person: Carolyn Patrick  
Telephone: (501) 682-8359

## Rehabilitative Services for Youth and Children Provider Manual

### *Children and Family Services*

Docket No.: 016.15.01--008  
Effective Date: 12/21/01  
Contact Person: Vivian Jackson  
Telephone: (501) 682-1577

## DCFS Family Services Forms Manual

## INSURANCE DEPARTMENT

Docket No.: 054.00.01--005  
Effective Date: 12/13/01  
Contact Person: Ashley Fisher  
Telephone: (501) 371-2820

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# ADOPTED RULES AND REGULATIONS

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## Emergency Rule and Regulation #26

### LABOR DEPARTMENT

*Board of Electrical Examiners*

Docket No.: 010.13.01--002  
Effective Date: 1/1/02  
Contact Person: Reece Stewart  
Telephone: (501) 682-4547

### Amendment to Regulation 1 - The National Electrical Code

### REAL ESTATE COMMISSION

Docket No.: 076.00.01--004  
Effective Date: 1/1/02  
Contact Person: Jewele Matthews  
Telephone: (501) 683-8015

**Regulation 4.1 - Applications, Education, Experience; Regulation 7.7 - Death of Principal Broker, Closing of Business; Regulation 10.8 - Trust Funds, Trust Accounts; Regulation 11.5 - Post-license Education Requirements**

### PROFESSIONAL BAIL BONDSMAN LICENSING BOARD

Docket No.: 164.00.01--002  
Effective Date: 1/1/02  
Contact Person: Linda Longstreth  
Telephone: (501) 682-9050

**Rule & Regulation 1 - Regulation of Bail Bond Business; Rule & Regulation 2 - Regulation of the Education Program**

### TOWING AND RECOVERY BOARD

Docket No.: 157.00.01--002  
Effective Date: 12/6/02  
Contact Person: Cynthia Lauen  
Telephone: (501) 305-2529

**Charges for Notifications**

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# INSURANCE DEPARTMENT

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

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# ORDERS AND NOTICES

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## LEGISLATIVE AUDIT

<b>Agency</b>	<b>Period Covered</b>
Department of Human Services	6/30/00
Arkansas Supreme Court	6/30/00
Arkansas Catfish Promotion Board Two-Year Period Ended	6/30/01
Contractor's Licensing Board Two-Year Period Ended	6/30/01
Department of Education - Arkansas State Library	6/30/01
Arkansas State Board of Embalmers and Funeral Directors Two-Year Period Ended	6/30/01
Department of finance and Administration - Motor Fuel Tax Section Two-Year Period Ended	6/30/01
Department of Information Systems	6/30/00
Arkansas State Military Department	6/30/00
Arkansas State Board of Pharmacy	6/30/01
Counseling Associates, Inc. (Private)	12/31/01
Counseling Clinic, Inc. (Private)	6/30/01
Mid-South Health Systems, Inc. (Private)	6/30/01

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# ORDERS AND NOTICES

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Ozark Counseling Services, inc. (Private)	6/30/01
Ozark Guidance Center (Private)	6/30/01
Southwest Arkansas Counseling and Mental Health Center, Inc. (Private)	6/30/01
Western Arkansas Counseling and Guidance Center (Private)	6/30/01
Riverside Vocational Technical School	6/30/00
Arkansas Department of Community Punishment	6/30/00

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