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Introduction

We are pleased to present the 2016-2017 Edition of *Arkansas Public Library Laws* which is designed to provide you with a handy tool for key Arkansas statutes related to libraries. The statutes cited are current as of the conclusion of the 2016 Regular and First Extraordinary Legislative Session.

This year's edition is being made available in print and as an online PDF through the Arkansas State Library website. www.library.arkansas.gov

The *Arkansas Public Library Laws* should be used as an orientation tool for trustees and librarians and as a starting point for investigating legal questions that arise in the management of the library. Arkansas State Library staff are not lawyers. We can only present the law to you. For further interpretation of the laws, librarians are encouraged to consult a qualified attorney.

The Arkansas State Library is committed to its mission of providing guidance and support for the development of local public libraries and library services. This compilation of library laws is an important part of that commitment. We hope this publication will serve you well.

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Table of Contents

PAGE

Title 5. Criminal Offenses

Subtitle 6. Offenses Against Public Health, Safety, or Welfare.

Chapter 73. Weapons.

- Subchapter 1. Possession and Use Generally, §§ 5-73-120,
5-73-122 1

Title 6. Education

Subtitle 2. Elementary and Secondary Education Generally.

Chapter 21. School Property and Supplies.

- Subchapter 1. General Provisions, §§ 6-21-107, 6-21-111 9

Title 13. Libraries, Archives, and Cultural Resources

Chapter 2. Libraries.

- Subchapter 1. General Provisions, §§ 13-2-101 to 13-2-104
..... 12
- Subchapter 2. Arkansas State Library, §§ 13-2-201 to 13-
2-214 14
- Subchapter 3. Library of the Secretary of State, §§ 13-2-
301 to 13-2-310 23
- Subchapter 4. County Libraries, §§ 13-2-401 to 13-2-409 25
- Subchapter 5. Municipal Libraries and Reading Rooms,
§§ 13-2-501 to 13-2-510 30
- Subchapter 6. Interstate Library Compact, §§ 13-2-601 to
13-2-606 37
- Subchapter 7. Confidentiality of Patrons' Records, §§ 13-2-
701 to 13-2-706 44
- Subchapter 8. Arkansas Library Materials Security Law,
§§ 13-2-801 to 13-3-806 46
- Subchapter 9. Regional Library System Law, §§ 13-2-901
to 13-2-907 48
- Subchapter 10. Arkansas Digital Library Act, §§ 13-2-
1001, 13-2-1002 53

	PAGE
Title 14. Local Government	
Subtitle 2. County Government.	
Chapter 14. County Government Code.	
Subchapter 1. General Provisions, §§ 14-14-109 to 14-14-111	55
Subchapter 2. Boundaries, § 14-14-201	57
Subchapter 3. County Seats, § 14-14-301	58
Subchapter 7. Service Organizations, §§ 14-14-705 to 14-14-707, 14-14-712	58
Subchapter 8. Legislative Powers, §§ 14-14-801, 14-14-802	62
Subchapter 9. Legislative Procedures, §§ 14-14-905, 14-14-907, 14-14-910, 14-14-914, 14-14-915, 14-14-917, 14-14-919	66
Subchapter 12. Personnel Procedures, §§ 14-14-1201, 14-14-1202	81
Chapter 16. Powers of Counties Generally.	
Subchapter 1. General Provisions, § 14-16-106	86
Chapter 19. County Buildings, § 14-19-103	87
Chapter 22. County Purchasing Procedures, §§ 14-22-101, 14-22-104, 14-22-106, 14-22-108	88
Subtitle 3. Municipal Government.	
Chapter 37. Classification of Cities and Towns, §§ 14-37-101 to 14-37-114	93
Subtitle 8. Public Facilities Generally.	
Chapter 141. Operation of Municipal Auditoriums, § 14-141-110	102
Subtitle 10. Economic Development and Tourism Generally.	
Chapter 168. Community Redevelopment Generally.	
Subchapter 3. Community Redevelopment — Creation and Procedures, §§ 14-168-301, 14-168-324	103
Title 20. Public Health and Welfare	
Subtitle 2. Health and Safety.	
Chapter 14. Individuals With Disabilities.	
Subchapter 3. Rights Generally, §§ 20-14-301 to 20-14-308	109

Title 25. State Government

Chapter 19. Freedom of Information Act of 1967, §§ 25-19-103, 25-19-105, 25-19-106, 25-19-108 to 25-19-110	115
Chapter 20. Interlocal Cooperation Act.	
Subchapter 1. General Provisions, §§ 25-20-101 to 25-20-108	137
Subchapter 2. Public Bodies Corporate and Politic, §§ 25-20-201 to 25-20-207	143
Chapter 32. Uniform Electronic Transactions Act, § 25-32-105	147

Constitution of the State of Arkansas of 1874.

Amendments to the Constitution of Arkansas of 1874.	
Amendment 30. City Libraries, §§ 1 to 5	149
Amendment 38. County Libraries, §§ 1 to 5	152
Amendment 72. City and County Library Amendment (Const. Amends. 30 and 38, §§ 1 and 3, Amended, Const. Amends. 30 and 38, § 5, Added)	156

Index	I-1
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Arkansas Public Library Laws Annotated

TITLE 5 CRIMINAL OFFENSES

SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, OR WELFARE

CHAPTER 73 WEAPONS

SUBCHAPTER 1 — POSSESSION AND USE GENERALLY

SECTION.

5-73-120. Carrying a weapon.

5-73-122. Carrying a firearm in publicly

owned buildings or facilities.

5-73-120. Carrying a weapon.

(a) A person commits the offense of carrying a weapon if he or she possesses a handgun, knife, or club on or about his or her person, in a vehicle occupied by him or her, or otherwise readily available for use with a purpose to attempt to unlawfully employ the handgun, knife, or club as a weapon against a person.

(b) As used in this section:

(1) “Club” means any instrument that is specially designed, made, or adapted for the purpose of inflicting serious physical injury or death by striking, including a blackjack, billie, and sap;

(2) “Handgun” means any firearm with a barrel length of less than twelve inches (12”) that is designed, made, or adapted to be fired with one (1) hand;

(3) “Journey” means travel beyond the county in which a person lives; and

(4) “Knife” means any bladed hand instrument three inches (3”) or longer that is capable of inflicting serious physical injury or death by

cutting or stabbing, including a dirk, a sword or spear in a cane, a razor, an ice pick, a throwing star, a switchblade, and a butterfly knife.

(c) It is permissible to carry a weapon under this section if at the time of the act of carrying the weapon:

(1) The person is in his or her own dwelling or place of business or on property in which he or she has a possessory or proprietary interest;

(2) The person is a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties;

(3) The person is assisting a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties pursuant to the direction or request of the law enforcement officer, correctional officer, or member of the armed forces;

(4) The person is carrying a weapon when upon a journey, unless the journey is through a commercial airport when presenting at the security checkpoint in the airport or is in the person's checked baggage and is not a lawfully declared weapon;

(5) The person is a registered commissioned security guard acting in the course and scope of his or her duties;

(6) The person is hunting game with a handgun that may be hunted with a handgun under rules and regulations of the Arkansas State Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun;

(7) The person is a certified law enforcement officer;

(8) The person is in possession of a concealed handgun and has a valid license to carry a concealed handgun under § 5-73-301 et seq., or recognized under § 5-73-321 and is not in a prohibited place as defined by § 5-73-306;

(9) The person is a prosecuting attorney or deputy prosecuting attorney carrying a firearm under § 16-21-147; or

(10) The person is in possession of a handgun and is a retired law enforcement officer with a valid concealed carry authorization issued under federal or state law.

(d) Carrying a weapon is a Class A misdemeanor.

History. Acts 1975, No. 696, § 1; 1981, No. 813, § 1; A.S.A. 1947, § 41-3151; Acts 1987, No. 266, § 1; 1987, No. 556, § 1; 1987, No. 734, § 1; 1995, No. 832, § 1; 2003, No. 1267, § 2; 2005, No. 1994, § 293; 2013, No. 539, § 2; 2013, No. 746, § 2; 2015, No. 1155, § 14.

Publisher's Notes. Acts 1995, No. 832, became law without the Governor's signature.

Amendments. The 2003 amendment added "unless the journey ... lawfully declared weapon" to the end of (c)(4).

The 2005 amendment, in (a), inserted "or her" twice and "or she"; and substi-

tuted "correctional officer" for "prison guard" in (c)(2) and twice in (c)(3).

The 2013 amendment by No. 539 added (c)(9).

The 2013 amendment by No. 746 substituted "to attempt to unlawfully employ" for "to employ" in (a); inserted (b)(3); redesignated former (b)(3)(A) and (3)(B) as (b)(4) and inserted "three inches (3") or longer"; substituted "It is permissible to carry a handgun under this section if" for "It is a defense to a prosecution under this section that" in the introductory language of (c); substituted "registered commissioned security guard" for "licensed secu-

rity guard” in (c)(5); rewrote (c)(8); added (c)(9) (now (c)(10)); and substituted “Carrying a weapon is a Class A misdemeanor” for “(1) Any person who carries a weapon into an establishment that sells alcoholic beverages is guilty of a misdemeanor and subject to a fine of not more than two thousand five hundred dollars (\$2,500) or

imprisonment for not more than one (1) year, or both. (2) Otherwise, carrying a weapon is a Class A misdemeanor.” in (d).

The 2015 amendment, in the introductory language of (c), substituted “weapon” for “handgun” and substituted “the weapon” for “a weapon”.

RESEARCH REFERENCES

ALR. Validity of airport security measures. 125 A.L.R.5th 281.

Ark. L. Notes. Laurent Sacharoff & Jacob Worlow, Open Carry in Arkansas – An Ambiguous Statute, 2014 Ark. L. Notes 1548.

Ark. L. Rev. Act 696: Robbing the

Hunter, or Hunting the Robber? 29 Ark. L. Rev. 570.

John Thomas Shepherd, Comment: Who Is the Arkansas Traveler?: Analyzing Arkansas’s “Journey” Exception to the Offense of Carrying a Weapon, 66 Ark. L. Rev. 463 (2013).

CASE NOTES

ANALYSIS

Constitutionality.

Construction.

Purpose.

Assisting Law Enforcement Officers, Etc.

Evidence and Proof.

Indictment.

Lawful Use.

Length of Time Carried.

Mail Carriers.

Occupied Vehicle.

Own Dwelling, Property, Etc.

Persons Upon a Journey.

Use as a Weapon.

Constitutionality.

The state may, as a matter of its police power, place appropriate restriction on one’s right to bear arms. *Jones v. State*, 314 Ark. 383, 862 S.W.2d 273 (1993), cert. denied, 512 U.S. 1237, 114 S. Ct. 2743, 129 L. Ed. 2d 863 (1994).

The simultaneous possession statute, § 5-74-106, does not unconstitutionally overlap or conflict with this section. *Johnson v. State*, 333 Ark. 673, 972 S.W.2d 935 (1998).

Construction.

The primary differences between this section and § 5-73-121 (now repealed) are (1) § 5-73-121 (now repealed) contains no specific element of purpose to use the knife as a weapon against another person; (2) § 5-73-121 (now repealed) carries a three-month maximum term in jail as

compared to one year for violation of this section; and (3) § 5-73-121 (now repealed) includes a presumption of guilt if the knife’s blade is three-and-one-half inches in length. *Garcia v. State*, 333 Ark. 26, 969 S.W.2d 591 (1998) (decision under prior law).

Purpose.

Former section prohibiting the wearing or carrying of certain weapons was intended to prevent the carrying of a pistol with a view of being armed and ready for offense or defense in case of conflict with a person or wantonly going armed. *Allison v. State*, 161 Ark. 304, 256 S.W. 42 (1923) (decision under prior law).

Assisting Law Enforcement Officers, Etc.

For cases discussing the use of armed services weapons, see *McDonald v. State*, 83 Ark. 26, 102 S.W. 703 (1907); *Blacknall v. State*, 90 Ark. 570, 119 S.W. 1119 (1909); *Henderson v. State*, 91 Ark. 224, 120 S.W. 966 (1909) (preceding decisions under prior law).

Evidence that the defendant was deputized by the town marshal to assist in preventing an expected disturbance which did not occur did not bring his act of carrying a pistol within the exception, as the marshal was not engaged in guarding prisoners. *Allison v. State*, 161 Ark. 304, 256 S.W. 42 (1923) (decision under prior law).

Evidence and Proof.

It was not necessary to prove that the pistol was loaded. *State v. Wardlaw*, 43 Ark. 73 (1884) (decision under prior law).

Evidence held sufficient to support conviction. *Clark v. State*, 253 Ark. 454, 486 S.W.2d 677 (1972) (decision under prior law).

Where defendant possessed a knife bearing a double-edged, nearly five-inch blade which was concealed under his shirt and in the small part of his back, the knife was described as a gang-type weapon, and defendant offered no explanation for having the knife concealed on his person, evidence of violation of this section held sufficient. *Nesdahl v. State*, 319 Ark. 277, 890 S.W.2d 596 (1995).

Arrest of driver for violation of this section, after being stopped and searched because the car had no license plates, upheld. *United States v. Peyton*, 108 F.3d 876 (8th Cir. 1997).

Evidence was sufficient to support a conviction for carrying a weapon where the defendant, without a permit, had in her vehicle and in her possession a handgun, and she pointed the gun at another person, which was evidence that the purpose of the handgun was for use against a person. *Dillehay v. State*, 74 Ark. App. 100, 46 S.W.3d 545 (2001).

In a case in which a youth was adjudicated a juvenile delinquent upon a finding that he had committed the criminal offense of carrying a weapon, in violation of this section, he unsuccessfully argued that the state did not prove that he knew the knife was there because he was driving a borrowed car, his sending the officer to retrieve his cell phone was inconsistent with such knowledge, and merely being in the car with the knife—what he referred to as joint occupancy—was insufficient evidence to sustain his adjudication. The issue on appeal was not one of joint occupancy since the youth was alone in the vehicle; therefore, the question was whether there was sufficient evidence to find that he constructively possessed the knife, and, while trial counsel seemed to have made some argument with regard to the purpose element, such argument was conspicuously absent on appeal. *M.S. v. State*, 2010 Ark. App. 254 (2010).

In a case in which a youth was adjudicated a juvenile delinquent upon a finding that he had committed the criminal of-

fense of carrying a weapon, in violation of this section, he unsuccessfully argued that the search of the car that yielded the weapon should have been suppressed. The intrusion into the vehicle was not a search, but an errand undertaken at the youth's request to retrieve his cell phone, and the knife, or at least the handle, was found in plain sight by a police officer. *M.S. v. State*, 2010 Ark. App. 254 (2010).

Indictment.

Indictment held sufficient. *State v. Masner*, 150 Ark. 469, 234 S.W. 474 (1921) (decision under prior law).

Lawful Use.

Carrying a pistol to kill hogs was not a violation of former section prohibiting the wearing or carrying of certain weapons. *Cornwell v. State*, 68 Ark. 447, 60 S.W. 28 (1900) (decision under prior law).

Length of Time Carried.

The weapon need not have been carried for any particular length of time. *Henderson v. State*, 91 Ark. 224, 120 S.W. 966 (1909); *Thompson v. City of Little Rock*, 194 Ark. 78, 105 S.W.2d 537 (1937) (preceding decisions under prior law).

Mail Carriers.

A mail carrier was not by reason of his occupation exempted from former section prohibiting the wearing or carrying of certain weapons. *Hathcote v. State*, 55 Ark. 181, 17 S.W. 721 (1891) (decision under prior law).

Occupied Vehicle.

Having a pistol in a glove compartment of an automobile was carrying a pistol. *Stephens v. City of Ft. Smith*, 227 Ark. 609, 300 S.W.2d 14 (1957) (decision under prior law).

There was probable cause to search a car's dashboard compartment where the ammunition in the car, the currency in the vents, and the configuration of the dashboard indicated a fair probability that guns, or other contraband or evidence of a crime, would be found in the dashboard compartment; defendant was held to possess the weapon found in the dashboard compartment. *United States v. Sample*, 136 F.3d 562 (8th Cir. 1998).

Own Dwelling, Property, Etc.

The exception in regard to carrying weapons upon one's own premises only

protected such as have an estate or interest in the premises. *Kinkead v. State*, 45 Ark. 536 (1885) (decision under prior law).

A tenant in possession of leased premises had such an interest that would have included him in the exception; however, a lodger or renter who used premises in common with others did not have such an interest that would bring him within the exception. *Clark v. State*, 49 Ark. 174, 4 S.W. 658 (1887) (decision under prior law).

A landlord had no right to carry weapons upon premises in possession of a tenant, although the tenant was wrongfully detaining the same after the termination of his lease. *Jones v. State*, 55 Ark. 186, 17 S.W. 719 (1891) (decision under prior law).

A mere license to enter certain premises gave no right to carry weapons there. *Lemmons v. State*, 56 Ark. 559, 20 S.W. 404 (1892) (decision under prior law).

Owner of fee in a highway was not entitled to carry weapons thereon. *Moss v. State*, 65 Ark. 368, 45 S.W. 987 (1898) (decision under prior law).

The word "business" in subsection (c)(1) does not include vehicular businesses, such as a taxi cab or other motor vehicles used for commercial purposes. *Boston v. State*, 330 Ark. 99, 952 S.W.2d 671 (1997).

Persons Upon a Journey.

One who was going from home to a definite point distant enough to convey him beyond the circle of his neighbors, and to detain him throughout the day, and not within the routine of his daily business, was upon a journey within the meaning of the former exception. *Davis v. State*, 45 Ark. 359 (1885) (decision under prior law).

The exception to former statute prohibiting the wearing or carrying of certain weapons was designed as a protection against the perils of the highway to which strangers were exposed, and which were not supposed to exist among one's neighbors. *Hathcote v. State*, 55 Ark. 181, 17 S.W. 721 (1891) (decision under prior law).

Whether a mail carrier on his daily trip was making a journey within the meaning of the law was a question of fact for a jury. *Hathcote v. State*, 55 Ark. 181, 17 S.W. 721 (1891) (decision under prior law).

One who has been on a journey could not, after his return to his accustomed haunts, continue to carry his pistol. *Holland v. State*, 73 Ark. 425, 84 S.W. 468 (1904) (decision under prior law).

A person, upon completing a journey, could not continue to carry a pistol upon stopping an hour or so at the home of his relative. *Ackerson v. State*, 76 Ark. 301, 89 S.W. 550 (1905) (decision under prior law).

One returning home from a town some miles distant where he knew only one person was upon a journey. *Ellington v. Town of Denning*, 99 Ark. 236, 138 S.W. 453 (1911) (decision under prior law).

Whether or not the accused was on a journey was a question for the jury. *Collins v. State*, 183 Ark. 425, 36 S.W.2d 75 (1931) (decision under prior law).

Where defendant was merely going from North Little Rock to Little Rock, the defendant, who was charged with carrying a gun illegally, was not entitled to the defense of carrying a weapon when upon a journey. *Woodall v. State*, 260 Ark. 786, 543 S.W.2d 957 (1976) (decision under prior law).

Where there was no evidence in the record which indicated that by driving to a certain city and back, defendant had traveled beyond the circle of his neighbors and general acquaintances, making it necessary to defend against the perils of the highway, the court's failure to give an instruction that being on a "journey" was a defense to the charge of carrying a prohibited weapon did not constitute reversible error. *Riggins v. State*, 17 Ark. App. 68, 703 S.W.2d 463 (1986).

Use as a Weapon.

To sustain a conviction it was essential to show that the pistol was carried as a weapon and whether it was so carried was a question for the jury. *Wylie v. State*, 131 Ark. 572, 199 S.W. 905 (1917) (decision under prior law).

Where pistol was loaded it could be presumed that it was placed in the glove compartment of automobile as a weapon. *Stephens v. City of Ft. Smith*, 227 Ark. 609, 300 S.W.2d 14 (1957) (decision under prior law).

There was a presumption of fact that the loaded pistol found by sheriff's officers under the front seat of the car driven by appellant was placed there as a weapon, and while that presumption may have been removed by proof offered by appellant, it was a question of fact for the jury to resolve the truth and determine whether the pistol was carried as a weapon. *Clark v. State*, 253 Ark. 454, 486

S.W.2d 677 (1972) (decision under prior law).

There is a presumption that a loaded pistol is placed in a car as a weapon. *McGuire v. State*, 265 Ark. 621, 580 S.W.2d 198 (1979).

Cited: *Duckins v. State*, 271 Ark. 658, 609 S.W.2d 674 (Ct. App. 1980); *Hutcherson v. State*, 34 Ark. App. 113, 806 S.W.2d 29 (1991); *Ark. Game & Fish Comm'n v. Murders*, 327 Ark. 426, 938 S.W.2d 854 (1997).

5-73-122. Carrying a firearm in publicly owned buildings or facilities.

(a)(1) Except as provided in § 5-73-322 and § 5-73-306(5), it is unlawful for any person other than a law enforcement officer or a security guard in the employ of the state or an agency of the state, or any city or county, or any state or federal military personnel, to knowingly carry or possess a loaded firearm or other deadly weapon in any publicly owned building or facility or on the State Capitol grounds.

(2) It is unlawful for any person other than a law enforcement officer or a security guard in the employ of the state or an agency of the state, or any city or county, or any state or federal military personnel, to knowingly carry or possess a firearm, whether loaded or unloaded, in the State Capitol Building or the Justice Building in Little Rock.

(3) However, this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building or facility or on the State Capitol grounds:

(A) For the purpose of participating in a shooting match or target practice under the auspices of the agency responsible for the publicly owned building or facility or State Capitol grounds;

(B) If necessary to participate in a trade show, exhibit, or educational course conducted in the publicly owned building or facility or on the State Capitol grounds; or

(C)(i) If the person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in a publicly owned and maintained parking lot.

(ii)(a) As used in this subdivision (a)(3)(C), “parking lot” means a designated area or structure or part of a structure intended for the parking of motor vehicles or a designated drop-off zone for children at school.

(b) “Parking lot” does not include a parking lot owned, maintained, or otherwise controlled by the Department of Correction or Department of Community Correction.

(4) As used in this section, “facility” means a municipally owned or maintained park, football field, baseball field, soccer field, or another similar municipally owned or maintained recreational structure or property.

(b)(1) Any person other than a law enforcement officer, officer of the court, or bailiff, acting in the line of duty, or any other person authorized by the court, who possesses a handgun in the courtroom of any court of this state is guilty of a Class D felony.

(2) Otherwise, any person violating a provision of this section is guilty of a Class A misdemeanor.

History. Acts 1977, No. 549, §§ 1, 2; A.S.A. 1947, §§ 41-3113, 41-3114; Acts 1991, No. 1044, § 1; 1995, No. 1223, § 1; 1997, No. 910, § 1; 2013, No. 226, § 2; 2015, No. 1078, § 2; 2015, No. 1259, § 1.

Amendments. The 2013 amendment added “Except as provided in § 5-73-322,” in (a)(1).

The 2015 amendment by No. 1078 substituted “this subsection does not” for “the

provisions of this subsection do not” in the introductory language of (a)(3); inserted designations (a)(3)(A) and (a)(3)(B); inserted “publicly owned” and “State Capitol” in (a)(3)(A) and (a)(3)(B); and added (a)(3)(C).

The 2015 amendment by No. 1259 inserted “and § 5-73-306(5)” in (a)(1).

TITLE 6
EDUCATION

***SUBTITLE 2. ELEMENTARY AND SECONDARY
EDUCATION GENERALLY***

CHAPTER 21
SCHOOL PROPERTY AND SUPPLIES

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

6-21-107. Official computer use policy.

SECTION.

6-21-111. Definitions.

6-21-107. Official computer use policy.

(a)(1) The board of directors of each school district in this state shall develop and adopt a written policy concerning student and staff use of computers owned by the school district.

(2) The written policy shall state that a system to prevent computer users from accessing material harmful to minors shall be established and maintained for all public access computers in the school district. The policy shall be implemented by August 1, 2001.

(b) The written policy shall include provisions for administration of punishment of students for violations of the policy with stiffer penalties for repeat offenders, and the same shall be incorporated into the school district's written student discipline policy.

(c) Students shall sign a computer-use agreement form outlining proper and improper use of public access computers prior to being allowed to access the computer equipment.

(d) For purposes of this section:

(1) "Harmful to minors" has the same meaning as prescribed in § 5-68-501; and

(2) "Public access computer" means a computer that:

(A) Is located in a public school or public library;

(B) Is accessible by a minor; and

(C) Is connected to any computer communication system such as, but not limited to, what is commonly known as the Internet.

History. Acts 1997, No. 801, § 1; 2001, No. 912, § 1.

Cross References. Public library computer use policy, § 13-2-103.

6-21-111. Definitions.

(a) As used in this section:

(1) “Harmful to minors” means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; and

(2) “Public access computer” means a computer that:

(A) Is located in a public school;

(B) Is frequently or regularly used directly by a minor; and

(C) Is connected to any computer communication system.

(b) A public school that provides a public access computer shall equip the computer with technology that seeks to prevent minors from gaining access to material that is harmful to minors or obtain Internet connectivity from an Internet service provider that provides filter services to limit access to material that is harmful to minors. Standards and rules for the enforcement of this subsection shall be prescribed by the State Board of Education.

(c) A school district board of directors by a majority vote and after an opportunity for a notice and comment period of at least thirty (30) calendar days may vote to exclude the public schools under its authority from the provisions of subsection (b) of this section.

History. Acts 2001, No. 1533, §§ 1, 2.

A.C.R.C. Notes. Acts 2001, No. 1533,

§ 1, codified as subsection (a) of this section, is also codified as § 13-2-104(a).

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sembly, Education Law, 24 U. Ark. Little Rock L. Rev. 453.

TITLE 13

LIBRARIES, ARCHIVES, AND CULTURAL RESOURCES

CHAPTER 2

LIBRARIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE LIBRARY.
3. LIBRARY OF THE SECRETARY OF STATE.
4. COUNTY LIBRARIES.
5. MUNICIPAL LIBRARIES AND READING ROOMS.
6. INTERSTATE LIBRARY COMPACT.
7. CONFIDENTIALITY OF PATRONS' RECORDS.
8. ARKANSAS LIBRARY MATERIALS SECURITY LAW.
9. REGIONAL LIBRARY SYSTEM LAW.
10. ARKANSAS DIGITAL LIBRARY ACT.

A.C.R.C. Notes. Acts 1995, No. 64, § 1, as amended by Acts 1997, No. 250, § 252, provided: “(a) A Commission on Library Laws is created and shall be composed of seventeen (17) members to be appointed by the Governor as follows:

“(1) Five (5) shall be library directors, one from each of the state’s five (5) library development districts;

“(2) Four (4) shall be citizens who are interested in and knowledgeable about library services;

“(3) Two (2) shall be representatives of municipal government;

“(4) Two (2) shall be representatives of county government;

“(5) One (1) shall be the state librarian or designee;

“(6) One (1) shall be a trustee from a library or library system that serves more than fifty thousand (50,000) people;

“(7) One (1) shall be a trustee from a library or library system that serves less than fifty thousand (50,000) people;

“(8) One (1) shall be an attorney who is knowledgeable about municipal and county law.

“(b) The governor shall make the appointments and select the chairperson from the commission membership no later than January 1, 1996.

“(c) The Commission shall hold its first meeting during January, 1996 at a time and place designated by the chairperson. Subsequent meetings will be held at the call of the chairperson or upon the written request of five (5) members of the commission.

“(d) The Governor may remove any commission member for incapacity, incompetence, neglect of duty or malfeasance in office.

“(e) The Governor shall fill any vacancy from a list of at least two (2) qualified candidates submitted within fifteen (15) days of the vacancy by the commission. The Governor shall make the appointment within fifteen (15) days after the commission has submitted the candidates’ names.

“(f) The members shall serve without compensation, but may be reimbursed for expenses in accordance with Arkansas Code 25-16-901 et seq.”

Acts 1995, No. 64, § 2, provided: “(a) The Commission on Library Laws shall study existing laws of the state that affect the operation and development of public and regional libraries for the purpose of developing a Model Library Law. The Model Library Law shall define the relationship of the library to the municipality and

county in which it is located and may also address any other aspect of law that the commission deems appropriate for the future development of effective library services in this state.

“(b) The Commission on Library Laws shall hold public hearings, may hire staff and consultants as monies are available,

and may solicit, accept, retain and administer gifts, grants or donations of money, services or property.

“(c) The Commission shall report its findings and make its recommendations to the Governor and the Bureau of Legislative Research by January 1, 1997.”

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

13-2-101. [Repealed.]

13-2-102. Multijurisdictional system agreements.

13-2-103. Library computer use — Policy

SECTION.

— Signed agreement form required.

13-2-104. [Repealed.]

Effective Dates. Acts 2001, No. 912, § 3: Mar. 19, 2001. Emergency clause provided: “It is found and determined by the General Assembly that the establishment of internet use policies for our public schools and libraries is vital; and that until this act goes into effect, minors will not be afforded the protection which will result from this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective

on the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

13-2-101. [Repealed.]

Publisher’s Notes. This section, concerning libraries, archives, and cultural resources, was repealed by Acts 2013, No.

1347, § 1. The section was derived from Acts 1987, No. 555, §§ 1, 2; 2005, No. 1994, § 80.

13-2-102. Multijurisdictional system agreements.

All county public libraries created under the authority of § 13-2-401 et seq. and all city public libraries created under the authority of § 13-2-501 et seq. which have entered into interlocal cooperation agreements or any other formal or informal or contractual arrangements to form a joint city-county library, a regional library or library

system, or any other form of multiple-jurisdiction library system which are not in written format shall within one (1) year formalize and renew in writing all such agreements and contractual arrangements among the libraries.

History. Acts 1997, No. 402, § 14.

A.C.R.C. Notes. As enacted by Acts 1997, No. 402, § 14, this section began:

“On and after the effective date of this act,”. The effective date of Acts 1997, No. 402, was August 1, 1997.

13-2-103. Library computer use — Policy — Signed agreement form required.

(a) The board of directors of each library operated as an entity of the state or any city, county, or other political subdivision of the state with one (1) or more public access computers shall develop, adopt, and implement a written policy that:

(1) Establishes and maintains a system to prevent a minor from gaining computer access to materials harmful to minors as defined in § 5-68-501;

(2) Provides for:

(A) Suspending the privilege of a minor to use the public access computers if the minor violates the policy; and

(B) Revoking such a privilege for a repeat offender; and

(3) Requires each user to sign a computer-use agreement form outlining proper and improper use of public access computers prior to the user’s being allowed to access the computer equipment.

(b) For purposes of this section, “public access computer” means a computer that is:

(1) Located in a public school or public library;

(2) Accessible by a minor; and

(3) Connected to any computer communication system such as, but not limited to, what is commonly known as the Internet.

(c) Copies of the standards and rules for the enforcement of this section shall be submitted to the Arkansas State Library.

History. Acts 2001, No. 912, § 2; 2003, No. 1473, § 28.

A.C.R.C. Notes. As enacted by Acts 2001, No. 912, subsection (a) contained the following language following “implement”: “by August 1, 2001.”

Amendments. The 2003 amendment, in (a), deleted “by August 1, 2001” following “implement”; in (a)(1), inserted “and maintains” following “establishes” and

substituted “a minor” for “minors”; inserted the subdivision designations in (a)(2); in (a)(2)(B), deleted “provides for” preceding “revoking” and substituted “offender” for “offenders”; in (a)(3), substituted “each user” for “all users” and “his or her” for “their”; and added (c).

Cross References. School computer use policy, § 6-21-107.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Education Law, 24 U. Ark. Little Rock L. Rev. 453.

13-2-104. [Repealed.]

Publisher's Notes. This section, concerning library computer use policy, was repealed by Acts 2003, No. 1473, § 28.

The section was derived from Acts 2001, No. 1533, §§ 1, 3. For current law, see § 13-2-103.

SUBCHAPTER 2 — ARKANSAS STATE LIBRARY

SECTION.

- 13-2-201. State and local publications defined — Exemptions.
 13-2-202. Effect of subchapter.
 13-2-203. Arkansas State Library created.
 13-2-204. State Librarian.
 13-2-205. State Library Board.
 13-2-206. Meetings of board.
 13-2-207. Powers and duties generally.
 13-2-208. Cooperation with other libraries.
 13-2-209. Agreements with Arkansas State Archives and Secretary of State.

SECTION.

- 13-2-210. Depository for federal, state, and local documents.
 13-2-211. Depository agreements and eligibility.
 13-2-212. State and Local Government Publications Clearinghouse.
 13-2-213. Number of copies provided clearinghouse.
 13-2-214. Libraries of colleges and universities — Contracts — Status.

A.C.R.C. Notes. Identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 1, provided:

“(a) The General Assembly finds:

“(1) State government provides vital functions that impact the lives of Arkansas citizens on a daily basis;

“(2) While these functions are important, it is equally important to ensure that state government operates efficiently and effectively to eliminate unnecessary spending of tax dollars and provide timely and quality services to Arkansas citizens; and

“(3) Issues such as the administrative organization of a governmental entity, the appointment structure of a governmental entity's governing board, and extraneous duties assigned to governmental entities hamper the operation of state government and result in unnecessary expenses and delays in the provision of state services.

“(b) It is the intent of this act to amend provisions of law applicable to certain agencies, task forces, committees, and commission to promote efficiency and effectiveness in the operations of state government as a whole.”

Cross References. Depositories, § 25-18-301 et seq.

Effective Dates. Acts 1979, No. 489, § 12: July 1, 1979.

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 128: July 1, 2016.

13-2-201. State and local publications defined — Exemptions.

(a) As used in this subchapter, the terms “state publication” and “local publication” shall include any document issued or printed by any state agency or local government which may be released for distribution, but these terms do not include:

(1) The bound volumes of the printed acts of each of the sessions of the General Assembly;

(2) The bound volumes of the Arkansas Supreme Court Reports;

(3) Printed copies of the Arkansas Statutes of 1947 Annotated or pocket part supplements thereto;

(4) Any other printed document which may be obtained from the office of the Secretary of State upon the payment of a charge or fee therefor;

(5) Correspondence and intraoffice or interoffice or agency communications or documents which are not of vital interest to the public;

(6)(A) Publications of state or local agencies intended or designed to be of limited distribution to meet the requirements of educational, cultural, scientific, professional, or similar use of a limited or restricted purpose and which are not designed for general distribution.

(B) Similarly, other publications or printed documents which are prepared to meet the limited distribution requirements of a governmental grant or use which are not intended for general distribution shall also be deemed exempt from the provisions of this subchapter unless funds have been provided for printing of a quantity of such publications sufficient for distribution.

(b) A depository copy of each document noted in subdivisions (a)(1), (2), (3), and (6) shall be made available to the Arkansas State Library.

History. Acts 1979, No. 489, § 8; A.S.A. 1947, § 6-307.

13-2-202. Effect of subchapter.

(a)(1) Nothing in this subchapter shall repeal, alter, or change the duties and responsibilities of the Secretary of State to maintain a library of official books, records, and documents under the provisions of § 13-2-301 et seq. and other laws of this state which impose specific duties upon the Secretary of State.

(2) The library maintained by the Secretary of State under the provisions of § 13-2-301 et seq. shall be designated as the Library of the Secretary of State, and the Secretary of State shall be librarian thereof.

(b) Nothing in this subchapter shall repeal, alter, or change the powers, duties, and responsibilities of the Arkansas State Archives as defined by law.

History. Acts 1979, No. 489, § 10; A.S.A. 1947, § 6-307n; Acts 2016 (3rd Ex. Sess.), No. 2, § 97; 2016 (3rd Ex. Sess.), No. 3, § 97.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 2 and 3 substituted “State Archives” for “History Commission” in (b).

13-2-203. Arkansas State Library created.

(a) There is created and established within the Department of Education a division to be known as the Arkansas State Library.

(b) The library shall function within the department in the same manner as provided by agencies transferred to the principal department of government by a type 1 transfer under the provisions of § 25-2-104 and which shall be adequately funded and properly housed in a designated building at the seat of state government.

History. Acts 1979, No. 489, §§ 1, 2;
A.S.A. 1947, § 6-301.

13-2-204. State Librarian.

(a) The Arkansas State Library shall be headed by the State Librarian, to be appointed by the State Library Board. The State Librarian shall serve for such time and for such terms as the board may prescribe.

(b) The State Librarian shall be a person of good professional standing and reputation, holding at least a master's degree from a graduate school of library science accredited by the American Library Association, and shall have had experience in library administration in academic, public, school, or special libraries.

(c) The State Librarian shall have charge of the work of the library and shall perform such other duties as the board may prescribe.

History. Acts 1979, No. 489, §§ 1, 2;
A.S.A. 1947, § 6-301.

13-2-205. State Library Board.

(a) There is created the State Library Board.

(b)(1) The board shall consist of seven (7) members, to be appointed by the Governor subject to confirmation by the Senate.

(2) The members of the board shall be appointed by the Governor for reasons of their interest in libraries and in statewide library development.

(3)(A) One (1) member of the board shall be appointed from each of the four (4) congressional districts of this state in existence on July 1, 1979, and three (3) members shall be selected from the state at large.

(B) However, no more than two (2) members of the board shall be appointed from any one (1) congressional district.

(4)(A) All members appointed to the board shall serve terms of seven (7) years and until their successors are appointed and qualified.

(B) No board member shall be appointed to serve for more than two (2) consecutive terms, including partial terms.

(c) Vacancies occurring on the board due to death, resignation, or other reason shall be filled by appointment of the Governor for the remainder of the unexpired portion of the term in the same manner as for the initial appointment.

(d)(1) Members of the board shall receive per diem at the rate established by law for attending board meetings or for performing other services required of members in their official capacity as members of the board.

(2) In addition, members shall be entitled to mileage at the rate provided by law for official travel of state employees for each mile in traveling from their place of residence to meetings of the board and returning or for attending to other authorized business of the board.

History. Acts 1979, No. 489, § 2; A.S.A. 1947, § 6-301; Acts 1997, No. 250, § 73; 1997, No. 1152, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1152. Acts 1997, No. 250 amended subsection (d) of this section to read as follows: "(d) Members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq."

As enacted by Acts 1997, No. 1152, § 1, subdivision (b)(4)(B) began: "Beginning January 1, 1998,"

Publisher's Notes. Acts 1979, No. 489,

§ 2, also provided, in part, that the Arkansas Library Commission was abolished and that no less than four members of the commission serving on July 1, 1979, should be appointed as initial members of the State Library Board.

The terms of the members of the State Library Board are arranged so that one term expires every year.

Acts 1979, No. 489, § 10, abolished the State Library Board created by Acts 1927, No. 244, § 5, as amended, and transferred its functions and duties to the State Library Board created by this section.

13-2-206. Meetings of board.

(a) The State Library Board shall meet at such place or places and shall keep such records as it may deem appropriate.

(b) The board shall select annually a chair and any other officers as it deems necessary.

(c) The board shall adopt policies and bylaws governing its meetings, the conduct of its business, and the business of the Arkansas State Library.

(d) The State Librarian shall serve as Executive Secretary of the State Library Board, but without a vote thereon, and shall attend all of the board meetings and keep records thereof.

(e) A majority of the board's members shall constitute a quorum for the transaction of business, and all business transacted by the board shall be by majority vote of its members.

History. Acts 1979, No. 489, §§ 1, 3; A.S.A. 1947, §§ 6-301, 6-302.

13-2-207. Powers and duties generally.

Within the limitations of facilities and funds provided for the Arkansas State Library, the library shall:

(1) Acquire books and other library materials by purchase, exchange, gift, grant, or donation and catalog and maintain those books and materials and make them available for reference and research use of the public and the public officials and employees of this state and its

political subdivisions under such rules established by the State Library Board as may be reasonably necessary to govern the use and preservation thereof;

(2) Establish and maintain a collection of books and library materials of and pertaining to Arkansas and its people, resources, and history and maintain the collection as a separate section within the library;

(3) Operate and maintain a collection of multimedia materials to complement book collections and establish reasonable rules and regulations for their use and preservation;

(4) Provide specialized services to the blind and individuals with physical disabilities under a cooperative plan with the National Library Service for the Blind and Physically Handicapped of the Library of Congress;

(5) Assist communities, libraries, schools, colleges, universities, study and civic clubs and groups, charitable and penal institutions, state agencies and departments, county and municipal governments, and any other institutions, agencies, and individuals with books, information, library materials, and services as needed;

(6) Direct the establishment and development of county and regional library systems and programs, devise and implement a certification plan for public librarians, and assist in the design and building of public library facilities;

(7) Conduct courses of library instruction, hold library institutes in various parts of the state, and encourage the recruitment and training of library personnel in any suitable manner;

(8) Cooperate with the Department of Education and the Department of Higher Education in devising plans for the development of libraries, in aiding librarians in their administration, in certification policies, and in formulating rules and regulations for the use of libraries;

(9) Receive gifts of library materials, money, and real and personal property, to be held in trust, subject to the terms of the donation for the purposes of this subchapter;

(10) Be the official state library agency designated to administer state and federal programs of aid to libraries and to undertake such other activities and services as will further statewide development of libraries and library systems through interlibrary, interagency, and interstate cooperation in order to secure efficient and effective library service for all Arkansans;

(11)(A) Cooperate with the various officers, departments, and agencies of state government in pooling and sharing library materials and programs so that duplication of services and facilities shall be minimized and so that maximum utilization may be made of the library services and resources of this state.

(B) In furtherance of subdivision (11)(A) of this section, the library may enter into contracts or agreements with state officers, departments, and agencies for the provision of special library services where needed and, under the terms of the contract or agreement, may

provide for the method of financing special costs incurred by the library in furnishing and maintaining such special library services; and

(12) Perform all other functions and services that are common to the purposes and objectives of a state library.

History. Acts 1979, No. 489, § 4; A.S.A. 1947, § 6-303; Acts 1997, No. 208, § 9.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

Publisher's Notes. Acts 1979, No. 489, § 7, provided that all powers and duties formerly vested in the Arkansas Library Commission, not specifically repealed by or inconsistent with the act, should be transferred to the State Library. It further provided for the transfer of all of the

commission's property to the State Library to be used as the board should determine.

Acts 1979, No. 489, § 8, provided, in part, that all powers and duties formerly vested in the Secretary of State under Acts 1971, No. 163 (§§ 25-18-306 — 25-18-308), should be transferred to the Arkansas State Library.

Acts 1979, No. 489, § 9, provided, in part, that all powers, functions, and duties of the Arkansas Library Commission with respect to the Interstate Library Compact, § 13-2-601 et seq., and all contracts and agreements entered into by the commission under the compact, should be performed by the State Library and the State Library Board.

Cross References. Preservation of state publications, § 13-3-108.

Records of public officials, preservation, § 13-3-107.

13-2-208. Cooperation with other libraries.

(a) The Arkansas State Library shall cooperate with the public and private libraries in the State of Arkansas and may enter into necessary agreements with libraries in other states and the Library of Congress for the sharing of library books, documents, facilities, or services under such terms and conditions as the State Library Board shall determine to be within the scope and services of the Arkansas State Library and in keeping with the state's library programs.

(b)(1) The Arkansas State Library shall obtain reports from all libraries and each year report the condition, growth, development, and manner of development of those libraries and such other facts and statistics as may be of public interest.

(2) The Arkansas State Library shall include a summary thereof in its biennial report, which shall be filed with the Governor and the presiding officer of each house of the General Assembly.

History. Acts 1979, No. 489, § 6; A.S.A. 1947, § 6-305.

13-2-209. Agreements with Arkansas State Archives and Secretary of State.

(a) The Arkansas State Library, acting through the State Library Board, is authorized to enter into necessary agreements with the Arkansas State Archives, with respect to an overall plan and design to assure that the functions and materials of the Arkansas State Library and the Arkansas State Archives may be convenient to the public and public officials of this state and to its political subdivisions, and to assure that unnecessary duplication of services and facilities is minimized.

(b)(1)(A) In addition, the library is authorized to enter into contracts and agreements with the Secretary of State for the custody, storage, cataloging, or display in the library or Arkansas State Archives of any books, records, documents, or other papers in the custody of the Secretary of State.

(B) This shall be done under such terms and conditions as may be mutually agreed to by the parties.

(2) The library is also authorized to accept custody and control over any books, records, and documents which the Secretary of State is now required by law to keep or maintain in his or her official files or volumes, if:

(A) The Secretary of State shall determine that the records could be properly cataloged, stored, and preserved in the Arkansas State Library or Arkansas State Archives; and

(B) The Governor agrees in writing for the transfer of the books, records, and documents from the Secretary of State to the Arkansas State Library or Arkansas State Archives, in accordance with the terms of the agreement made in writing signed by the Secretary of State and the State Librarian or the State Historian for the custody, cataloging, preservation, and care of the records.

History. Acts 1979, No. 489, § 5; A.S.A. 1947, § 6-304; Acts 2016 (3rd Ex. Sess.), No. 2, § 98; 2016 (3rd Ex. Sess.), No. 3, § 98.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 2 and 3 substituted "State Archives" for "History

Commission" in the section heading and in (a); substituted "Arkansas State Archives" for "commission" in (a); and inserted "Arkansas" preceding "State Archives" in (b)(1)(A), (b)(2)(A), and (b)(2)(B).

13-2-210. Depository for federal, state, and local documents.

The Arkansas State Library shall serve as the state's regional depository library for federal documents and shall become the official depository for state and local documents.

History. Acts 1979, No. 489, § 8; A.S.A. 1947, § 6-307.

13-2-211. Depository agreements and eligibility.

(a) The Arkansas State Library may enter into depository agreements with any city, county, district, regional, town, school, college, or university library in this state.

(b) The Arkansas State Library shall establish standards for eligibility as a depository library under this section, § 13-2-210, and §§ 13-2-212 — 13-2-214. The standards may include and take into account:

- (1) The type of library;
- (2) The library's ability to preserve state and local publications and to make them available for public use; and
- (3) The library's geographical location, in order to assure that the publications are conveniently accessible to residents in all areas of the state.

History. Acts 1979, No. 489, § 8; A.S.A. 1947, § 6-307.

13-2-212. State and Local Government Publications Clearinghouse.

(a) The Arkansas State Library shall create and maintain a State and Local Government Publications Clearinghouse.

(b) The Arkansas State Library shall make such rules as may be necessary to carry out the purposes of the clearinghouse.

(c)(1) All state agencies, including the General Assembly and its committees, constitutional officers, any department, division, bureau, board, commission, or agency of the State of Arkansas, all local governments, including cities of the first and second class and incorporated towns, and counties, and all boards, commissions, or agencies thereof shall furnish to the Arkansas State Library, upon release, a specified number of copies of each of its state or local publications.

(2) These publications shall be furnished to enable the clearinghouse to meet the needs of the Depository Library System and to provide library loan services to those libraries without depository status.

(3) The distribution will be required only if sufficient funds are appropriated for the printing of these materials by the agencies, boards, and commissions and for the distribution thereof by the Arkansas State Library to depository libraries.

(d) At least quarterly, and more frequently if funds are available, the clearinghouse of the Arkansas State Library shall publish and, upon request, distribute a list of state publications to all state agencies and contracting depository libraries.

History. Acts 1979, No. 489, § 8; A.S.A. 1947, § 6-307.

13-2-213. Number of copies provided clearinghouse.

(a) If sufficient funds are available, each state and local agency printing or duplicating publications of the type which are to be made available to the State and Local Government Publications Clearinghouse shall print or duplicate fifty (50) additional copies or a lesser number as may be requested by the Arkansas State Library, for deposit with the clearinghouse for distribution to established depository libraries or interstate library exchange.

(b) However, if a state agency or a local governmental agency does not have sufficient funds or resources available to furnish the fifty (50) copies to the clearinghouse, it shall notify the Arkansas State Library and deliver to the clearinghouse three (3) copies of each publication to be maintained in the Arkansas State Library, to be indexed and made available on loan to participating libraries through the interlibrary loan services of the Arkansas State Library.

History. Acts 1979, No. 489, § 8; A.S.A. 1947, § 6-307.

13-2-214. Libraries of colleges and universities — Contracts — Status.

(a) The Arkansas State Library is authorized to enter into contracts or agreements with the Mullins Library of the University of Arkansas at Fayetteville and the library of each of the state-supported institutions of higher learning in this state to provide through the State and Local Government Publications Clearinghouse any of the clearinghouse, exchange, depository, or selective or partial depository duties or functions of any of the libraries, or to provide depository library services in behalf of any of the libraries that may be mutually agreed to by the Arkansas State Library and the Mullins Library of the University of Arkansas at Fayetteville or one (1) of the several institutions of higher learning of this state.

(b)(1) Nothing in this subchapter shall be construed to repeal, amend, modify, or affect the status of the Mullins Library of the University of Arkansas at Fayetteville as a depository of state, city, and county documents under the provisions of §§ 25-18-301 — 25-18-304.

(2) This subchapter shall not repeal, amend, modify, or affect the powers of the Mullins Library of the University of Arkansas at Fayetteville or the library of each of the state-supported institutions of higher learning to be a selective or partial depository of state, city, and county documents under the provisions of §§ 25-18-306 — 25-18-308.

History. Acts 1979, No. 489, § 8; A.S.A. — 25-18-304, referred to in subsection (b), 1947, § 6-307. were repealed by Acts 1993, No. 1224, § 6.

Publisher's Notes. Sections 25-18-302

SUBCHAPTER 3 — LIBRARY OF THE SECRETARY OF STATE

SECTION.

- 13-2-301. Librarian.
 13-2-302. Binding of books and documents.
 13-2-303. [Repealed.]
 13-2-304. Procuring copies of missing books.
 13-2-305. [Repealed.]

SECTION.

- 13-2-306. Expenses of procuring works.
 13-2-307. Accounts.
 13-2-308. Privilege of using books.
 13-2-309. Removal of books.
 13-2-310. Injury to or failure to return books or charts — Penalty.

13-2-301. Librarian.

The Secretary of State shall be librarian for the Library of the Secretary of State and shall have custody and direction of all books, papers, maps, charts, and all other things belonging to it, and he or she shall take special care that none of them be lost or injured.

History. Rev. Stat., ch. 144, § 1; C. & M. Dig., § 4428; Pope's Dig., § 5463; A.S.A. 1947, § 5-301.

Publisher's Notes. Section 13-2-202 provides that nothing in § 13-2-201 et seq., which created the State Library

Board, shall affect the duties of the Secretary of State under this subchapter and that the library maintained by the Secretary of State shall be known as the Library of the Secretary of State.

13-2-302. Binding of books and documents.

The Secretary of State shall cause to be bound, if not already done, in an inexpensive and substantial manner, three (3) copies of each of the acts of the General Assembly.

History. Rev. Stat., ch. 144, § 2; C. & M. Dig., § 4429; Pope's Dig., § 5464; A.S.A. 1947, § 5-302; Acts 2001, No. 791, § 1.

Amendments. The 2001 amendment substituted "acts of the General Assembly of this state" for "following works"; and deleted (1) through (4).

13-2-303. [Repealed.]

Publisher's Notes. This section, concerning books arranged in a convenient room, was repealed by Acts 2001, No. 791,

§ 2. The section was derived from Rev. Stat., ch. 144, § 3; C. & M. Dig., § 4430; Pope's Dig., § 5465; A.S.A. 1947, § 5-303.

13-2-304. Procuring copies of missing books.

Where there shall be a deficiency in any of the acts, journals, or other works, it shall be the duty of the Secretary of State to correspond with the proper officer for the purpose of procuring copies of the different works, and, if not otherwise procured, he or she shall purchase them and place them in the Library of the Secretary of State.

History. Rev. Stat., ch. 144, § 4; C. & M. Dig., § 4431; Pope's Dig., § 5466; A.S.A. 1947, § 5-304.

13-2-305. [Repealed.]

Publisher's Notes. This section, concerning the purchase of books as directed by the General Assembly, was repealed by Acts 2001, No. 791, § 3. The section was derived from Rev. Stat., ch. 144, § 5; C. & M. Dig., § 4432; Pope's Dig., § 5467; A.S.A. 1947, § 5-305.

13-2-306. Expenses of procuring works.

All expenses of procuring copies of acts, journals, and other works as are mentioned in this subchapter shall be paid out of the contingent fund of the General Assembly.

History. Rev. Stat., ch. 144, § 6; C. & M. Dig., § 4433; Pope's Dig., § 5468; A.S.A. 1947, § 5-306.

13-2-307. Accounts.

The Auditor of State shall adjust the accounts of the Secretary of State as Librarian for the Library of the Secretary of State and draw warrants for the payment of them.

History. Rev. Stat., ch. 144, § 7; C. & M. Dig., § 4434; Pope's Dig., § 5469; A.S.A. 1947, § 5-307.

13-2-308. Privilege of using books.

The officers of the several departments of the state, who are entitled to the use of the Library of the Secretary of State, may introduce citizens or strangers into the library, who shall have the privilege, during all seasonable hours, to read any of the books therein.

History. Rev. Stat., ch. 144, § 11; C. & M. Dig., § 4438; Pope's Dig., § 5473; A.S.A. 1947, § 5-311.

13-2-309. Removal of books.

(a) No person shall be permitted to remove any book from the Library of the Secretary of State except the Governor, Auditor of State, Treasurer of State, members of the General Assembly, Justices of the Supreme Court and judges of circuit courts, and attorneys for the state.

(b) No person shall be permitted to remove any book from the library without giving a receipt therefor to the Secretary of State.

History. Rev. Stat., ch. 144, §§ 8, 9; C. & M. Dig., §§ 4435, 4436; Pope's Dig., §§ 5470, 5471; A.S.A. 1947, §§ 5-308, 5-309.

13-2-310. Injury to or failure to return books or charts — Penalty.

If any person shall injure or fail to return any book, map, or chart taken from the Library of the Secretary of State for more than three (3) months, he or she shall forfeit and pay to the Secretary of State, for the use and benefit of the library, three (3) times the value thereof, or of the set to which it belongs, to be recovered in the name of the state for the use of the library.

History. Rev. Stat., ch. 144, § 10; C. & M. Dig., § 4437; Pope's Dig., § 5472; A.S.A. 1947, § 5-310.

SUBCHAPTER 4 — COUNTY LIBRARIES

SECTION.

- 13-2-401. Establishment.
 13-2-402. Librarian.
 13-2-403. Multidistrict counties.
 13-2-404. County public library fund — Claims.
 13-2-405. Surplus funds — Matching funds.
 13-2-406. Library services for outside the

SECTION.

- county — Fees for county public libraries.
 13-2-407. Joint city-county and regional public library systems.
 13-2-408. Injuries to county public library property — Penalty.
 13-2-409. County library tax petition — Filing fee.

A.C.R.C. Notes. References to “this subchapter” in §§ 13-2-401 — 13-2-408 may not apply to § 13-2-409, which was enacted subsequently.

Cross References. Local government

reserve funds, § 14-73-101 et seq.
 Public bodies corporate and politic, § 25-20-201 et seq.
 Supreme Court Reports, § 25-18-218.

13-2-401. Establishment.

(a) The county quorum courts of the several counties shall have the power and authority to establish, maintain, and operate county public libraries or public library services or systems in the manner and with the functions prescribed in this subchapter, and counties may appropriate money for these purposes.

(b) The county quorum court shall also have the power to establish in cooperation with another county or other counties a joint public library or a joint library service or system for the benefit of the cooperating counties.

(c)(1) Establishment of county libraries or library systems shall be evidenced by an ordinance of the county quorum court or by an agreement between the governing bodies of the several counties participating in a regional library system or coordinating library services under an interlocal agreement.

(2) Appropriations for the establishment and maintenance of a county library or library system shall be in the manner prescribed by law for expenditures by counties.

(d) In addition to county library boards created under this section, § 13-2-402, and § 13-2-404, a county quorum court may by ordinance establish a county library board to conduct the affairs of the county public library or its library services or system in accordance with the law for establishing other county advisory or administrative boards found at § 14-14-705.

History. Acts 1927, No. 244, § 1; Pope's Dig., § 2629; A.S.A. 1947, § 17-1001; Acts 1997, No. 402, § 1; 2011, No. 837, § 1. began: "Beginning January 1, 1998,"

A.C.R.C. Notes. As enacted by Acts 1997, No. 402, § 1, subdivision (d)(2)

Amendments. The 2011 amendment deleted (d)(2).

13-2-402. Librarian.

(a) No person shall be appointed to the office of county librarian unless prior to appointment the person is recommended for appointment by the county library board, if the board has been created.

(b) The county librarian shall conduct the library according to the most acceptable library methods.

History. Acts 1927, No. 244, § 4; Pope's Dig., § 2632; A.S.A. 1947, § 17-1004; Acts 1997, No. 402, § 2.

13-2-403. Multidistrict counties.

In any county in this state which is divided into two (2) districts and which has two (2) county seats, each district of the county may be considered as an individual county for the purpose of levying a county library tax under the provisions of Arkansas Constitution, Amendment 38.

History. Acts 1973, No. 239, § 1; A.S.A. 1947, § 17-1001.1.

13-2-404. County public library fund — Claims.

(a)(1) All tax and other county-appropriated funds of the county public library shall be in the custody of the county treasurer and shall constitute a separate fund, to be known as the "county public library fund".

(2)(A) A county that supports a county public library or library system with a library tax under Arkansas Constitution, Amendment 38, shall by ordinance of the quorum court of the county levy a tax at a millage rate approved by the voters on all taxable property within the county to be used for the support, operation, and maintenance of the public library or public library system located in the county.

(B) As used in Arkansas Constitution, Amendment 38, “maintaining and operating” a public county library or a county library service or system includes the:

- (i) Repair and upkeep of property and equipment;
- (ii) Overhead and ongoing costs; and
- (iii) General and administrative expenses.

(C) Except as otherwise provided in the ordinance, “maintaining and operating” includes without limitation:

- (i) Postage, telephone, and Internet services;
- (ii) Printing;
- (iii) Library-owned motor vehicle expenses;
- (iv) Advertising;
- (v) Minor and major repairs;
- (vi) Maintenance contracts;
- (vii) Lawn care services;
- (viii) Utilities and fuel;
- (ix) Rent and lease payments;
- (x) Insurance premiums;
- (xi) Association and membership dues;
- (xii) Contractual services not otherwise classified;
- (xiii) Consumable supplies, materials, and commodities;
- (xiv) Court costs;
- (xv) Equipment not capitalized;
- (xvi) Applicable petty cash reimbursements, laundry, and taxes;
- (xvii) Travel, subsistence, meals, lodging, and transportation of county library employees or officials traveling on official business; and
- (xviii) Such other items and expenses as may be considered maintaining and operating a public county library or a county library service or system under Arkansas Constitution, Amendment 38.

(3) In addition to the levy authorized by this section, the quorum court in a county may appropriate from any available funds for the support, operation, and maintenance of a public library or public library system located in the county.

(4) Further, the quorum court in a county may appropriate from the county funds and any other available funds for the support, operation, and maintenance of a regional public library system in which the county has agreed to participate in coordination with the libraries of other counties and other cities.

(b)(1) Funds received by the county public library by gift, bequest, devise, or donation or from fees or fines may remain in the custody of the county library board, if a board has been created, or deposited with the county treasurer for the county public library fund if the county library board so chooses or if a board has not been created.

(2) Funds retained by the county library board shall be used by it for the establishment, expansion, construction, maintenance, and operation of the county library.

(c)(1) No claim against the fund shall be approved by the county court until acted upon by the governing library board, if a governing

library board has been created, and payment authorized by the governing library board.

(2) When certified as a valid claim by the governing library board, the claim shall be acted upon as all other claims against the county.

(3)(A)(i) Pursuant to an ordinance adopted by the quorum court at the request of the governing library board, the governing library board may certify to the county treasurer a claim against the fund for an amount equal to the undistributed balance of the fund.

(ii) The ordinance shall specify the frequency that the claim may be made. The frequency shall not be more than monthly.

(B) The claim shall be acted upon as all other claims against the county.

(C) When the claim is paid, the funds shall be in the custody of the governing library board and shall be subject to expenditure pursuant to an appropriate resolution or budget adopted by the governing library board.

History. Acts 1927, No. 244, § 2; Pope's Dig., § 2630; Acts 1981, No. 49, § 1; A.S.A. 1947, § 17-1002; Acts 1995, No. 232, § 2; 1997, No. 402, § 3; 2005, No. 1162, § 1; 2009, No. 570, § 1; 2009, No. 764, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2009, No. 764. Subsec-

tion (a)(2)(B) was also added by Acts 2009, No. 570, to read as follows: "(B) Maintenance and operation costs include rental costs paid for the library facility."

Amendments. The 2009 amendment by No. 764 inserted (a)(2)(B) and (C) and redesignated the remaining text of (a)(2) accordingly.

13-2-405. Surplus funds — Matching funds.

(a) The governing board of any county public library is authorized to use any surplus funds available in the operating or maintenance account of the public library for matching federal or other funds available for financing necessary expansions or improvements of the public library.

(b) Before using any of the funds for the purposes of this section, the governing board of the county public library shall adopt a resolution setting forth the:

- (1) Amount of the funds to be used;
- (2) Purposes for which the funds are to be used;
- (3) Amount of matching funds to be derived by the use of the funds;

and

- (4) Nature of the expansions or improvements to be made.

(c) The resolution shall include a declaration that the use of the funds will not jeopardize any existing program of the county public library and that the funds are not needed for any existing or anticipated maintenance or operating purpose of the library.

(d) The governing board of any county library using funds as authorized in this section is authorized to enter into contracts or agreements necessary to accomplish the purposes of this section.

(e)(1) With respect to the purposes of this section, the governing board is authorized to accept gifts, grants, or donations of both real and

personal property from the federal government or from any person, firm, or corporation.

(2) These gifts, grants, or donations shall be used for the purposes of the expansion or improvement of the public library.

History. Acts 1965, No. 402, § 1; A.S.A. 1947, § 19-3205.1.

Publisher's Notes. Acts 1965, No. 402, § 1, is also codified as § 13-2-504.

13-2-406. Library services for outside the county — Fees for county public libraries.

(a) Any county public library may extend the privilege and use of the library and library services to persons residing outside the county upon the terms and conditions as the library boards may prescribe by regulation or policy.

(b) In addition, reasonable reimbursements may be collected by the county public library for providing any special library services beyond the customary library services, provided that they are determined in advance and in writing by the library board, if a board has been created.

History. Acts 1997, No. 402, § 4.

13-2-407. Joint city-county and regional public library systems.

(a)(1) Any county library board, with the consent of its county quorum court, the board of trustees of any municipal public library, any group of municipal public libraries, and any combination of counties and cities may contract with each other or among themselves to create, maintain, and support a joint city-county public library system or regional public library system or may enter into an interlocal cooperation agreement among themselves to coordinate public library services among the different jurisdictions.

(2) Such a contract, interlocal agreement, or other arrangement shall contain terms, agreements, and conditions as may be agreed upon by the county library board, the county quorum court, and the board of trustees of the several municipalities with the final approval of the governing body of the cities.

(3) The expenses of the regional public library system or the cooperating libraries shall be apportioned between or among the entities concerned on such a basis as shall be agreed upon in the ordinance, contract, arrangement, or interlocal agreement.

(4) The library system headquarters building shall be located at a place in one (1) of the counties to be agreed upon by the quorum courts of the various counties in the regional public library or with a cooperating library system.

(b) Any county library board may contract with an entity to provide library services at any location.

(c) Any joint city-county public library system or regional public library system may extend the privilege and use of the library and library services to persons residing outside the several jurisdictions of

the library system upon the terms and conditions as the several library boards may prescribe by regulations or policy.

(d)(1) If not provided for by the library system or by one (1) of the participating jurisdictions of the library system, all eligible employees of a joint city-county library or a regional public library system shall be entitled to the comparable retirement and fringe benefit coverage as are other county employees in the headquarters county.

(2) Costs for these benefits shall be apportioned among the participating jurisdictions of the joint city-county library or a regional public library system.

History. Acts 1997, No. 402, § 5.

13-2-408. Injuries to county public library property — Penalty.

(a) In addition to any penalties prescribed and notwithstanding any provisions to the contrary in the Arkansas Library Materials Security Law, § 13-2-801 et seq., the county quorum court shall have the power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon library grounds or property or injuring or failing to return any book, periodical, or property belonging to the library.

(b) The county library board or the county librarian may refuse the use of the library to such offenders.

History. Acts 1997, No. 402, § 6.

13-2-409. County library tax petition — Filing fee.

When a petition is filed as authorized in Arkansas Constitution, Amendment 38, as amended by Amendment 72, to submit to the electors of a county the question of levying, increasing, decreasing, or repealing a county library tax and the petition or the sponsor of the petition requests that the question be submitted at a special election, the sponsor of the petition may be required by the county quorum court to pay a filing fee not to exceed two thousand dollars (\$2,000) which shall be used to offset a portion of the cost of calling and conducting the special election.

History. Acts 2001, No. 1377, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 13-2-401 — 13-2-408

may not apply to this section, which was enacted subsequently.

SUBCHAPTER 5 — MUNICIPAL LIBRARIES AND READING ROOMS

SECTION.

13-2-501. Establishment — Appropriations.
13-2-502. Board of trustees.
13-2-503. Powers of trustees — Librarian and staff.

SECTION.

13-2-504. Surplus funds — Matching funds.
13-2-505. Donations for library.
13-2-506. Injuries to library property — Penalty.

SECTION.

13-2-507. Contracts for library services outside the city — Fees for special library services.

13-2-508. Joint municipal libraries — Joint city-county libraries.

SECTION.

13-2-509. Trustees' report.

13-2-510. City and town library services.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of

the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Cross References. Local government reserve funds, § 14-73-101 et seq.

Public bodies corporate and politic, § 25-20-201 et seq.

Public libraries, Ark. Const. Amend. 30.

13-2-501. Establishment — Appropriations.

(a)(1) The city council or governing body of any city of the first class may by ordinance establish and maintain a public library for the use and benefit of the inhabitants of the city.

(2) The governing body of any city which levies a city library tax in accordance with Arkansas Constitution, Amendment 30, shall establish, operate, and maintain a city public library or library services for the citizens of the city.

(b)(1) In a city of the first class, on petition of five percent (5%) of the voters requesting the establishment of a public library, the city council or governing body of the municipality within thirty (30) days after the filing of the petition shall call an election to be held in accordance with § 7-11-201 et seq.

(2)(A) The election shall be advertised and conducted as special elections are required by law to be advertised and conducted.

(B) The ballots shall be marked "FOR Public Library", "AGAINST Public Library".

(3) If a majority of the electors voting at the election vote in favor of the establishment of a public library, it shall be the duty of the city council or the governing body of the municipality immediately to establish a public library and continue to maintain it in accordance with the provisions of this section.

(c) When a public library has been established, the city council or the governing body of the municipality may allot for library purposes a prescribed proportion of its municipal revenues to be used exclusively for the maintenance of the public library.

(d)(1) A city which supports a city public library or library system with a city library tax under Arkansas Constitution, Amendment 30, shall by ordinance of the governing body of the municipality appropriate all tax revenues raised by the millage approved by the voters on all taxable property within the city to be used for the support, operation, and maintenance of the public library or public library system located in the city or for library services from within a library system in which the city participates.

(2) In addition to the levy authorized in this subsection, the governing body of the municipality may make contributions from any available funds for the support, operation, and maintenance of a city public library or public library system located in the city or for library services from within a library system in which the city participates.

(3) Further, the governing body of a municipality may make contributions from the city funds and any other available funds for the support, operation, and maintenance of a joint city-county or regional public library system in which the city has agreed to participate in coordination with the libraries of other cities and other counties.

History. Acts 1931, No. 177, § 1; Pope's Dig., § 9590; A.S.A. 1947, § 19-3201; Acts 1991, No. 417, § 1; 1997, No. 402, § 7; 2005, No. 2145, § 17; 2007, No. 1049, § 34; 2009, No. 1480, § 49.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (b)(1).

13-2-502. Board of trustees.

(a)(1) When any city council or governing body of a city of the first class has decided to establish and maintain a public library under this subchapter, the mayor of the city with the approval of the city council shall appoint a board of not fewer than five (5) trustees nor more than seven (7) trustees for the library.

(2) The trustees shall be chosen from the citizens at large with reference to their fitness for the office.

(3) Before entering upon the duties of their office, the trustees shall make oath or affirmation before some judicial officer that they will discharge the duties enjoined upon them.

(b) The trustees shall receive no compensation for their services.

(c)(1) Two (2) trustees shall hold office for two (2) years, two (2) for four (4) years, and one (1) or more members for five (5) years from the January 1 following their appointment in each case. At the first meeting they shall cast lots for their respective terms, reporting the result to the council or governing body. All subsequent terms shall be for five (5) years.

(2) However, all trustees appointed after January 1, 1998, shall serve terms of five (5) years and until their successors are appointed and qualified. Any trustee may succeed himself or herself in office.

(d)(1) The removal of any trustee permanently from the city or his or her absence from four (4) consecutive meetings of the board without due explanation of absence shall render his or her office as trustee vacant.

(2) Vacancies on the board shall be filled by the mayor with the approval of the city council or governing body.

(e) Immediately after their appointment, the trustees shall meet and organize by the election of one (1) of their number as president and by the election of such other officers as they may deem necessary.

(f) The trustees shall make and adopt such bylaws, rules, and regulations for their own guidance as they see fit.

(g) The trustees shall meet once a calendar quarter, or more often if necessary, for the transaction of business.

(h) With the final approval of the city council or governing body of the municipality, the trustees shall have the authority:

(1) To negotiate and carry out all agreements between the city public library and the governing boards of the several city libraries and any counties participating in a joint city-county library or a regional library system; or

(2) To coordinate any and all library services for their city under an interlocal cooperation agreement.

History. Acts 1931, No. 177, §§ 2-4; Pope's Dig., §§ 9591-9593; Acts 1973, No. 56, § 1; A.S.A. 1947, §§ 19-3202 — 19-3204; Acts 1997, No. 204, § 1; 1997, No. 402, § 8; 2001, No. 630, § 1; 2001, No. 1515, § 1.

Amendments. The 2001 amendment, by No. 630, redesignated the former (c)(1)

as the present (c); added the last sentence in (c); and deleted (c)(2).

The 2001 amendment, by No. 1515, deleted "or has decided to provide library services to its citizens through participation in a library system" preceding "under this subchapter" in (a)(1); and substituted "the trustees" for "they" in (a)(3).

13-2-503. Powers of trustees — Librarian and staff.

(a)(1) All moneys received for library purposes, whether by taxation or otherwise, shall belong to and be designated as the library fund.

(2) The moneys shall be kept separate and apart from other funds of the city and drawn upon by the proper officers of the library upon the properly authenticated invoices of the library board of trustees.

(b)(1) The board shall have exclusive control of the expenditures of all moneys collected to the credit of the library fund and of the construction of any library building.

(2) The board shall have the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for library purposes.

(c)(1)(A) The board shall have the power to purchase or lease grounds or to purchase, lease, erect, and occupy appropriate buildings for the use of the library.

(B) When a building erected or purchased by the board is not adapted to its purpose or needs, the board may remodel or reconstruct the building.

(2) The board may also sell or otherwise dispose of any real or personal property that it deems no longer necessary or useful for library purposes.

(d)(1) The board shall have the power to appoint a librarian qualified by education, training, experience, and personality, who shall serve at the will of the board.

(2) The board shall have the power to appoint necessary assistants and other members of the staff, basing their appointment on the recommendation of the librarian.

(e) The board shall have the power to make necessary rules and regulations for administering the library and shall make provisions for representation at library conventions.

History. Acts 1931, No. 177, § 5; Pope's Dig., § 9594; A.S.A. 1947, § 19-3205; Acts 2005, No. 1246, § 1. **Cross References.** Exemption from civil service commission act, § 14-49-301.

13-2-504. Surplus funds — Matching funds.

(a) The board of trustees of any city public library is authorized to use any surplus funds available in the operating or maintenance account of the library for matching federal or other funds available for financing necessary expansions or improvements of the library.

(b) Before using any of the funds for the purposes of this section, the board shall adopt a resolution setting forth the amount of the funds to be used, the purposes for which the funds are to be used, the amount of matching funds to be derived by the use of the funds, and the nature of the expansions or improvements to be made.

(c) The resolution shall include a declaration that the use of the funds will not jeopardize any existing program of the library and that the funds are not needed for any existing or anticipated maintenance or operating purpose of the library.

(d) The board, using funds as authorized in this section, is authorized to enter into contracts or agreements necessary to accomplish the purposes of this section.

(e) With respect to the purposes of this section, the board is authorized to accept gifts, grants, or donations of real or personal property from the federal government or from any person, firm, or corporation, to be used for the purposes of the expansion or improvement of the library.

History. Acts 1965, No. 402, § 1; A.S.A. 1947, § 19-3205.1. **Publisher's Notes.** Acts 1965, No. 402, § 1, is also codified as § 13-2-405.

13-2-505. Donations for library.

(a) Any person desiring to make donations of money, personal property, or real estate for the benefit of a library shall have the right to vest the title to the money or real estate so donated in the board of trustees of the library created under this subchapter.

(b) The money or real estate shall be held and controlled by the board, when accepted, according to the terms of the deed, gift, devise, or bequest of the property.

(c) As to the property, the board shall be considered trustees.

History. Acts 1931, No. 177, § 7; Pope's Dig., § 9596; A.S.A. 1947, § 19-3207.

13-2-506. Injuries to library property — Penalty.

(a) In addition to any penalties prescribed and notwithstanding any provisions to the contrary in the Arkansas Library Materials Security Law, § 13-2-801 et seq., the city council or governing body of a city shall have the power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon library grounds or property or injuring or failing to return any book, periodical, or property belonging to the library.

(b) The board of trustees of the library may refuse the use of the library to such offenders.

History. Acts 1931, No. 177, § 8; Pope's Dig., § 9597; A.S.A. 1947, § 19-3208; Acts 1997, No. 402, § 9.

13-2-507. Contracts for library services outside the city — Fees for special library services.

(a) The board of trustees of the library may extend the privilege and use of the library to persons residing outside the city upon such terms and conditions as the board may prescribe by its regulations or its policies.

(b) The board may also contract for library service or for the privilege and use of the library with the county quorum court, the municipal authorities of a neighboring city, town, or village, or school authorities.

(c) In addition, reasonable reimbursements may be collected by the city public library for providing any special library services beyond the customary library services, provided they are determined in advance and in writing by the board.

History. Acts 1931, No. 177, § 6; Pope's Dig., § 9595; A.S.A. 1947, § 19-3206; Acts 1997, No. 402, § 10.

13-2-508. Joint municipal libraries — Joint city-county libraries.

(a) When any city council or governing body of a city of the first class shall have decided to establish and maintain a public library under the terms of this subchapter, the city board of trustees of the library appointed pursuant to this subchapter in fulfilling the purposes of this subchapter may contract with the municipal authorities of a neighboring city within this state or without this state if the city limits of the neighboring city so without this state extend to the state line of this state and are contiguous to the city limits of the city of the first class within this state, whereby a common library for the residents of both cities may be established and maintained by both cities.

(b) The contract shall provide for the division of the total cost of establishing, maintaining, and operating the library between the cities, even though the library is located without this state.

(c) However, the contract shall become effective only from and after its ratification by a majority of the elected members of the city council or the governing body of a city of the first class.

(d)(1) The city board of trustees, with the consent of its governing body of the city, and the county library board, with the consent of the county quorum court, or any group of municipal public libraries, and any combination of them, may contract with each other or among themselves to create, maintain, and support a joint city-county public library system or regional public library system or may enter into an interlocal cooperation agreement among themselves to coordinate public library services among the different jurisdictions.

(2) Such a contract or interlocal agreement shall contain terms, agreements, and conditions as may be agreed upon by the city board of trustees, the county library board of trustees, the county quorum court, and the board of trustees of the several municipalities.

(e) Any library or joint city-county library or other library system created under this section for coordination of library services when so established and operated shall be a public city library for all the intents and purposes of this subchapter and of Arkansas Constitution, Amendment 30.

(f) This section does not repeal any existing law and shall be cumulative to the provisions of §§ 13-2-501 — 13-2-503, 13-2-505 — 13-2-507, and 13-2-509.

History. Acts 1951, No. 36, §§ 1-3; A.S.A. 1947, §§ 19-3210, 19-3211, 19-3211n; Acts 1997, No. 402, § 11.

13-2-509. Trustees' report.

(a) At the end of each fiscal year, the board of trustees of the library shall present a report of the condition of the trust to the city council. This report shall be verified under oath by the secretary or some responsible person.

(b) It shall contain:

(1) An itemized statement of the various sums of money received from the library fund and other sources;

(2) A statement of the number of books and periodicals available for use and the number and character thereof circulated;

(3) A statement of the real and personal property received by devise, bequest, purchase, gift, or otherwise;

(4) A statement of the character of any extension of library service which may have been undertaken;

(5) A statement of the financial requirements of the library for the ensuing year; and

(6) Any other statistics, information, or suggestions that might be of interest.

(c) A copy of this report shall be filed with the State Library Board.

History. Acts 1931, No. 177, § 9; Pope's Dig., § 9598; Acts 1951, No. 299, § 1; A.S.A. 1947, § 19-3209.

13-2-510. City and town library services.

(a)(1) Any city of the first class, city of the second class, or incorporated town in Arkansas may provide for library services for its citizens or may enter into agreements or contracts for library services with other political subdivisions or join with other political subdivisions to form regional library systems to provide library services for its citizens.

(2) The governing body of the city of the first class, city of the second class, or incorporated town may expend available municipal funds for the support, operation, and maintenance of any service, contract, agreement, or library system in which the municipality participates for library services for its citizens.

(b) The provisions of this subchapter shall not be construed to restrict or prohibit any cities of the first class, cities of the second class, or incorporated towns from entering into interlocal cooperation agreements with other cities, counties, or regional library systems to better coordinate the provision of services to their inhabitants.

History. Acts 1997, No. 402, § 12.

SUBCHAPTER 6 — INTERSTATE LIBRARY COMPACT

SECTION.

13-2-601. Definition.
13-2-602. Compact enacted.
13-2-603. Compact administrators.
13-2-604. Notice of withdrawal.
13-2-605. Prerequisites for construction

SECTION.

or maintenance of libraries.
13-2-606. Interstate library districts included.

Effective Dates. Acts 1967, No. 419, § 7: July 1, 1967.

13-2-601. Definition.

As used in this compact, "state library agency", with reference to this state, means the State Library Board.

History. Acts 1967, No. 419, § 3; A.S.A. 1947, § 6-312.

Publisher's Notes. Acts 1979, No. 489, § 9, provided in part, that all powers,

functions, and duties of the Arkansas Library Commission with respect to the Interstate Library Compact should be performed by the State Library and the State

Library Board.

13-2-602. Compact enacted.

The Interstate Library Compact is enacted into law and entered into by this state with all states legally joining therein and in the form substantially as follows:

INTERSTATE LIBRARY COMPACT

ARTICLE I.

Policy and Purpose.

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provisions of library service on an interstate basis the most effective way of providing adequate and efficient service.

ARTICLE II.

Definitions.

As used in this compact: (a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

ARTICLE III.

Interstate Library Districts.

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities

and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which the agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, the district shall have power to do any one or more of the following in accordance with the library agreement:

1. Undertake, administer, and participate in programs or arrangements for securing, lending, or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment, or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and receive, utilize, and dispose of them.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical, and other personnel, and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain, and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

ARTICLE IV.

Interstate Library Districts, Governing Board.

(a) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing

board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

ARTICLE V.

State Library Agency Cooperation.

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provision covering the subjects detailed in Article VI of this compact for interstate library agreements.

ARTICLE VI.

Library Agreements.

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable.
2. Provide for the allocation of costs and other financial responsibilities.
3. Specify the respective rights, duties, obligations, and liabilities of the parties.
4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to the agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

ARTICLE VII.

Approval of Library Agreements.

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

ARTICLE VIII.

Other Laws Applicable.

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposal of any property held in trust by a library agency in a manner contrary to the terms of such trust.

ARTICLE IX.

Appropriations and Aid.

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which the public

library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which the district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

ARTICLE X.

Compact Administrator.

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have any other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, the state may designate one or more deputy compact administrators in addition to its compact administrator.

ARTICLE XI.

Entry into Force and Withdrawal.

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by that state.

(b) This compact shall continue in force with respect to a party state and remain binding upon that state until six (6) months after the state has given notice to each other party state of the repeal thereof. The withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

ARTICLE XII.

Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1967, No. 419, § 1; A.S.A. 1947, § 6-310.

13-2-603. Compact administrators.

The Governor shall appoint an officer of this state who shall be the compact administrator pursuant to Article X of the compact. The Governor shall also appoint one (1) or more deputy compact administrators pursuant to that article.

History. Acts 1967, No. 419, § 5; A.S.A. 1947, § 6-314.

13-2-604. Notice of withdrawal.

In the event of withdrawal from the compact, the Governor shall send and receive any notices required by Article XI(b) of the compact.

History. Acts 1967, No. 419, § 6; A.S.A. 1947, § 6-315.

13-2-605. Prerequisites for construction or maintenance of libraries.

No county, city, town, or combination thereof acting as a regional library district of this state shall be party to a library agreement which provides for the construction or maintenance of a library pursuant to Article III, subdivision (c)7 of the compact, nor pledge its credit in support of such a library, or contribute to the capital financing thereof, except:

- (1) After compliance with the Arkansas Constitution and any laws applicable to the county, city, town, or combination thereof relating to or governing capital outlays and the pledging of credit; and
- (2) After submitting the plan to the State Library Board for approval.

History. Acts 1967, No. 419, § 2; A.S.A. 1947, § 6-311.

13-2-606. Interstate library districts included.

(a) An interstate library district lying partly within this state may claim to be entitled to receive state aid in support of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state.

(b) For the purposes of computing and apportioning state aid to an interstate library district, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly.

(c) Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

History. Acts 1967, No. 419, § 4; A.S.A. 1947, § 6-313.

SUBCHAPTER 7 — CONFIDENTIALITY OF PATRONS' RECORDS

SECTION.

13-2-701. Definitions.

13-2-702. Penalty.

13-2-703. Disclosure prohibited.

SECTION.

13-2-704. Disclosure permitted.

13-2-705. Construction — Statistics.

13-2-706. Use of information in evidence.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, The Arkansas Freedom of Information Act: Time for a Change, 44 Ark. L. Rev. 535.

13-2-701. Definitions.

As used in this subchapter:

(1) "Confidential library records" means documents or information in any format retained in a library that identifies a patron as having requested, used, or obtained specific materials, including, but not limited to, circulation of library books, materials, computer database searches, interlibrary loan transactions, reference queries, patent searches, requests for photocopies of library materials, title reserve requests, or the use of audiovisual materials, films, or records; and

(2) "Patron" means any individual who requests, uses, or receives services, books, or other materials from a library.

History. Acts 1989, No. 903, § 1.

13-2-702. Penalty.

(a) Any person who knowingly violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars (\$200) or thirty (30) days in jail, or both, or a sentence of appropriate public service or education, or both.

(b) No liability shall result from any lawful disclosure permitted by this subchapter.

(c) No action may be brought under this subchapter unless the action is begun within two (2) years from the date of the act complained of or the date of discovery.

History. Acts 1989, No. 903, § 2.

13-2-703. Disclosure prohibited.

(a) Library records which contain names or other personally identifying details regarding the patrons of public, school, academic, and special libraries and library systems supported in whole or in part by public funds shall be confidential and shall not be disclosed except as permitted by this subchapter.

(b) Public libraries shall use an automated or Gaylord-type circulation system that does not identify a patron with circulated materials after materials are returned.

History. Acts 1989, No. 903, § 2.

13-2-704. Disclosure permitted.

A library may disclose personally identifiable information concerning any patron to:

- (1) The patron;
- (2) Any person with the informed, written consent of the patron;
- (3) A law enforcement agency or civil court, under a search warrant;

or

(4) Any person, including without limitation the patron, who has received an automated telephone notification or other electronic communication for overdue materials or reserve materials if the person making the request can verify the telephone number or email address to which the notice was sent.

History. Acts 1989, No. 903, § 2; 2003, No. 677, § 1; 2009, No. 757, § 1.

Amendments. The 2003 amendment added (4) and made related changes.

The 2009 amendment deleted “given at the time the disclosure is sought” at the end of (2); and made minor stylistic changes in (3) and (4).

13-2-705. Construction — Statistics.

(a) No provision of this subchapter shall be construed to prohibit any library or any business operating jointly with a library from disclosing information for the purpose of:

- (1) Collecting overdue books, documents, films, or other items or materials owned or otherwise belonging to the library;
- (2) Collecting fines on overdue books, documents, films, or other items or materials; and

(3) Contacting its patrons by telephone, mail service, or other medium for the purpose of notifying, informing, and educating patrons or otherwise promoting the legitimate programs, policies, and other interests of the library.

(b) Aggregate statistics shown from registration and circulation records with all personal identification removed may be released or used by a library or library system for research or planning purposes.

History. Acts 1989, No. 903, § 2; 1995, No. 612, § 1.

13-2-706. Use of information in evidence.

Personally identifiable information obtained in any manner other than as provided in this subchapter shall not be received in evidence in any trial, hearing, arbitration, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or political subdivision of the state.

History. Acts 1989, No. 903, § 2.

SUBCHAPTER 8 — ARKANSAS LIBRARY MATERIALS SECURITY LAW

SECTION.

- 13-2-801. Short title.
 13-2-802. Definitions.
 13-2-803. Unauthorized removal or willful mutilation of library materials.
 13-2-804. Applicability.

SECTION.

- 13-2-805. Reasonable detention and questioning to determine whether offense was committed.
 13-2-806. Relation with other criminal or civil proceedings.

13-2-801. Short title.

This subchapter shall be known and may be cited as the “Arkansas Library Materials Security Law”.

History. Acts 1995, No. 906, § 1.

13-2-802. Definitions.

For the purposes of this subchapter:

(1) “Library materials” means books, manuscripts, letters, newspapers, court records, films, microfilms, tape recordings, phonograph records, lithographs, prints, photographs, or any other written or printed documents, graphic material of any nature, and other personal property which is the property or in the custody of or entrusted to a public or private library, museum, archive, or other depository;

(2) “Mutilate” means, in addition to its commonly accepted definition, the willful removal or separation of constituent parts of an item of library materials, causing library materials to be exposed to damage; and

(3) “Without authorization” means contrary to rules which set forth policies governing access to library materials and include eligibility for library patronage and lending procedures.

History. Acts 1995, No. 906, § 2.

13-2-803. Unauthorized removal or willful mutilation of library materials.

(a)(1) It shall be unlawful for any person to remove library materials without authorization from the premises wherein such materials are maintained or to retain possession of library materials without authorization.

(2) It shall be unlawful for any person to willfully mutilate library materials.

(b)(1) A violation of this section is a Class B felony if the value of the property is two thousand five hundred dollars (\$2,500) or more.

(2) A violation of this section is a Class C felony if the value of the property is less than two thousand five hundred dollars (\$2,500) but more than five hundred dollars (\$500).

(3) A violation of this section is a Class A misdemeanor if the value of the property is five hundred dollars (\$500) or less.

(c) However, before a charge of retaining possession of library materials without authorization shall be filed against any person, the library shall send written notice by ordinary mail addressed to the last known address of the person who checked out or otherwise removed the books or materials from the library, notifying the person that:

(1) If the books or materials are not returned to the library within thirty (30) days from the date of the notice, charges will be filed against the person under the provisions of this section; and

(2) Upon conviction, the person may be fined in an amount as provided in this section.

History. Acts 1995, No. 906, § 3.

Cross References. Fines, § 5-4-201.
Imprisonment, § 5-4-401.

13-2-804. Applicability.

This subchapter shall apply to all libraries, museums, archives, and other depositories operated by an agency, board, commission, department, or officer of the State of Arkansas, by private persons, societies, or organizations, or by agencies or officers of municipalities, counties, schools, and institutions of higher learning, or of any other political subdivisions of the State of Arkansas.

History. Acts 1995, No. 906, § 4.

13-2-805. Reasonable detention and questioning to determine whether offense was committed.

(a) If a person employed by a library or a person charged with the supervision thereof has reason to believe that a person has committed or has attempted to commit any offense under this subchapter or that the person has concealed any library material upon his or her person or within his or her belongings, then the person may be detained and

questioned in a reasonable manner for the purpose of ascertaining whether or not an offense has been committed.

(b) The detention and questioning shall not render the employee civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention, or otherwise, if the library employee or person charged with the supervision of the library acts in good faith and in a reasonable manner.

(c) For the purpose of ascertaining whether or not an offense has been committed, libraries, museums, archives, and other depositories may establish policies that require persons entering and exiting the premises wherein library materials are maintained to open and disclose the contents of any bags, purses, briefcases, and other containers which are being carried by or are in the possession of the persons.

History. Acts 1995, No. 906, § 6; 1997, No. 358, § 1.

13-2-806. Relation with other criminal or civil proceedings.

(a) The provisions of this subchapter are supplemental to other criminal statutes.

(b) An acquittal or conviction obtained under this subchapter shall not be a bar to civil proceedings or actions arising from the same incident.

History. Acts 1995, No. 906, § 5.

SUBCHAPTER 9 — REGIONAL LIBRARY SYSTEM LAW

SECTION.

13-2-901. Title.

13-2-902. Purpose.

13-2-903. Creation of a regional library system.

13-2-904. Board of trustees.

SECTION.

13-2-905. Powers and duties.

13-2-906. Annual reports.

13-2-907. Contracts for library services and with other libraries.

13-2-901. Title.

This subchapter may be referred to and cited as the “Regional Library System Law”.

History. Acts 1997, No. 402, § 13.

13-2-902. Purpose.

(a) In order to better coordinate the services of libraries and library systems in different counties, as is permitted under both Arkansas Constitution, Amendment 30, and Arkansas Constitution, Amendment 38, when city and county public libraries are formed in the various counties of the State of Arkansas and taxes are levied in those cities and counties for the purpose of maintaining and operating a public library or library system or when counties, cities, or towns form public libraries

or provide library services for their citizens without levying specific taxes, the city and county public libraries may organize themselves into regional library systems in accordance with this subchapter.

(b)(1) The provisions of this subchapter for creating a regional library system in Arkansas shall be supplemental to and in addition to the present laws relating to the powers of counties and municipalities to contract for services and to enter into interlocal cooperation agreements under the Interlocal Cooperation Act, § 25-20-101 et seq.

(2) This subchapter shall not be construed to prohibit a county or municipality from joining with other counties or cities to create other regional or multijurisdictional arrangements to provide library services for their citizens.

History. Acts 1997, No. 402, § 13.

13-2-903. Creation of a regional library system.

(a) Any two (2) or more municipalities, any two (2) or more counties, or any one (1) or more municipalities together with any one (1) or more counties are authorized to create and become members of a regional library system as prescribed in this subchapter.

(b) Upon the recommendation by the city library board of trustees or the county library board, the governing body of each municipality and county desiring to create and become a member of a system may by ordinance determine that it is in the best interest of the municipality or county in accomplishing the purposes of this subchapter to create and become a member of a system to better coordinate the services of libraries of different cities and counties as is permitted under Arkansas Constitution, Amendment 30, § 4, and Arkansas Constitution, Amendment 38, § 4, or as is otherwise permitted under interlocal cooperation agreements.

(c) The ordinance shall:

(1) Specify the desire that a system be created as a public body and a body corporate and politic under this subchapter;

(2) Set forth the names of the municipalities or counties, or both, which are proposed to be initial members of the system;

(3) Set forth the name which is proposed for the system;

(4) Specify the powers to be granted to the system and its board of trustees and any limitations on the exercise of the powers granted, including limitations on the system's area of operations and the use of system funds and facilities;

(5) Specify the number of trustees on the board, the length of terms, and the voting rights of each trustee;

(6) Establish the proportion of financial assistance and support to be apportioned among the participating jurisdictions in the system; and

(7) Set forth the terms and conditions for the withdrawal from the system and the division of any system funds or property.

(d)(1) The ordinance shall be signed by the mayor of each municipality and the county judge of each county, attested by the respective

clerks, and sent to the Secretary of State and to the Arkansas State Library. The Secretary of State shall receive and file it and shall record it in an appropriate book of record in his or her office.

(2) When the ordinance has been made, filed, and recorded as provided in this subchapter, the system shall constitute a public body and a body corporate and politic under the name proposed in the ordinance.

(e)(1) Any ordinance filed with the Secretary of State pursuant to the provisions of this section may be amended from time to time, and any other municipality or county may become a new member in the system with the consent of the members of the system evidenced by ordinances of their governing bodies.

(2) The amendment shall be signed and filed with the Secretary of State and the Arkansas State Library in the manner provided in this section.

History. Acts 1997, No. 402, § 13.

13-2-904. Board of trustees.

(a)(1)(A) The management and control of a regional library system shall be vested in a board of trustees, who shall be appointed by the county or municipal library boards from among the membership of the county or municipal library boards.

(B) In the absence of the county or municipal library board, the governing body of the county or municipality shall appoint the trustees to the regional library board.

(2) The number of trustees shall be agreed upon by the governing bodies of the municipality or municipalities and with the county quorum courts which have agreed with each other or among themselves to create, maintain, and support the system.

(b) Each trustee shall be a resident and qualified elector of the municipality or county represented on the regional library board.

(c)(1) Vacancies on the regional library board shall be filled in the same manner in which members of the regional library board were first appointed.

(2) Any trustee who shall not attend three (3) consecutive meetings of the regional library board without reasonable explanation shall be subject to removal by the municipal or county body which is the appointing authority.

(d)(1) A trustee shall not receive salary or other compensation for his or her service.

(2) However, a trustee may be reimbursed for necessary travel and mileage expenses if reimbursements are adopted as a policy by the regional library board.

History. Acts 1997, No. 402, § 13.

13-2-905. Powers and duties.

(a)(1) Immediately after their initial appointment, the board of trustees of the regional library system shall meet and elect the officers as they deem necessary.

(2) A quorum of this board shall be a majority of the total number of members.

(3) The board shall:

(A) Adopt such bylaws, rules and regulations, and policies for their own guidance, including personnel policies, and for the governing of the system as they deem reasonable and necessary;

(B) Meet at least one (1) time in each calendar quarter;

(C) Have the custody and supervision of all property of the system, including the rooms or buildings constructed, leased, or set apart for the system;

(D) Employ a system director, who shall serve at the will of the board, which shall prescribe his or her duties and fix his or her compensation;

(E) Have exclusive control of the finances of the system;

(F) Cause an annual audit to be performed in accordance with Arkansas law for audits of local government entities;

(G) Be responsible for any fine or fee money for special library services and accept any grants, gifts of money, or property for use of the system and use it for purposes as the board deems reasonable and necessary;

(H) May purchase and dispose of equipment as provided in Arkansas law for county government purchase and disposition of county government property;

(I) Develop and enforce policies and penalties for persons injuring library property and materials or failing to return any book, periodical, or property belonging to the system. The board may refuse the use of the library to those offenders; and

(J) Do all other acts necessary for the orderly and efficient management and control of the system.

(b) No expenditure made or contracted by the board shall be binding on any participating municipalities or counties so as to require any payment in excess of funds made available for library purposes under this subchapter.

(c)(1) There shall be one (1) regional library director for each system.

(2) The director shall have a master's degree from an accredited American Library Association program.

(3) The director shall administer and establish procedures in accordance with policies established by the board.

(4) The director's duties shall include:

(A) Employment and supervision of system staff;

(B) Financial and statistical management of the system, including initial preparation of the annual budget;

(C) Reporting to the board on system operations and services; and

(D) Other acts necessary for the orderly and efficient administration of the system.

(d)(1) If not provided for by the system or by one (1) of the participating jurisdictions of the system, all eligible employees of a system shall be entitled to comparable fringe benefit and retirement benefit coverage as are other county employees in the headquarters county.

(2) Costs for these benefits shall be apportioned among the participating municipalities and counties of the system.

(e)(1) On a monthly basis each county and municipality supporting a system shall transmit appropriated amounts of tax revenues and other appropriated funds to the system pursuant to the interlocal agreement, the regional library ordinance, or the contract.

(2) All regional funds shall be deposited in one (1) or more public depositories previously selected by the board.

(3)(A) All funds shall be placed in the depository or depositories selected by the board in the same manner as provided by law for the selection of county depositories.

(B) The depository shall place on deposit with the director the same securities as are required by law for county deposits.

(4) The board shall, by appropriate order recorded in its minutes, authorize the director to expend system funds for lawful purposes only and in accordance with its budget.

(f)(1) The board shall have the power to purchase or lease grounds or to purchase, lease, erect, and occupy appropriate buildings for the use of all public libraries in the system. When a building erected or purchased by the board is not adapted to its purpose or needs, the board may remodel or reconstruct the building.

(2) The board may also sell or otherwise dispose of any real or personal property that it deems no longer necessary or useful for library purposes.

History. Acts 1997, No. 402, § 13.

13-2-906. Annual reports.

At the end of each calendar year, the board of trustees of every regional library system shall make a report to the governing body in the county or counties or municipality or municipalities wherein the board serves, showing the condition of the system during the year and other statistics and information as the board deems of public interest.

History. Acts 1997, No. 402, § 13.

13-2-907. Contracts for library services and with other libraries.

(a) Regional library systems are authorized to contract with other regional libraries, municipal libraries, or county public libraries or with library authorities of any college or university or any privately organized or endowed library, whereby common library branches or build-

ings or joint library services for the residents or patrons of the participating jurisdictions may be established and maintained in joint effort.

(b) The contract shall provide for the division of any cost of establishing, maintaining, and operating the library and library services between the system and the other entity, even though the entity may be located without this state.

(c) The contract shall become effective only from and after its ratification by a majority of the members of the board of trustees of the regional library system.

History. Acts 1997, No. 402, § 13.

SUBCHAPTER 10 — ARKANSAS DIGITAL LIBRARY ACT

SECTION.

13-2-1001. Title.

SECTION.

13-2-1002. Creation.

13-2-1001. Title.

This subchapter may be referred to as the “Arkansas Digital Library Act”.

History. Acts 2003, No. 1810, § 1.

13-2-1002. Creation.

(a)(1) The Department of Higher Education and the Arkansas State Library shall develop a digitized collection of information that includes information that is in the public domain, cleared for public distribution over the Internet, and to which students of public postsecondary schools in Arkansas have access.

(2) The digitized information under this subchapter shall be available for public access in at least one (1) location in each Arkansas county.

(b)(1) The department and the library shall develop criteria regarding the:

- (A) Selection of materials to be digitized;
- (B) Need for public access; and
- (C) Means of cataloging or indexing the materials and digitizing them.

(2) Materials to be digitized may include:

- (A) Print documents;
- (B) Texts;
- (C) Manuscripts;
- (D) Photographs;
- (E) Art reproductions;
- (F) Postcards;
- (G) Illustrations;
- (H) Sound;

(I) Film; and

(J) Video.

(c) The department shall make grants under this subchapter to assist public postsecondary institutions and other public or private entities in:

(1) Selecting and digitizing information; and

(2) Developing and providing access to the digital collection in at least one (1) location in each Arkansas county.

(d)(1) Each postsecondary public institution in Arkansas shall cooperate with the department in developing the digitized collection under this subchapter.

(2) Each postsecondary public institution and any entity receiving a grant under this subchapter shall develop a plan to inform the public regarding the use of the resources made available under this subchapter.

(3) Funds made available under this subchapter may be used by the receiving entities to obtain matching funds from federal programs.

History. Acts 2003, No. 1810, § 2.

TITLE 14
LOCAL GOVERNMENT

SUBTITLE 2. COUNTY GOVERNMENT

CHAPTER 14
COUNTY GOVERNMENT CODE

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-14-109. Public meetings.

14-14-110. Public records.

SECTION.

14-14-111. Electronic records.

14-14-109. Public meetings.

(a)(1) All meetings of a county government governing body, board, committee, or any other entity created by, or subordinate to, a county government shall be open to the public except as provided in subdivision (a)(2) of this section.

(2) A meeting, or part of a meeting, which involves or affects the employment, appointment, promotion, demotion, disciplining, dismissal, or resignation of a county government official or employee need not be open to the public unless the local government officer or employee requests a public meeting.

(b) In any meeting required to be open to the public, the county quorum court, committee, board, or other entity shall adopt rules for conducting the meeting which afford citizens a reasonable opportunity to participate prior to the final decision.

(c) Appropriate minutes shall be kept of all public meetings and shall be made available to the public for inspection and copying.

History. Acts 1977, No. 742, §§ 8, 9;
A.S.A. 1947, §§ 17-3108, 17-3109.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings
Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

CASE NOTES

Cited: Baxter County Newspapers, Inc. v. Medical Staff of Baxter Gen. Hosp., 273 Ark. 511, 622 S.W.2d 495 (1981).

14-14-110. Public records.

(a) Except as provided in subsection (b) of this section, all records and other written materials in the possession of a local government shall be available for inspection and copying by any person during normal office hours.

(b) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

History. Acts 1977, No. 742, § 10; A.S.A. 1947, § 17-3110.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

14-14-111. Electronic records.

(a)(1) County governments in Arkansas are the repository for vast numbers of public records necessary for the regulation of commerce and vital to the health, safety, and welfare of the citizens of the state.

(2) These records are routinely kept in electronic format by the county officials who are the custodians of the records.

(3) It is the intent of this section to:

(A) Ensure that all public records kept by county officials are under the complete care, custody, and control of the county officials responsible for the records; and

(B) Prevent a computer or software provider doing business with a county from obtaining complete care and control of county records and from becoming the de facto custodian of the records.

(b) As used in this section:

(1) “Administrative rights” means permissions and powers, including without limitation the permissions and powers to access, alter, copy, download, read, record, upload, write, or otherwise manipulate and maintain records kept by a county official;

(2) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means; and

(3)(A)(i) “Public records” means writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of

official functions that are or should be carried out by a public official or employee, a governmental agency, or other agency wholly or partially supported by public funds or expending public funds.

(ii) All records maintained in county offices or by county employees within the scope of employment are public records.

(B) "Public records" does not mean software acquired by purchase, lease, or license.

(c)(1) A county official required by law to maintain public records and who in the normal performance of official duties chooses to keep and maintain the records in an electronic record retains administrative rights and complete access to all the records.

(2) A contract between a county and an electronic record provider shall include the information under subdivision (c)(1) of this section.

History. Acts 2009, No. 569, § 1.

SUBCHAPTER 2 — BOUNDARIES

SECTION.

14-14-201. Power to change.

14-14-201. Power to change.

(a) The power to change county boundaries is inherent in the General Assembly, subject to express constitutional restrictions.

(b)(1) No county now established shall be reduced to an area of less than six hundred square miles (600 sq. mi.) nor to less than five thousand (5,000) inhabitants; nor shall any new county be established with less than six hundred square miles (600 sq. mi.) and five thousand (5,000) inhabitants.

(2) This section shall not apply to the counties of Lafayette, Pope, and Johnson nor be so construed as to prevent the General Assembly from changing the line between the counties of Pope and Johnson.

(c) No part of a county shall be taken off to form a new county, or a part thereof, without the consent of a majority of voters in the part to be taken off.

(d) In the formation of new counties, no line thereof shall run within ten (10) miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County.

(e)(1) Sebastian County may have two (2) districts and two (2) county seats, at which county and circuit courts shall be held as may be provided by law, each district paying its own expenses.

(2) However, nothing in this section shall be construed as requiring Sebastian County to maintain two (2) districts or two (2) county seats, nor construed as authorizing the establishment of two (2) county quorum courts and two (2) county courts.

History. Acts 1977, No. 742, §§ 12-16; A.S.A. 1947, § 17-3202.

CASE NOTES

ANALYSIS

In General.
Area.
New Counties.
Sebastian County.

In General.

The power to change county lines is inherent in the General Assembly, subject to express constitutional restrictions and the essential requisites of the state that are implied in our form of government. Reynolds v. Holland, 35 Ark. 56 (1879); Pulaski County v. County Judge, 37 Ark. 339 (1881) (decisions under prior law).

Area.

An act of the General Assembly reducing a county below 600 square miles is

unconstitutional. Bittle v. Stuart, 34 Ark. 224 (1879) (decision under prior law).

New Counties.

Consent of a majority of voters in part taken off is only required in the case of new counties to be formed out of portions of old ones. Reynolds v. Holland, 35 Ark. 56 (1879); Pulaski County v. County Judge, 37 Ark. 339 (1881) (decisions under prior law).

Sebastian County.

The two districts of Sebastian County are, in effect, separate counties, so far as the recording requirements of § 18-50-103 are involved. Henson v. Fleet Mtg. Co., 319 Ark. 491, 892 S.W.2d 250 (1995).

Cited: In re Wallace, 61 B.R. 54 (Bankr. W.D. Ark. 1986); In re Henson, 157 B.R. 867 (Bankr. W.D. Ark. 1993).

SUBCHAPTER 3 — COUNTY SEATS

SECTION.

14-14-301. Definition.

14-14-301. Definition.

(a) A “county seat” shall be defined as the principal site for the conducting of county affairs and maintaining records of the various courts.

(b) Nothing in this section, however, shall be construed as a limitation on a county to maintain several sites throughout the county for the conducting of county affairs.

History. Acts 1977, No. 742, § 23; A.S.A. 1947, § 17-3301.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

SUBCHAPTER 7 — SERVICE ORGANIZATIONS

SECTION.

14-14-705. County advisory or administrative boards.
14-14-706. Register of board appointment.
14-14-707. Conduct of affairs of county boards.

SECTION.

14-14-712. Reorganization of existing county boards and commissions.

14-14-705. County advisory or administrative boards.

(a) A county quorum court, by ordinance, may establish county advisory or administrative boards for the conduct of county affairs.

(b)(1) **ADVISORY BOARDS.**

(A) An advisory board may be established to assist a county office, department, or subordinate service district. The advisory board may furnish advice, gather information, make recommendations, and perform other activities as may be prescribed by ordinance. A county advisory board shall not have the power to administer programs or set policy.

(B) All advisory board members shall be appointed by the county judge. Confirmation of advisory board members by a quorum court shall not be required.

(C) An advisory board may contain any number of members as may be provided by the ordinance creating the advisory board.

(D) The term of all advisory board members shall not exceed three (3) years.

(2) **ADMINISTRATIVE BOARDS.**

(A) Administrative boards may be established to exercise administrative powers granted by county ordinance, except that the board may not be authorized to pledge the credit of the county. The administrative board shall be a body politic and corporate, with power to contract and be contracted with and sue and be sued. As to actions of tort, the board shall be considered as an agency of the county government and occupy the same status as a county. No board member shall be liable in court individually for an act performed by him or her as a board member unless the damages caused thereby were the results of the board member's malicious acts.

(B) No member of any administrative board shall be interested, either directly or indirectly, in any contract made with the administrative board. A violation of subdivision (2)(B) of this section shall be deemed a felony.

(C) An administrative board may be assigned responsibility for a county department or a subordinate service district.

(D) All administrative board members shall be appointed by the county judge. These appointments shall require confirmation by a quorum court.

(E) An administrative board shall contain five (5) members. Provided, a county library board created after August 1, 1997, shall consist of not less than five (5) members nor more than seven (7) members and shall serve until their successors are appointed and qualified.

(F) The term of any administrative board member shall be for a period of five (5) years. However, the initial appointment of any administrative board shall provide for the appointment of one (1) member for a one-year term, one (1) member for a two-year term, one (1) member for a three-year term, one (1) member for a four-year

term, and the remaining member or members for a five-year term, thereby providing, except for county library boards with more than five (5) members, for the appointment of one (1) member annually thereafter.

(3) **BOARDS GENERALLY.**

(A) No board member, either advisory or administrative, shall be appointed for more than two (2) consecutive terms.

(B) All persons appointed to an advisory or administrative board shall be qualified electors of the county. A quorum court may prescribe by ordinance additional qualifications for appointment to a county administrative board.

(C) All board members appointed to either an advisory or administrative board shall subscribe to the oath of office within ten (10) days from the date of appointment. Evidence of oath of office shall be filed with the county clerk. Failure to do so shall be deemed to constitute rejection of the office, and the county judge shall appoint a board member to fill the vacancy.

(D) No member of a quorum court shall serve as a member of a county advisory or administrative board.

(E) A person may be removed from a county board for cause by the county judge with confirmation by resolution of the quorum court. Written notification stating the causes for removal shall be provided to the board member prior to the date established for quorum court consideration of removal, and the board member shall be afforded the opportunity to meet with the quorum court in their deliberation of removal.

(F) Appeals from removal of a county board member shall be directed to the circuit court of the respective county within thirty (30) days after the removal is confirmed by the quorum court.

History. Acts 1977, No. 742, § 103;
A.S.A. 1947, § 17-4106; Acts 1997, No.
359, § 1.

14-14-706. Register of board appointment.

The clerk of the county court shall maintain a register of county advisory and administrative board appointments established by a county quorum court, including:

- (1) The name of the board;
- (2) The ordinance reference number establishing the board;
- (3) The name of the board member;
- (4) The date of appointment; and
- (5) The expiration date of the appointments.

History. Acts 1977, No. 742, § 104;
A.S.A. 1947, § 17-4107.

14-14-707. Conduct of affairs of county boards.

(a) **INITIAL MEETING.** The time and place for the initial meeting of a county board shall be established by the county judge through written notification of each board member.

(b) **MEETING DATES AND NOTIFICATION.** All boards shall by rule provide for the date, time, and place of regular monthly meetings or other regularly scheduled meetings. This information shall be filed with the county court, and notification of all meetings shall be conducted as established by law for public meetings.

(c) **SPECIAL MEETINGS.** Special meetings may be called by two (2) or more board members upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of the meeting.

(d) **QUORUM.** A majority of board members shall constitute a quorum for the purpose of conducting business and exercising powers and responsibilities. Board action may be taken by a majority vote of those present and voting unless the ordinance creating the board requires otherwise.

(e) **ORGANIZATION AND VOTING.** At its initial meeting of a quorum of members, each county board shall elect one (1) of their members to serve as chair of the board for a term of one (1) year. The chair shall thereafter preside over the board throughout his or her term as chair. In the absence of the chair, a quorum of the board may select one (1) of its members to preside and conduct the affairs of the board.

(f) **MINUTES.** All boards shall provide for the keeping of written minutes which include the final vote on all board actions indicating the vote of each individual member on the question.

History. Acts 1977, No. 742, § 105;
A.S.A. 1947, § 17-4108.

14-14-712. Reorganization of existing county boards and commissions.

(a) All laws providing for the organization, jurisdiction, and operation of county boards and commissions, except the laws relating to county hospital boards of governors and except laws relating to county nursing home boards, shall be given the status of county ordinance until June 30, 1978. These organizations shall continue to function under those respective laws until reorganized by county ordinance. The organizations subject to reorganization by county ordinance are, but are not limited to, the following:

- (1) County library boards;
- (2) County planning boards;
- (3) County park commissions; and
- (4) County welfare boards.

(b) Advisory board members appointed as a result of a reorganizational ordinance shall have a term of appointment as specified in this subchapter.

(c) Ordinances enacted by a county quorum court for the reorganization of county government into county departments, with or without advisory or administrative boards or subordinate service districts, may be adopted in a single reading of the court.

History. Acts 1977, No. 742, § 107; 1977 (1st Ex. Sess.), No. 13, § 6; 1979, No. 741, § 1; A.S.A. 1947, § 17-4110. **Cross References.** County hospitals board of governors, § 14-263-101 et seq.

SUBCHAPTER 8 — LEGISLATIVE POWERS

SECTION.

14-14-801. Powers generally.

14-14-802. Providing of services generally.

14-14-801. Powers generally.

(a) As provided by Arkansas Constitution, Amendment 55, § 1, Part (a), a county government, acting through its county quorum court, may exercise local legislative authority not expressly prohibited by the Arkansas Constitution or by law for the affairs of the county.

(b) These powers include, but are not limited to, the power to:

- (1) Levy taxes in a manner prescribed by law;
- (2) Appropriate public funds for the expenses of the county in a manner prescribed by ordinance;
- (3) Preserve peace and order and secure freedom from dangerous or noxious activities. However, no act may be declared a felony;
- (4) For any public purpose, contract or join with any other county, with any political subdivision, or with the federal government;
- (5) Create, consolidate, separate, revise, or abandon any elected office, except during the term thereof, if a majority of those voting on the question at a general election have approved the action;
- (6) Fix the number and compensation of deputies and county employees;
- (7) Fix the compensation of each county officer within a minimum and maximum to be determined by law;
- (8) Fill vacancies in elected county offices;
- (9) Have the power to override the veto of the county judge by a vote of three-fifths ($\frac{3}{5}$) of the total membership of the quorum court;
- (10) Provide for any service or performance of any function relating to county affairs;
- (11) Impose a special assessment reasonably related to the cost of any special service or special benefit provided by county government or impose a fee for the provisions of a service;
- (12) Provide for its own organization and management of its affairs; and
- (13) Exercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions.

History. Acts 1977, No. 742, § 69; A.S.A. 1947, § 17-3801.

CASE NOTES

ANALYSIS

Constitutionality.
 Compensation.
 County Employees.
 Elected Officials.
 Fees.
 Medical Services.

Constitutionality.

County quorum court ordinance that required all county constitutional offices to be open during certain hours related to the performance of person in providing necessary services as a tax collector and, as such, was within the express powers granted the quorum court by Ark. Const. Amend. 55 and this section, and not in violation of the separation of powers provisions of the Arkansas Constitution. *Walker v. County of Washington*, 263 Ark. 317, 564 S.W.2d 513 (1978).

Compensation.

While it is clear that a county sheriff has the authority to appoint his deputies, it is equally clear that the compensation for these individuals is within the exclusive jurisdiction of the quorum court. *Venhous v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988).

County Employees.

A county ordinance that expressly required that a county employee be given two weeks notice prior to involuntary termination, that the reasons for such action had to be filed in writing, and that the employee had a right to appeal such action to a grievance board, did not, on its face, or as applied to sheriff's deputies, violate the separation of powers doctrine under Arkansas law by encroaching upon the executive branch of county government. *Wilson v. Robinson*, 668 F.2d 380 (8th Cir. 1981).

Elected Officials.

Ordinance by county quorum court prohibiting nepotism by elected county officials is a valid and properly adopted ordinance. *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979).

Fees.

Where ordinances of county quorum court levying additional local recording fees on deeds and other instruments were inconsistent and in conflict with § 21-6-306, which established a uniform standard amount of recording fee to be charged throughout the state, such ordinances exceeded the local legislative authority granted to the counties by Ark. Const. Amend. 55 and this section and were, therefore, void, and the moneys collected thereunder had to be refunded. *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980).

Medical Services.

Section 14-14-801 et seq. and § 20-13-301 et seq. were not intended to provide alternative procedures for the establishment of emergency medical services by a county, since to hold that these provisions were intended to provide alternative methods would effectively render § 20-13-301 et seq. a nullity, as there would be no reason for a quorum court to choose the more arduous route required by § 20-13-301 et seq. when it could accomplish the same result more easily under § 14-14-801 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Section 14-14-801 et seq. gives the quorum court of any county the authority to provide for emergency medical services; however, the authority created under these provisions is governed and limited by the procedural requirements of § 20-13-301 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

The general county powers law found in this section is circumscribed by § 20-13-303 when the method of financing a county emergency medical service is by service charge. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

The term "as provided by law" in this section does not refer to § 20-13-303 in cases in which a service charge is to be imposed. *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

14-14-802. Providing of services generally.

(a) A county government, acting through the county quorum court, shall provide, through ordinance, for the following necessary services for its citizens:

(1) The administration of justice through the several courts of record of the county;

(2) Law enforcement protection services and the custody of persons accused or convicted of crimes;

(3) Real and personal property tax administration, including assessments, collection, and custody of tax proceeds;

(4) Court and public records management, as provided by law, including registration, recording, and custody of public records; and

(5) All other services prescribed by state law for performance by each of the elected county officers or departments of county government.

(b)(1) A county government, acting through the quorum court, may provide through ordinance for the establishment of any service or performance of any function not expressly prohibited by the Arkansas Constitution or by law.

(2) These legislative services and functions include, but are not limited to, the following services and facilities:

(A) Agricultural services, including:

(i) Extension services, including agricultural, home economic, and community development;

(ii) Fairs and livestock shows and sales services;

(iii) Livestock inspection and protection services;

(iv) Market and marketing services;

(v) Rodent, predator, and vertebrate control services; and

(vi) Weed and insect control services;

(B) Community and rural development services, including:

(i) Economic development services;

(ii) Housing services;

(iii) Open spaces;

(iv) Planning, zoning, and subdivision control services;

(v) Urban and rural development, rehabilitation, and redevelopment services; and

(vi) Watercourse, drainage, irrigation, and flood control services;

(C) Community services, including:

(i) Animal control services;

(ii) Cemetery, burial, and memorial services;

(iii) Consumer education and protection services;

(iv) Exhibition and show services;

(v) Libraries, museums, civic center auditoriums, and historical, cultural, or natural site services;

(vi) Park and recreation services; and

(vii) Public camping services;

(D) Emergency services, including:

(i) Ambulance services;

- (ii) Civil defense services;
- (iii) Fire prevention and protection services; and
- (iv) Juvenile attention services;
- (E) Human services, including:
 - (i) Air and water pollution control services;
 - (ii) Child care, youth, and senior citizen services;
 - (iii) Public health and hospital services;
 - (iv) Public nursing and extended care services; and
 - (v) Social and rehabilitative services;
- (F) Solid waste services, including:
 - (i) Recycling services; and
 - (ii) Solid waste collection and disposal services;
- (G) Transportation services, including:
 - (i) Roads, bridges, airports, and aviation services;
 - (ii) Ferries, wharves, docks, and other marine services;
 - (iii) Parking services; and
 - (iv) Public transportation services;
- (H) Water, sewer, and other utility services, including:
 - (i) Sanitary and storm sewers and sewage treatment services; and
 - (ii) Water supply and distribution services; and
- (I) Other services related to county affairs.

History. Acts 1977, No. 742, § 70;
A.S.A. 1947, § 17-3802.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Emergency Services.
Gravedigging.

Constitutionality.

Constitutionality of this section was upheld. *Thruston v. Little River County*, 310 Ark. 188, 832 S.W.2d 851 (1992).

This section does not violate the uniformity requirement of Ark. Const. Amend. 14. *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

This statute is not unconstitutional and in contravention Ark. Const. Amend. 55, § 1(a). *Villines v. Tucker*, 324 Ark. 13, 918 S.W.2d 153 (1996).

Construction.

Providing for the administration of justice under subdivision (a)(1) is a mandatory service; providing a museum under subdivision (b)(2)(C)(v) is a discretionary service the county is authorized to offer.

Haynes v. Faulkner County, 326 Ark. 557, 932 S.W.2d 328 (1996).

Designation of county building as a museum was not an illegal exaction since § 14-14-1102(b)(3) and Ark. Const. Amend. 55, § 3, provide that the County Judge is the custodian of county property and is therefore authorized to determine how county property shall be used; moreover, subdivision (b)(2)(C)(v) of this section and § 13-5-501 et seq. authorize the County to provide for a county museum. *Haynes v. Faulkner County*, 326 Ark. 557, 932 S.W.2d 328 (1996).

Emergency Services.

Section 14-14-801 et seq. and § 20-13-301 et seq. were not intended to provide alternative procedures for the establishment of emergency medical services by a county, since to hold that these provisions were intended to provide alternative methods would effectively render § 20-13-301 et seq. a nullity, as there would be no reason for a quorum court to choose the more arduous route required by § 20-13-301 et seq. when it could accomplish the

same result more easily under § 14-14-801 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Section 14-14-801 et seq. gives the quorum court of any county the authority to provide for emergency medical services; however, the authority created under these provisions is governed and limited by the procedural requirements of § 20-13-301 et seq. *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982).

Gravedigging.

Although gravedigging services can be provided when this section is complied with, where there was no indication from the record that the quorum court knew of the county's free gravedigging services

other than testimony from a county judge, and even if the quorum court had known of the gravedigging services, it took no action by ordinance or otherwise to authorize such services; the provision of these services was invalid. *Dudley v. Little River County*, 305 Ark. 102, 805 S.W.2d 642 (1991).

Cited: *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980); *Wilson v. Robinson*, 506 F. Supp. 1236 (E.D. Ark. 1981); *Hall v. Fisher*, 285 Ark. 222, 685 S.W.2d 803 (1985); *Venhaus v. Adams*, 295 Ark. 606, 752 S.W.2d 20 (1988); *West Wash. County Emergency Medical Servs. v. Washington County*, 313 Ark. 76, 852 S.W.2d 137 (1993).

SUBCHAPTER 9 — LEGISLATIVE PROCEDURES

SECTION.

- 14-14-905. Adoption and amendment of ordinances generally.
 14-14-907. Appropriation ordinances.
 14-14-910. Interlocal agreements.
 14-14-914. Initiative and referendum generally.

SECTION.

- 14-14-915. Initiative and referendum requirements.
 14-14-917. Initiative and referendum elections.
 14-14-919. Referendum petitions on county bond issue.

14-14-905. Adoption and amendment of ordinances generally.

(a) INTRODUCTION OF ORDINANCES AND AMENDMENTS TO EXISTING ORDINANCES.

A county ordinance or amendment to an ordinance may be introduced only by a justice of the peace of the county or through the provisions of initiative and referendum pursuant to Arkansas Constitution, Amendment 7.

(b) STYLE REQUIREMENTS.

(1) GENERALLY.

(A) No ordinance or amendment to an existing ordinance passed by a county quorum court shall contain more than one (1) comprehensive topic and shall be styled "Be It Enacted by the Quorum Court of the County of, State of Arkansas; an Ordinance to be Entitled:".

(B) Each ordinance shall contain this comprehensive title, and the body of the ordinance shall be divided into articles, sequentially numbered, each expressing a single general topic related to the single comprehensive topic.

(2) AMENDMENT TO EXISTING ORDINANCES. No county ordinance shall be revised or amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revised, amended, extended, or conferred shall be reenacted and published at length.

(c) PASSAGE.

(1)(A) On the passage of every ordinance or amendment to an existing ordinance, the yeas and nays shall be called and recorded.

(B) A concurrence by a majority of the whole number of members elected to the quorum court shall be required to pass any ordinance or amendment.

(2)(A) All ordinances or amendments to existing ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days unless two-thirds ($\frac{2}{3}$) of the members composing the court shall dispense with the rule.

(B) This subdivision (c)(2) shall not serve to:

(i) Require a vote after each individual reading, but a vote only after the third and final reading;

(ii) Require the ordinance or amendment to be read in its entirety on the first, second, or third reading; or

(iii) Restrict the passage of emergency, appropriation, initiative, or referendum measures in a single meeting as provided by law.

(d) APPROVAL AND PUBLICATION.

(1)(A) Upon passage, all ordinances or amendments shall be approved by the county judge within seven (7) days unless vetoed and shall become law without his or her signature if not signed within seven (7) days.

(B) The ordinances or amendments shall then be published by the county clerk as prescribed by law.

(2)(A) Approval by the county judge shall be demonstrated by affixing his or her signature and his or her notation of the date signed on the face of an original copy of the proposed ordinance.

(B) This approval and authentication shall apply to all ordinances or amendments to existing ordinances unless the power of veto is invoked.

(e) EFFECTIVE DATE.

(1) No ordinance or amendment to an existing ordinance other than an emergency ordinance or appropriation ordinance shall be effective until thirty (30) calendar days after publication has appeared.

(2) An ordinance or amendment to an existing ordinance may provide for a delayed effective date or may provide for the ordinance or amendment to an existing ordinance to become effective upon the fulfillment of an indicated contingency.

(f) REFERENCE TO ELECTORS.

(1) GENERALLY.

(A)(i) At the time of or within thirty (30) days of adoption and prior to the effective date of an ordinance, a quorum court may refer the ordinance to the electors for their acceptance or rejection.

(ii) The referral shall be in the form of a resolution and shall require a three-fifths affirmative vote of the whole number of justices constituting a quorum court.

(B) This action by a court shall not be subject to veto and shall constitute a referendum measure.

(2) MANNER AND PROCEDURE.

(A) Any ordinance enacted by the governing body of any county in the state may be referred to a vote of the electors of the county for

approval or rejection in the manner and procedure prescribed in Arkansas Constitution, Amendment 7, and laws enacted pursuant thereto, for exercising the local initiative and referendum.

(B) The manner and procedure prescribed therein shall be the exclusive method of exercising the initiative and referendum regarding these local measures.

History. Acts 1977, No. 742, § 86; 1981, No. 220, § 1; A.S.A. 1947, §§ 17-4003, 17-4003.1; Acts 2005, No. 543, § 1.

CASE NOTES

ANALYSIS

Construction.
Passage.
Style Requirements.

Construction.

Subdivision (f)(2) did not repeal § 14-14-915(b)(2), but specifically preserved all previously enacted enabling legislation, including § 14-14-915(b)(2). *Cox v. French*, 277 Ark. 134, 640 S.W.2d 786 (1982).

Passage.

Law requiring the clerk to keep a record of the proceedings and to enter the name and the yeas and nays of those voting on propositions to levy tax or to appropriate money was mandatory. *Blakemore v. Brown*, 142 Ark. 293, 219 S.W. 311 (1920) (decision under prior law).

Clerk's failure to keep record of voting on proposition to levy taxes, for nonpayment of which realty was subsequently sold, was a mere omission of an officer to

do a positive duty required by statute and could be cured by curative statute. *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938) (decision under prior law).

After confirmation of the state's title to tax-forfeited land under former §§ 26-38-108 — 26-38-118, it was too late to object to the validity of the tax sale on the ground that the record of the quorum court did not show the vote or the names of the justices voting for the motion levying the tax. *Nichols v. Kesselberg*, 211 Ark. 673, 201 S.W.2d 997 (1947) (decision under prior law).

Style Requirements.

Where an ordinance contains the word "ordained" rather than the statutorily prescribed word "enacted," the ordinance is not void. *Henderson v. Russell*, 267 Ark. 140, 589 S.W.2d 565 (1979).

Cited: *Foster v. Jefferson County Quorum Court*, 321 Ark. 105, 901 S.W.2d 809 (1995); *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997).

14-14-907. Appropriation ordinances.

(a)(1) **GENERALLY.** An appropriation ordinance or amendment to an appropriation ordinance is defined as a measure by which the county quorum court designates a particular fund, or sets apart a specific portion of county revenue in the treasury, to be applied to some general object of expenditure or to some individual purchase or expense of the county.

(2) An appropriation ordinance or amendment to an existing appropriation ordinance may be introduced in the manner provided by law for the introduction of ordinances.

(3) Appropriation measures enacted by a quorum court shall include the following categories of financial management:

(A) The levy of taxes and special property tax assessments as provided by law; and

(B) The enactment of specific appropriations by which a specified sum has been set apart in the treasury and devoted to the payment of a particular demand. Specific appropriations may be enacted through the adoption of an annual budget, a statement of estimated receipts and expenditures, in a manner prescribed by law.

(b) **ADOPTION AND AMENDMENT BY REFERENCE.** Any quorum court may adopt, amend, or repeal an appropriation ordinance which incorporates by reference the provisions of any county budget or portion of a county budget, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the adopted budget in full. At least one (1) copy of a budget, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the county clerk and there kept available for public use, inspection, and examination.

(c) **DESIGNATION.** All appropriation ordinances or an amendment to an appropriation ordinance shall be designated "appropriation ordinance".

(d) **READINGS AND PUBLICATION.** An appropriation ordinance may be enacted without separate readings or publication prior to passage. However, publication shall be initiated within two (2) calendar days, excepting holidays, after approval of the measure by the county judge.

(e) **VOTING REQUIREMENTS.** The passage of appropriation ordinances or amendments to existing appropriation ordinances enacted without separate readings shall require a two-thirds vote of the whole number of justices comprising a quorum court. On the passage of every appropriations measure, the yeas and nays shall be called and recorded in the minutes of the meeting.

(f) **EFFECTIVE DATE.** An appropriation measure is effective immediately upon passage by the quorum court and approval by the county judge.

History. Acts 1977, No. 742, § 87; A.S.A. 1947, § 17-4004.

Cross References. Appropriations to be specific — Limitations, § 14-20-103.

Political subdivisions not to become stockholders in or lend credit to private corporations, Ark. Const., Art. 12, § 5.

CASE NOTES

ANALYSIS

Appropriation Measures.
Voting Requirements.

Appropriation Measures.

County ordinance was not labeled or designated an appropriation measure because it was not one as defined by this section. *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997).

Voting Requirements.

Where the record showed a unanimous vote for all appropriations, it was unnecessary to show the yeas and nays; record need not be signed. *Hilliard v. Bunker*, 68 Ark. 340, 58 S.W. 362 (1900) (decision under prior law).

14-14-910. Interlocal agreements.

(a) **GENERALLY.** The county court of each county may contract, cooperate, or join with any one (1) or more other governments or public agencies, including any other county, or with any political subdivisions of the state or any other states, or their political subdivisions, or with the United States to perform any administrative service, activity, or undertaking which any contracting party is authorized by law to perform.

(b) **DEFINITIONS.**

(1) "County interlocal agreement" means any service contract entered into by the county court which establishes a permanent or perpetual relationship thereby obligating the financial resources of a county. Grant-in-aid agreements enacted through an appropriation ordinance shall not be considered an interlocal agreement.

(2) "Permanent or perpetual relationship" means for purposes of this section any agreement exhibiting an effective duration greater than one (1) year, twelve (12) calendar months, or an agreement exhibiting no fixed duration but where the apparent intent of the agreement is to establish a permanent or perpetual relationship. The interlocal agreements shall be authorized by ordinance of the quorum court. Any interlocal agreement enacted by ordinance may provide for the county to:

(A) Cooperate in the exercise of any function, power, or responsibility;

(B) Share the services of any officer, department, board, employee, or facility; and

(C) Transfer or delegate any function, power, responsibility, or duty.

(c) **CONTENTS.** An interlocal agreement shall:

(1) Be authorized and approved by the governing body of each party to the agreement;

(2) Set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties; and

(3) Specify the following:

(A) Its duration;

(B) The precise organization, composition, and nature of any separate legal entity created;

(C) The purposes of the interlocal agreement;

(D) The manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;

(E) The permissible methods to be employed in accomplishing the partial or complete termination of an agreement and for disposing of property upon partial or complete termination. The methods for termination shall include a requirement of six (6) months written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw;

(F) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking including representation of the contracting parties on the joint board;

(G) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking; and

(H) Any other necessary and proper matters.

(d) **SUBMISSION TO LEGAL COUNSEL.** Prior to and as a condition precedent to its final adoption and performance, every agreement made shall be submitted to legal counsel who shall determine whether the agreement is in proper form and compatible with all applicable laws. The legal counsel shall approve any agreement submitted to him or her unless he or she finds it does not meet the conditions set forth in this section. Then he or she shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval.

(e) **SUBMISSION TO ATTORNEY GENERAL.** Prior to and as a condition precedent to its final adoption and performance, every agreement including a state or a state agency shall be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of the State of Arkansas. The Attorney General shall approve any agreement submitted to him or her unless he finds it does not meet the conditions set forth in this section. Then he or she shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval.

History. Acts 1977, No. 742, § 90; A.S.A. 1947, § 17-4007.

A.C.R.C. Notes. Former subdivision (6) of this section provided that, effective February 1, 1978, all interlocal agreements subject to the provisions of this section

should be reenacted or terminated by ordinance of the county quorum court and provided that no termination should impair the obligation of contract unless agreed to by the parties involved.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Illegal Exaction.

Construction.

Plain language of this section contemplates that counties may contract for any administrative service as long as either the county or the public agency is legally authorized to perform it; the plain language of this section contemplates that

counties may delegate administrative powers to other public agencies under the provisions of this section. *Sullins v. Central Arkansas Water*, 2015 Ark. 29, 454 S.W.3d 727 (2015).

Applicability.

This section was applicable because a watershed protection agreement between a county and Central Arkansas Water required the county to expend money from its general tax revenues in executing the agreement and thus implicated the finan-

cial resources of the county; additionally, the actual enforcement of the agreement would, at times, involve existing members of the county staff beyond those for which Central Arkansas Water was reimbursing the county. *Sullins v. Central Arkansas Water*, 2015 Ark. 29, 454 S.W.3d 727 (2015).

Illegal Exaction.

Circuit court correctly ruled that a watershed protection agreement was valid under the Interlocal Agreement Act, § 14-

14-910, because it was for administrative activities that either the county or Central Arkansas Water was legally authorized to perform and the county's financial resources were obligated in the agreement; because the contract between the county and Central Arkansas Water was authorized by the Act, the expenditure of funds under the contract was not an illegal exaction. *Sullins v. Central Arkansas Water*, 2015 Ark. 29, 454 S.W.3d 727 (2015).

Cited: *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91 (1978).

14-14-914. Initiative and referendum generally.

(a) COUNTY LEGISLATIVE POWERS RESERVED. The powers of initiative and referendum are reserved to the electors of each county government pursuant to Arkansas Constitution, Amendment 7.

(b) RESTRICTIONS. No county legislative measure shall be enacted contrary to the Arkansas Constitution or any general state law which operates uniformly throughout the state, and any general law of the state shall have the effect of repealing any county ordinance which is in conflict therewith. All ordinances adopted by the county quorum court providing for alternative county organizations and all proposed reorganizations of county government that may be proposed by initiative petition of electors of the county under Arkansas Constitution, Amendment 7, shall be submitted to the electors of the county only at the next following general election. However, such referendum shall be subject to initiative petition.

(c) PETITION BY ELECTORS. The qualified electors of each county may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition if signed by not less than fifteen percent (15%) of the qualified electors voting in the last general election for the office of circuit clerk, or the office of Governor where the electors have abolished the office of circuit clerk.

(d) SUSPENSION OF FORCE.

(1) GENERAL ORDINANCE. A referendum petition on a general ordinance, or any part thereof, shall delay the effective date on that part included in the petition until the ordinance is ratified by the electors. However, the filing of a referendum petition against one (1) or more items, sections, or parts of any ordinance shall not delay the remainder from becoming operative.

(2) EMERGENCY ORDINANCE. A referendum petition on an emergency ordinance shall not suspend the force of the law, but the measure may be law until it is voted upon by the electors.

History. Acts 1977, No. 742, § 94; 1979, No. 413, § 24; A.S.A. 1947, § 17-4011.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Heller and Sallings, Survey of Public Law, 3 U. Ark. Little Rock L.J. 296.

CASE NOTES

ANALYSIS

Legislative Powers.
Petition by Electors.

Legislative Powers.

Where provisions of optional general stock law were never put in force in county, an initiated stock law covering the county was valid. *Smith v. Plant*, 179 Ark. 1024, 19 S.W.2d 1022 (1929) (decision under prior law).

The qualified electors of any particular county may enact salary laws applicable to that particular county. *Dozier v. Ragsdale*, 186 Ark. 654, 55 S.W.2d 779 (1932); *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72 (1935); *Tindall v. Searan*, 192 Ark. 173, 90 S.W.2d 476 (1936); *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decisions under prior law).

Neither this section nor Ark. Const.

Amend. 7, nor any other state law prohibits the voters of a county from using their right of initiative to call for a referendum whereby the people of the county can express their approval or disapproval of the quorum court's action in leasing a county owned hospital. *Proctor v. Hammons*, 277 Ark. 247, 640 S.W.2d 800 (1982).

Petition by Electors.

Where an elector wishes to place a bond issue on a special election ballot, but no votes were tabulated in the most recent general election for circuit clerk, the number of signatures required on the referendum petition should be determined by the total votes cast in the last general election in which votes were cast for the circuit clerk. *Yarbrough v. Witty*, 336 Ark. 479, 987 S.W.2d 257 (1999).

14-14-915. Initiative and referendum requirements.

(a) **STYLE REQUIREMENTS OF PETITIONS.** A petition for county initiative or referendum filed by the electors shall:

(1) Embrace only a single comprehensive topic and shall be styled and circulated for signatures in the manner prescribed for county ordinances and amendments to ordinances established in this section and § 7-9-101 et seq.;

(2) Set out fully in writing the ordinance sought by petitioners; or in the case of an amendment, set out fully in writing the ordinance sought to be amended and the proposed amendment; or in the case of referendum, set out the ordinance, or parts thereof, sought to be repealed; and

(3) Contain a written certification of legal review by an attorney at law duly registered and licensed to practice in the State of Arkansas. This legal review shall be conducted for the purpose of form, proper title, legality, constitutionality, and conflict with existing ordinances. Legal review shall be concluded prior to the circulations of the petition for signatures. No change shall be made in the text of any initiative or referendum petition measure after any or all signatures have been obtained.

(b) TIME REQUIREMENTS FOR FILING PETITIONS.

(1) INITIATIVE PETITIONS. All petitions for initiated county measures shall be filed with the county clerk not less than ninety (90) calendar days nor more than one hundred twenty (120) calendar days prior to the date established for the next regular election.

(2) REFERENDUM PETITIONS. All petitions for referendum on county measures must be filed with the county clerk within sixty (60) calendar days after passage and publication of the measure sought to be repealed.

(3) CERTIFICATION. All initiative and referendum petitions must be certified sufficient to the county board of election commissioners not less than seventy (70) calendar days prior to a regular general election to be included on the ballot. If the adequacy of a petition is determined by the county clerk less than seventy (70) days prior to the next regular election, the election on the measure shall be delayed until the following regular election unless a special election is called on a referendum measure as provided by law.

(c) FILING OF PETITIONS. Initiative and referendum petitions ordering the submission of county ordinances or measures to the electors shall be directed to and filed with the county clerk.

(d) SUFFICIENCY OF PETITION. Within ten (10) days after the filing of any petition, the county clerk shall examine and ascertain its sufficiency. Where the petition contains evidence of forgery, perpetuated either by the circulator or with his or her connivance, or evidence that a person has signed a name other than his or her own to the petition, the prima facie verity of the circulator's affidavit shall be nullified and disregarded, and the burden of proof shall be upon the sponsors of petitions to establish the genuineness of each signature. If the petition is found sufficient, the clerk shall immediately certify the finding to the county board of election commissioners and the quorum court.

(e) INSUFFICIENCY OF PETITION AND RECERTIFICATION. If the county clerk finds the petition insufficient, within ten (10) days after the filing thereof the clerk shall notify the petitioners or their designated agent or attorney of record, in writing, setting forth in detail every reason for the findings of insufficiency. Upon notification of insufficiency of the petition, the petitioners shall be afforded ten (10) calendar days, exclusive of the day notice of insufficiency is received, in which to solicit and add additional signatures, or to submit proof tending to show that signatures rejected by the county clerk are correct and should be counted. Upon resubmission of a petition which was previously declared insufficient, within five (5) calendar days the county clerk shall recertify its sufficiency or insufficiency in the same manner as prescribed in this section and, thereupon, the clerk's jurisdiction as to the sufficiency of the petition shall cease.

(f) APPEAL OF SUFFICIENCY OR INSUFFICIENCY FINDINGS. Any taxpayer aggrieved by the action of the clerk in certifying the sufficiency or insufficiency of any initiative or referendum petition, may within fifteen (15) calendar days, but not thereafter, may file a petition in circuit court for a review of the findings.

History. Acts 1977, No. 742, § 94; 1979, No. 891, § 1; A.S.A. 1947, § 17-4011; Acts 2009, No. 1480, § 50.

Amendments. The 2009 amendment substituted “not less than ninety (90) calendar days nor more than one hundred

twenty (120) calendar days” for “not less than sixty (60) calendar days nor more than ninety (90) calendar days” in (b)(1); and substituted “seventy (70)” for “forty (40)” twice in (b)(3).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Heller and Sallings, Survey of Public Law, 3 U. Ark. Little Rock L.J. 296.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Filing.
Signatures.
Sufficiency of Petition.
Time Requirements.

Constitutionality.

The 15-day time limit in subsection (f) of this section is not unconstitutional in violation of Ark. Const. Amend. 7. *Committee for Util. Trimming, Inc. v. Hamilton*, 290 Ark. 283, 718 S.W.2d 933 (1986).

Subsection (d) does not conflict with U.S. Const. amend. 7 because under the statute, the person attacking the petition must first meet the burden of proving the petition contains evidence of forgery or that there is evidence a person has signed a name other than his or her own, and this is consistent with the constitution, which places the burden of proof on the challenger; because the burden is on the contestant in the first instance, the statute does not conflict with the constitution. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Construction.

Subsection (e) does not purport to preclude a circuit court from considering in its review the entirety of the petition, which includes all of the signatures submitted to a county clerk with the petition, but merely sets a deadline of five days for the county clerk to complete the task of determining whether thirty-eight percent of the registered voters signed the petition, after the sponsors have been given ten days to cure the previous deficiencies. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Filing.

Procedural deficiencies by county clerk on proper filing of petition held not fatal when there is yet time in which the clerk may correct such deficiencies. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956) (decision under prior law).

Signatures.

Subsection (e) does envision the collection of signatures following the clerk’s notification that the petition, as originally submitted, is insufficient; however, there is nothing in the statute that expressly prohibits a sponsor from collecting signatures after the petition has been filed with the county clerk. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Circuit court clearly erred by refusing to consider 720 signatures in its review of the county clerk’s certification of a ballot-question committee’s local-option petition; a circuit court is called upon to determine whether the petition is sufficient, meaning whether thirty-eight percent of the registered voters signed the petition, and, in that review, a circuit court has to consider the entire petition, which includes all of the signatures submitted to a county clerk with the petition. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Although the statute couches the deadline in jurisdictional terms, it does not follow that a circuit court is prohibited from considering uncounted signatures when determining the correctness of a clerk’s certification that thirty-eight percent of registered voters signed the petition; although a county clerk is required to meet the deadline, the clerk’s loss of juris-

diction after five days does not limit the evidence that can be received in circuit court upon de novo review of certification. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Subsection (d) does not conflict with U.S. Const. amend. 7 because under the statute, the person attacking the petition must first meet the burden of proving the petition contains evidence of forgery or that there is evidence a person has signed a name other than his or her own, and this is consistent with the constitution, which places the burden of proof on the challenger; because the burden is on the contestant in the first instance, the statute does not conflict with the constitution. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Because a ballot-question committee presented no evidence verifying excluded signatures, the circuit court correctly excluded all of the signatures found on petitions where any one signature was found to be invalid; nothing in the language of the statute limits its application to the county clerk's verification process. *Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Sufficiency of Petition.

One affidavit to each petition consisting of many pages was held sufficient. *Blocker v. Sewell*, 189 Ark. 924, 75 S.W.2d 658 (1934) (decision under prior law).

Where evidence is satisfactory that names appearing on initiative petitions are not, prima facie, qualified electors, and no proof is offered to overcome this showing, the names will be stricken from the lists. *Hargis v. Hall*, 196 Ark. 878, 120 S.W.2d 335 (1938) (decision under prior law).

Evidence that names appearing on initiative petition were written in groups and in handwritings other than that of persons whose names were being used held sufficient to establish fraud, requiring the names be purged from lists. *Hargis v. Hall*, 196 Ark. 878, 120 S.W.2d 335 (1938) (decision under prior law).

If persons' names are signed by others to petition for the submission of a proposed initiated act to the voters, in the absence of wrongful intent or connivance between the signers and circulators of the petition, only those names wrongfully signed should be stricken. *Sturdy v. Hall*,

204 Ark. 785, 164 S.W.2d 884 (1942) (decision under prior law).

Where affidavits filed by circulators of petitions for an initiated measure were found to be false, the court was not wrong, as a matter of law, in excluding entirely the petitions of those affiants when the affiants merely said that they did not actually see all the persons sign in their presence. *Parks v. Taylor*, 283 Ark. 486, 678 S.W.2d 766 (1984).

Trial judge properly set aside a county clerk's certification of initiative petitions and properly instructed an election commission to remove the issue from the ballot because there was sufficient evidence on which the trial judge could rely to find that certain people signed names other than their own on various initiative petitions submitted to the clerk; the trial court was well within its bounds under subsection (d) of this section to reject the validity of those petitions and invalidate all of the signatures. *Save Energy Reap Taxes v. Shaw*, 374 Ark. 428, 288 S.W.3d 601 (2008).

Trial court erred in dismissing appellants' complaint challenging the validity of a county clerk's certification of a "wet/dry" initiative petition for placement on the ballot at a general election because appellants satisfied their burden of proof under subsection (d) of this section regarding two allegedly forged signatures on a petition; because the county clerk failed to produce any evidence on the issue, all of the signatures on the petition that contained the alleged forgeries had to be decertified. *Mays v. Cole*, 374 Ark. 532, 289 S.W.3d 1 (2008).

Time Requirements.

Where filing dates of initiative petitions showed they were filed less than 60 days before election contrary to Arkansas Constitution, there could be no presumption that the public had notice of proceeding contemplated and required by the constitution, and there was, therefore, no authority for holding the election and, the election was a nullity. *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decision under prior law).

Section 14-14-905(f)(2) did not repeal subdivision (b)(2), but specifically preserved all previously enacted enabling legislation, including subdivision (b)(2). *Cox v. French*, 277 Ark. 134, 640 S.W.2d 786 (1982).

Paragraph three of the local petitions part of Ark. Const. Amend. 7, which states that the time for filing referendum petitions is from 30 to 90 days from the passage of the county measure, is not self-executing, because it clearly anticipates that general laws may be enacted fixing a time for filing a referendum petition at a specific time between 30 and 90 days; therefore, where the General As-

sembly, by enacting subdivision (b)(2), fixed the time at 60 days, the General Assembly exercised its lawful power to enact enabling legislation. *Cox v. French*, 277 Ark. 134, 640 S.W.2d 786 (1982).

Cited: *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 784 S.W.2d 598 (1990); *Lawson v. St. Francis County Election Comm'n*, 309 Ark. 135, 827 S.W.2d 159 (1992).

14-14-917. Initiative and referendum elections.

(a) TIME OF ELECTION FOR INITIATIVE AND REFERENDUM MEASURES.

(1) INITIATIVE. Initiative petition measures shall be considered by the electors only at a regular general election at which state and county officers are elected for regular terms.

(2) REFERENDUM. Referendum petition measures may be submitted to the electors during a regular general election and shall be submitted if the adequacy of the petition is determined within the time limitation prescribed in this section. A referendum measure may also be referred to the electors at a special election called for the expressed purpose proposed by petition. However, no referendum petition certified within the time limitations established for initiative measures shall be referred to a special election, but shall be voted upon at the next regular election. No referendum election shall be held less than sixty (60) days after the certification of adequacy of the petition by the county clerk.

(3) CALLING SPECIAL ELECTIONS. The jurisdiction to establish the necessity for a special election on referendum measures is vested in the electors through the provisions of petition. Where the jurisdiction is not exercised by the electors, the county court of each of the several counties may determine the necessity. However, a quorum court may compel the calling of a special election by a county court through resolution adopted during a regularly scheduled meeting of the quorum court. The resolution may specify a reasonable time limitation in which a county court order calling the special election shall be entered.

(4) TIME OF SPECIAL ELECTION. The county court shall fix the date for the conduct of any special elections on referendum measures. The date shall be not less than established under § 7-11-201 et seq. When the electors exercise their powers to establish the necessity for a special election, the county court shall order an election according to the dates stated in § 7-11-201 et seq.

(b) CERTIFICATION REQUIREMENTS.

(1) NUMERIC DESIGNATION OF INITIATIVE AND REFERENDUM MEASURES. Upon finding an initiative or referendum petition sufficient and prior to delivery of the certification to a board of election commissioners and quorum court, the county clerk shall cause the measure to be entered into the legislative agenda register of the quorum court. This entry shall be in the order of the original filing of petition, and the register entry number shall be the official numeric designation of the proposed measure for election ballot purposes.

(2) **CERTIFICATION OF SUFFICIENCY.** The certification of sufficiency for initiative and referendum petitions transmitted by the county clerk to the county board of election commissioners and quorum court shall include the ballot title of the proposed measure, the legislative agenda registration number, and a copy of the proposed measure, omitting signatures. The ballot title certified to the board shall be the comprehensive title of the measure proposed by petition, and the delivery of the certification to the chair or secretary of the board shall be deemed sufficient notice to the members of the board and their successors.

(c) **NOTICE OF ELECTION.**

(1) **INITIATIVE PETITIONS.** Upon certification of any initiative or referendum petition measure submitted during the time limitations for a regular election, the county clerk shall give notice through publication by a two-time insertion, at not less than a seven-day interval, in a newspaper of general circulation in the county or as provided by law. Publication notice shall state that the measure will be submitted to the electors for adoption or rejection at the next regular election and shall include the full text, the ballot title, and the official numeric designation of the measure.

(2) **REFERENDUM PETITION.** Upon certifying any referendum petition prior to the time limitations of filing measures established for a regular election, the county clerk shall give notice through publication by a one-time insertion in a newspaper of general circulation in the county or as provided by law. Publication notice shall state that the measure will be submitted to the electors for adoption or rejection at the next regular election or a special election when ordered by the county court and shall include the full text, the ballot title, and the official numeric designation of the measure.

(3) **PUBLICATION OF SPECIAL REFERENDUM ELECTION NOTICE.** Upon filing of a special election order by the county court, the county clerk shall give notice of the election through publication by a two-time insertion, at not less than a seven-day interval, in a newspaper of general circulation in the county or as provided by law. Publication shall state that the measure will be submitted to the electors for adoption or rejection at a special election and shall include the full text, the date of the election, the ballot title, and official numeric designation of the measure.

(4) **COSTS.** The cost of all publication notices required in this section shall be paid out of the county general fund.

(d) **BALLOT SPECIFICATIONS FOR INITIATIVE AND REFERENDUM MEASURES.**

(1)(A) Upon receipt of any initiative or referendum measure certified as sufficient by a county clerk, it shall be the duty of the members of the county board of election commissioners to take due cognizance and to certify the results of the vote cast thereon.

(B)(i) Except as provided in subdivision (d)(1)(B)(ii) of this section, the board shall cause the ballot title to be placed on the ballot to be used in the election, stating plainly and separately the title of the ordinance or measure so initiated or referred by the quorum court to the electors with these words:

“FOR PROPOSED INITIATIVE (OR REFERRED) ORDINANCE (OR AMENDMENT OR MEASURE)

NO. _____

AGAINST PROPOSED INITIATIVE (OR REFERRED) ORDINANCE (OR AMENDMENT OR MEASURE)

NO. _____”.

(ii) If the election concerns repeal of an ordinance or measure by referendum petition, the ballot shall state plainly the title of the initiated ordinance or referred measure with these words:

“FOR REPEAL OF THE INITIATIVE (OR REFERRED) ORDINANCE (OR AMENDMENT OR MEASURE)

NO. _____

AGAINST REPEAL OF THE INITIATIVE (OR REFERRED) ORDINANCE (OR AMENDMENT OR MEASURE)

NO. _____”.

(2) In arranging the ballot title on the ballot, the commissioners shall place it separate and apart from the ballot titles of the state acts, constitutional amendments, and the like. If the board of election commissioners fails or refuses to submit a proposed initiative or referendum ordinance when it is properly petitioned and certified as sufficient, the qualified electors of the county may vote for or against the ordinance or measure by writing or stamping on their ballots the proposed ballot title, followed by the word “FOR” or “AGAINST”, and a majority of the votes so cast shall be sufficient to adopt or reject the proposed ordinance.

(e) CONFLICTING MEASURES. Where two (2) or more ordinances or measures shall be submitted by separate petition at any one (1) election, covering the same subject matter and being for the same general purpose, but different in terms, words, and figures, the ordinance or measure receiving the greatest number of affirmative votes shall be declared the law, and all others shall be declared rejected.

(f) CONTEST OF ELECTION. The right to contest the returns and certification of the vote cast upon any proposed initiative or referendum measure is expressly conferred upon any ten (10) qualified electors of the county. The contest shall be brought in the circuit court and shall be conducted under the procedure for contesting the election of county officers, except that the complaint shall be filed within sixty (60) days after the certification of the vote, and no bond shall be required of the contestants.

(g) VOTE REQUIREMENT FOR ENACTMENT OF ORDINANCE. Any measure submitted to the electors as provided in this section shall take effect and become law when approved by a majority of the votes cast upon the measure, and not otherwise, and shall not be required to receive a majority of the electors voting at the election. The measure so enacted shall be operative on and after the thirtieth day after the election at which it is approved, unless otherwise specified in the ordinance or amendment.

History. Acts 1977, No. 742, § 94; A.S.A. 1947, § 17-4011; Acts 2003, No. 1441, § 2; 2007, No. 1049, § 35; 2009, No. 1480, § 51; 2015, No. 1036, § 1.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” twice in (a)(4).

The 2015 amendment redesignated (d) as (d)(1) and (2); deleted “So that electors may vote upon the ordinance or measure”

from the end of (d)(1)(A); in (d)(1)(B)(i), in the introductory language, added “Except as provided in subdivision (d)(1)(B)(ii) of this section” to the beginning and inserted “by the quorum court,” and added “OR MEASURE” twice throughout; and added (d)(1)(B)(ii).

Cross References. Special school elections, § 6-14-102.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Heller and Sallings, Survey of Public Law, 3 U. Ark. Little Rock L.J. 296.

CASE NOTES

ANALYSIS

Ballot Specifications.
Calling Special Elections.
Contest of Elections.
Publication of Election Notices.
Vote Requirements.

Ballot Specifications.

The words “Initiative Act No. 1 of White County” preceding the title was no part of the title and the omission of the words “of White County” from the ballot did not affect its validity. *Smith v. Plant*, 179 Ark. 1024, 19 S.W.2d 1022 (1929) (decision under prior law).

Ballot title, “An act to fix the salaries and expenses of county officers and to fix the manner in which such compensations and salaries shall be paid and to reduce the costs of county government, and for other purposes,” was sufficient. *Coleman v. Sherrill*, 189 Ark. 843, 75 S.W.2d 248 (1934); *Blocker v. Sewell*, 189 Ark. 924, 75 S.W.2d 658 (1934); *House v. Brazil*, 196 Ark. 602, 119 S.W.2d 397 (1938) (decisions under prior law).

Calling Special Elections.

The matter of calling a special election, if not exercised by the electors, rests in the discretion of the county judge and/or the quorum court, either of which may determine the necessity of calling a special election. *Quattlebaum v. Davis*, 265 Ark. 588, 579 S.W.2d 599 (1979).

Contest of Elections.

Equity had no jurisdiction to try election contests involving initiated acts.

Hutto v. Rogers, 191 Ark. 787, 88 S.W.2d 68 (1935) (decision under prior law).

Taxpayer’s suit against county officials to enjoin disbursement of public revenues pursuant to provisions of initiated act by reason that submission of the question was unauthorized under the initiative and referendum act and enabling act passed pursuant thereto, and therefore did not become a law notwithstanding a favorable vote thereon, held not an election contest, and 60 day limitation would not apply to it. *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decision under prior law).

In suit to restrain enforcement of an initiative act and to have the act declared invalid, exhibits attached to motion to dissolve temporary restraining order, showing that jurisdictional requirements were met in respect of initiation of the act, showed prima facie the act was legally adopted. *Sager v. Hibbard*, 203 Ark. 672, 158 S.W.2d 922 (1942) (decision under prior law).

Proper procedure to prevent calling of election on dog racing by board of commissioners was by suit against commissioners rather than against county clerk, since an election was under authority of former statutes relating to racing, and not under the power of initiative or referendum. *Townes v. McCollum*, 221 Ark. 920, 256 S.W.2d 716 (1953) (decision under prior law).

After a question is submitted to and voted upon by the people, the sufficiency of the petition was of no importance and

could not be questioned. *Herrington v. Hall*, 238 Ark. 156, 381 S.W.2d 529 (1964) (decision under prior law).

Under former statute and Ark. Const. Amend. 7, validity of election wherein countywide stock law was adopted was not affected by failure of court to rule on action attacking validity of petition prior to the election where record showed no request for trial nor objection for failure to grant a trial. *Herrington v. Hall*, 238 Ark. 156, 381 S.W.2d 529 (1964) (decision under prior law).

When the Arkansas Constitution of 1874 was adopted, chancery courts had no jurisdiction with respect to election contests or the adjudication of political rights, and such jurisdiction could not be conferred by statute. *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979) (decision under prior law).

Publication of Election Notices.

Acts 1911 (Ex. Sess.), No. 2, § 15, relating to the publication of initiated measures, could have no applicability to local or county measures after the adoption of Ark. Const. Amend. 7. *Reeves v. Smith*, 190 Ark. 213, 78 S.W.2d 72 (1935) (decision under prior law).

Vote Requirements.

An affirmative vote could not be given effect when the petition was not filed in compliance with the constitutional provisions. *Phillips v. Rothrock*, 194 Ark. 945, 110 S.W.2d 26 (1937) (decision under prior law).

Cited: *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 784 S.W.2d 598 (1990); *Redd v. Sossomon*, 315 Ark. 512, 868 S.W.2d 466 (1994).

14-14-919. Referendum petitions on county bond issue.

All referendum petitions under Arkansas Constitution, Amendment 7, against any measure, as the term is used and defined in Arkansas Constitution, Amendment 7, pertaining to a county bond issue or a short-term financing obligation of a county under Arkansas Constitution, Amendment 78, must be filed with the county clerk within thirty (30) days after the adoption of any such measure.

History. Acts 1979, No. 717, § 1; A.S.A. 1947, § 17-4011.1; Acts 2001, No. 981, § 1.

A.C.R.C. Notes. Acts 2001, No. 981,

§ 2, provided: "All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

SUBCHAPTER 12 — PERSONNEL PROCEDURES

SECTION.

14-14-1201. Surety bond for certain county and township officers and employees.

SECTION.

14-14-1202. Ethics for county government officers and employees.

14-14-1201. Surety bond for certain county and township officers and employees.

(a) **SURETY BOND REQUIRED.** All elected or appointed county and township officers, and employees thereof, who receipt for cash funds or disburse public funds of a county by virtue of their office or employment shall obtain a surety bond.

(b) **AMOUNT OF BOND.**

(1) The amount for which a county or township officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. These amounts shall be

fixed annually by ordinance of the quorum court of each county based on the total cash receipts and disbursements of the office for the preceding calendar year.

(2)(A) These surety bonds shall be initiated in minimum amounts computed as follows:

(i) On the first one hundred thousand dollars (\$100,000), or any part thereof, of receipts or disbursements of the office, ten percent (10%) of the amount;

(ii) On the next two hundred thousand dollars (\$200,000), or any part thereof, of receipts or disbursements of the office, seven and one-half percent (7½%) of the amount;

(iii) On the next two hundred thousand dollars (\$200,000), or any part thereof, of receipts or disbursements of the office, five percent (5%) of the amount;

(iv) On the next five hundred thousand dollars (\$500,000), or any part thereof, of the amount, two and one-half percent (2½%); and

(v) On all amounts in excess of one million dollars (\$1,000,000), one percent (1%) of the amount.

(B) The maximum amount of any bond required of any elected officer or employee thereof shall not exceed five hundred thousand dollars (\$500,000).

(c) AUTHORIZED BONDING COMPANIES. Bonds purchased by a county government shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in the state.

(d) CONDITIONS OF SURETIES. The condition of every official bond must be that the covered officers and employees shall perform all official duties required of them by law and also such additional duties as may be imposed on them by any law subsequently enacted, and that they will account for and pay over and deliver to the person or officer entitled to receive the same all moneys or other property that may come into their hands as such officers or employees. The sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by an officer or employee of county government.

(e) PURCHASE OF BONDS. The county judge of each county shall purchase all surety bonds for county and township officers, and employees thereof, in the amounts fixed by ordinance of the county quorum court pursuant to the purchasing laws governing county government. A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees, or any group or combination of officers and employees.

(f) APPROPRIATION OF BOND PREMIUMS. The quorum court of each county shall provide for by appropriation the payment of premiums for surety bonds of all county and township officers, and employees thereof.

(g) APPROVAL AND FILING OF BONDS. All official bonds must be signed and executed by the county court of each county and one (1) or more surety companies organized under the laws of this state or licensed to

do business in this state. The original of each such executed bond, as required in this section, shall be filed in the office of county clerk.

History. Acts 1977, No. 742, § 113; A.S.A. 1947, § 17-4206.

Cross References. Self-Insured Fidelity Bond Program,, § 21-2-701 et seq.

CASE NOTES

ANALYSIS

Actions on Bonds.
Attorney's Fees.
Conditions of Sureties.
Liability of Sureties.

Actions on Bonds.

The state may bring an action on a county officer's bond for the amount of the officer's defalcation. State ex rel. Benton County v. Wood, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

Suit cannot be brought on a county officer's bond until the amount due has been determined by a court. Graham v. State, 100 Ark. 571, 140 S.W. 735 (1911) (decision under prior law).

Attorney's Fees.

For an indemnity agreement contained in bond executed to state to indemnify sheriff to include attorney's fees and to be recoverable by the indemnitee, the attorney's fees had to be reasonable, proper, necessary, and incurred in good faith and with due diligence; were factual questions to be determined by the trier of fact; and when properly placed in dispute, were not matters to be disposed of on motion for summary judgment. United States Fid. & Guar. Co. v. Love, 260 Ark. 374, 538 S.W.2d 558 (1976) (decision under prior law).

Conditions of Sureties.

A county officer's bond that obligates the officer and his sureties that he will truly account for and pay over all moneys that come to his hands by virtue of his office is valid, although it names no obligee. State ex rel. Benton County v. Wood, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

The failure of a county treasurer to bring funds into court when ordered constituted a breach of his bond, although the funds could have been lost by the insolvency of the bank in which they were deposited. State ex rel. Benton County v.

Wood, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

Liability of Sureties.

It is in the discretion of a court, upon a proper showing by a surety on an official bond of a county officer, to require the officer to give a new bond and discharge the surety from future liability; however, the court has no power to discharge the surety from past liability. Ex parte Talbot, 32 Ark. 424 (1877) (decision under prior law).

The amount for which the bond for a county officer is liable is the amount fixed by a court, with legal interest from the date of auditing. State ex rel. Benton County v. Wood, 51 Ark. 205, 10 S.W. 624 (1889) (decision under prior law).

The General Assembly may release an officer and bondsmen from liability for a claim legally due, but which would be unjust and oppressive to collect. Pearson v. State, 56 Ark. 148, 19 S.W. 499 (1892) (decision under prior law).

Sureties on bond approved by circuit judge in vacation were not liable for any funds that came into a treasurer's hands after rejection of the bond by the circuit court and the expiration of 15 days thereafter within which the treasurer failed to file new bond. Wood v. State, 63 Ark. 337, 40 S.W. 87 (1897) (decision under prior law).

Sureties on an officer's bond are not liable for penalties imposed by a statute passed after the execution of the bond. Hunter State Bank v. Mills, 90 Ark. 10, 117 S.W. 760 (1909) (decision under prior law).

A county treasurer depositing county funds in a bank that had not executed a bond payable to the county as required by statute was not relieved from liability on his official bond on the bank's insolvency, although the treasurer took a bond from the bank payable to himself to secure his deposits, which bond was approved by the county court. Huffstuttler v. State, 183

Ark. 993, 39 S.W.2d 721 (1931) (decision under prior law).

A surety is not liable for punitive damages assessed against county officer. Arnold v. State ex rel. Burton, 220 Ark. 25,

245 S.W.2d 818 (1952) (decision under prior law).

Cited: Wilson v. Robinson, 506 F. Supp. 1236 (E.D. Ark. 1981).

14-14-1202. Ethics for county government officers and employees.

(a) PUBLIC TRUST.

(1) The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of officers and employees of county government.

(2) An officer or employee shall carry out all duties assigned by law for the benefit of the people of the county.

(3) The officer or employee may not use his or her office, the influence created by his or her official position, or information gained by virtue of his or her position to advance his or her individual personal economic interest or that of an immediate member of his or her family or an associate, other than advancing strictly incidental benefits as may accrue to any of them from the enactment or administration of law affecting the public generally.

(b) OFFICERS AND EMPLOYEES OF COUNTY GOVERNMENT DEFINED.

(1) For purposes of this section, officers and employees of county government shall include:

(A)(i) All elected county and township officers;

(ii) All district judicial officers serving a county; and

(iii) All members of county boards, advisory, administrative, or subordinate service districts; and

(B) All employees thereof.

(2) Officials who are considered to be state officers or deputy prosecuting attorneys are not covered by this subsection.

(c) RULES OF CONDUCT.

(1) No officer or employee of county government shall:

(A)(i) Be interested, either directly or indirectly, in any contract or transaction made, authorized, or entered into on behalf of the county or an entity created by the county, or accept or receive any property, money, or other valuable thing for his or her use or benefit on account of, connected with, or growing out of any contract or transaction of a county.

(ii)(a) If in the purchase of any materials, supplies, equipment, or machinery for the county, any discounts, credits, or allowances are given or allowed, they shall be for the benefit of the county.

(b) It shall be unlawful for any officer or employee to accept or retain them for his or her own use or benefit;

(B) Be a purchaser at any sale or a vendor of any purchase made by him or her in his or her official capacity;

(C) Acquire an interest in any business or undertaking which he or she has reason to believe may be directly affected to its economic benefit by official action to be taken by county government;

(D)(i) Perform an official act directly affecting a business or other undertaking to its economic detriment when he or she has a substantial financial interest in a competing firm or undertaking.

(ii) Substantial financial interest is defined for purposes of this section as provided in Acts 1971, No. 313, § 7 [repealed].

(2)(A)(i) If the quorum court determines that it is in the best interest of the county, the quorum court may by ordinance permit the county to purchase goods or services directly or indirectly from quorum court members, county officers, or county employees due to unusual circumstances.

(ii) The ordinance permitting the purchases must specifically define the unusual circumstances under which the purchases are allowed and the limitations of the authority.

(B) Any quorum court member having any interest in the goods or services being considered under these procedures shall not be entitled to vote upon the approval of the goods or services.

(C) If goods or services are purchased under these procedures, the county judge must file an affidavit, together with a copy of the voucher and other documents supporting the disbursement, with the county clerk certifying that each disbursement has been made in accordance with the provisions of the ordinance.

(3)(A) No person shall simultaneously hold office and serve as an elected county justice of the peace and hold office and serve as an elected city council member.

(B) This subdivision (c)(3) shall not cut short the term of any office holder serving as such on September 1, 2005, but shall be implemented during the next election cycle of each office.

(d) REMOVAL FROM OFFICE OR EMPLOYMENT.

(1) COURT OF JURISDICTION. Any citizen of a county or the prosecuting attorney of a county may bring an action in the circuit court in which the county government is located to remove from office any officer or employee who has violated the rules of conduct set forth in this section.

(2) SUSPENSION PRIOR TO FINAL JUDGMENT.

(A) Pending final judgment, an officer or employee who has been charged as provided in this section may be suspended from his or her office or position of employment without pay.

(B) Suspension of any officer or employee pending final judgment shall be upon order of the circuit court or judge thereof in vacation.

(3) PUNISHMENT.

(A) Judgment upon conviction for violation of the rules of conduct set forth in this section shall be deemed a misdemeanor.

(B) Punishment shall be by a fine of not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000), and the officer or employee shall be removed from office or employment of the county.

(4) ACQUITTAL. Upon acquittal, an officer or employee shall be reinstated in his or her office or position of employment and shall receive all back pay.

(5) LEGAL FEES.

(A) Any officer or employee charged as provided in this section and subsequently acquitted shall be awarded reasonable legal fees incurred in his or her defense.

(B)(i) Reasonable legal fees shall be determined by the circuit court or the Supreme Court on appeal.

(ii) Such legal fees shall be ordered paid out of the general fund of the county treasury.

History. Acts 1977, No. 742, § 115; 930, § 1; 1989, No. 352, § 1; 1989, No. A.S.A. 1947, § 17-4208; Acts 1987, No. 681, § 1; 2005, No. 1924, § 1.

CASE NOTES**Constable.**

A constable is an official of the county and thus covered by workers' compensation. *Farnsworth v. White County*, 312 Ark. 574, 851 S.W.2d 451 (1993).

Cited: *Hester v. Langston*, 297 Ark. 87, 759 S.W.2d 797 (1988); *Farnsworth v. White County*, 39 Ark. App. 98, 839 S.W.2d 229 (1992); *Post v. Harper*, 980 F.2d 491 (8th Cir. 1992).

CHAPTER 16**POWERS OF COUNTIES GENERALLY****SUBCHAPTER 1 — GENERAL PROVISIONS**

SECTION.

14-16-106. Sale or disposal of surplus property.

14-16-106. Sale or disposal of surplus property.

(a) If it is determined by the county judge to be surplus, any personal or real property owned by a county may be sold at public auction or by Internet sale to the highest bidder.

(b)(1) Notice of the public auction or Internet sale shall be published at least one (1) time a week for two (2) consecutive weeks in a newspaper having general circulation in the county.

(2) The notice shall specify the description of the property to be sold and the time and place of the public auction or Internet sale.

(3)(A) If the property will be sold by Internet sale, the notice of sale shall be placed on the website of the Internet vendor for no less than eight (8) consecutive days before the date of sale and shall contain a description of the property to be sold and the time of the sale.

(B) An additional notice may be posted on a county-owned or county-affiliated website, trade website, or business website for no less than eight (8) consecutive days before the date of sale.

(c)(1) If it is determined by the county judge and the county assessor that any personal property owned by a county is junk, scrap, discarded, or otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the county judge.

(2) However, the county judge shall report monthly to the quorum court any property that has been disposed of under subdivision (c)(1) of this section.

(d) The county fixed asset listing shall be amended to reflect all sales or disposal of county property made by the county under this section.

(e) If the sale is conducted on the Internet, the invoice from the Internet vendor or publisher shall be accompanied by a statement from the Internet vendor or publisher that the sale was published and conducted on the Internet.

(f)(1) When the sale is complete, the county court shall enter an order approving the sale.

(2) The order shall set forth:

(A) The description of the property sold;

(B) The name of the purchaser;

(C) The terms of the sale;

(D) That the proceeds of the sale have been deposited with the county treasurer; and

(E) The funds to which the proceeds were credited by the county treasurer.

History. Acts 1980 (1st Ex. Sess.), No. 41, § 1; 1980 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, § 17-322; Acts 1997, No. 364, § 1; 2005, No. 725, § 1; 2011, No. 614, § 4; 2011, No. 1014, § 2.

Amendments. The 2011 amendment by No. 614 inserted “or by Internet sale” in (a), (b)(1) and (2); and added (d).

The 2011 amendment by No. 1014 added (b)(3), (e), and (f).

CASE NOTES

Compliance.

County judge complied with the procedures set forth in subsection (c) of this section when he sold a gravel crusher belonging to the county after he conferred with the county assessor and they agreed it was junk that should be sold for scrap. The general assembly did not intend for

the provisions of § 14-16-105 for sales of county property generally to apply to sales or disposal of surplus property under this section. Searcy County Counsel for Ethical Gov’t v. Hinchey, 2013 Ark. 84 (2013).

Cited: Searcy County Counsel for Ethical Gov’t v. Hinchey, 2011 Ark. 533 (2011).

CHAPTER 19

COUNTY BUILDINGS

SECTION.

14-19-103. Plans — Contracts.

14-19-103. Plans — Contracts.

(a) When the ground for erecting any public building shall be designated as indicated in § 14-19-102 [repealed], the commissioner of public buildings shall prepare and submit to the county court a plan of the building to be erected, the dimensions thereof, and the materials of which it is to be composed, with an estimate of the probable cost thereof.

(b)(1) When the plan shall be approved by the court, the commissioner shall advertise for receiving proposals for erecting the building and shall contract with the person who will agree to do the work on the lowest and best terms, not exceeding the amount so appropriated by the court.

(2) The commissioner may let parts of the work to different persons.

History. Rev. Stat., ch. 36, §§ 11, 12, 14; C. & M. Dig., §§ 1936, 1937, 1939; Pope's Dig., §§ 2458, 2459, 2461; A.S.A. 1947, §§ 17-908, 17-909, 17-911.

Cross References. Legal notices and advertisements, § 16-3-101 et seq.

Contracts for public buildings, Ark. Const., Art. 19, § 16.

CASE NOTES**Architects.**

Where a county undertakes the erection of a county courthouse, it is proper for the county court to employ an architect, in

addition to the commissioner of public buildings, and to pay him a reasonable compensation. *Mississippi County v. Grider*, 126 Ark. 219, 190 S.W. 102 (1916).

CHAPTER 22**COUNTY PURCHASING PROCEDURES**

SECTION.

14-22-101. Definitions.

14-22-104. Purchases permitted.

14-22-106. Purchases exempted from soliciting bids.

SECTION.

14-22-108. Bidding procedure.

14-22-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Commodities" means all supplies, goods, material, equipment, machinery, facilities, personal property, and services other than personal services, purchased for or on behalf of the county;

(2) "Formal bidding" means the procedure to be followed in the solicitation and receipt of sealed bids, wherein:

(A) Notice shall be given of the date, time, and place of opening of bids, and the names or a brief description and the specifications of the commodities for which bids are to be received, by one (1) insertion in a newspaper with a general circulation in the county, not less than ten (10) days nor more than thirty (30) days prior to the date fixed for opening such bids;

(B) Not less than ten (10) days in advance of the date fixed for opening the bids, notices and bid forms shall be furnished to all eligible bidders on the bid list for the class of commodities on which bids are to be received, and to all others requesting them; and

(C) At least ten (10) days in advance of the date fixed for opening bids, a copy of the notice of invitation to bid shall be posted in a conspicuous place in the county courthouse;

(3) "Open market purchases" means those purchases of commodities by any purchasing official in which competitive bidding is not required;

(4) "Purchase" means not only the outright purchase of a commodity, but also the acquisition of commodities under rental-purchase agreements or lease-purchase agreements or any other types of agreements whereby the county has an option to buy the commodity and to apply the rental payments on the purchase price thereof;

(5) "Purchase price" means the full sale or bid price of any commodity, without any allowance for trade-in;

(6) "Purchasing official" means any county official, individual, board, or commission, or his or her or its lawfully designated agent, with constitutional authority to contract or make purchases on behalf of the county;

(7) "Trade-in purchases" means all purchases where offers must be included with the bids of each bidder for trade-in allowance for used commodities; and

(8)(A) "Used or secondhand motor vehicles, equipment, or machinery" means motor vehicles, equipment, or machinery at least one (1) year in age from the date of original manufacture or that has at least two hundred fifty (250) working hours' prior use or five thousand (5,000) miles' prior use.

(B)(i) A purchase of a used motor vehicle, equipment, or machinery shall be accompanied by a statement in writing from the vendor on the bill of sale or other document that the motor vehicle, equipment, or machinery is at least one (1) year in age from the date of original manufacture or has been used a minimum of two hundred fifty (250) hours or driven a minimum of five thousand (5,000) miles.

(ii) This statement shall be filed with the county clerk at the time of purchase.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 2; 1975, No. 439, § 2; 1975, No. 617, § 2; 1985, No. 844, § 1; A.S.A. 1947, § 17-1602; Acts 2001, No. 219, § 1; 2009, No. 410, § 8; 2009, No. 756, § 21; 2015, No. 561, § 1.

Amendments. The 2009 amendment by No. 410 inserted "on the bill of sale or otherwise documenting" in (8)(B)(i).

The 2009 amendment by No. 756 inserted "on the bill of sale or other document" in (8)(B)(i).

The 2015 amendment, in (8)(A) and (B), substituted "one (1) year" for "two (2) years," substituted two hundred fifty (250) for "five hundred (500)," and substituted "five thousand (5,000)" for "ten thousand (10,000)."

CASE NOTES

Formal Bidding.

Purchase of voting machines without complying with subdivision (5) was invalid even though it was known that there

were only two eligible bidders, who were notified and invited to submit bids and did submit bids. *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

14-22-104. Purchases permitted.

All purchases of commodities made by any county purchasing official with county funds, except those specifically exempted by this chapter, shall be made as follows:

(1) Formal bidding shall be required in each instance in which the estimated purchase price shall equal or exceed twenty thousand dollars (\$20,000);

(2) Open market purchases may be made of any commodities where the purchase price is less than twenty thousand dollars (\$20,000); and

(3) No purchasing official shall parcel or split any items of commodities or estimates with the intent or purpose to change the classification or to enable the purchase to be made under a less restrictive procedure.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 3; 1975, No. 439, § 3; 1975, No. 617, § 3; 1985, No. 745, § 2; A.S.A. 1947, § 17-1603; Acts 1995, No. 431, § 2; 2003, No. 209, § 2; 2007, No. 249, § 2.

Amendments. The 2003 amendment substituted “fifteen thousand dollars (\$15,000)” for “ten thousand dollars (\$10,000)” in (1) and (2).

CASE NOTES

ANALYSIS

Purpose.

Formal Bidding.

Parcel or Split.

Purchases.

Purpose.

Purpose of this section is to regulate purchasing procedures. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

Formal Bidding.

The purchase of sixty voting machines at a cost far in excess of the statutory amount required formal bidding under subdivision (1). *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

Parcel or Split.

Mere suspicion was not enough to prove that defendant intentionally violated the

prohibition against splitting purchases to avoid the necessity of soliciting competitive bids where the evidence showed only that materials of the same kind were purchased on successive days for amounts under the statutory requirements. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

Purchases.

Approval by county judge of purchases already made by others does not amount to purchases by the judge, and therefore a judge does not violate the purchasing restrictions, where no conspiracy between the judge and those making the purchases is proved. *Mackey v. State*, 257 Ark. 497, 519 S.W.2d 760 (1975).

Cited: *Dean Leasing, Inc. v. Van Buren County*, 27 Ark. App. 134, 767 S.W.2d 316 (1989).

14-22-106. Purchases exempted from soliciting bids.

The following listed commodities may be purchased without soliciting bids:

- (1) Perishable foodstuffs for immediate use;
- (2) Unprocessed feed for livestock and poultry;
- (3) Advanced emergency medical services provided by a nonprofit corporation and proprietary medicines when specifically requested by a professional employee;
- (4) Books, manuals, periodicals, films, and copyrighted educational aids for use in libraries and other informational material for institutional purposes;
- (5) Scientific equipment and parts therefor;
- (6) Replacement parts and labor for repairs of machinery and equipment;
- (7) Commodities available only from the federal government;
- (8)(A) Any commodities needed in instances in which an unforeseen and unavoidable emergency has arisen in which human life, health, or public property is in jeopardy.
(B) An emergency purchase under subdivision (8)(A) of this section shall not be approved unless a statement in writing is attached to the purchase order describing the emergency necessitating the purchase of the commodity without competitive bidding;
- (9) Utility services, the rates for which are subject to regulation by a state agency or a federal regulatory agency;
- (10) Sand, gravel, soil, lumber, used pipe, or used steel;
- (11) Used or secondhand motor vehicles, machinery, or equipment, except a used or secondhand motor vehicle that has been under lease to a county when the vehicle has fewer than five thousand (5,000) miles of use shall not be purchased by the county when it has been used five thousand (5,000) miles or more except upon competitive bids as provided in this chapter;
- (12) Machinery, equipment, facilities, or other personal property purchased or acquired for or in connection with the securing and developing of industry under the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq., or any other provision of law pertaining to the securing and developing of industry;
- (13) Registered livestock to be used for breeding purposes;
- (14) Motor fuels, oil, asphalt, asphalt oil, and natural gas;
- (15) Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids;
- (16) All goods and services that are regularly provided to state agencies and county government by the Department of Correction's various penal industries;
- (17)(A) New motor vehicles purchased from a licensed automobile dealership located in Arkansas for an amount not to exceed the fleet

price awarded by the Office of State Procurement and in effect at the time the county submits the purchase order for the same make and model motor vehicle.

(B) The purchase amount for a new motor vehicle may include additional options up to six hundred dollars (\$600) over the fleet price awarded;

(18) Renewal or an extension of the term of an existing contract;

(19) Purchase of insurance for county employees, including without limitation health insurance, workers' compensation insurance, life insurance, risk management services, or dental insurance;

(20) Purchases made through programs of the National Association of Counties or the Association of Arkansas Counties;

(21) Goods or services if the quorum court has approved by resolution the purchase of goods or services through competitive bidding or procurement procedures used by:

(A) The federal government or one (1) of its agencies;

(B) Another state; or

(C) An association of governments or governmental agencies including associations of governments or governmental agencies below the state level; and

(22)(A) Goods or services available only from a single source.

(B) A purchase under this subdivision (22) shall be supported with:

(i) Documentation concerning the exclusivity of the single source; and

(ii) A county court order filed with the county clerk that sets forth the basis for the single source procurement.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 6; 1975, No. 439, §§ 5, 6; 1975, No. 617, §§ 5, 6; 1981, No. 306, § 1; 1985, No. 844, §§ 2, 3; A.S.A. 1947, § 17-1606; Acts 1989, No. 879, § 1; 1991, No. 786, § 12; 1993, No. 237, § 1; 2001, No. 219, § 2; 2007, No. 13, § 1; 2009, No. 410, §§ 9, 10; 2009, No. 756, § 22; 2011, No. 1044, § 1; 2013, No. 465, § 1; 2015, No. 561, § 2.

A.C.R.C. Notes. Ark. Const., Amend. 62, § 11, provides that all provisions of the Arkansas Constitution, or amendments thereto, in conflict with Ark. Const., Amend. 62, including Ark. Const., Amends. 17 and 49, are repealed.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts

and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 2009 amendment by No. 410 inserted "oil, asphalt, asphalt oil, and natural gas" in (14) and made a related change; and added (17) through (20).

The 2009 amendment by No. 756 subdivided (8) and inserted "under subdivision (8)(A) of this section" in (8)(B); deleted "or pursuant to the provisions of Arkansas Constitution, Amendment 49 [repealed]" following "under" in (12); inserted "oil, asphalt, asphalt oil, and natural gas" in (14); added (17) and (18); and made related and minor stylistic changes.

The 2011 amendment added (21).

The 2013 amendment added (22).

The 2015 amendment, in (11), deleted "that" following "except" and substituted "five thousand (5,000)" for "ten thousand (10,000)" twice.

CASE NOTES

ANALYSIS

Attached Statement.
Nonexempt Purchases.

Attached Statement.

The purpose of the statement requirement in subdivision (8) is likely to assure that the exemption only applies to equipment that is truly used equipment. *Robinson v. Clark Contracting Co.*, 992 F.2d 154 (8th Cir. 1993).

Where a party did not timely file a subdivision (8) statement, the party's substantial compliance as to the time of filing allowed the exemption in subdivision (11) to be applicable. *Robinson v. Clark Contracting Co.*, 992 F.2d 154 (8th Cir. 1993).

Nonexempt Purchases.

The purchase of voting machines is not within the exceptions enumerated in this section. *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

14-22-108. Bidding procedure.

(a) All bids which require either formal or informal bidding shall be opened in public and read at the time and place specified in the notice.

(b) The awarding of contracts need not be upon the day of the opening of the bids but may be at a later date to be determined by the purchasing official.

(c) In order to assure that the bidder will accept and perform a contract under the terms of his or her bid, the purchasing official may require bids to be accompanied by certified check or surety bond furnished by a surety company authorized to do business in this state in such a reasonable amount as the purchasing official shall determine.

History. Acts 1965 (1st Ex. Sess.), No. 52, § 8; A.S.A. 1947, § 17-1608.

SUBTITLE 3. MUNICIPAL GOVERNMENT

CHAPTER 37**CLASSIFICATION OF CITIES AND TOWNS**

SECTION.

- 14-37-101. Applicability.
- 14-37-102. Division into classes.
- 14-37-103. Population limits.
- 14-37-104. Cities of the first class.
- 14-37-105. Cities of the second class.
- 14-37-106. Board of Municipal Corporations.
- 14-37-107. Advancement of cities and towns according to census.
- 14-37-108. Application for advancement between census periods.
- 14-37-109. Appointment of enumerators to take census.

SECTION.

- 14-37-110. Returns of enumerators.
- 14-37-111. Reduction of city to lower grade — In general.
- 14-37-112. Incorporated town may become city of the second class.
- 14-37-113. Effect of population changes on legislation.
- 14-37-114. Reduction of city of the first class to city of the second class.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1893, No. 145, § 6: effective on passage.

Acts 1903, No. 46, § 4: effective on passage.

Acts 1909, No. 306, § 2: effective on passage.

Acts 1931, No. 61, § 3: effective on passage.

Acts 1931, No. 119, § 2: approved Mar. 9, 1931. Emergency clause provided: "By reason of the fact that many towns in the State with more than seventeen hundred and fifty inhabitants wish to undertake public improvements that are not practicable under improvement district laws, an emergency is declared to exist, and that for the immediate preservation of the public peace, health and safety it is necessary that this act shall take effect and be in force immediately upon its passage, and thereupon the same shall be in force immediately upon passage."

Acts 1939, No. 92, § 3: approved Feb. 15, 1939. Emergency clause provided: "Whereas, there are cities and towns as described herein which are losing revenue, and because there are people living outside of said cities and towns which are deprived of the privilege of police protection, and this act will provide additional revenue for said cities and will provide said people with adequate police protection, this act is found necessary for the public peace, health and safety, and an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage."

Acts 1939, No. 211, § 2: approved Mar. 9, 1939. Emergency clause provided: "It is ascertained and hereby declared that by reason of the depression continuing there are several incorporated towns in the State of Arkansas, that are now handicapped by not being able to become cities of the second class so that this act is necessary for the preservation of the public peace, health and safety. Therefore an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1943, No. 160, § 2: Mar. 4, 1943.

Acts 1945, No. 247, § 6: Mar. 20, 1945. Emergency clause provided: "It is ascertained and declared by the General Assembly of the State of Arkansas, that it would be advantageous to many cities not

having four thousand or more inhabitants to become cities of the first class, since the Statutes of Arkansas give the cities of the first class greater rights than the cities of the second class; an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 227, § 3: approved Mar. 18, 1947. Emergency clause provided: "It is ascertained and declared that there are a large number of towns in the State of Arkansas which have raised their classifications under the provisions of Act No. 334 of the Acts of the General Assembly of 1937, and under the provisions of Act No. 334 of the General Assembly of 1937 as amended by Act 211 of the Acts of the General Assembly of 1939 and their operations and advantages as cities of the second class are being delayed by reason of the present law so that this Act is necessary for the preservation of the public peace, health and safety. Therefore an emergency is declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1967, No. 498, § 3: Apr. 4, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that various laws of this State have been enacted applicable to cities of this State within defined population classifications, but that subsequent thereto many of the cities to which said laws are applicable have either increased or decreased their population to an extent that such laws are no longer applicable to such cities, and that the immediate passage of this Act is necessary in order that the laws formerly applicable to said cities may continue to be applicable thereto. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should

be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the

Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., §§ 1 et seq., 105 et seq.
Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146.

U. Ark. Little Rock L.J. Goldner, A Call for Reform of Arkansas Municipal Law, 15 U. Ark. Little Rock L.J. 175.

14-37-101. Applicability.

All corporations which existed when the Arkansas Constitution of 1874 took effect for the purpose of municipal government, and described or denominated in any law then in force, are organized into cities of the first and second class, as the case may be, and incorporated towns with the territorial limits respectively prescribed or belonging.

History. Acts 1875, No. 1, § 5, p. 1; C. & M. Dig., § 7456; Pope's Dig., § 9489; A.S.A. 1947, § 19-203.

Publisher's Notes. The Arkansas Con-

stitution of 1874 was ratified by the people October 13, 1874, and its adoption was proclaimed October 30, 1874.

CASE NOTES

Boundaries.

When a municipal corporation has definite boundaries that are in dispute, it is

for the courts, and not the General Assembly, to determine their location. *State v. Leatherman*, 38 Ark. 81 (1881).

14-37-102. Division into classes.

In respect to the exercise of certain corporate powers and to the number, character, powers, and duties of certain officers, municipal corporations are divided into the following classes:

- (1) Cities of the first class;
- (2) Cities of the second class; and
- (3) Incorporated towns.

History. Acts 1875, No. 1, § 1, p. 1; C. & M. Dig., § 7448; Pope's Dig., § 9480; A.S.A. 1947, § 19-201.

14-37-103. Population limits.

(a)(1) All municipal corporations having over two thousand five hundred (2,500) inhabitants shall be deemed cities of the first class.

(2) All cities having five hundred (500) inhabitants or more and fewer than two thousand five hundred (2,500) inhabitants shall be deemed cities of the second class.

(3) All others shall be incorporated towns and shall be governed by the provisions of this subtitle.

(b)(1) Any incorporated towns of fewer than five hundred (500) inhabitants who have voted to be a city of the second class under § 14-37-112 shall continue to be a city of the second class.

(2) Any city having a population of one thousand five hundred (1,500) or more may become a city of the first class upon the enactment of an ordinance therefor, with all powers, authority, and responsibility of other cities of the first class.

History. Acts 1875, No. 1, § 5, p. 1; C. & M. Dig., § 7457; Pope's Dig., § 9490; Acts 1945, No. 247, § 4; 1965, No. 108, § 1; 1971, No. 269, § 1; A.S.A. 1947, § 19-202.

Publisher's Notes. Acts 1945, No. 247, § 5, provided that this act shall be cumulative to §§ 14-37-105(b) and 14-37-112 and shall not affect the provisions of these sections.

14-37-104. Cities of the first class.

(a) All cities, which at the last federal census had, or now have, a population exceeding two thousand five hundred (2,500) inhabitants shall be deemed cities of the first class.

(b) All cities which, at any future federal census, or any census which may be taken in pursuance of the laws of this state, shall be found to have a population of two thousand five hundred (2,500) inhabitants shall thereafter be deemed cities of the first class.

History. Acts 1875, No. 1, § 2, p. 1; C. & M. Dig., §§ 7449, 7450; Pope's Dig.,

§§ 9481, 9482; Acts 1945, No. 247, §§ 1, 2; A.S.A. 1947, §§ 19-204, 19-205.

CASE NOTES

Paris.

The municipality of Paris, Arkansas, is a city of the first class as the 1990 census reports a population of approximately three thousand six hundred (3,600) inhab-

itants. *Pearson v. City of Paris*, 839 F. Supp. 645 (W.D. Ark. 1993).

Cited: *City of Cabot v. Thompson*, 286 Ark. 395, 692 S.W.2d 235 (1985).

14-37-105. Cities of the second class.

(a) Any incorporated town of the State of Arkansas which, at any future federal census, or any census taken under the authority of the State of Arkansas, shall be found to have a population exceeding five hundred (500) persons who shall be inhabitants of the town and less than two thousand five hundred (2,500) inhabitants shall be deemed in all respects to be a city of the second class. However, this section shall not apply to cities that are now classified as cities of the first class.

(b)(1) In all counties having two (2) levying courts, in which there is a county seat town of less than five hundred (500) population, according to the last federal census, the county seat towns are made cities of the

second class, with all the powers and privileges conferred upon cities of the second class by law.

(2) Any of the towns described in subdivision (b)(1) of this section, through the governing body thereof, shall have the power, by ordinance, to annex to the city or town all heretofore platted additions thereto, so as to make them a part of the city and included within its boundaries and subject to all the rights, duties, and privileges of the original territory of the city.

History. Acts 1875, No. 1, § 2, p. 1; Dig., § 9483; Acts 1939, No. 92, §§ 1, 2; 1909, No. 306, § 1, p. 915; C. & M. Dig., 1945, No. 247, § 3; A.S.A. 1947, §§ 19-§ 7451; Acts 1931, No. 119, § 1; Pope's 206, 19-207.

14-37-106. Board of Municipal Corporations.

The Board of Municipal Corporations shall consist of the Auditor of State, Secretary of State, and Attorney General. The Secretary of State shall be president.

History. Acts 1893, No. 145, § 2, p. 251; C. & M. Dig., § 7454; Pope's Dig., § 9487; A.S.A. 1947, § 19-208.

CASE NOTES

Facilities Boards.

Facilities boards are not the type of company, association or corporation contemplated by this section; rather, facilities

boards are agencies created by the counties to carry out various county activities. *McCutchen v. Huckabee*, 328 Ark. 202, 943 S.W.2d 225 (1997).

14-37-107. Advancement of cities and towns according to census.

(a)(1) It shall be the duty of the Governor, the Auditor of State, and the Secretary of State, or any two (2) of them, to ascertain from the federal census and census provided for by law of this state, what cities of the second class are entitled to become cities of the first class and what incorporated towns are entitled to become cities and their proper class.

(2) The Governor shall cause a statement stating the grade to which the city has been advanced to be prepared and transmitted to the mayor of the city or town.

(b) As soon as the statement has been received by the mayor, as provided in subsection (a) of this section, showing that any city or town will be entitled to be organized into a city of the first class or city of the second class at the next regular annual period for the election of municipal officers, it shall be the duty of the proper corporate authority of the city or incorporated town to make and publish bylaws or ordinances necessary to perfect the organization in respect to the election, duties, and compensation of municipal officers, or otherwise.

(c) When a city of the second class becomes a city of the first class, the recorder of the affected city of the second class automatically

becomes the city clerk of the city when the change in classification occurs.

History. Acts 1875, No. 1, §§ 3, 4, p. 1; A.S.A. 1947, §§ 19-209, 19-210; Acts 2005, C. & M. Dig., §§ 7452, 7455; Pope's Dig., No. 44, § 1. §§ 9485, 9488; Acts 1943, No. 160, § 1;

CASE NOTES

Void Orders.

An order made by the state board of municipal corporations raising an incorporated town to a city of the second class was void where census list required by statute had not been filed in mayor's office 30 days prior to the date the order was made. *Bush v. Echols*, 178 Ark. 507, 10 S.W.2d 906 (1928).

Where 1910 federal census showed a population of 2,331 and 1920 federal census showed a population of 2,836, it was

proper to find that the special census taken in 1879 was fraudulent (there being testimony that some persons included in the count did not live within the city), that the order making it a second-class city was void ab initio, and that the town did not become a city until after 1910. *City of Searcy v. Roberson*, 256 Ark. 1081, 511 S.W.2d 627 (1974).

Cited: *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

14-37-108. Application for advancement between census periods.

(a) The Auditor of State, Secretary of State, and Attorney General may declare incorporated towns cities of the second class, and cities of the second class cities of the first class, between the periods fixed in § 14-37-107(a), upon application from any incorporated town or city of the second class, accompanied by a resolution adopted by the town or city council, asking to be so declared a city of the first or second class, as the case may be.

(b) The application shall be accompanied with satisfactory evidence showing the population of the town or city to be large enough to entitle it to such advancement.

History. Acts 1875, No. 1, § 3, p. 1; C. & M. Dig., § 7453; Pope's Dig., § 9486; A.S.A. 1947, § 19-211.

Publisher's Notes. As to validation of acts, proceedings, enumerations, resolutions, and ordinances passed by incorporated towns declared to be cities of the second class, notwithstanding any irregu-

larities, defects, errors, or informalities in such proceedings, see Acts 1909, No. 167, § 1. As to ratification of the actions of de facto officers of cities that been advanced under special acts that had been held unconstitutional, see Acts 1915, No. 212, § 1.

CASE NOTES

Validating Acts.

Acts 1909, No. 167 was not intended to cure an ordinance fixing a date for the election of city officers different from the date fixed by statute for such an election. *McMahan v. State*, 102 Ark. 12, 143 S.W. 94 (1912).

The actions of municipal officers in creating a local improvement district and levying assessments, performed subsequent to the passage of Acts 1915, No. 212, and before an election was held to elect new officers, were valid as were the formation of the district and the assess-

ments. *Cotten v. Hughes*, 125 Ark. 126, 187 S.W. 905 (1916).

14-37-109. Appointment of enumerators to take census.

(a)(1) Whenever any city or incorporated town shall desire to be made a city of the first or second class, or if it shall be deemed necessary to determine the number of inhabitants within the town or city for any purpose, on petition of ten (10) qualified voters of the town or city filed with the recorder thereof, the board of aldermen of the town or city shall consider the petition at its next regular meeting.

(2) If the board deems the prayer of petitioners well founded and deems that a census of the town or city should be taken in accordance with the prayer of the petitioners, the board may pass a resolution authorizing and directing the taking of a census of the town or city, and the mayor shall appoint enumerators to take the census, the appointees to be approved by the board.

(b)(1) The resolution authorizing the taking of census shall prescribe the duties of the enumerators as to when and how to proceed.

(2) Not more than one (1) enumerator shall be appointed for each ward. However, one (1) enumerator may take more than one (1) ward if the board deems it proper.

History. Acts 1903, No. 46, § 1, p. 78; C. & M. Dig., § 7662; Pope's Dig., § 9784; A.S.A. 1947, § 19-212.

14-37-110. Returns of enumerators.

(a)(1) Before the enumerators shall enter upon their duties, they shall make and subscribe to an oath to well and faithfully perform their duties, and their return shall be taken as true.

(2)(A) However, the returns so made by the census enumerators shall be filed in the office of the mayor and shall be subject to examination of the public for thirty (30) days.

(B) Any correction thereof may be made if proper proof is made before the board of aldermen to their satisfaction authorizing the correction sought to be made.

(b) The enumerators shall be entitled to and receive two and one-half cents (2½¢) per name for all names found to be authentic by the board of aldermen, to be paid by the town or city.

History. Acts 1903, No. 46, §§ 2, 3, p. 78; C. & M. Dig., § 7663; Pope's Dig., § 9785; A.S.A. 1947, §§ 19-213, 19-214.

14-37-111. Reduction of city to lower grade — In general.

(a) Whenever the last federal census shows that any city of the first class has fewer than two thousand five hundred (2,500) inhabitants and that any city of the second class has fewer than five hundred (500)

inhabitants, the city may be reduced to a city of the second class or to an incorporated town, respectively, upon the adoption of a resolution by the council of the municipal corporations requesting that the grade of the corporations be reduced.

(b)(1) The Board of Municipal Corporations, upon the receipt of a certified copy of the resolution, shall make an order reducing the grade of the municipal corporation.

(2) Upon being advised of the action of the board, the Governor shall cause a statement to be prepared and transmitted to the mayor of the city or town stating the grade to which it has been reduced.

(c) Whenever a city of the first class is reduced to the grade of a city of the second class or an incorporated town, the mayor of the city shall automatically become the police judge, and the office of police judge shall automatically be abolished. All other officers of a city whose grade may be reduced shall continue in office until the next general election for the city or town.

History. Acts 1931, No. 61, §§ 1, 2; Pope's Dig., §§ 9547, 9548; A.S.A. 1947, §§ 19-216, 19-217.

A.C.R.C. Notes. Ark. Const. Amend. 80, § 19(B)(2) provided: "District Courts shall have the jurisdiction vested in Municipal Courts, Corporation Courts, Police Courts, Justice of the Peace Courts, and Courts of Common Pleas at the time this Amendment takes effect. District Courts shall assume the jurisdiction of these courts of limited jurisdiction and other

jurisdiction conferred in this Amendment on January 1, 2005. City Courts shall continue in existence after the effective date of this Amendment unless such City Court is abolished by the governing body of the city or by appropriate action of the General Assembly. Immediately upon abolition of such City Court, the jurisdiction of the City Court shall vest in the nearest District Court in the county where the city is located."

14-37-112. Incorporated town may become city of the second class.

(a)(1) Any incorporated town in this state may become a city of the second class by the adoption and publication of an ordinance, duly adopted and published as provided by law, converting the incorporated town into a city of the second class. However, after the adoption and publication of the ordinance, the qualified voters of the town shall vote in any general election or a special election called by the mayor to be held in accordance with § 7-11-201 et seq., in favor of the ordinance.

(2) If a majority of the qualified electors voting in the election vote in favor of the ordinance, a certified copy of the ordinance shall be filed with the Secretary of State. Thereupon the incorporated town shall become a city of the second class.

(b)(1) The officers of the incorporated town, upon filing with the Secretary of State the certified copy of the ordinance, shall immediately become officers of the city of the second class with full authority to proceed, do, and perform any and all things for, and on behalf of, the city of the second class as if elected as officers of the city of the second class. They shall serve as officers for the full period of time for which they were elected or until their successors are elected and qualified.

(2)(A) At the regular time for holding election of officers of incorporated towns, there shall be an election for the election of officers of the city of the second class, who shall hold office as officers of the city of the second class until the next regular time fixed by law for electing officers of a city of the second class or until their successors are elected and qualified.

(B) However, the mayor of the incorporated town which has been raised to a city of the second class may call a special election by proclamation, to be held in accordance with § 7-11-101 et seq., which shall be published by two (2) insertions in a newspaper of general circulation in the county in which the city is located. This special election shall be held for the purpose of electing officers for the city of the second class.

History. Acts 1937, No. 334, § 1; Pope's Dig., § 9484; Acts 1939, No. 211, § 1; 1947, No. 227, § 1; A.S.A. 1947, § 19-215; Acts 2005, No. 2145, § 19; 2007, No. 1049, § 37; 2009, No. 1480, §§ 53, 54.

Publisher's Notes. As to validation of acts of officers of municipalities that raised their classification from incorporated town to cities of the second class

under Acts 1937, No. 334, as amended by Acts 1939, No. 211, see Acts 1947, No. 227, § 2.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in the last sentence of (a)(1); and substituted "§ 7-11-101 et seq." for "§ 7-5-103(b)" in the first sentence of (b)(2)(B).

CASE NOTES

ANALYSIS

Constitutionality.
Applicability.
Certified Copy of Ordinance.

Constitutionality.

This section was held not unconstitutional as delegating to towns or the inhabitants thereof the authority to raise the classification of towns. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940).

Applicability.

This section applies to all incorporated towns in the state and is a general and not

a special law. *Gross v. Homard*, 201 Ark. 391, 144 S.W.2d 705 (1940).

Certified Copy of Ordinance.

When certified copy of ordinance raising classification of municipality from town to city of the second class is filed with secretary of state as required, the town immediately becomes a city of the second class and the officers thereof immediately become officers of a city of the second class. *Luther v. Gower*, 233 Ark. 496, 345 S.W.2d 608 (1961).

Cited: *Logan v. Harris*, 213 Ark. 37, 210 S.W.2d 301 (1948).

14-37-113. Effect of population changes on legislation.

Whenever any law of this state provides that the provisions of it shall apply to any city within a defined population classification, it is declared to be the intent of the General Assembly that, in the event any city to which the law was applicable at the time of the enactment of that law shall subsequently achieve a lesser or greater population than the classification prescribed by law, the law shall nevertheless thereafter be equally applicable to any such city, irrespective of the fact that the city no longer has a population within the classification prescribed by the law.

History. Acts 1967, No. 498, § 1; A.S.A. 1947, § 19-218.

14-37-114. Reduction of city of the first class to city of the second class.

(a) Whenever the last federal census shows that any city of the first class has less than five thousand (5,000) inhabitants, the city may be reduced to a city of the second class upon the adoption of a resolution by the council of the municipal corporation requesting that the grade of the municipal corporation be reduced.

(b) The Board of Municipal Corporations, upon the receipt of a certified copy of the resolution, shall make an order reducing the grade of the municipal corporation, and, upon being advised of the action of the board, the Governor shall cause a statement thereof to be prepared and transmitted to the mayor of the city stating the grade to which the municipal corporation has been reduced.

History. Acts 1991, No. 514, § 1.

SUBTITLE 8. PUBLIC FACILITIES GENERALLY

CHAPTER 141

OPERATION OF MUNICIPAL AUDITORIUMS

SECTION.

14-141-110. Expenditures.

14-141-110. Expenditures.

(a)(1) The commissioners of a municipal auditorium commission under this chapter shall have, in addition to other powers enumerated in this chapter, the exclusive right and power to make purchases of all supplies, apparatus, and other property and things requisite and necessary for the management and operation of the city auditorium.

(2) In all expenditures which may exceed three hundred dollars (\$300), it shall be the duty of the commissioners to advertise for bids and let the work or contract to the lowest responsible bidder, when and if it is feasible and possible to obtain competitive bids.

(b) The commissioners shall have no power in any case, except upon advertisement and to the lowest bidders, to make any contract with any person associated in business with or related within the sixth degree of consanguinity or affinity under the civil law to any member of the auditorium commission, or to the mayor or any member of the city council. Every contract in which such forbidden person shall have an interest, directly or indirectly, shall be null and void.

(c) In any city which has a population between twenty-five thousand five hundred (25,500) and twenty-seven thousand (27,000) according to the most recent federal decennial census, the commission shall be allowed to make purchases of one thousand dollars (\$1,000) or less without soliciting competitive bids.

History. Acts 1939, No. 355, § 6; 1979, No. 689, § 1; A.S.A. 1947, §§ 19-2606, 19-2606.1.

***SUBTITLE 10. ECONOMIC DEVELOPMENT AND
TOURISM GENERALLY***

CHAPTER 168

COMMUNITY REDEVELOPMENT GENERALLY

**SUBCHAPTER 3 — COMMUNITY REDEVELOPMENT — CREATION AND
PROCEDURES**

SECTION.

14-168-301. Definitions.

14-168-324. Exemption — Library mill-
age.

14-168-301. Definitions.

As used in this subchapter:

(1) “Applicable ad valorem rate” means the total ad valorem rate less the debt service ad valorem rate;

(2) “Base value” means the assessed value of all real property within a redevelopment district subject to ad valorem taxation, as of the most recent assessment preceding the effective date of the ordinance approving the project plan of the redevelopment district;

(3)(A) “Blighted area” means an area in which the structures, buildings, or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, or open spaces, high density of population, and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals, or welfare.

(B) “Blighted area” includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of

site or other improvements, diversity of ownership, tax on special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community;

(4) "Capital improvements of a public nature" has the same meaning as in § 14-164-303(2);

(5) "Current value" means the assessed value of all real property within a redevelopment district subject to ad valorem taxation, as of the most recent assessment after the formation of the redevelopment district;

(6) "Debt service ad valorem rate" means that portion of the total ad valorem rate that, as of the effective date of the creation of the redevelopment district, is pledged to the payment of debt service on bonds issued by any taxing unit in which all or any part of the redevelopment district is located;

(7)(A) "Incremental value" for any redevelopment district, means the difference between the base value and the current value.

(B) The incremental value will be positive if the current value exceeds the base value, and the incremental value will be negative if the current value is less than the base value;

(8) "Local governing body" means the city council, city board of directors, county quorum court, or any other legislative body governing a local government in the State of Arkansas;

(9) "Local government" means any city or county in the State of Arkansas;

(10)(A) "Project costs" means expenditures made in preparation of the project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the local government, which are listed in the project plan as costs of public works or improvements benefiting a redevelopment project district, plus any costs incidental thereto.

(B) Project costs include, but are not limited to:

(i) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures, the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment, and site clearing, grading, and preparation;

(ii) Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs,

all costs of issuance, and any redemption premiums, credit enhancement, or other related costs;

(iii) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the local government of real or personal property within a redevelopment district for consideration which is less than its cost to the local government;

(iv) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services;

(v) Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by local government employees in connection with the implementation of a project plan;

(vi) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(vii) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of redevelopment project areas and the implementation of project plans;

(viii) The amount of any contributions made in connection with the implementation of the project plan;

(ix) Payments made, in the discretion of the local governing body, which are found to be necessary or convenient to the creation of redevelopment areas or the implementation of project plans; and

(x) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities, federal or state highways, or city or county streets or the rebuilding or expansion of highways or streets, the construction, alteration, rebuilding, or expansion of which is necessitated by the project plan for a district, whether or not the construction, alteration, rebuilding, or expansion is within the area;

(11) "Project plan" means the plan which shall be adopted by a local governing body for a redevelopment project as described in § 14-168-306;

(12) "Real property" means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest, and right, legal or equitable, in them, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by the liens;

(13) "Redevelopment district" means a contiguous geographic area within a city or county in which a redevelopment project will be undertaken, as defined and created by ordinance of the local governing body;

(14)(A) "Redevelopment project" means an undertaking for eliminating or preventing the development or spread of slums or deteriorated, deteriorating, or blighted areas, for discouraging the loss of commerce, industry, or employment, or for increasing employment, or any combination thereof.

(B) A redevelopment project may include one (1) or more of the following:

(i) The acquisition of land and improvements, if any, within the redevelopment district and clearance of the land so acquired;

(ii) The development, redevelopment, revitalization, or conservation of the project area whenever necessary to provide land for needed public facilities, public housing, or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise remove or prevent the spread of blight or deterioration;

(iii) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the redevelopment project and other improvements necessary for carrying out the project plan, together with such site improvements as are necessary for the preparation of any sites and making any land or improvements acquired in the project area available by sale or by lease for public housing or for development, redevelopment, or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(iv) The construction of capital improvements within a redevelopment district designed to alleviate deteriorating conditions or a blighted area or designed to increase or enhance the development of commerce, industry, or housing within the redevelopment district; or

(v) Any other projects the local governing body deems appropriate to carry out the purposes of this subchapter;

(15) "Special fund" means a separate fund for a redevelopment district established by the local government into which all tax increment revenues and other pledged revenues are deposited and from which all project costs are paid;

(16) "Tax increment" means the incremental value of a redevelopment district multiplied by the applicable ad valorem rate;

(17) "Taxing unit" means the State of Arkansas and any city, county, or school district; and

(18)(A) "Total ad valorem rate" means the total millage rate of all state, county, city, school, or other property taxes levied on all taxable property within a redevelopment district in a year.

(B) The total ad valorem rate shall not include any:

(i) Increases in the total millage rate occurring after the effective date of the creation of the redevelopment district if the additional millage is pledged for repayment of a specific bond or note issue;

(ii) Property taxes levied for libraries under Arkansas Constitution, Amendment 30, or Arkansas Constitution, Amendment 38;

(iii) Property taxes levied for a fireman's relief and pension fund or policeman's relief and pension fund of any municipality or county; or

(iv) Property taxes levied for any hospital owned and operated by a county.

History. Acts 2001, No. 1197, § 2; 2005, No. 1163, § 1; 2005, No. 2231, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, Nos. 1163 and 2231. Present subsection (18) of this section was also amended by Acts 2005, No. 1275, § 1, to read as follows:

“Total ad valorem rate’ means the total millage rate of all county, city, school, or other local general property taxes levied on all taxable property within a redevelopment district in a year, other than property taxes levied for libraries under Arkansas Constitution, Amendment 30, or Arkansas Constitution, Amendment 38.”

Cross References. City and county government redevelopment, Ark. Const. Amend. 78.

Amendments. The 2005 amendment by No. 1163 deleted “or community college district” in former (16) and made a related change.

The 2005 amendment by No. 2231 substituted “subchapter” for “act subchapter,

unless the context otherwise requires” in the introductory language; in (2), inserted “real” preceding “property” and substituted “effective date of the ordinance approving the project plan” for “formation”; added present (4) and redesignated the remaining subsections accordingly; substituted “as of the effective date of the creation of the redevelopment district, if” for “has been, at January 1, 2001” in present (6); substituted “benefiting” for “within” in present (10)(A); in (10)(B)(x), inserted “federal or state highways, city or county” and made a related change and inserted “highways or” following “expansion of”; inserted “the State of Arkansas and” in present (17); in present (18) added the subdivision (A) designation and added (B); and in present (18)(A) inserted “state” preceding “county”, deleted “local general” preceding “property taxes” and deleted “other than property taxes for libraries under Arkansas Constitution, Amendment 30, or Arkansas Constitution, Amendment 38.”

CASE NOTES

Total Ad Valorem Rate.

County tax collector erred in including 2.75 mills in the total ad valorem rate and applying a portion of them to the redevelopment district because the mills were passed to repay proposed school bonds;

under subdivision (18)(B)(i) of this section, the “total ad valorem rate” excluded increases that were pledged for repayment of a specific bond issue. *City of Fayetteville v. Fayetteville Sch. Dist. No. 1*, 2013 Ark. 71, 427 S.W.3d 1 (2013).

14-168-324. Exemption — Library millage.

Property taxes levied for libraries under Arkansas Constitution, Amendment 30, or Arkansas Constitution, Amendment 38, are exempt from this subchapter and shall not be diverted from the use for which they were levied.

History. Acts 2005, No. 1275, § 2.

TITLE 20
PUBLIC HEALTH AND WELFARE

SUBTITLE 2. HEALTH AND SAFETY

CHAPTER 14
INDIVIDUALS WITH DISABILITIES

SUBCHAPTER 3 — RIGHTS GENERALLY

SECTION.

20-14-301. Policy.
20-14-302. Penalty.
20-14-303. Rights generally.
20-14-304. Right to be accompanied by service animal — Penalty and restitution for killing or injuring a service animal or search and rescue dog.

SECTION.

20-14-305. Access to housing accommodations.
20-14-306. Reasonable precautions by drivers.
20-14-307. Signs for individuals with disabilities.
20-14-308. Guide dog and service dog access.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-14-301 through 20-14-306 may not apply to §§ 20-14-307 and

20-14-308 which were enacted subsequently.

RESEARCH REFERENCES

Ark. L. Rev. Flaccus, Handicap Discrimination Legislation, etc., 40 Ark. L. Rev. 261.

20-14-301. Policy.

(a) It is the policy of this state to accord individuals with visual, hearing, or other physical disabilities all rights and privileges of other persons with respect to the use of public streets, highways, sidewalks, public buildings, public facilities, public carriers, public housing accommodations, public amusement and resort areas, and other public areas to which the public is invited, subject only to the limitations and conditions established by law and applicable to all persons and subject

to the special limitations and conditions prescribed in this subchapter for individuals with visual, hearing, or other physical disabilities.

(b) It is further the policy of this state that individuals with visual, hearing, or other physical disabilities shall be employed in state service, in the service of political subdivisions of this state, in the public schools, and in all other employment supported in whole or in part by public funds, on the same terms and conditions as individuals with visual, hearing, or other physical disabilities, unless it is shown that the visual, hearing, or other physical disability of a person prevents the performance of the work involved.

History. Acts 1973, No. 484, § 1; 1979, No. 574, § 1; A.S.A. 1947, § 82-2901.

20-14-302. Penalty.

Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with the admittance to or enjoyment of public facilities and housing accommodations by an individual with visual, hearing, or other physical disabilities or otherwise interferes with the rights of an individual with visual, hearing, or other physical disabilities shall be guilty of a misdemeanor.

History. Acts 1973, No. 484, § 6; 1979, No. 574, § 1; A.S.A. 1947, § 82-2906.

20-14-303. Rights generally.

(a) Individuals with visual, hearing, or other physical disabilities shall have the same rights and privileges as other persons to the full use and enjoyment of:

- (1) The public streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;
- (2) All common carriers and other public conveyances or modes of transportation, whether by air, land, or water;
- (3) All hotels, motels, lodging places, and housing accommodations;
- (4) Other places of public accommodation, amusement, or resort; and
- (5) All other places to which the general public is invited.

(b) The rights and privileges are subject only to the limitations and conditions established by law and applicable to all persons and subject to the special limitations and conditions prescribed in this subchapter with respect to individuals with visual, hearing, or other physical disabilities.

History. Acts 1973, No. 484, § 2; 1979, No. 574, § 1; A.S.A. 1947, § 82-2902.

20-14-304. Right to be accompanied by service animal — Penalty and restitution for killing or injuring a service animal or search and rescue dog.

(a) Every individual with visual, hearing, or other physical disabilities shall have the right to be accompanied by a service animal especially trained to do work or to perform tasks for the benefit of an individual with a disability in or upon any and all public ways, public places, and other public accommodations and housing accommodations prescribed in § 20-14-303 and shall not be required to pay any extra fee or charge for the service animal.

(b) However, any individual with visual, hearing, or other physical disabilities accompanied by a service animal in any public way, public place, public accommodation, or housing accommodation shall be liable for any damage caused to the premises or facilities by the animal.

(c) As used in this section, “search and rescue dog” means any dog:

(1) In training for or trained for the purpose of search and rescue;
 (2) Owned by an independent handler or a member of a search and rescue team; and

(3) Used in conjunction with local law enforcement or emergency services organizations for the purpose of locating missing persons or evidence of arson.

(d) Any person who without just cause purposely kills or injures any service animal described in this section or any search and rescue dog is guilty of a Class D felony.

(e) Any person who kills or injures any service animal described in this section or any search and rescue dog shall make restitution to the owner of the animal.

History. Acts 1973, No. 484, § 3; 1979, No. 574, § 1; A.S.A. 1947, § 82-2903; Acts 1995, No. 266, § 1; 1999, No. 571, § 2.

RESEARCH REFERENCES

ALR. What Constitutes “Service Animal” and Accommodation Thereof, Under Americans with Disabilities Act (ADA). 75 A.L.R. Fed. 2d 49.

20-14-305. Access to housing accommodations.

(a) Individuals with visual, hearing, or other physical disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rental, lease, or compensation in this state subject only to the conditions and limitations established by law and applicable alike to other persons.

(b) The provisions of this section with respect to the rights of individuals with visual, hearing, or other physical disabilities to equal access to housing accommodations shall not be deemed to include any accommodations in a facility which is designed and used primarily as a

single family residence and a portion of which is rented, leased, or furnished for compensation.

(c) Nothing in this section shall be deemed to require any person renting, leasing, or otherwise providing housing accommodations for compensation to modify his or her accommodations in any way or to provide a higher degree of care for an individual with visual, hearing, or other physical disabilities than for an individual without visual, hearing, or other physical disabilities.

History. Acts 1973, No. 484, § 5; 1979, No. 574, § 1; A.S.A. 1947, § 82-2905.

20-14-306. Reasonable precautions by drivers.

The driver of a vehicle approaching a visually handicapped or hearing impaired person who is carrying a cane which is predominately white or metallic in color with or without a red tip or using a guide or hearing ear dog or the driver of a vehicle approaching an otherwise handicapped person shall take all reasonable precautions to avoid injury to the pedestrian with visual, hearing, or other physical disabilities.

History. Acts 1973, No. 484, § 4; 1979, No. 574, § 1; A.S.A. 1947, § 82-2904.

20-14-307. Signs for individuals with disabilities.

(a) State agencies which require any persons, agencies, boards, commissions, businesses, or other entities to display signs for individuals with disabilities shall require those persons, agencies, boards, commissions, businesses, or other entities to display only the blue and white international symbol of access.

(b) This section shall have no retroactive effect, applying only to signs installed subsequent to this section's taking effect.

(c) This section shall apply only if installation of a required sign can be achieved without creating a negative financial impact on any persons, agencies, boards, commissions, businesses, or other entities required to display signs for individuals with disabilities.

History. Acts 2001, No. 992, § 1. 14-306 may not apply to this section which
A.C.R.C. Notes. References to "this subchapter" in §§ 20-14-301 through 20- was enacted subsequently.

20-14-308. Guide dog and service dog access.

(a) An individual with visual, hearing, or other physical disabilities and his or her guide, signal, or service dog or a dog trainer in the act of training a guide, signal, or service dog shall not be denied admittance to or refused access to the following because of the dog:

- (1) Any street or highway;
- (2) Any sidewalk or walkway;

(3) Any common carrier, airplane, motor vehicle, railroad train, bus, streetcar, boat, or any other public conveyance or mode of transportation;

(4) Any hotel, motel, or other place of lodging;

(5) Any public building maintained by any unit or subdivision of government;

(6) Any building to which the general public is invited;

(7) Any educational facility or college dormitory;

(8) Any restaurant or other place where food is offered for sale to the public; or

(9) Any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited within the State of Arkansas.

(b) The individual with visual, hearing, or other physical disabilities, or dog trainer in the act of training a guide, signal, or service dog shall not be required to pay any additional charges for his or her guide, signal, or service dog but shall be liable for any damage done to the premises by the dog.

History. Acts 2003, No. 1107, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 20-14-301 through 20-

14-306 may not apply to this section, which was enacted subsequently.

RESEARCH REFERENCES

ALR. What Constitutes “Service Animal” and Accommodation Thereof, Under Americans with Disabilities Act (ADA). 75 A.L.R. Fed. 2d 49.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Public Health and Welfare, Guide Dogs, 26 U. Ark. Little Rock L. Rev. 464.

TITLE 25
STATE GOVERNMENT

CHAPTER 19
FREEDOM OF INFORMATION ACT OF 1967

SECTION.

25-19-103. Definitions.
25-19-105. Examination and copying of public records.
25-19-106. Open public meetings.
25-19-108. Information for public guidance.

SECTION.

25-19-109. Special requests for electronic information.
25-19-110. Exemptions.

25-19-103. Definitions.

As used in this chapter:

(1)(A) “Custodian”, except as otherwise provided by law and with respect to any public record, means the person having administrative control of that record.

(B) “Custodian” does not mean a person who holds public records solely for the purposes of storage, safekeeping, or data processing for others;

(2) “Disaster recovery system” means an electronic data storage system implemented and maintained solely for the purpose of allowing a governmental unit or agency to recover operational systems and datasets following the occurrence of a catastrophe, including without limitation an act of war, an equipment failure, a cyber-attack, or a natural disaster such as a tornado, earthquake, or fire;

(3) “Format” means the organization, arrangement, and form of electronic information for use, viewing, or storage;

(4) “Medium” means the physical form or material on which records and information may be stored or represented and may include, but is not limited to, paper, microfilm, microform, computer disks and diskettes, optical disks, and magnetic tapes;

(5)(A) “Municipally owned utility system” means a utility system owned or operated by a municipality that provides:

- (i) Electricity;
- (ii) Water;
- (iii) Wastewater;
- (iv) Cable television; or
- (v) Broadband service.

(B) “Municipally owned utility system” includes without limitation a:

(i) Consolidated waterworks system under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

(ii) Utility system managed or operated by a nonprofit corporation under § 14-199-701 et seq.; and

(iii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated Public Utility System Improvement District Law, § 14-217-101 et seq.;

(6) “Public meetings” means the meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds;

(7)(A) “Public records” means writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, or any other agency or improvement district that is wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

(B) “Public records” does not mean software acquired by purchase, lease, or license;

(8) “Public water system” means all facilities composing a system for the collection, treatment, and delivery of drinking water to the general public, including without limitation reservoirs, pipelines, reclamation facilities, processing facilities, distribution facilities, and regional water distribution districts under The Regional Water Distribution District Act, § 14-116-101 et seq.; and

(9) “Vulnerability assessment” means an assessment of the vulnerability of a public water system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the public water system to provide a safe and reliable supply of drinking water as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188.

History. Acts 1967, No. 93, § 3; 1977, No. 652, § 1; 1981, No. 608, § 1; 1985, No. 468, § 1; A.S.A. 1947, § 12-2803; Acts 2001, No. 1653, § 1; 2003, No. 763, § 1; 2005, No. 259, § 1; 2007, No. 268, § 1; 2007, No. 998, § 1; 2009, No. 631, § 1; 2011, No. 99, § 1; 2011, No. 210, § 2; 2013, No. 235, § 1; 2015, No. 186, § 2; 2015, No. 881, § 1; 2015, No. 999, § 4.

Amendments. The 2009 amendment

substituted “July 1, 2011” for “July 1, 2009” in (6)(B) and made a minor stylistic change.

The 2011 amendment by No. 99 substituted “July 1, 2013” for “July 1, 2011” in (6)(B).

The 2011 amendment by No. 210 inserted “or improvement district that is” in (5)(A).

The 2013 amendment redesignated for-

mer (6)(A) as (6), and deleted (6)(B).

The 2015 amendment by No. 186 inserted the definition for “Municipally owned utility system” and redesignated the remaining subdivisions accordingly; and in (7) [now (8)], substituted “without limitation” for “but not limited to” and added “and regional water distribution districts under The Regional Water Distribution District Act, § 14-116-101 et seq.”

The 2015 amendment by No. 881 added the definition for “Disaster recovery system.”

The 2015 amendment by No. 999 inserted “except as otherwise provided by law and” in (1)(A).

Cross References. Access to criminal history information, § 12-12-1508.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Meetings Requirement, 57 Ark. L. Rev. Freedom of Information Act — Public 1015.

CASE NOTES

ANALYSIS

Public Funds.
Public Meetings.
Public Records.

Public Funds.

A private, nonprofit association of colleges and secondary schools which was composed of public servants and accepted public moneys was subject to this chapter. *North Cent. Ass'n of Colleges & Sch. v. Troutt Bros.*, 261 Ark. 378, 548 S.W.2d 825 (1977).

A ground lease between a city and the American Red Cross, wherein the city charged the Red Cross a one-dollar-per-year lease payment, did not qualify as support by public funds within the meaning of subdivision (1). *Sebastian County Chapter of Am. Red Cross v. Weatherford*, 311 Ark. 656, 846 S.W.2d 641 (1993).

The plain language of subdivision (1) confirms that the General Assembly intended that direct public funding be required; had the General Assembly intended to extend this act to private organizations that receive any form of government assistance or subsidy, no matter how indirect, it would not have used the words “supported ... by public funds” to describe the nature of support necessary to trigger this act. *Sebastian County Chapter of Am. Red Cross v. Weatherford*, 311 Ark. 656, 846 S.W.2d 641 (1993).

Refusal to read indirect government benefits or subsidies into the term “public funds” is not at odds with a liberal construction of this act. *Sebastian County*

Chapter of Am. Red Cross v. Weatherford, 311 Ark. 656, 846 S.W.2d 641 (1993).

The term “public funds” should be given its plain and ordinary meaning which is best evidenced by Black’s Law Dictionary and the definition “moneys belonging to government.” *Sebastian County Chapter of Am. Red Cross v. Weatherford*, 311 Ark. 656, 846 S.W.2d 641 (1993).

Public Meetings.

Where committee of a state board meets to transact business, such meeting is a public meeting subject to the provisions of this chapter and a newspaper reporter must be permitted to attend. *Ark. Gazette Co. v. Pickens*, 258 Ark. 69, 522 S.W.2d 350 (1975).

This section does not encompass staff meetings of the Department of Human Services held to develop a bid solicitation. *National Park Medical Ctr. v. Arkansas Dep’t of Human Servs.*, 322 Ark. 595, 911 S.W.2d 250 (1995).

Where city board members held one-on-one meetings discussing the potential purchase of property, the meetings violated § 25-19-106(a) of the Arkansas Freedom of Information Act, § 25-19-101 et seq., because the members had made up their minds before the public meeting and, thus, the meetings constituted board meetings under subdivision (4) of this section. *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004).

Public Records.

Records of intercollegiate conference on the amount of money that its member

institutions disbursed to its student athletes were not “educational” records under the Family Education Rights and Privacy Act of 1974, and were not closed to the public because they were not individual education or academic records; moreover, the conference was not entitled to exemption from disclosure since it was partially supported by public funds, and the dues paid by some member institutions were from state funds so that the conference records came within the terms of this section. *Arkansas Gazette Co. v. Southern State College*, 273 Ark. 248, 620 S.W.2d 258 (1981), dismissed, 455 U.S. 931, 102 S. Ct. 1416 (1982).

Recorded votes of individual members of committee constituted a record of the performance or lack of performance of official functions carried out by the committee, and where there was testimony that it was the general practice of the committee to retain mailout ballots used in voting on matters coming before the committee then, the vote slips at issue constituted public records which should have been retained. *Depoyster v. Cole*, 298 Ark. 203, 766 S.W.2d 606 (1989), overruled in part, *Harris v. City of Fort Smith*, 366 Ark. 277, 234 S.W.3d 875 (2006).

Police crime scene photographs and pathologist photographs are “otherwise kept” for evidence in criminal cases as an “official function” of a police department, and are thus public records subject to the Freedom of Information Act. *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

Police investigation file with respect to the charges against defendant constituted “public records” as defined in subdivision (1). *Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990).

Legal memoranda prepared by outside counsel for the City for litigation purposes are public records within the meaning of this chapter and are open to inspection. *City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990).

Inmate records appellee requested were “public records” since they were required to be kept by law. *Furman v. Holloway*, 312 Ark. 378, 849 S.W.2d 520 (1993).

By requiring audits to be performed by a private auditing firm and not the state auditor, the state, in § 15-5-210, has elected to employ a private firm to perform a task normally carried out by state

employees or officials; thus, the audit working papers of the Legislative Joint Auditing Committee are considered public records subject to this chapter. *Swaney v. Tilford*, 320 Ark. 652, 898 S.W.2d 462 (1995).

Definition of “public record” in subdivision (5)(A) of this section does not require that the custodian be the person who actually keeps the document, nor does it say that the custodian must be required to keep the document. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Locus of a record is important only to determine whether the record falls under the presumption in § 25-19-103(5)(A) of the Arkansas Freedom of Information Act, and the definition of “public record” is not dependent upon who keeps the record or where it is kept, just that it either is required to be kept or is otherwise kept. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Where the records in question are established as “public records” pursuant to subdivision (1) of the this section and not otherwise exempted from disclosure, the appropriate governmental agency shall have the responsibility to provide reasonable access for examination and copying of such public records which are in existence at the time of the request, as provided in § 25-19-105. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Circuit judge’s law clerk’s personal check was a public record under this section, and the circuit judge was its custodian and had to disclose the check to an attorney and his counsel pursuant to § 25-19-105 where the circuit judge instructed his clerk to obtain copies of certain documents from a federal court for use in contempt proceedings against the attorney, and where the attorney and his counsel sought disclosure of the check under FOIA. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Seed sample did not meet the definition of a “public record” because it could not be said to be an object on which records and information may be stored or represented; the list of items that could be mediums did not contain a seed or any other object, and removal and destructive testing of seed samples went far beyond the inspection and copying of public records. *Nolan v. Little*, 359 Ark. 161, 196 S.W.3d 1 (2004).

Legal opinions rendered in tax cases under Gross Receipts Tax Rule G-75 are subject to disclosure to a company because they are “otherwise kept” public records under subdivision (5)(A) of this section; however, any and all identifying facts and information have to be fully redacted under § 25-19-105(f)(1)–(3). Moreover, the legal opinions are not confidential because § 26-18-303(a)(1) does not cover Gross Receipts Tax Rule G-75; state law does not require that the opinions be kept by or filed with the Director of the Arkansas

Department of Finance and Administration. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

Cited: *Legislative Joint Auditing Comm. v. Woosley*, 291 Ark. 89, 722 S.W.2d 581 (1987); *Ark. Hwy. & Transp. Dep’t v. Hope Brick Works, Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988); *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992); *Stilley v. McBride*, 332 Ark. 306, 965 S.W.2d 125 (1998); *Arkansas Dep’t of Fin. v. Pharmacy Assocs., Inc.*, 333 Ark. 451, 970 S.W.2d 217 (1998).

25-19-105. Examination and copying of public records.

(a)(1)(A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

(B) However, access to inspect and copy public records shall be denied to:

(i) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(ii) The representative of a person under subdivision (a)(1)(B)(i) of this section unless the representative is the person’s attorney who is requesting information that is subject to disclosure under this section.

(2)(A) A citizen may make a request to the custodian to inspect, copy, or receive copies of public records.

(B) The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

(C) The request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.

(3) If the person to whom the request is directed is not the custodian of the records, the person shall so notify the requester and identify the custodian, if known to or readily ascertainable by the person.

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax records;

(2) Medical records, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of that act;

(3) The site files and records maintained by the Arkansas Historic Preservation Program of the Department of Arkansas Heritage and the Arkansas Archeological Survey;

- (4) Grand jury minutes;
- (5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;
- (6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;
- (7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General;
- (8) Documents that are protected from disclosure by order or rule of court;
- (9)(A) Files that if disclosed would give advantage to competitors or bidders; and
 - (B)(i) Records maintained by the Arkansas Economic Development Commission related to any business entity's planning, site location, expansion, operations, or product development and marketing, unless approval for release of those records is granted by the business entity.
 - (ii) However, this exemption shall not be applicable to any records of expenditures or grants made or administered by the commission and otherwise disclosable under the provisions of this chapter;
- (10)(A) The identities of law enforcement officers currently working undercover with their agencies and identified in the Arkansas Minimum Standards Office as undercover officers.
 - (B) Records of the number of undercover officers and agency lists are not exempt from this chapter;
- (11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein;
- (12) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (13) Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees, nonelected municipal employees, nonelected school employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;
- (14) Materials, information, examinations, and answers to examinations utilized by boards and commissions for purposes of testing applicants for licensure by state boards or commissions;
- (15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date;

(16) Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the United States Environmental Protection Agency for a period of ten (10) years from the date of submission;

(17)(A) Records, including analyses, investigations, studies, reports, or recommendations, containing information relating to any Department of Human Services risk or security assessment, known or suspected security vulnerability, or safeguard related to compliance with the Health Insurance Portability and Accountability Act of 1996 or protection of other confidential department information.

(B) The records shall include:

(i) Risk and security assessments;

(ii) Plans and proposals for preventing and mitigating privacy and security risks;

(iii) Emergency response and recovery records;

(iv) Privacy and security plans and procedures; and

(v) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect personal health information or other protected department information.

(C) This subdivision (b)(17) expires on July 1, 2009;

(18)(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information relating to security for any public water system or municipally owned utility system.

(B) The records under subdivision (b)(18)(A) include:

(i) Risk and vulnerability assessments;

(ii) Plans and proposals for preventing and mitigating security risks;

(iii) Emergency response and recovery records;

(iv) Security plans and procedures;

(v) Plans and related information for generation, transmission, and distribution systems; and

(vi) Other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system or municipally owned utility system;

(19) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under § 5-73-301 et seq., including without limitation all records provided to or obtained by a local, state, or federal government or their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee, and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:

(A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency to assist in a criminal investigation or prosecution or to determine the validity of or eligibility for a license; and

(B) The name of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records;

(20) Personal information of current and former public water system customers and municipally owned utility system customers, including without limitation:

- (A) Home and mobile telephone numbers;
- (B) Personal email addresses;
- (C) Home and business addressees; and
- (D) Customer usage data;

(21) Electronic data information maintained by a disaster recovery system;

(22) The date of birth, home address, email address, phone number, and other contact information from county or municipal parks and recreation department records of a person who was under eighteen (18) years of age at the time of the request made under this section; and

(23)(A) Information related to taxes collected by particular entities under § 26-74-501 et seq.; the Advertising and Promotion Commission Act, § 26-75-601 et seq.; and § 26-75-701 et seq.

(B) However, this exemption does not apply to information or other records regarding the total taxes collected under § 26-74-501 et seq.; the Advertising and Promotion Commission Act, § 26-75-601 et seq.; and § 26-75-701 et seq. in the county or municipality as a whole.

(c)(1) Notwithstanding subdivision (b)(12) of this section, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B)(i) If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period, the custodian shall send written notice via overnight mail to the subject of the records at his or her last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

(ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d)(1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(2)(A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.

(B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

(C) A custodian is not required to compile information or create a record in response to a request made under this section.

(3)(A)(i) Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

(ii) The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

(iii) If the estimated fee exceeds twenty-five dollars (\$25.00), the custodian may require the requester to pay that fee in advance.

(iv) Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

(B) The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.

(e) If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days at which time the record will be available for the exercise of the right given by this chapter.

(f)(1) No request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.

(2) Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.

(3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.

(4) If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, or obtain copies of public records, the custodian shall bear the cost of the separation.

(g) Any computer hardware or software acquired by an entity subject to § 25-19-103(6)(A) after July 1, 2001, shall be in full compliance with the requirements of this section and shall not impede public access to records in electronic form.

(h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, any settlement agreement entered into by a state agency shall be deemed a public document for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1967, No. 93, § 4; 1977, No. 652, § 2; A.S.A. 1947, § 12-2804; Acts 1987, No. 49, § 1; 1989 (3rd Ex. Sess.), No. 8, § 1; 1993, No. 895, § 1; 1997, No. 540, § 52; 1997, No. 873, § 1; 1997, No. 1335, § 1; 1999, No. 1093, § 1; 2001, No. 1259, § 1; 2001, No. 1336, § 1; 2001, No. 1653, § 2; 2003, No. 213, § 1; 2003, No. 275, § 2; 2003, No. 763, § 2; 2003, No. 1214, § 1; 2005, No. 259, § 2; 2005, No. 2003, § 1; 2007, No. 268, § 2; 2007, No. 726, §§ 1, 2; 2007, No. 998, § 2; 2009, No. 631, § 2; 2009, No. 1291, § 1; 2011, No. 99, § 2; 2011, No. 168, § 1; 2013, No. 145, § 1; 2013, No. 235, § 2; 2013, No. 411, § 1; 2015, No. 186, § 3; 2015, No. 881, § 2; 2015, No. 1015, § 1; 2015, No. 1102, § 1.

A.C.R.C. Notes. Acts 2015, No. 1137, § 1, provided:

“6-60-108. Audit records.

“(a)(1) After an audit report is presented to the governing board of the institution of higher education, the audit report and copies of any documents contained in the working papers related to the audit report are open to public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq., except:

“(A) Documents specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.; and

“(B) Documents that disclose auditing procedures and techniques, including the following:

“(i) Internal control questionnaires consisting of the checklist of accounting

and administrative procedures employed by auditors in the course of performing an audit; and

“(ii) The instructions and guidelines provided by or to the auditors about the examination procedures to be followed in the course of examining records and accounts to verify their accuracy, including verifications that the examination procedures have been followed.

“(2) The documents described in subdivision (a)(1)(B) of this section are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

“(b)(1) Until an audit report has been presented to the governing board of the institution of higher education, all working papers, including without limitation communications, notes, memoranda, preliminary drafts of audit reports, and other data gathered in the preparation of audit reports by auditors employed by or on behalf of a governing board of an institution of higher education, are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

“(2) The exemption provided under this section applies to all working papers in the custody or possession of any person before presentation of the audit report to the governing board of the institution of higher education regardless of the actual physical location of the report.

“(c) As used in this section, ‘audit’ means a financial audit, performance audit, technology audit, review, report of agreed-upon procedures, compilation, examination, investigation, or other report

or procedure approved by the governing board of an institution of higher education.”

Amendments. The 2009 amendment by No. 631 substituted “July 1, 2011” for “July 1, 2009” in (b)(18)(C) and made a minor stylistic change.

The 2009 amendment by No. 1291 added (b)(19) and made related changes.

The 2011 amendment by No. 99 substituted “July 1, 2013” for “July 1, 2011” in (b)(18)(C).

The 2011 amendment by No. 168 redesignated former (a)(1)(B)(i)(a) and (b) as (a)(1)(B)(i) and (ii), and deleted former (a)(1)(B)(ii); deleted “of the Department of Correction and the Department of Community Correction” following “public records” in present (a)(1)(B); and substituted “(a)(1)(B)(i)” for “(a)(1)(B)(i)(a)” in present (a)(1)(B)(ii).

The 2013 amendment by No. 145 substituted “government or” for “governments” in the introductory language of (b)(19); in (b)(19)(A), substituted “to assist” for “for the purpose of assisting” and “to determine the” for “for determining”; substituted “The name” for “Names” in (b)(19)(B); and deleted (b)(19)(C).

The 2013 amendment by No. 235 substituted “under (b)(18)(A)” for “shall” in (b)(18)(B); and deleted former (b)(18)(C).

The 2013 amendment by No. 411, in (b)(13), added “Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and” at the beginning and inserted “nonelected school employees” following “nonelected municipal employees.”

The 2015 amendment by No. 186 added “or municipally owned utility system” to the end of (b)(18)(A); redesignated former (b)(18)(B)(v) as (b)(18)(B)(vi); inserted present (b)(18)(B)(v); added “or municipally owned utility system” to the end of (b)(18)(B)(vi); and added (b)(20).

The 2015 amendment by No. 881 added (b)(21).

The 2015 amendment by No. 1015 added (b)(22).

The 2015 amendment by No. 1102 added (b)(23).

Cross References. Student competency tests excluded, § 6-15-415.

Confidentiality of military discharge records, § 14-2-102(c)-(e).

Disposition of criminal data to the central repository, § 12-12-1505.

Dissemination of criminal history information, requirements and exceptions, § 12-12-1504.

RESEARCH REFERENCES

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U. Ark. Little Rock L.J. Survey — Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

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CASE NOTES

ANALYSIS

Constitutionality.
In General.
Construction.
Applicability.
Attorney-Client Privilege.
Attorney General.

Competitor.
Driver’s Privacy Protection Act.
Exempted Records.
Investigation Files.
Medical Records.
Ongoing Investigations.
Parties Entitled.
Personnel Records.

Ratepayer's Address.
 Records Subject to Inspection.
 Redaction.
 Regular Business Hours.

Constitutionality.

There is a rational basis for exempting the working papers of the governor, the legislators, and the supreme court justices from public disclosure. Such protection promotes and encourages free exchange of thought in each of the three branches of government. *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

The attorney-client privilege has no application outside of court proceedings and, therefore, cannot create an exception to the Freedom of Information Act. *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

Subdivision (a)(1)(B) of this section, which permits an incarcerated felon to request information of public record only through an attorney, did not violate the inmate's due process right to access the courts because the inmate suffered no actual injury from the statute, as he had rights available to him through habeas petition. *Holt v. Howard*, 806 F.3d 1129 (8th Cir. 2015).

Subdivision (a)(1)(B) of this section, which permits an incarcerated felon to request information of public record only through an attorney, does not violate the Fourteenth Amendment's Equal Protection Clause because the statute is rationally related to preventing the use of records to harass or threaten victims or witnesses and to conserving government resources. *Holt v. Howard*, 806 F.3d 1129 (8th Cir. 2015).

In General.

Generally, all public records are available for inspection under the Freedom of Information Act; exceptions are spelled out in this section. *City of Fayetteville v. Rose*, 294 Ark. 468, 743 S.W.2d 817 (1988) Criticized by *Arkansas Gazette Co. v. Goodwin*, 304 Ark. 204, 801 S.W.2d 284 (Ark. 1990).

This chapter does not require a court to provide, free of charge, a copy of material on file with the court; a petitioner is not entitled to photocopying at public expense unless he demonstrates some compelling need for specific documentary evidence to

support an allegation contained in a petition for post-conviction relief. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996).

Construction.

The Freedom of Information Act should be broadly construed in favor of disclosure, and exceptions construed narrowly in order to counterbalance the self-protective instincts of the governmental bureaucracy. *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989); *Bryant v. Mars*, 309 Ark. 480, 830 S.W.2d 869 (1992).

Acts 1989 (3rd Ex. Sess.), No. 8 was not merely remedial or procedural in nature, but created new exemptions from public disclosure which did not exist before. Statutes which are remedial or procedural generally supply new, different, or more appropriate remedies which relate to existing rights, and do not create new rights or extinguish old ones. *Gannett River States Publishing Co. v. Arkansas Indus. Dev. Comm'n*, 303 Ark. 684, 799 S.W.2d 543 (1990).

Any exemption from disclosure is to be narrowly construed, and when the scope of an exemption is unclear or ambiguous, the court will interpret it in a manner that favors disclosure. *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).

Exemptions to the Freedom of Information Act are to be narrowly construed. *Trout Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).

The court's policy regarding this chapter has been enunciated clearly in our case law — it will interpret it liberally to accomplish the purpose of promoting free access to public information. *Johninson v. Stodola*, 316 Ark. 423, 872 S.W.2d 374 (1994).

After reviewing §§ 25-19-102, 25-19-106, and this section, the court found nothing in the Freedom of Information Act that specifies that the communications media by which the public's business is conducted are limited to publicly owned communications; thus, the court rejected a state employee's claim that the employee was asked to violate the law by communicating with the governor via a private email address and, thus, the employee's subsequent resignation was voluntary without good cause and the em-

ployee was not entitled to benefits under § 11-10-513(a)(1). *Bradford v. Dir., Empl. Sec. Dep't.*, 83 Ark. App. 332, 128 S.W.3d 20 (2003).

Trial court erred by finding that the driver received a timely and compliant response from appellees because the response, refusing to comply with the request on the ground that it was too broad and too burdensome, was in direct conflict with the Freedom of Information Act (FOIA) and with the court's case law interpreting the FOIA. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, 411 S.W.3d 196 (2012).

Applicability.

Acts 1989 (3rd Ex. Sess.), No. 8 contains neither express language nor clear implication mandating retroactive effect, and operates prospectively only. *Gannett River States Publishing Co. v. Arkansas Indus. Dev. Comm'n*, 303 Ark. 684, 799 S.W.2d 543 (1990).

In order to invoke a narrowly construed exemption under this chapter, the circuit court must peruse the pertinent data in question in order to make an informed decision. *Johninson v. Stodola*, 316 Ark. 423, 872 S.W.2d 374 (1994).

The circuit court must review the relevant files in camera in order to make its decision that the exemption of subdivision (b)(6) of this section applies across the board to those files. *Johninson v. Stodola*, 316 Ark. 423, 872 S.W.2d 374 (1994).

Where the records in question are established as "public records" pursuant to § 25-19-103(1) of the Arkansas Freedom of Information Act and not otherwise exempted from disclosure, the appropriate governmental agency shall have the responsibility to provide reasonable access for examination and copying of such public records which are in existence at the time of the request, as provided in this section. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Circuit judge's law clerk's personal check was a public record under the Arkansas Freedom of Information Act (FOIA), § 25-19-101 et seq., and the circuit judge was its custodian under § 25-19-103(1) and had to disclose the check to an attorney and his counsel pursuant to this section where the circuit judge instructed his clerk to obtain copies of certain documents from a federal court for

use in contempt proceedings against the attorney, and where the attorney and his counsel sought disclosure of the check under FOIA. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Seed sample did not meet the definition of a "public record" under § 25-19-103 because it could not be said to be an object on which records and information may be stored or represented; the list of items that could be mediums did not contain a seed or any other object, and removal and destructive testing of seed samples went far beyond the inspection and copying of public records. *Nolan v. Little*, 359 Ark. 161, 196 S.W.3d 1 (2004).

Because not all of the emails that were requested by a newspaper were "public records" pursuant to subdivision (a)(1)(A) of this section, but there was not enough evidence to discern which of them were "public records", an in camera review was needed to make that determination. The definition of "public records" under the Freedom of Information Act, § 25-19-101 et seq., was content-driven, and the only way to determine the content was to examine the emails because an analysis of messages based solely on the context in which they were created, without an examination of the content of the messages, was insufficient to determine whether the messages were "public records". *Pulaski County v. Ark. Democrat-Gazette, Inc.*, 370 Ark. 435, 260 S.W.3d 718 (2007).

Trial court erred by finding that appellees' requirement that the driver pay a deposit of \$2,475 to obtain the requested records did not violate the Freedom of Information Act because § 25-19-109 did not apply, as the driver stated that she requested only copies of the recordings and did not ask for any type of special conversion or any type of compilation. The applicable provision to the driver's request was subsection (d) of this section, as she simply requested a copy of the files, and therefore appellees could not charge fees that exceeded the cost of reproduction and could not include the hourly rate of a captain in assessing costs to the driver. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, 411 S.W.3d 196 (2012).

When a teacher made a Freedom of Information Act (FOIA) request to a school district (district) after the teacher was terminated, and the denial of that request was reviewed in the same case in

which the termination was contested, a trial court had no jurisdiction to grant the district's renewed motion for a protective order because (1) the order was sought under Ark. R. Civ. P. 26(c), which was independent of the FOIA, and (2) the renewed motion initiated no FOIA case, as the district was the records custodian and only a citizen could seek review of the denial of an FOIA request, and the motion was litigated while the termination case was on appeal. *Hollis v. Fayetteville Sch. Dist. No. 1*, 2016 Ark. App. 132, 485 S.W.3d 280 (2016).

Attorney-Client Privilege.

There is no attorney-client privilege or attorney work product exemption under this chapter. *City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990).

Litigation files prepared by an attorney hired by private medical malpractice liability insurance carriers to represent three doctors who worked for the state university were not subject to disclosure under the Freedom of Information Act, §§ 25-19-101 to 25-19-110, because the documents were not public records for purposes of subdivision (a)(1)(A) of this section. As the doctors were sued in their personal capacity, simply changing the records request to name the doctors in their official capacity did not convert the documents from private to public; the documents were also attorney work-product and subject to the attorney-client privilege. *Harrill & Sutter, PLLC v. Farrar*, 2012 Ark. 180, 402 S.W.3d 511 (2012).

Attorney General.

The term "Attorney General" as used in this section refers to the office as opposed to an individual, including not only the individual holding the elective office but also his authorized deputies and representatives. *Bryant v. Mars*, 309 Ark. 480, 830 S.W.2d 869 (1992).

The working papers of an outside consultant retained by the Attorney General, are also exempt from the Freedom of Information Act as working papers of the Attorney General. *Bryant v. Mars*, 309 Ark. 480, 830 S.W.2d 869 (1992).

Competitor.

Categorizing members of the public who may wish to learn of, and/or disagree with, actions of public officials, even to the point

of litigation, does not make such a person or entity a "competitor" as envisioned by this chapter. *City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990).

A state agency can claim the competitive advantage exception on behalf of the person who supplied the information. *Arkansas Dep't of Fin. v. Pharmacy Assocs., Inc.*, 333 Ark. 451, 970 S.W.2d 217 (1998).

The Department of Finance and Administration (DF&A) was not required to fully disclose a company's successful bid proposal to the DF&A since the bid proposal fell under the competitive advantage exception and since disclosure would not only be detrimental to the successful bidder, but also to the DF&A in the quality of information it would receive to requests for proposals in the future. *Arkansas Dep't of Fin. v. Pharmacy Assocs., Inc.*, 333 Ark. 451, 970 S.W.2d 217 (1998).

Driver's Privacy Protection Act.

Unredacted access to certain accident reports should have been granted to an attorney seeking clients for his law practice because the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721-2725, did not prohibit information contained in such reports from being released under the Freedom of Information Act. A vehicle accident report is not included in the definition of a "motor vehicle record," regardless of whether, as a matter of convenience, some of the information included in an accident report may be taken from or verified by a database maintained by the Office of Motor Vehicles. Moreover, "personal information" does not include information on vehicular accidents. *Ark. State Police v. Wren*, 2016 Ark. 188 (2016).

Exempted Records.

Public access must be afforded only to those records statutorily required to be kept by public agencies and lists of recipients of complimentary football tickets kept by state university, since not required by statute, need not be opened to public. *McMahan v. Board of Trustees*, 255 Ark. 108, 499 S.W.2d 56 (1973).

An order sealing a written pretrial motion was exempted from inspection or copying under this section. *Arkansas Newspaper, Inc. v. Patterson*, 281 Ark. 213, 662 S.W.2d 826 (1984).

This section does not exempt working papers of employees of a legislative com-

mittee, only those of the legislator; therefore, the working papers of an auditor who was a state employee were not exempt. *Legislative Joint Auditing Comm. v. Woosley*, 291 Ark. 89, 722 S.W.2d 581 (1987).

The law enforcement exception to the Freedom of Information Act includes only agencies which investigate suspected criminal activity under the State Penal Code and have enforcement powers; therefore, the law enforcement exemption does not apply to state auditors working for the Legislative Joint Auditing Committee. *Legislative Joint Auditing Comm. v. Woosley*, 291 Ark. 89, 722 S.W.2d 581 (1987).

Records not of an "undisclosed investigation" are public and available for examination. *City of Fayetteville v. Rose*, 294 Ark. 468, 743 S.W.2d 817 (1988) Criticized by *Arkansas Gazette Co. v. Goodwin*, 304 Ark. 204, 801 S.W.2d 284 (Ark. 1990).

Real estate appraisals did not amount to working papers, correspondence, and unpublished memoranda of the Attorney General. *Ark. Hwy. & Transp. Dep't v. Hope Brick Works, Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988).

Disclosures requested held not protected by exception in subdivision (b)(8) of this section. *Ark. Hwy. & Transp. Dep't v. Hope Brick Works, Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988).

Exclusion in subdivision (b)(9) is intended to prevent competitors from obtaining information about others seeking the same type of work or furnishing material to the state. *Ark. Hwy. & Transp. Dep't v. Hope Brick Works, Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988).

Attorney-client privilege is not one of exceptions of this section. *Ark. Hwy. & Transp. Dep't v. Hope Brick Works, Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988).

When a criminal case is closed by administrative action, the reason for the exemption under subdivision (b)(6) no longer exists, and statements previously exempted thereby may be released. *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

Applying the general rule of prospectivity which governs interpretation of statutes, the application of the May 14, 1990, version of Rule 7 of the Rules of Judicial Discipline & Disability Commission is prospective, and thus the Judicial Discipline & Disability Commission is not re-

quired to divulge its actions prior to that time which were protected under the former rule and statute. *Gannett River States Pub. Co. v. Arkansas Judicial Discipline & Disability Com.*, 304 Ark. 244, 801 S.W.2d 292 (1990).

Because only the General Assembly can create exceptions to this chapter, a statute must specifically provide for nondisclosure before a court will exempt a public record from the chapter. *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992).

There must be a specific statutory mandate to exempt public records from disclosure. *Byrne v. Eagle*, 319 Ark. 587, 892 S.W.2d 487 (1995).

The home addresses of 2 police officers, which were sought by the plaintiff in a civil action so as to decrease his cost of service of process, were exempt from disclosure as an unwarranted invasion of personal privacy. *Stilley v. McBride*, 332 Ark. 306, 965 S.W.2d 125 (1998).

Investigation Files.

Where the high level of publicity and media attention threatened to interfere with defendant's right to a fair trial, the closing of the investigation files of the state police and the files of all investigative agencies, including a legislative audit, by the court, was warranted to ensure the defendant's right to a fair trial. *Arkansas Gazette Co. v. Goodwin*, 304 Ark. 204, 801 S.W.2d 284 (Ark. 1990).

Medical Records.

Hospital statements taken from witnesses as part of a quality assurance or peer review proceeding were excluded from disclosure and were absolutely privileged communications pursuant to Arkansas statutes. *Berry v. Saline Mem. Hosp.*, 322 Ark. 182, 907 S.W.2d 736 (1995).

Ongoing Investigations.

If a law enforcement investigation remains open and ongoing it is one meant to be protected as "undisclosed" under the Arkansas Freedom of Information Act. *Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990).

The trial court will have to decide, as a matter of fact in each case, whether investigations are ongoing or not for purposes of applying the exemption provided in subdivision (b)(6). *Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990).

Parties Entitled.

Intent of Freedom of Information Act includes a corporation doing business in this state as being a party entitled to information. Hence, representative of corporation is entitled to receive any information that any other person would be entitled to receive pursuant to the Freedom of Information Act. *Ark. Hwy. & Transp. Dep't v. Hope Brick Works, Inc.*, 294 Ark. 490, 744 S.W.2d 711 (1988).

The public, for whose benefit this chapter was enacted, includes both those who support and those who oppose the actions or inactions of public officials, employees or agencies, as well as those who wish to merely learn of and evaluate the actions of public officials. *City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990).

The Attorney General, acting in his official capacity and using the resources of his office, possesses standing to appeal the denial of his request pursuant to the Arkansas Freedom of Information Act. *Bryant v. Weiss*, 335 Ark. 534, 983 S.W.2d 902 (1998).

Pursuant to this section, while the contractor possessed the records requested, it was not an entity covered by the Freedom of Information Act (FOIA), § 25-19-101 et seq., which would render it subject to suit under the FOIA; therefore, the association's suit was reversed and dismissed. *Nabholz Constr. Corp. v. Contrs. for Pub. Prot. Ass'n*, 371 Ark. 411, 266 S.W.3d 689 (2007).

Personnel Records.

Subdivision (b)(10) requires that the public's right to knowledge of records be weighed against an individual's right to privacy, so that when the public's interest is substantial, it will usually outweigh any individual privacy interests, and disclosure will be favored. *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).

Where the release of records could subject candidates for police lieutenant to embarrassment, and perhaps threaten their future employment, release would result in a clearly unwarranted invasion of the candidates' personal privacy; although the public's interest in knowing that its safety is protected by the best-qualified police lieutenant is also substantial, it was served by the release of the report forms, even though the candidates'

identities remained unknown. *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).

Ratepayer's Address.

In connection with the claim that the home address of a ratepayer should not be disclosed, the department made a policy argument that since a public employee's personal contact information was exempted from disclosure, so should that of a private customer, but it was the job of the General Assembly to establish exemptions under the Freedom of Information Act, and arguments for additional exemptions had to be addressed to the General Assembly, not the court. *Hopkins v. City of Brinkley*, 2014 Ark. 139, 432 S.W.3d 609 (2014).

Records Subject to Inspection.

The books and records of a city collector's office are at all times available to the public. *Pointer v. State*, 248 Ark. 710, 454 S.W.2d 91 (1970), cert. denied, *Pointer v. Arkansas*, 400 U.S. 959, 91 S. Ct. 359 (1970).

Records of intercollegiate conference on the amount of money that its member institutions disbursed to its student athletes records were not "educational" records under the Family Education Rights and Privacy Act of 1974, and were not closed to the public because they were not individual education or academic records. *Arkansas Gazette Co. v. Southern State College*, 273 Ark. 248, 620 S.W.2d 258 (1981), dismissed, 455 U.S. 931, 102 S. Ct. 1416 (1982).

Information stored on computer tapes is a public record, and the public is entitled to have it in the form in which it is kept. *Blaylock v. Staley*, 293 Ark. 26, 732 S.W.2d 152 (1987).

Committee violated the Arkansas Freedom of Information Act when it used unsigned written ballots which were disposed of in a manner making their review impossible. *Depoyster v. Cole*, 298 Ark. 203, 766 S.W.2d 606 (1989), overruled in part, *Harris v. City of Fort Smith*, 366 Ark. 277, 234 S.W.3d 875 (2006).

While items obtained by police in the course of a criminal investigation involve personal matters, the governmental interest in disclosure under the Freedom of Information Act may outweigh the privacy interest in the nondisclosure of personal matters. *McCambridge v. City of Little*

Rock, 298 Ark. 219, 766 S.W.2d 909 (1989).

Legal memoranda prepared by outside counsel for the City for litigation purposes are public records within the meaning of this chapter and are open to inspection, and, the enhanced risk that the City may lose litigation does not constitute an exemption. *City of Fayetteville v. Edmark*, 304 Ark. 179, 801 S.W.2d 275 (1990).

The jail log, arrest records and shift sheet requested from the police department by a news reporter were not records containing undisclosed law enforcement investigations and were subject to disclosure pursuant to this section. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991).

There is no statute that specifically provides for the exemption of the names of juveniles arrested for felonies but not charged as delinquent juveniles, thus, detention facility logs and booking sheets of juvenile detention facilities are not exempt. *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992).

By requiring audits to be performed by a private auditing firm and not the state auditor, the state, in § 15-5-210, has elected to employ a private firm to perform a task normally carried out by state employees or officials; thus, the audit working papers of the Legislative Joint Auditing Committee are considered public records subject to this chapter. *Swaney v. Tilford*, 320 Ark. 652, 898 S.W.2d 462 (1995).

Judgment was properly awarded to appellee in an action against a police chief, in the chief's capacity as the custodian of records for the police department, for violation of the Arkansas FOIA because an

officer's use-of-force reports describing an incident with appellee did not fall within the exemption in subdivision (c)(1) of this section for employee evaluation or job performance records. *Thomas v. Hall*, 2012 Ark. 66, 399 S.W.3d 387 (2012).

Redaction.

Legal opinions rendered in tax cases under Gross Receipts Tax Rule G-75 are subject to disclosure to a company because they are "otherwise kept" public records under § 25-19-103(5)(A); however, any and all identifying facts and information have to be fully redacted under subdivision (f)(1)-(3) of this section. Moreover, the legal opinions are not confidential because § 26-18-303(a)(1) does not cover Gross Receipts Tax Rule G-75; state law does not require that the opinions be kept by or filed with the Director of the Department of Finance and Administration. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

Regular Business Hours.

As the police department operated 24 hours a day, seven days a week, in the absence of some showing to the contrary those were its regular business hours. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991).

Cited: *Baxter County Newspapers, Inc. v. Medical Staff of Baxter Gen. Hosp.*, 273 Ark. 511, 622 S.W.2d 495 (1981); *Morton v. City of Little Rock*, 728 F. Supp. 543 (E.D. Ark. 1989); *Ark. Dep't of Health v. Westark Christian Action Council*, 322 Ark. 440, 910 S.W.2d 199 (1995); *Hamilton v. Simpson*, 67 Ark. App. 173, 993 S.W.2d 501 (1999); *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002); *Watkins v. Dale*, 2011 Ark. App. 385 (2011).

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which

the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

(c)(1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee. The specific purpose of the executive session shall be announced in public before going into executive session.

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

(5)(A) Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials that are administered to applicants for licensure from state agencies.

(B) Boards and commissions are excluded from this chapter for the administering of examinations to applicants for licensure.

(6) Subject to the provisions of subdivision (c)(4) of this section, a public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security or municipally owned utility system security as described in § 25-19-105(b)(18).

History. Acts 1967, No. 93, § 5; 1975 (Extended Sess., 1976), No. 1201, § 1; 1985, No. 843, § 1; A.S.A. 1947, § 12-2805; reen. Acts 1987, No. 1001, § 1; 1999, No. 1589, § 1; 2001, No. 1259, § 2; 2003, No. 763, § 3; 2005, No. 259, § 3; 2007, No. 268, § 3; 2007, No. 998, § 3; 2009, No. 631, § 3; 2011, No. 99, § 3; 2013, No. 235, § 3; 2015, No. 186, § 4.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1001, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Amendments. The 2009 amendment

substituted “July 1, 2011” for “July 1, 2009” in (c)(6)(B) and made a minor stylistic change.

The 2011 amendment substituted “July 1, 2013” for “July 1, 2011” in (c)(6)(B).

The 2013 amendment redesignated former (c)(6)(A) as (c)(6), and deleted (c)(6)(B).

The 2015 amendment inserted “or municipally owned utility system security” in (c)(6).

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Freedom of Information Act — Public Meetings Requirement, 57 Ark. L. Rev. 1015.

Note, *Harris v. City of Fort Smith: Arkansas’s Sunshine Clouds Over*, 59 Ark. L. Rev. 147.

U. Ark. Little Rock L.J. Brooks, Adventures in Cyber-Space: Computer Technology and the Arkansas Freedom of Information Act, 17 U. Ark. Little Rock L.J. 417.

CASE NOTES

ANALYSIS

In General.
Construction.
Applicability.
Committee Meetings.
Emergency or Special Meetings.
Executive Sessions.
Informal Meetings.
Injunction.
Invalidation of Action.
No Violation.
Publicly Funded Agencies.

In General.

The legislature, in this section, has provided for both the public’s right to know and protection of the individual’s rights from unwarranted adverse publicity and ensuing damage to his reputation. *Commercial Printing Co. v. Rush*, 261 Ark. 468, 549 S.W.2d 790 (1977).

Circuit court’s determination that § 25-19-104 and this section were unconstitutional was improper because declaratory relief was inappropriate under § 16-111-104 as appellees did not yet have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state’s Freedom of Information Act rather than resolution of an actual controversy. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671 (2012).

Construction.

After reviewing §§ 25-19-102, 25-19-105, and this section, the court found nothing in the Freedom of Information Act that specifies that the communications media by which the public’s business is conducted are limited to publicly owned communications; thus, the court rejected a state employee’s claim that the employee was asked to violate the law by communicating with the governor via a private email address and, thus, the employee’s subsequent resignation was voluntary without good cause and the employee was not entitled to benefits under § 11-10-513(a)(1). *Bradford v. Dir., Empl. Sec. Dep’t.*, 83 Ark. App. 332, 128 S.W.3d 20 (2003).

Applicability.

The Freedom of Information Act applies to formal and informal meetings alike, not just to meetings of officially designated committees, and applies to informal but unofficial group meetings for the discussion of governmental business. *Mayor of El Dorado v. El Dorado Broadcasting Co.*, 260 Ark. 821, 544 S.W.2d 206 (1976).

This section does not encompass staff meetings of the Department of Human Services held to develop a bid solicitation. *National Park Medical Ctr. v. Arkansas Dep’t of Human Servs.*, 322 Ark. 595, 911 S.W.2d 250 (1995).

City administrator’s succession of one-

on-one conversations with each member of the city's board of directors violated the "open meetings" provision of the Freedom of Information Act, §§ 25-19-101 — 25-19-109; through its conversations the board held a meeting within the intent of the FOIA such that the city's actions resulted in a consensus being reached on a given issue, thus rendering the formal meeting held before the public a mere charade. *Harris v. City of Fort Smith*, 86 Ark. App. 20, 158 S.W.3d 733 (2004), *aff'd*, 359 Ark. 355, 197 S.W.3d 461 (2004).

Committee Meetings.

Where committee of a state board meets to transact business, such meeting is a public meeting subject to the provisions of this chapter and a newspaper reporter must be permitted to attend, and may seek a declaratory judgment if refused admission. *Ark. Gazette Co. v. Pickens*, 258 Ark. 69, 522 S.W.2d 350 (1975).

Emergency or Special Meetings.

This chapter repealed former open meetings law by implication and thus, since no advance notice of emergency meetings of school board were required unless requested by the news media under this section, approval of \$150,000 bond issue by electors of school district was not void for failure to give notice of meetings. *Nance v. Williams*, 263 Ark. 237, 564 S.W.2d 212 (1978).

The allegation that a special meeting had been called without notice to the press states a cause of action at law for a declaratory judgment. *Yandell v. Havana Bd. of Educ.*, 266 Ark. 434, 585 S.W.2d 927 (1979).

Subsection (b)(2) of this section provides that the news media located in the county where the meeting is held and those located elsewhere that cover regular meetings of the body may request that they be notified of special and emergency meetings; absent such a request, no notice to them is required. *Elmore v. Burke*, 337 Ark. 235, 987 S.W.2d 730 (1999).

Executive Sessions.

It was a violation of this section for a city council to go into an executive session with the mayor and city attorney to discuss a Public Service Commission proceeding to which the city was a party. *Laman v. McCord*, 245 Ark. 401, 432 S.W.2d 753 (1968).

This section required that the hearing of testimony concerning reinstatement of a discharged officer, as distinguished from a discussion or consideration by the State Police Commission, be held in public. *Ark. State Police Comm'n v. Davidson*, 253 Ark. 1090, 490 S.W.2d 788 (1973).

This section makes it mandatory for the commissioners to reassemble in public session for the purpose of voting on the matter which they have discussed or considered in executive session. *Ark. State Police Comm'n v. Davidson*, 253 Ark. 1090, 490 S.W.2d 788 (1973).

Once an executive session had been called for a proper purpose, the subsequent discussion could of necessity deal with several areas which, taken out of the context of the total discussion, might be construed as improper subject matter for an executive session. *Commercial Printing Co. v. Rush*, 261 Ark. 468, 549 S.W.2d 790 (1977).

It is not the bare decision whether or not to discipline an employee that the executive session provision allows to be made in privacy, but rather the discussion or consideration of particular acts or omissions of the employee whose conduct has been called into question so as to avoid adverse publicity and unjustified damage to the reputation of individuals, allegations against whom later prove unwarranted. *Commercial Printing Co. v. Rush*, 261 Ark. 468, 549 S.W.2d 790 (1977).

Once a decision has been made in executive session that discipline or other action is needed, all further acts of the board should be public, and the public officials accountable and answerable for their actions. *Commercial Printing Co. v. Rush*, 261 Ark. 468, 549 S.W.2d 790 (1977).

A resolution or motion actually considered or arrived at in executive session must be publicly ratified if it is to be legal. *Yandell v. Havana Bd. of Educ.*, 266 Ark. 434, 585 S.W.2d 927 (1979).

A meeting of the credentials committee of the medical staff of a county hospital for the hearing of testimony and a vote on whether the staff privileges of a doctor should be continued was required to be held in public, since the doctor's status was that of an individual who has certain privileges extended to him by a publicly owned, operated and supported county hospital; however, the discussion or con-

sideration of the specific issue by the committee members could be conducted in executive session. *Baxter County Newspapers, Inc. v. Medical Staff of Baxter Gen. Hosp.*, 273 Ark. 511, 622 S.W.2d 495 (1981).

Informal Meetings.

Where city board members held one-on-one meetings discussing the potential purchase of property, the meetings violated subsection (a) of this section because the members had made up their minds before the public meeting and, thus, the meetings constituted board meetings under § 25-19-103(4). *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004).

Injunction.

In an action to enjoin purchase of voting machines for noncompliance with this chapter, where plaintiffs testified that the general public was expelled from the meeting of the election commissioners to open and consider bids, but election commissioners and others testified that, when representatives of voting machine companies were asked to step outside, others left voluntarily, it was not error to deny the injunction. *Davis v. Jerry*, 245 Ark. 500, 432 S.W.2d 831 (1968).

Invalidation of Action.

Before invalidation of decision made in violation of this section is sought the board or agency must be given the opportunity to address the issue. *Rehab Hospital Services Corp. v. Delta-Hills Health*

Systems Agency, Inc., 285 Ark. 397, 687 S.W.2d 840 (1985).

No Violation.

In circumstances in which a city administrator, prior to a board study session, prepared a memorandum and draft ordinance and provided the documents to individual board members, no violation of this section of the state FOIA occurred because only information was provided; no solicitation of votes for the proposal took place. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671 (2012).

Publicly Funded Agencies.

A private, nonprofit association of colleges and secondary schools which was composed of public servants and accepted public moneys was subject to this chapter. *North Cent. Ass'n of Colleges & Sch. v. Troutt Bros.*, 261 Ark. 378, 548 S.W.2d 825 (1977).

A nonprofit regional health planning corporation which received its primary funding from the federal government was subject to this chapter and violated its open public meeting requirements when it reconsidered the granting of a certificate of need to construct a hospital after conducting a telephone poll of members of the executive committee. *Rehab Hospital Services Corp. v. Delta-Hills Health Systems Agency, Inc.*, 285 Ark. 397, 687 S.W.2d 840 (1985).

Cited: *Wright v. South Ark. Regional Health Ctr., Inc.*, 800 F.2d 199 (8th Cir. 1986).

25-19-108. Information for public guidance.

(a) Each state agency, board, and commission shall prepare and make available:

(1) A description of its organization, including central and field offices, the general course and method of its operations, and the established locations, including, but not limited to, telephone numbers and street, mailing, electronic mail, and Internet addresses and the methods by which the public may obtain access to public records;

(2) A list and general description of its records, including computer databases;

(3)(A) Its regulations, rules of procedure, any formally proposed changes, and all other written statements of policy or interpretations formulated, adopted, or used by the agency, board, or commission in the discharge of its functions.

(B)(i) Rules, regulations, and opinions used in this section shall refer only to substantive and material items that directly affect procedure and decision-making.

(ii) Personnel policies, procedures, and internal policies shall not be subject to the provisions of this section.

(iii) Surveys, polls, and fact-gathering for decision-making shall not be subject to the provisions of this section.

(iv) Statistical data furnished to a state agency shall be posted only after the agency has concluded its final compilation and result;

(4) All documents composing an administrative adjudication decision in a contested matter, except the parts of the decision that are expressly confidential under state or federal law; and

(5) Copies of all records, regardless of medium or format, released under § 25-19-105 which, because of the nature of their subject matter, the agency, board, or commission determines have become or are likely to become the subject of frequent requests for substantially the same records.

(b)(1) All materials made available by a state agency, board, or commission pursuant to subsection (a) of this section and created after July 1, 2003, shall be made publicly accessible, without charge, in electronic form via the Internet.

(2) It shall be a sufficient response to a request to inspect or copy the materials that they are available on the Internet at a specified location, unless the requester specifies another medium or format under § 25-19-105(d)(2)(B).

History. Acts 2001, No. 1653, § 3.

25-19-109. Special requests for electronic information.

(a)(1) At his or her discretion, a custodian may agree to summarize, compile, or tailor electronic data in a particular manner or medium and may agree to provide the data in an electronic format to which it is not readily convertible.

(2) Where the cost and time involved in complying with the requests are relatively minimal, custodians should agree to provide the data as requested.

(b)(1) If the custodian agrees to a request, the custodian may charge the actual, verifiable costs of personnel time exceeding two (2) hours associated with the tasks, in addition to copying costs authorized by § 25-19-105(d)(3).

(2) The charge for personnel time shall not exceed the salary of the lowest paid employee or contractor who, in the discretion of the custodian, has the necessary skill and training to respond to the request.

(c) The custodian shall provide an itemized breakdown of charges under subsection (b) of this section.

History. Acts 2001, No. 1653, § 4.

CASE NOTES

Fees.

Trial court erred by finding that appellees' requirement that the driver pay a deposit of \$2,475 to obtain the requested records did not violate the Freedom of Information Act because this section did not apply, as the driver stated that she requested only copies of the recordings and did not ask for any type of special conversion or any type of compilation. The

applicable provision to the driver's request was § 25-19-105(d), as she simply requested a copy of the files, and therefore appellees could not charge fees that exceeded the cost of reproduction and could not include the hourly rate of a captain in assessing costs to the driver. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, 411 S.W.3d 196 (2012).

25-19-110. Exemptions.

(a) Beginning July 1, 2009, in order to be effective, a law that enacts a new exemption to the requirements of this chapter or that substantially amends an existing exemption to the requirements of this chapter shall state that the record or meeting is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) For purposes of this section:

(1) An exemption from the requirements of this chapter is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records; and

(2) An exemption from the requirements of this chapter is not substantially amended if the amendment narrows the scope of the exemption.

History. Acts 2009, No. 184, § 1.

CHAPTER 20

INTERLOCAL COOPERATION ACT

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

25-20-101. Title.

25-20-102. Purpose.

25-20-103. Definitions.

25-20-104. Agreements for joint or cooperative action — Authority to make — Requirements generally.

25-20-105. Agreements for joint or cooperative action — Filing — Interstate compacts — Liability for damages.

25-20-106. Agreements for joint or coop-

SECTION.

erative action — Submission to and approval by state officer or agency controlling services or facilities.

25-20-107. Appropriation of funds — Supplying of personnel or services.

25-20-108. Contract for services from another agency — Requirements — Limitations.

Effective Dates. Acts 1967, No. 430, § 10: Mar. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is currently no general authority for interlocal cooperation among the various political subdivisions of this state and between political subdivisions of this state and other states, and that such authority will make it possible for such subdivision to perform local functions and provide local services much more efficiently. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in effect from the date of its passage and approval."

Acts 1973, No. 415, § 2: Mar. 21, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Interlocal Cooperation Act, Act 430 of 1967, was intended to permit local governmental units to make the most efficient uses of the powers and resources by enabling them to cooperate together with other local governmental units on a basis of mutual advantage, and that in many instances school districts of this state, and city and county governments, could provide and share facilities, employees, and services that would provide mutual benefits to their respective advantages and enable them thereby to perform their respective responsibilities with maximum efficiencies; and that the immediate passage of this act is necessary to enable school districts to participate in the Interlocal Cooperation Act. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 208, § 6: Feb. 18, 1975. Emergency clause provided: "It is hereby

found and determined by the General Assembly that water districts created under Act 114 of 1957 are authorized to individually undertake projects to utilize a water supply available as a result of multi-purpose reservoirs constructed by the United States Corps of Engineers; that it would be mutually beneficial to permit water districts created under Act 114 of 1957 to jointly and cooperatively undertake such projects and that this Act is immediately necessary to permit such cooperative or joint action by such water districts. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 982, § 3: June 30, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the Arkansas laws for the operation and management of municipal waterworks are inadequate to accommodate the merger of two (2) or more large municipal waterworks; that a new law is needed to protect the financial and governmental interests of the various municipalities involved in consolidating the various municipal waterworks systems; that the financial savings and economies of scale which are anticipated from the merger will make the consolidation in the best interest of the citizens of the merging municipalities; that the consolidation agreement was achieved through persistent and complex negotiations balancing the various municipal interests involved and it is therefore necessary that the law take effect at a time prescribed by that agreement. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on June 30, 2001."

25-20-101. Title.

This chapter may be cited as the "Interlocal Cooperation Act".

History. Acts 1967, No. 430, § 2; A.S.A. 1947, § 14-902.

CASE NOTES

Cited: City of Maumelle v. Jeffrey Sand Co., 353 Ark. 686, 120 S.W.3d 55 (2003).

25-20-102. Purpose.

It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History. Acts 1967, No. 430, § 1; A.S.A. 1947, § 14-901.

25-20-103. Definitions.

As used in this chapter:

(1) "Public agency" means any:

(A) School district;

(B) Political subdivision of this state;

(C) Agency of the state government or of the United States;

(D) Political subdivision of another state;

(E) Water district created under the provisions of The Regional Water Distribution District Act, § 14-116-101 et seq.;

(F) Governing body of a municipal electric utility as defined in § 25-20-402; and

(G) Fire department organized under the laws of this state if the fire department:

(i) Offers fire protection services to unincorporated areas; and

(ii) Has received approval by its quorum court for participation in an interlocal cooperation agreement; and

(2) "State" means a state of the United States and the District of Columbia.

History. Acts 1967, No. 430, § 3; 1973, 180, § 1; A.S.A. 1947, § 14-903; Acts No. 415, § 1; 1975, No. 208, § 4; 1983, No. 2003, No. 366, § 2.

25-20-104. Agreements for joint or cooperative action — Authority to make — Requirements generally.

(a) Any governmental powers, privileges, or authority exercised or capable of exercise by a public agency of this state alone may be exercised and enjoyed jointly with any other public agency of this state which has the same powers, privileges, or authority under the law and jointly with any public agency of any other state of the United States which has the same powers, privileges, or authority, but only to the

extent that laws of the other state or of the United States permit the joint exercise or enjoyment.

(b) Any two (2) or more public agencies may enter into agreements with one another for joint cooperative action pursuant to the provisions of this chapter. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before the agreement may enter into force.

(c) Any agreement for joint or cooperative action shall specify the following:

- (1) Its duration;
- (2) The precise organization, composition, and nature of any separate legal or administrative entity created thereby, together with the powers delegated to it, provided that the entity may be legally created;
- (3) Its purposes;
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;
- (5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon the partial or complete termination; and
- (6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, in addition to the items enumerated in subdivisions (c)(1) and (c)(3)-(6) of this section, the agreement shall contain the following:

(1) Provisions for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, performance may be offered in satisfaction of the obligation or responsibility.

(f)(1) Every agreement made under this section prior to and as a condition precedent to its entry into force shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state.

(2) The Attorney General shall approve any agreement submitted to him or her under this section unless he or she finds that it does not meet the conditions set forth in this section and shall detail, in writing addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law.

(3) Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.

(g) Financing of joint projects by agreement shall be as provided by law.

(h) In addition to other specific grants of authority as provided in the Arkansas Constitution and statutes and in addition to the formal cooperation authorized by this chapter, cities, towns, counties, and other units of government are authorized to associate and cooperate with one another on an informal basis without complying with the detailed procedure set out in this section.

(i) In addition to the legal or administrative entities which may otherwise be legally created under Arkansas statutes, public agencies may create a separate legal entity in the form of a public body corporate and politic pursuant to:

(1) Section 25-20-201 et seq. for the purpose of constructing, operating, and maintaining a public library system;

(2) The Consolidated Waterworks Authorization Act, § 25-20-301 et seq., for the purpose of constructing, owning, operating, financing, and maintaining a consolidated waterworks system; or

(3) The Consolidated Wastewater Systems Act, § 25-20-501 et seq., for the purpose of constructing, operating, financing, and maintaining a consolidated wastewater system.

History. Acts 1967, No. 430, § 4; 1979, No. 52, § 1; A.S.A. 1947, § 14-904; Acts 1995, No. 813, § 1; 2001, No. 982, § 2; 2009, No. 1371, § 2.

Publisher's Notes. Acts 1979, No. 52, § 2, provided that it was the purpose of the act to further authorize and encourage

association and cooperation between governmental units which had existed in this state for many years and that the act was necessary for efficient and economical government.

Amendments. The 2009 amendment added (i)(3) and made related changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Public Agencies, 24 U. Ark. Little Rock L. Rev. 601.

25-20-105. Agreements for joint or cooperative action — Filing — Interstate compacts — Liability for damages.

(a) Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county clerk and with the Secretary of State.

(b)(1) In the event that an agreement entered into pursuant to this chapter is between or among one (1) or more public agencies of this state and one (1) or more public agencies of another state or of the United States, the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest.

(2)(A) The state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein.

(B) The action shall be maintained against any public agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

History. Acts 1967, No. 430, § 5; A.S.A. 1947, § 14-905.

25-20-106. Agreements for joint or cooperative action — Submission to and approval by state officer or agency controlling services or facilities.

(a) In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement, as a condition precedent to its entry into force, shall be submitted to the state officer or agency having the power of control and shall be approved or disapproved by him or her or it as to all matters within his or her or its jurisdiction in the same manner and subject to the same requirements governing the action of the Attorney General pursuant to § 25-20-104(f).

(b) This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General.

History. Acts 1967, No. 430, § 6; A.S.A. 1947, § 14-906.

25-20-107. Appropriation of funds — Supplying of personnel or services.

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing personnel or services therefor which may be within its legal power to furnish.

History. Acts 1967, No. 430, § 7; A.S.A. 1947, § 14-907.

25-20-108. Contract for services from another agency — Requirements — Limitations.

(a) Any one (1) or more public agencies may contract with any one (1) or more other public agencies to perform any governmental service, activity, or undertaking which each of the public agencies entering into the contract is authorized by law to perform alone, provided that the contract shall be authorized by the governing body of each party to the contract. The contract shall set forth fully the purpose, powers, rights, objectives, and responsibilities of the contracting parties.

(b) However, nothing in this chapter authorizes or shall be construed to authorize any public agency to enter into any contract, agreement, or undertaking with any other public agency to purchase, condemn, or otherwise acquire any plant, property, facilities, or business owned or operated by any regulated public utility or pipeline company or to jointly construct or operate any such plant, property, or facility.

History. Acts 1967, No. 430, § 8; A.S.A. 1947, § 14-908.

SUBCHAPTER 2 — PUBLIC BODIES CORPORATE AND POLITIC

SECTION.

25-20-201. Creation.

25-20-202. Board of directors — Executive director.

25-20-203. Powers.

25-20-204. Tax exempt status of property and income.

SECTION.

25-20-205. Immunity.

25-20-206. Construction.

25-20-207. Withdrawal.

Cross References. County libraries, § 13-2-401 et seq. Municipal Libraries and Reading Rooms, § 13-2-501 et seq.

25-20-201. Creation.

(a) Any two (2) or more public agencies are hereby authorized to create a public body corporate and politic as a separate legal entity for the purpose of constructing, operating, and maintaining a public library system.

(b) The governing body of each public agency wishing to form a public body corporate and politic shall, by ordinance or resolution, or otherwise pursuant to law, of the governing body of each participating public agency:

(1) Determine that it is in the best interest of the public agency in accomplishing the purposes of this subchapter to create a public body;

(2) Set forth the names of the public agencies which are proposed to form the public body;

(3) Specify any limitations on the exercise of the public body's powers;

(4) Specify the number of directors of the public body, the number of directors required from each public agency, and the voting rights of each director, which number and voting rights may vary by agency and director; and

(5) Approve the filing of an application with the Secretary of State to create the public body corporate and politic.

(c)(1) An application to create a public body corporate and politic shall then be prepared, setting forth:

(A) A request that a public body corporate and politic be created under this subchapter;

(B) The proposed name for the public body;

(C) The names of the participating public agencies;

(D) Any limitations on the exercise of the public body's powers;

(E) The number of directors of the public body;

(F) The number of directors required from each public agency; and

(G) The voting rights of each director.

(2) The application shall be deemed signed and approved by each public agency by attaching thereto a certified copy of the ordinance, resolution, or other action of each participating public agency.

(d)(1) The Secretary of State shall examine the application, and, if the Secretary of State finds that the name proposed for the public body is not identical with that of any other corporation, agency, or instrumentality of this state, so nearly similar as to lead to confusion and uncertainty, or otherwise deceptively misleading, the Secretary of State shall:

(A) Receive and file the application;

(B) Record it in an appropriate book of record in his or her office;

(C) Make and issue a certificate of incorporation under the seal of the state setting forth the names of the participating public agencies; and

(D) Record the certificate in an appropriate book of record in his or her office.

(2) A copy of the certificate of incorporation, certified by the Secretary of State, shall be admissible in evidence in any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the public body and shall be conclusive proof of the filing and contents of the certificate and the effective creation of the public body corporate and politic, absent fraud in the premises being established.

(e)(1) Any application filed with the Secretary of State pursuant to the provisions of this subchapter may be amended from time to time with the unanimous consent of the directors of the public body corporate and politic who are entitled to vote.

(2) The amendment shall be signed and filed with the Secretary of State in the manner provided in this section, whereupon the Secretary of State shall make and issue an amendment to the certificate of incorporation.

History. Acts 1995, No. 813, § 2.

25-20-202. Board of directors — Executive director.

(a)(1)(A) Each public body corporate and politic shall be administered and governed by a board of directors, with each director residing within the jurisdiction of the public agency which he or she represents.

(B) Each director shall be appointed by the governing body of the public agency which he or she represents, with all vacancies being likewise filled within forty-five (45) days.

(2)(A) The directors shall receive no compensation for their services, but they shall be entitled to reimbursement of expenses incurred in the performance of their duties.

(B) No director may serve more than six (6) consecutive years.

(3) Before entering upon their duties, the directors shall take and subscribe to an oath of office swearing to discharge faithfully their duties in the manner provided by law.

(b)(1) The board of directors shall appoint a paid executive director, who shall be in charge of the daily operations of the public body and shall be responsible for submitting a budget to the board of directors for approval and the hiring, dismissal, and compensation of other staff.

(2) The board of directors shall have final approval of all budgets.

History. Acts 1995, No. 813, § 2. of Acts 1995, No. 1211, codified as § 25-16-90 et seq.
A.C.R.C. Notes. The operation of this section may be affected by the enactment

25-20-203. Powers.

(a) Unless its application provides otherwise, each public body shall have the power to:

- (1) Have perpetual succession;
- (2) Maintain such offices as it may deem appropriate;
- (3) Execute and perform contracts;
- (4) Apply for and receive permits, licenses, certificates, and approvals as may be necessary and construct, maintain, and operate facilities in accordance therewith;
- (5) Employ the services of professionals;
- (6) Purchase insurance;
- (7) Purchase, receive, own, hold, improve, use, lease, sell, convey, exchange, transfer, assign, mortgage, pledge, or otherwise acquire, dispose of, or deal with, real or personal property or any legal or equitable interest therein in its own name;
- (8) Apply for, receive, and use loans, grants, taxes, donations, and contributions from any public agency or other lawful source, including any taxes levied pursuant to any authority granted by the Arkansas Constitution or statutes, and amendments thereto, and any proceeds from the sale of bonds;
- (9) Acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes, in the manner prescribed in §§ 18-15-1202 — 18-15-1207 or in the manner provided by any other statutory provisions for the exercise of the power of eminent domain; and
- (10) Do any and all other acts and things necessary, convenient, or desirable to carry out the purposes of and to exercise the powers granted to the public body by this subchapter.

(b) A public body corporate and politic created as provided by this subchapter shall constitute an independent legal entity, and, notwithstanding any other provision of state law or any ordinance, resolution, or other action of any participating public agency to the contrary, none of the powers granted to a public body under the provisions of this subchapter or in its application for incorporation shall be subject to the further supervision or regulation or require the further approval or consent of any participating public agency.

History. Acts 1995, No. 813, § 2.

25-20-204. Tax exempt status of property and income.

(a) Each public body corporate and politic created pursuant to this subchapter will be performing functions and will be a public instrumentality of the participating public agencies.

(b) Accordingly, all properties at any time owned by the public body and the income therefrom shall be exempt from all taxation in the state.

History. Acts 1995, No. 813, § 2.

25-20-205. Immunity.

(a) This subchapter does not abrogate or in any other manner affect the immunity of the participating public agencies.

(b) Such immunity extends also to any public body corporate and politic created pursuant to this subchapter and to each director thereof.

History. Acts 1995, No. 813, § 2.

25-20-206. Construction.

This subchapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplishment of its purposes. To this end it shall not be necessary to comply with the general provisions of other laws dealing with public facilities, their acquisition, construction, equipping, maintenance, operation, leasing, encumbering, or disposition.

History. Acts 1995, No. 813, § 2.

25-20-207. Withdrawal.

(a)(1) If any public agency participating in a public body corporate and politic wishes to withdraw therefrom, the governing body of that public agency shall determine by ordinance or resolution, or otherwise pursuant to law, of the governing body, that it is in the best interest of the public agency to withdraw from the public body and give notice thereof to all directors of the public body and to the mayor, county judge, president, chair, or other chief executive of the governing body of each of the other public agencies.

(2) Each such governing body shall have ninety (90) days in which to determine, by ordinance or resolution, or otherwise pursuant to law, of the governing body, whether to dissolve the public body or continue without the withdrawing public agency.

(b) The notice of withdrawal shall become effective upon the earlier of:

(1) The date each public agency participating in the public body makes its determination, as provided in subsection (a) of this section; or

(2) The expiration of ninety (90) days.

History. Acts 1995, No. 813, § 2.

CHAPTER 32

UNIFORM ELECTRONIC TRANSACTIONS ACT

SECTION.

25-32-105. Use of electronic records and

electronic signatures —

Variation by agreement.

25-32-105. Use of electronic records and electronic signatures — Variation by agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

History. Acts 2001, No. 905, § 5.

**CONSTITUTION OF THE
STATE OF ARKANSAS
OF 1874**

**AMENDMENTS TO THE CONSTITUTION OF ARKANSAS
OF 1874**

AMEND. 30. CITY LIBRARIES

Publisher's Notes. This amendment adopted at the general election on Nov. 5, 1940, was proposed by initiative petition and 1940.

CASE NOTES

Cited: Robinson v. Villines, 2009 Ark. 632, 362 S.W.3d 870 (2009).

§ 1. Petition for tax levy — Election.

Whenever 100 or more taxpaying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for the purpose of maintaining and operating a public city library and shall specify a rate of taxation not to exceed five mills on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

For a _____ mill tax on real and personal property to be used for maintenance and operation of a public city library.

Against a _____ mill tax on real and personal property to be used for maintenance and operation of a public city library. [As amended by Const. Amend. 72, § 1.]

Publisher's Notes. Prior to amendment by Ark. Const. Amend. 72, § 1, this section read: "Whenever 100 or more taxpaying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for the purpose of maintaining a public city library and shall specify a rate

of taxation not exceeding one mill on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general city election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

“For a _____ mill tax on real and personal property to be used for maintenance of a public city library.

“Against a _____ mill tax on real and personal property to be used for maintenance of a public city library.”

Cross References. Local police and fire pension and relief funds, § 24-11-101 et seq.

Local police and fire retirement system, § 24-10-101 et seq.

CASE NOTES

Broadening Beneficiary Lists.

Cities cannot by municipal ordinance broaden the list of beneficiaries as provided by statute under the Firemen’s Re-

lief Pension Fund Act. *McLaughlin v. Retherford*, 207 Ark. 1094, 184 S.W.2d 461 (1944).

§ 2. Result of election — Certification and proclamation — Tax levy.

The Election Commissioners shall certify to the Mayor the result of the vote, and if a majority of the qualified electors voting on the question at such election vote in favor of the specified tax, then it shall thereafter be continually levied and collected as other general taxes of such city are levied and collected. The result of the election shall be proclaimed by the Mayor. The result so proclaimed shall be conclusive unless attacked in the courts within thirty days. The proceeds of any tax voted for the maintenance of a city public library shall be segregated by the city officials and used only for that purpose.

§ 3. Raising, reducing or abolishing tax — Petition and election.

Whenever 100 or more taxpaying electors of any city having a library tax in force shall file a petition with the Mayor asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and proclaimed, as provided in Section 2 hereof, and the result as proclaimed shall be conclusive unless attacked in the courts within thirty days. Subject to the limitations of Section 5(e) hereof, the tax shall be lowered, raised or abolished, as the case may be, according to the majority of the qualified electors voting on the question of such election. If lowered or raised, the revised tax shall thereafter be continually levied and collected and the proceeds used in the manner and for the purposes as provided in Section 2 hereof. [As amended by Const. Amend. 72, § 2.]

Publisher’s Notes. Prior to amendment by Ark. Const. Amend. 72, § 2, this section read: “Whenever 100 or more taxpaying electors of any city having a library tax in force shall file a petition with the

Mayor asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general city election. Such petition must be filed at least thirty days prior to the

election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and proclaimed, as provided in Section 2 hereof, and the result as proclaimed shall be conclusive unless attacked in the courts within thirty days. The tax shall be lowered, raised or abolished, as the case

may be, according to the majority of the qualified electors voting on the question of such election; provided, however, that it shall not be raised to more than one mill on the dollar. If lowered or raised, the revised tax shall thereafter be continually levied and collected and the proceeds used in the manner and for the purposes as provided for in Section 2 hereof.”

§ 4. Co-ordination of city with county library.

Nothing herein shall be construed as preventing a co-ordination of the services of a city public library and a county public library.

§ 5. Petition for tax levy — Election.

(a) Whenever 100 or more taxpaying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for capital improvements to or construction of a public city library and shall specify a rate of taxation not to exceed three mills on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

For a ___ mill tax on real and personal property to be used for capital improvements to or construction of a public city library.

Against a ___ mill tax on real and personal property to be used for capital improvements to or construction of a public city library.

(b) The electors may authorize the governing body of the city to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized by this section for the purpose of retiring the bonds. The ballot submitting the question to the voters shall be in substantially the following form:

For a ___ mill tax on real and personal property within the city, to be pledged to an issue or issues of bonds not to exceed \$____, in aggregate principal amount, to finance capital improvements to or construction of the city library and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the city.

Against a ___ mill tax on real and personal property within the city, to be pledged to an issue or issues of bonds not to exceed \$____, in aggregate principal amount, to finance capital improvements to or construction of the city library and to authorize the issuance of the bonds on such terms and conditions as they shall be approved by the city.

(c) The maximum rate of any special tax to pay bonded indebtedness, as authorized by paragraph (b) hereof shall be stated on the ballot.

(d) The special tax for payment of bonded indebtedness authorized in paragraph (b) hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections, which may have accumulated shall be transferred to the general funds of the city, and shall be used for maintenance and operation of the public city library.

(e) Notwithstanding any other provision of this amendment, a tax approved by the voters for the purpose of paying the bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of, premium or interest on, and the reasonable fees of a trustee or paying agent, so long as the bonded indebtedness shall remain outstanding and unpaid. [Added by Const. Amend. 72, § 3; amended by Const. Amend. 89.]

Publisher's Notes. Ark. Const. Amend. 89 repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, the introductory

language of subsection (b) read: "The electors may authorize the governing body of the city to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized by this section for the purpose of retiring the bonds. The interest rate on any bonds shall not exceed the rate provided by this Constitution. The ballot submitting the question to the voters shall be in substantially the following form:"

AMEND. 38. COUNTY LIBRARIES

Publisher's Notes. This amendment was proposed by initiative petition and approved at the general election on Nov. 5,

1946, by a vote of 64,859 for and 60,262 against. See Acts 1947, p. 1077.

§ 1. Petition for tax levy — Election.

Whenever 100 or more taxpaying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of maintaining and operating a public county library or a county library service or system and shall specify a rate of taxation not to exceed five mills on the dollar, the question as to whether said tax shall be levied shall be submitted to the qualified electors of such county at a general or special election. Such petition must be filed at least thirty days prior to the election at which

it will be submitted to the voters. The ballot shall be in substantially the following form:

FOR a _____ mill tax on real and personal property to be used for maintenance and operation of a public county library or county library service or system.

AGAINST a _____ mill tax on real and personal property to be used for maintenance and operation of a public county library or county library service or system. [As amended by Const. Amend. 72, § 4.]

Publisher's Notes. Prior to amendment by Const., Amend. 72, § 4, this section read: "Whenever 100 or more tax paying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of maintaining a public county library or a county library service or system and shall specify a rate of taxation not exceeding one mill on the dollar, the question as to whether said tax shall be levied shall be submitted to the qualified electors of such county at a general county election. Such petition must be filed at least thirty days prior to

the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

"FOR a _____ mill tax on real and personal property to be used for maintenance of a public county library or county library service or system.

"AGAINST a _____ mill tax on real and personal property to be used for maintenance of a public county library or county library service or system."

Cross References. Counties with two districts, § 13-2-403.

CASE NOTES

Cited: Weems v. Anderson, 257 Ark. 376, 516 S.W.2d 895 (1974).

§ 2. Result of election — Certification — Record — Tax levy — Funds — Disbursement.

The election commissioners shall certify to the County Judge the result of the vote. The County Judge shall cause the result of the election to be entered of record in the County Court. The result so entered shall be conclusive unless attacked in the courts within thirty days. If a majority of the qualified electors voting on the question at such election vote in favor of the specified tax, then it shall thereafter be continually levied and collected as other general taxes of such county are levied and collected; provided, however, that such tax shall not be levied against any real or personal property which is taxed for the maintenance of a city library, pursuant to the provisions of Amendment No. 30; and no voter residing within such city shall be entitled to vote on the question as to whether county tax shall be levied. The proceeds of any tax voted for the maintenance of a county public library or county library service or system shall be segregated by the county officials and used only for that purpose. Such funds shall be held in the custody of the County Treasurer. No claim against said funds shall be approved by the County Court unless first approved by the County Library Board, if there is a county Library Board functioning under Act 244 of 1927 [§§ 17-1001—17-1011], or similar legislation.

Publisher's Notes. The remaining sections of Acts 1927, No. 244, are codified in § 13-2-401 et seq.

§ 3. Raising, reducing or abolishing tax — Petition and election.

Whenever 100 or more taxpaying electors of any county having library tax in force shall file a petition in the County Court asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified and entered of record as provided in Section 2 hereof, and the result as entered of record shall be conclusive unless attacked in the courts within thirty days. Subject to the limitations of Section 5(e) hereof, the tax shall be lowered, raised or abolished, as the case may be, according to the majority of qualified electors voting on the question at such election. If lowered or raised, the revised tax shall thereafter be continually levied and collected and proceeds used in the manner and for the purposes as provided in Section 2 hereof. [As amended by Const. Amend. 72, § 5.]

Publisher's Notes. Prior to amendment by Ark. Const. Amend. 72, § 5, this section read: "Whenever 100 or more tax paying electors of any county having library tax in force shall file a petition in the County Court asking that such tax be raised, reduced or abolished, the question shall be submitted to the qualified electors at a general county election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall follow, as far as practicable, the form set forth in Section 1 hereof. The result shall be certified

and entered of record as provided in Section 2 hereof, and the result as entered of record shall be conclusive unless attacked in the courts within thirty days. The tax shall be lowered, raised or abolished, as the case may be, according to the majority of qualified electors voting on the question at such election; provided, however, that it shall not be raised to more than one mill on the dollar. If lowered or raised, the revised tax shall thereafter be continually levied and collected and proceeds used in the manner and for the purposes as provided in Section 2 hereof."

§ 4. Co-ordination of county with city library.

Nothing herein shall be construed as preventing the co-ordination of the services of a city public library and county public library, or the co-ordination of the services of libraries of different counties.

§ 5. Petition for tax levy — Election.

(a) Whenever 100 or more taxpaying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of capital improvements to or construction of a public county library or a county library service or system and shall specify a rate of taxation not to exceed three mills on the dollar, the question as to whether said tax shall be levied shall be

submitted to the qualified electors of such county at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

FOR a ____ mill tax on real and personal property to be used for capital improvements to or construction of a public county library or county library service or system.

AGAINST a ____ mill tax on real and personal property to be used for capital improvements to or construction of a public county library or county library service or system.

(b) The voters may authorize the County Court to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized in Section 1 of this Amendment for the purpose of retiring the bonds. The ballot submitting the question to the voters shall be in substantially the following form:

For a _____ mill tax on real and personal property within the county, to be pledged to an issue or issues of bonds not to exceed \$_____, in aggregate principal amount, to finance capital improvements to or construction of the county library or county library service or system, and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the County Court.

Against a _____ mill tax on real and personal property within the county, to be pledged to an issue or issues of bonds not to exceed \$_____, in aggregate principal amount, to finance capital improvements to or construction of the county library or county library service or system, and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the County Court.

(c) The maximum rate of any special tax to pay bonded indebtedness, as authorized by paragraph (b) hereof shall be stated on the ballot.

(d) The special tax for payment of bonded indebtedness authorized in paragraph (b) hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections, which may have accumulated, shall be transferred to the general funds of the county, and shall be used for maintenance of the county library or county library service or system.

(e) Notwithstanding any other provision of this Amendment, a tax approved by the voters for the purpose of paying the bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of, premium or interest on, and the

reasonable fees of a trustee or paying agent, so long as the bonded indebtedness shall remain outstanding and unpaid. [Added by Const. Amend. 72, § 6; amended by Const. Amend. 89.]

Publisher's Notes. Ark. Const. Amend. 89 repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, the introductory

language of subsection (b) read: "The voters may authorize the County Court to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized in Section 1 of this Amendment for the purpose of retiring the bonds. The interest rate on any bonds shall not exceed the rate provided in this Constitution. The ballot submitting the question to the voters shall be in substantially the following form:"

**AMEND. 72. CITY AND COUNTY LIBRARY AMENDMENT
(CONST. AMENDS. 30 AND 38, §§ 1 AND 3, AMENDED, CONST.
AMENDS. 30 AND 38, § 5, ADDED).**

Publisher's Notes. This amendment amended Ark. Const. Amend. 30, §§ 1, and 3, added Ark. Const. Amend. 30, § 5, amended Ark. Const. Amend. 38, §§ 1, and 3 and added Ark. Const. Amend. 38, § 5. The amendments to those sections are incorporated within those sections.

The amendment was proposed by H.J.R. 1006 and was adopted at the 1992 general election by a vote of 471,325 for and 325,160 against.

Cross References. House of Representatives, Ark. Const., Art. 5, § 2.

Index

A

ACCOUNTS AND ACCOUNTING.

Library of secretary of state,
§13-2-307.

ADOPTION.

Freedom of information.

Records deemed not public records,
§25-19-105.

Records.

Freedom of information.
Records deemed not public records,
§25-19-105.

ADVERTISING.

Municipal auditoriums.

Commission to manage auditoriums.
Advertising for bids, §14-141-110.

APPROPRIATIONS.

Counties.

Ordinances, §14-14-907.

County libraries.

Authorized, §13-2-401.

Municipal corporations.

Libraries and reading rooms,
§13-2-501.

Ordinances.

County appropriation ordinances,
§14-14-907.

ARCHEOLOGICAL SURVEY.

Freedom of information.

Site files and records.
Records deemed not public records,
§25-19-105.

Records.

Freedom of information.
Site files and records.
Records deemed not public
records, §25-19-105.

ARKANSAS DIGITAL LIBRARY ACT,

§§13-2-1001, 13-2-1002.

ATTORNEY GENERAL.

Freedom of information.

Unpublished memoranda, working
papers, etc.
Records deemed not public records,
§25-19-105.

ATTORNEY GENERAL —Cont'd

Municipal corporations.

Classification of cities and towns.
Board of municipal corporations.
Declaration of advancement
between census periods,
§14-37-108.
Membership on board, §14-37-106.
Reduction of city to lower grade,
§14-37-111.
Statement of cities and towns
entitled to be advanced
according to census,
§14-37-107.

Records.

Freedom of information.
Unpublished memoranda, working
papers, etc.
Records deemed not public
records, §25-19-105.

AUCTIONS AND AUCTIONEERS.

Counties.

Personal property.
Sale of surplus county property,
§14-16-106.

AUDITOR OF STATE.

Municipal corporations.

Classification of cities and towns.
Board of municipal corporations.
Declaration of advancement
between census periods,
§14-37-108.
Membership on board, §14-37-106.
Reduction of city to lower grade,
§14-37-111.
Statement of cities and towns to
be advanced according to
census, §14-37-107.

B

BIDS AND BIDDING.

Counties.

Buildings.
Advertisements for bids, §14-19-103.
Personal property.
Sale of surplus county property.
Public auction, §14-16-106.

BIDS AND BIDDING —Cont'd**Municipal corporations.**

- Auditoriums.
 - Commission to manage auditoriums.
 - Purchases and supplies.
 - Advertising for bids, §14-141-110.
 - Purchase without competitive bidding in certain cities, §14-141-110.

Personal property.

- Counties.
 - Sale of surplus county property.
 - Public auctions, §14-16-106.

BOARDS AND COMMISSIONS.**Municipal corporations.**

- Board of municipal corporations, §§14-37-106 to 14-37-108, 14-37-111.
- Libraries and reading rooms.
 - Board of trustees, §13-2-502.
 - Donations for library.
 - Control by board, §13-2-504.
 - Powers of trustees, §13-2-503.
- Funds.
 - Surplus funds.
 - Use to match federal or other funds, §13-2-504.
 - Report of trustees, §13-2-509.

Open public meetings, §25-19-106.**State library.**

- State library board.
 - Chairman.
 - Selection.
 - Meetings of board, §13-2-206.
 - Compensation, §13-2-205.
 - Creation, §13-2-205.
 - Expenses, §13-2-205.
 - Librarian.
 - Management, §13-2-204.
 - Meetings, §13-2-206.
 - Members, §13-2-205.
 - Terms of office, §13-2-205.
 - Vacancies, §13-2-205.

BONDS, SURETY.**Constables, §14-14-1201.****Coroners, §14-14-1201.****Counties.**

- Assessors of counties, §14-14-1201.
- Clerks of counties, §14-14-1201.
- Employees, §14-14-1201.
- Judges of counties, §14-14-1201.
- Officers, §14-14-1201.
- Purchasing.
 - Accompanying bids, §14-22-108.
- Surveyors of counties, §14-14-1201.

BONDS, SURETY —Cont'd**Counties —Cont'd**

- Tax collectors, §14-14-1201.
- Treasurers of counties, §14-14-1201.

Sheriffs, §14-14-1201.**Townships.**

- Officers and employees, §14-14-1201.

BOOKS.**Library of secretary of state.**

- Binding, §13-2-302.
- Injury to or failure to return books.
 - Penalty, §13-2-310.
- Missing books.
 - Procuring copies of missing books, §13-2-304.
- Privilege of using books, §13-2-208.
- Removal of books, §13-2-309.

BOUNDARIES.**General assembly.**

- Counties, §14-14-201.

Johnson county.

- Area and population requirements.
 - Exemption from provisions, §14-14-201.

Lafayette county.

- Area and population requirements.
 - Exemption from provisions, §14-14-201.
- County seat.
 - Minimum distance between boundary and county seat, §14-14-201.

Pope county.

- Area and population requirements.
 - Exemption from provisions, §14-14-201.

C**CARRYING FIREARM IN PUBLICLY OWNED BUILDING OR FACILITY, §5-73-122.****CENSORSHIP.****Public school Internet filters, §13-2-103.****CIRCUIT COURTS.****Clerks of court.**

- Bonds, surety, §14-14-1201.
- Conflicts of interest, §14-14-1202.
 - Misdemeanors, §14-14-1202.
- Ethics, §14-14-1202.

Conflicts of interest.

- Clerks, §14-14-1202.
 - Misdemeanors, §14-14-1202.

CLEARINGHOUSES.**State library.**

- State and local government publications clearinghouse, §13-2-212.
- College and university libraries. Contracts, §13-2-214.
- Copies provided clearinghouse. Number, §13-2-213.

COMMERCE.**Freedom of information.**

- Advantage to competitors or bidders if files disclosed.
- Files deemed not public records, §25-19-105.

COMMUNITY CORRECTIONS.**Department of community correction.**

- Freedom of information, restriction of access to certain records, §25-19-105.

COMPACTS.**Interstate library compact,**

- §§13-2-601 to 13-2-606.

COMPUTERS.**Public school Internet filters,**

- §13-2-103.

CONFIDENTIALITY OF INFORMATION.**Counties.**

- Certain records, §14-14-110.
- Patron's records, §§13-2-701 to 13-2-706.

CONFIDENTIALITY OF PATRON'S RECORDS.**Construction of chapter, §13-2-705.****Definitions, §13-2-701.****Disclosure.**

- Aggregate statistics, §13-2-705.
- Penalties for violations, §13-2-702.
- When permitted, §13-2-704.
- No liability, §13-2-702.
- When prohibited, §13-2-703.
- Exclusion of evidence of personally identifiable information obtained, §13-2-706.

Limitation of actions, §13-2-702.**Penalties for violations, §13-2-702.****CONFLICTS OF INTEREST.****Circuit courts.**

- Clerks, §14-14-1202.

Constables, §14-14-1202.**Coroners, §14-14-1202.****Counties.**

- Boards, advisory or administrative, §14-14-705.

CONFLICTS OF INTEREST —Cont'd**Counties —Cont'd**

- Officers and employees, §14-14-1202.
- County assessors, §14-14-1202.
- County clerks, §14-14-1202.
- County judges, §14-14-1202.
- Misdemeanors, §14-14-1202.
- County surveyors, §14-14-1202.
- County treasurers, §14-14-1202.
- Justices of the peace, §14-14-1202.
- Sheriffs, §14-14-1202.
- Tax collectors, §14-14-1202.

CONSTABLES.**Bonds, surety, §14-14-1201.****Conflicts of interest, §14-14-1202.**

- Misdemeanors, §14-14-1202.

Ethics, §14-14-1202.**CONSTITUTION OF ARKANSAS.****City libraries.**

- Coordination of city with county library, AR Const Amd 30 §4.

Tax.

- Election on question, AR Const Amd 30 §§1, 2, 5, Amd 72.
- Levy, AR Const Amd 30 §2.
- Petition for, AR Const Amd 30 §§1, 5, Amd 72.
- Raising, reducing or abolishing. Petition and election, AR Const Amd 30 §3, Amd 72.

Counties.

- Elections.
- Libraries. Tax levy for, AR Const Amd 38 §§1 to 3.

Taxation.

- Libraries. Tax levy for, AR Const Amd 38 §§1 to 3.

County libraries.

- Coordination of county with city library, AR Const Amd 38 §4.
- Tax levy for. Election, AR Const Amd 38 §§1 to 3, Amd 72.
- Petition, AR Const Amd 38 §§1, 5, Amd 72.
- Raising, reducing or abolishing tax. Petition and election, AR Const Amd 38 §3, Amd 72.
- Results of election, AR Const Amd 38 §2.

Elections.

- Counties.
- Libraries. Tax levy for, AR Const Amd 38 §§1 to 3.

CONSTITUTION OF ARKANSAS

—Cont'd

Municipal corporations.

Libraries.

City libraries.

Coordination of city with county library, AR Const Amd 30 §4.

Tax for, AR Const Amd 30 §§1 to 3.

Taxation.

Libraries, AR Const Amd 30 §§1 to 3.

Taxation.

Counties.

Libraries.

Tax levy for, AR Const Amd 38 §§1 to 3.

Municipal corporations.

Libraries, AR Const Amd 30 §§1 to 3.

CONSTRUCTION AND INTERPRETATION.**Confidentiality of patron's records, §13-2-705.****CONTRACTS.****Counties.**

Buildings.

Letting of contract.

Lowest and best terms, §14-19-103.

Part of contract, §14-19-103.

Regional library system, §13-2-907.**State library.**

Agreements with state archives and secretary of state, §13-2-209.

Depository agreements, §13-2-211.

University and college libraries, §13-2-214.

CONVEYANCES.**Counties.**

Sales.

Personal property, §14-16-106.

COPIES.**Library of secretary of state.**

Expenses of procuring works.

Payment out of contingent fund of general assembly, §13-2-306.

Missing books.

Procuring copies, §13-2-304.

Secretary of state.

Library of secretary of state, §§13-2-304, 13-2-306.

State and local government publications clearinghouse.

Number of copies provided clearinghouse, §13-2-213.

COPIES —Cont'd**State library.**

State and local government publications clearinghouse.

Number of copies provided clearinghouse, §13-2-213.

CORONERS.**Bonds, surety, §14-14-1201.****Conflicts of interest, §14-14-1202.**

Misdemeanors, §14-14-1202.

Ethics, §14-14-1202.**CORRECTIONS.****Department of correction.**

Records.

Freedom of information, denial of access to certain records, §25-19-105.

COUNTIES.**Appropriations.**

Ordinances, §14-14-907.

Auctions and auctioneers.

Personal property.

Sale of surplus county property, §14-16-106.

Bids.

Buildings.

Advertisements for bids, §14-19-103.

Personal property.

Sale of surplus county property. Public auction, §14-16-106.

Boards and commissions.

Administrative boards.

Establishment by quorum courts, §14-14-705.

Register of board appointment, §14-14-706.

Advisory boards.

Establishment by quorum courts, §14-14-705.

Register of board appointment, §14-14-706.

Conduct of affairs, §14-14-707.

Meetings, §14-14-707.

Open public meetings, §25-19-106.

Organization, §14-14-707.

Records, §14-14-707.

Register of board appointment, §14-14-706.

Reorganization of existing county boards and commissions, §14-14-712.

Termination of existing organizations, §14-14-712.

Voting, §14-14-707.

Bond issues.

Initiative and referendum.

Petitions against county bond issues.

Time for filing, §14-14-919.

COUNTIES —Cont'd**Bonds, surety.**

- Elected county officers and employees thereof, §14-14-1201.
- Employees, §14-14-1201.
- Purchasing.
 - Accompanying bids, §14-22-108.
 - Tax collectors, §14-14-1201.

Boundaries.

- Alteration of boundaries.
 - Area.
 - Minimum area, §14-14-201.
 - Authority to change, §14-14-201.
 - General assembly.
 - Inherent powers, §14-14-201.
 - Johnson county, §14-14-201.
 - Lafayette county, §14-14-201.
 - Minimum area and population, §14-14-201.
 - Pope county, §14-14-201.
 - Population.
 - Minimum population, §14-14-201.
 - Sebastian county, §14-14-201.
- County seats.
 - Minimum distance between boundary and county seat, §14-14-201.
- General assembly.
 - Alteration of boundaries.
 - Inherent powers to change, §14-14-201.
 - Inherent powers to change boundaries, §14-14-201.

Buildings.

- Bids.
 - Advertisements for bids, §14-19-103.
- Contracts.
 - Letting of contract.
 - Lowest and best terms, §14-19-103.
 - Part of contract, §14-19-103.
- Costs.
 - Estimate of cost, §14-19-103.
 - Estimate of cost, §14-19-103.
 - Plans of buildings, §14-19-103.

Confidentiality of information.

- Certain records, §14-14-110.

Conflicts of interest.

- Boards, advisory or administrative, §14-14-705.
- Officers and employees, §14-14-1202.
 - Deputy prosecuting attorneys not covered by provisions, §14-14-1202.
 - Misdemeanors, §14-14-1202.
 - State officers not covered by provisions, §14-14-1202.

COUNTIES —Cont'd**Contracts.**

- Buildings.
 - Letting of contract.
 - Lowest and best terms, §14-19-103.
 - Part of contract, §14-19-103.

Conveyances.

- Sales.
 - Personal property, §14-16-106.

Cooperation.

- Interlocal cooperation, §§25-20-101 to 25-20-108.
- See INTERLOCAL COOPERATION.

County libraries, §§13-2-401 to 13-2-409.

- See COUNTY LIBRARIES.

County seats.

- Boundaries.
 - Minimum distance between boundary and county seat, §14-14-201.
- Definitions, §14-14-301.
- Sebastian county.
 - Two county seats, §14-14-201.
- Second-class cities.
 - Court having levying courts.
 - County seats of less than 500, §14-37-105.

Definitions.

- County seats, §14-14-301.
- Interlocal agreements, §14-14-910.
- Officers and employees of county government, §14-14-1202.
- Purchasing, §14-22-101.

Elections.

- Initiative and referendum, §14-14-917.
- Libraries.
 - Tax levy for, AR Const Amd 38 §§1 to 3.

Electronic records, §14-14-111.**Ethics.**

- County officials and employees, §14-14-1202.

Governing bodies.

- Open public meetings, §25-19-106.

Grants-in-aid agreements.

- Enacted through appropriation ordinance.
 - Not considered interlocal agreement, §14-14-910.

Initiative and referendum.

- Bond issues.
 - Petition against county bond issue.
 - Time for filing, §14-14-919.
- Election.
 - Ballots, §14-14-917.
 - Contest of election, §14-14-917.

COUNTIES —Cont'd**Initiative and referendum —Cont'd**

Election —Cont'd

Notice, §14-14-917.

Time for, §14-14-917.

Vote required for enactment of ordinance, §14-14-917.

Enactment of ordinance.

Vote required, §14-14-917.

Notice.

Election, §14-14-917.

Petitions, §14-14-914.

Against county bond issues.

Time for filing, §14-14-919.

Requirements, §14-14-915.

Sufficiency, §14-14-915.

Time for filing, §14-14-915.

Petitions against county bond issues, §14-14-919.

Reservation of legislative powers, §14-14-914.

Restrictions, §14-14-914.

Interlocal agreements.

Definitions, §14-14-910.

Legislative powers, §14-14-802.

Enumeration of services provided, §14-14-802.

Self government powers.

Enumeration of powers, §14-14-801.

Services provided citizens, §14-14-802.

Maps and plats.

Public buildings, §14-19-103.

Meetings.

Public meetings.

Required, §14-14-109.

Public participation, §14-14-109.

Rules and regulations.

Public participation, §14-14-109.

Motor vehicles.

Purchasing.

Definition of used or secondhand motor vehicles, equipment or machinery, §14-22-101.

Notice.

Initiative and referendum.

Election, §14-14-917.

Personal property.

Sale of surplus county property, §14-16-106.

Officers and employees.

Bonds, surety, §14-14-1201.

Definitions, §14-14-1202.

Ethics, §14-14-1202.

Open public meetings.

Boards and commissions, §25-19-106.

Governing bodies, §25-19-106.

Ordinances.

Adoption, §14-14-905.

COUNTIES —Cont'd**Ordinances —Cont'd**

Amendments, §14-14-905.

Appropriation ordinances, §14-14-907.

Effective date, §14-14-905.

Initiative and referendum.

Generally, §§14-14-914 to 14-14-919.

Publication, §14-14-905.

Referral to electors, §14-14-905.

Personal property.

Bids and bidding.

Sale of surplus county property, §14-16-106.

Notice.

Sale of surplus county property, §14-16-106.

Sale of surplus county property, §14-16-106.

Auctions and auctioneers.

Highest bidder, §14-16-106.

Notice, §14-16-106.

Public auction, §14-16-106.

Sales, §14-16-106.

Petitions.

Initiative and referendum,

§§14-14-914, 14-14-915, 14-14-919.

Publication.

Ordinances, §14-14-905.

Purchasing.

Bids.

Formal bidding.

Defined, §14-22-101.

When required, §14-22-104.

Opened in public, §14-22-108.

Procedure, §14-22-108.

Purchases exempted from soliciting bids, §14-22-106.

Bonds, surety.

Accompanying bids, §14-22-108.

Definitions, §14-22-101.

Commodities, §14-22-101.

Formal bidding, §14-22-101.

Open market purchases, §14-22-101.

Purchase, §14-22-101.

Purchase price, §14-22-101.

Trade-in purchases, §14-22-101.

Used or secondhand motor vehicles, equipment or machinery, §14-22-101.

Exemptions from bid solicitation requirements, §14-22-106.

Open market purchases, §14-22-104.

Defined, §14-22-101.

Types of purchases required and permitted, §14-22-104.

Quorum courts.

Legislative powers of county government, §14-14-802.

Self-government powers, §14-14-801.

COUNTIES —Cont'd**Records, §14-14-110.**

Confidentiality of information,
§14-14-110.

Electronic records, §14-14-111.

Public records, §14-14-110.

Rules and regulations.

Affording reasonable public
participation, §14-14-109.

Sales.**Bids.**

Sale of surplus county property,
§14-16-106.

Notice.

Surplus county property, §14-16-106.

Personal property.

Surplus county property, §14-16-106.

Auctions and auctioneers,
§14-16-106.

Highest bidder, §14-16-106.

Notice, §14-16-106.

Bids and bidding, §14-16-106.

Notice, §14-16-106.

Public auctions, §14-16-106.

Subordinate service districts.

Establishment, §14-14-706.

Taxation.**Libraries.**

Tax levy for, AR Const Amd 38 §§1
to 3.

Tax collectors.

Bonds, surety, §14-14-1201.

Ethics, §14-14-1202.

COUNTY ASSESSORS.**Bonds, surety, §14-14-1201.****Conflicts of interest, §14-14-1202.**

Misdemeanors, §14-14-1202.

Ethics, §14-14-1202.**COUNTY CLERKS.****Bonds, surety, §14-14-1201.****Conflicts of interest, §14-14-1202.**

Misdemeanors, §14-14-1202.

Ethics, §14-14-1202.**COUNTY COURTS.****County libraries.**

Establishment of county libraries,
§13-2-401.

Definitions.

Interlocal agreements, §14-14-910.

Permanent or perpetual
relationship, §14-14-910.

Interlocal agreements, §14-14-910.**COUNTY JUDGES.****Bonds, surety, §14-14-1201.****Conflicts of interest, §14-14-1202.**

Misdemeanors, §14-14-1202.

COUNTY JUDGES —Cont'd**Ethics, §14-14-1202.****COUNTY LIBRARIES.****Appropriations.**

Authorized, §13-2-401.

Cooperation with other counties.

Joint library authorized, §13-2-401.

Coordination of city with county library, AR Const Amd 38 §4.**Counties with two districts.**

Levy of library tax, §13-2-403.

County courts.

Establishment of county libraries,
§13-2-401.

County free library fund, §13-2-404.

Appropriations, §13-2-402.

Custody, §13-2-404.

County librarians.

Appointment, §13-2-402.

Duties, §13-2-402.

Qualifications, §13-2-402.

Damage to property, §13-2-408.**Establishment by county courts, §13-2-401.****Extension of services outside county, §13-2-406.****Funds.**

County free library fund, §13-2-404.

Appropriations, §13-2-402.

Custody, §13-2-404.

Surplus funds.

Use of funds to match federal or
other funds, §13-2-405.

Injuries to library property, §13-2-408.**Joint city-county and regional public library systems, §13-2-407.****Librarians.**

Appointment, §13-2-402.

Duties, §13-2-402.

Qualifications, §13-2-402.

Library tax petition.

Filing fee, §13-2-409.

Regional and joint city-county public library systems, §13-2-407.**Regional library system.**

Generally, §§13-2-901 to 13-2-907.

Taxation.

Levy of tax for libraries, AR Const
Amd 38 §§1 to 3.

Counties with two districts,
§13-2-403.

COUNTY SURVEYORS.**Bonds, surety, §14-14-1201.****Conflicts of interest, §14-14-1202.**

Misdemeanors, §14-14-1202.

Ethics, §14-14-1202.

COUNTY TREASURERS.
Bonds, surety, §14-14-1201.
Conflicts of interest, §14-14-1202.
 Misdemeanors, §14-14-1202.
Ethics, §14-14-1202.
COURTS.
Freedom of information.
 Documents protected from disclosure
 by court order or rule.
 Documents deemed not public
 records, §25-19-105.
CRIMINAL LAW AND PROCEDURE.
Counties.
 Boards, advisory or administrative.
 Conflicts of interest, §14-14-705.
 Officers and employees.
 Ethical rules of conduct violations,
 §14-14-1202.
Library materials security.
 Unauthorized removal or willful
 mutilation, §13-2-803.

D

DEFINED TERMS.
Administrative rights.
 County electronic records, §14-14-111.
Applicable ad valorem rate.
 Redevelopment districts, §14-168-301.
Base value.
 Redevelopment districts, §14-168-301.
Blighted area.
 Redevelopment districts, §14-168-301.
Club, §5-73-120.
Commodities.
 County purchasing, §14-22-101.
Confidentiality of patron's records,
 §13-2-701.
Confidential library records,
 §13-2-701.
County interlocal agreement,
 §14-14-910.
County seat, §14-14-301.
Current value.
 Redevelopment districts, §14-168-301.
Custodian.
 Freedom of information act,
 §25-19-103.
Debt service ad valorem rate.
 Redevelopment districts, §14-168-301.
Disaster recovery system.
 Freedom of information act,
 §25-19-103.
Electronic record.
 Counties, §14-14-111.
Facilities.
 Firearms.
 Carrying loaded firearms, §5-73-122.

DEFINED TERMS —Cont'd
Formal bidding.
 County purchasing, §14-22-101.
Format.
 Freedom of information act,
 §25-19-103.
Handgun, §5-73-120.
Harmful to minors.
 Education, Internet filters, §6-21-111.
 School computer use policy, §6-21-107.
Incremental value.
 Redevelopment districts, §14-168-301.
Interstate library compact,
 §§13-2-601, 13-2-602.
Knife, §5-73-120.
Library materials.
 Security, §13-2-802.
Local governing body.
 Redevelopment districts, §14-168-301.
Local government.
 Redevelopment districts, §14-168-301.
Local publication, §13-2-201.
Medium.
 Freedom of information act,
 §25-19-103.
Municipally owned utility system.
 Freedom of information act,
 §25-19-103.
Mutilate.
 Library materials security, §13-2-802.
Open market purchases.
 County purchasing, §14-22-101.
Patron.
 Confidential library records, §13-2-701.
**Permanent or perpetual
 relationship.**
 County interlocal agreements,
 §14-14-910.
Project costs.
 Redevelopment districts, §14-168-301.
Project plan.
 Redevelopment districts, §14-168-301.
Public access computers.
 Education, Internet filters, §6-21-111.
 School computer use policy, §6-21-107.
Public agency.
 Interlocal cooperation act, §25-20-103.
Public meetings.
 Freedom of information act,
 §25-19-103.
Public records.
 Counties, electronic records,
 §14-14-111.
 Freedom of information act,
 §25-19-103.
Public water system.
 Freedom of information, §25-19-103.

DEFINED TERMS —Cont'd**Purchase.**

County purchasing, §14-22-101.

Purchase price.

County purchasing, §14-22-101.

Purchasing official.

County purchasing, §14-22-101.

Real property.

Redevelopment districts, §14-168-301.

Redevelopment district, §14-168-301.**Redevelopment project, §14-168-301.****Special fund.**

Redevelopment districts, §14-168-301.

State.

Interlocal cooperation act, §25-20-103.

State library agency.

Interstate library compact, §13-2-601.

State publication, §13-2-201.**Tax increment.**

Redevelopment districts, §14-168-301.

Taxing unit.

Redevelopment districts, §14-168-301.

Total ad valorem rate.

Redevelopment districts, §14-168-301.

Trade-in purchases.

County purchasing, §14-22-101.

Used or secondhand motor vehicles, equipment or machinery.

County purchasing, §14-22-101.

Vulnerability assessment.

Freedom of information act,
§25-19-103.

Without authorization.

Library materials security, §13-2-802.

DIGITAL LIBRARY ACT, §§13-2-1001, 13-2-1002.**DISABILITIES, INDIVIDUALS WITH.****Blue and white international symbol of access, §20-14-307.****Discrimination.**

Public rights of individuals with disabilities, §20-14-303.

Display of signs for the disabled.

International symbol of access,
§20-14-307.

Dogs.

Killing or injuring service animals,
§20-14-304.

Visually or hearing impaired persons' right to be accompanied by,
§§20-14-304, 20-14-308.

Housing.

Right to housing accommodations,
§20-14-305.

International symbol of access, §20-14-307.**DISABILITIES, INDIVIDUALS WITH —Cont'd****Policy of state, §20-14-301.****Public rights of individuals with disabilities, §20-14-303.****Rights.**

Policy of state, §20-14-301.

Public accommodations, §20-14-303.

Violations, §20-14-302.

Service animals.

Killing or injuring, §20-14-304.

Right to be accompanied by service animal, §§20-14-304, 20-14-308.

White cane law, §20-14-306.**DOCUMENTS.****Library of secretary of state.**

Binding, §13-2-302.

E**EDUCATION.****Computers.**

Internet access, §6-21-107.

Internet filters required, §6-21-111.

County boards of education.

Open public meetings, §25-19-106.

Internet access, §6-21-107.**Internet filters.**

Public schools, §13-2-103.

Required, §6-21-111.

Meetings.

Open public meetings.

School districts and county boards of education, §25-19-106.

Open public meetings.

County boards of education,
§25-19-106.

School districts, §25-19-106.

Public school Internet filters, §13-2-103.**School districts.**

Open public meetings, §25-19-106.

State library.

Department of education.

State library established and created within department,
§13-2-203.

ELECTIONS.**Municipal corporations.**

Towns.

Advancement of second-class city,
§14-37-112.

Officers, §14-37-112.

ELECTRONIC TRANSACTIONS.**Agreements.**

Variation by agreement, §25-32-105.

ELECTRONIC TRANSACTIONS

—Cont'd

Applicability of provisions,

§25-32-105.

Scope of provisions, §25-32-105.**ETHICS.****County assessors, §14-14-1202.****County clerks, §14-14-1202.****County judges, §14-14-1202.****County officials and employees,**
§14-14-1202.**County surveyors, §14-14-1202.****County treasurers, §14-14-1202.****Justices of the peace, §14-14-1202.****Sheriffs, §14-14-1202.****EVIDENCE.****Confidentiality of patron's records.**Personally identifiable information
obtained not in compliance with
subchapter.Exclusion of information obtained
from admission into evidence,
§13-2-706.**F****FEES.****County libraries.**Extension of services outside county,
§13-2-406.**Freedom of information.**Electronic information requests,
§25-19-109.**FINES.****Confidentiality of patrons' records,**
§13-2-702.**County officers and employees.**Ethical rules of conduct violations,
§14-14-1202.**FIREARMS AND OTHER WEAPONS.****Carrying firearm in publicly owned
building or facility, §§5-73-120,
5-73-122.****FREEDOM OF INFORMATION.****Adoption.**Records deemed not public records,
§25-19-105.**Agency information for public
guidance, §25-19-108.****Archeological survey.**Site files and records.
Records deemed not public records,
§25-19-105.**FREEDOM OF INFORMATION**

—Cont'd

Attorney general.Unpublished memoranda, working
papers, etc.
Records deemed not public records,
§25-19-105.**Concealed weapons licenses.**Records deemed not public records,
§25-19-105.**Copying requests, §25-19-105.****Courts.**Documents protected from disclosure
by court order or rule.
Documents deemed not public
records, §25-19-105.**Definitions, §25-19-103.****Disaster recovery systems,
electronic data information.**Records deemed not public records,
§25-19-105.**Electronic information requests,
§25-19-109.****Exemptions to be explicitly stated in
laws, §25-19-110.****Fees.**Electronic information requests,
§25-19-109.**General assembly.**Unpublished memoranda, working
papers, etc.
Records deemed not public records,
§25-19-105.**Governor.**Unpublished memoranda, working
papers, etc.
Records deemed not public records,
§25-19-105.**Grand jury.**Minutes of proceedings.
Minutes deemed not public records,
§25-19-105.**Historical preservation program.**Site files and records.
Records deemed not public records,
§25-19-105.**Income tax.**State income tax records.
Records deemed not public records,
§25-19-105.**Judges.**Opinions and decisions.
Unpublished drafts of opinions and
decisions.
Deemed not public records,
§25-19-105.

FREEDOM OF INFORMATION

—Cont'd

Law enforcement officers.

Investigations.

Undisclosed investigations of suspected criminal activity.

Records deemed not public records, §25-19-105.

Medical records.

Records deemed not public records, §25-19-105.

Meetings.

Public meetings.

Defined, §25-19-103.

Executive sessions.

Restrictions on, §25-19-106.

Open meetings, §25-19-106.

Notice of request for records,

§25-19-105.

Public guidance, information for,

§25-19-108.

Public officers and employees.

Personnel records disclosure.

Invasion of personal privacy.

Availability of records to employee or designated representative, §25-19-105.

Records deemed not public records, §25-19-105.

Public utilities, customer information.

Records not deemed public records, §25-19-105.

Records.

Public records.

Defined, §25-19-103.

Examination and copying, §25-19-105.

Requests for copies of records,

§25-19-105.

Statutes enacted.

Exemptions to be explicitly stated in laws, §25-19-110.

Supreme court.

Justices.

Unpublished memoranda, working papers, etc.

Records deemed not public records, §25-19-105.

Trade and commerce.

Advantage to competitors or bidders if files disclosed.

Files deemed not public records, §25-19-105.

Trade secrets.

Advantage to competitors or bidders if files disclosed.

Files deemed not public records, §25-19-105.

FREEDOM OF INFORMATION

—Cont'd

Unfair competition and trade practices.

Advantage to competitors or bidders if files disclosed.

Files deemed not public records, §25-19-105.

Universities and colleges.

Scholastic records.

Records deemed not public records, §25-19-105.

FUNDS.**County libraries.**

County free library fund, §13-2-404.

Custody, §13-2-404.

Surplus funds.

Use of funds to match federal or other funds, §13-2-405.

General assembly.

Library of secretary of state.

Expenses of procuring works.

Payment out of contingent fund, §13-2-306.

G**GENERAL ASSEMBLY.****Freedom of information.**

Unpublished memoranda, working papers, etc.

Records deemed not public records, §25-19-105.

Funds.

Library of secretary of state.

Expenses of procuring works.

Payment out of contingent fund, §13-2-306.

Library of secretary of state.

Acts.

Binding, §13-2-302.

Expenses of procuring works.

Payment out of contingent fund, §13-2-306.

Records.

Freedom of information.

Unpublished memoranda, working papers, etc.

Records deemed not public records, §25-19-105.

GOVERNOR.**Freedom of information.**

Unpublished memoranda, working papers, etc.

Records deemed not public records, §25-19-105.

GOVERNOR —Cont'd**Records.**

- Freedom of information.
- Unpublished memoranda, working papers, etc.
- Records deemed not public records, §25-19-105.

GRAND JURY.**Freedom of information.**

- Minutes of proceedings.
- Minutes deemed not public records, §25-19-105.

Minutes of proceedings.

- Freedom of information.
- Minutes deemed not public records, §25-19-105.

GRANTS.**Counties.**

- Agreements enacted through appropriation ordinance.
- Not considered interlocal agreement, §14-14-910.

H**HEALTH INSURANCE.****Portability and accountability.**

- Records, freedom of information act, §25-19-105.

HISTORICAL PRESERVATION PROGRAM.**Freedom of information.**

- Site files and records.
- Records deemed not public records, §25-19-105.

Records.

- Freedom of information.
- Site files and records.
- Records deemed not public records, §25-19-105.

I**INCOME TAX.****Freedom of information.**

- State income tax records.
- Records deemed not public records, §25-19-105.

Records.

- Freedom of information.
- State income tax records.
- Records deemed not public records, §25-19-105.

INTERLOCAL COOPERATION.**Agreements.**

- Approval, §§25-20-104, 25-20-106.

INTERLOCAL COOPERATION**—Cont'd****Agreements —Cont'd**

- Filing, §25-20-105.
- Provisions, §25-20-104.
- Requirements, §25-20-104.
- Specifications to be included, §25-20-104.
- Submission to state officer or agency controlling services or facilities, §25-20-106.

Appropriations, §25-20-107.**Citation of act.**

- Short title, §25-20-101.

Contracts.

- Services from another agency, §25-20-108.

Damages.

- Liability for damages under agreements, §25-20-105.

Definitions, §25-20-103.**Legislative declaration, §25-20-102.****Public library systems.**

- Public body corporate and politic.
- Board of directors, §25-20-202.
- Construction of subchapter, §25-20-206.
- Creation, §25-20-201.
- Executive director, §25-20-202.
- Immunity, §25-20-205.
- Powers, §25-20-203.
- Tax exempt status, §25-20-204.
- Withdrawal of public agency, §25-20-207.

Purpose of provisions, §25-20-102.**Title of act.**

- Short title, §25-20-101.

INTERNET.**Digital library act, §§13-2-1001, 13-2-1002.****Public school Internet filters, §13-2-103.****School districts.**

- Access policies, §6-21-107.
- Internet filters required, §6-21-111.

INTERSTATE COMPACTS.**Interstate library compact, §§13-2-601 to 13-2-606.****INVESTIGATIONS.****Law enforcement officers.**

- Freedom of information.
- Undisclosed investigations of suspected criminal activity.
- Records deemed not public records, §25-19-105.

J**JOHNSON COUNTY.****Boundaries.**

Area and population requirements.
Exemption from provisions,
§14-14-201.

JUDGES.**Freedom of information.**

Opinions and decisions.
Unpublished drafts of opinions and
decisions.
Deemed not public records,
§25-19-105.

Mayors.

Municipal corporations.
Reduction of city to lower grade.
Mayor to become police judge,
§14-37-111.

Municipal corporations.

Police.
Reduction of city to lower grade.
Mayor to become police judge,
§14-37-111.

Opinions and decisions.

Freedom of information.
Unpublished drafts of opinions and
decisions.
Deemed not public records,
§25-19-105.

JUSTICES OF THE PEACE.

Bonds, surety, §14-14-1201.

Conflicts of interest, §14-14-1202.

Misdemeanors, §14-14-1202.

Ethics, §14-14-1202.

L**LAFAYETTE COUNTY.****Boundaries.**

Area and population requirements.
Exemption from provisions,
§14-14-201.

County seat.

Minimum distance between
boundary and county seat,
§14-14-201.

County seat.

Boundaries.
Minimum distance between
boundary and county seat,
§14-14-201.

LAW ENFORCEMENT OFFICERS.**Investigations.**

Freedom of information.
Undisclosed investigations of
suspected criminal activity.
Records deemed not public
records, §25-19-105.

Undercover officer lists.

Public records, §25-19-105.

LIBRARY OF SECRETARY OF STATE.

Accounts and accounting, §13-2-307.

Binding of books and documents,
§13-2-302.

Books.

Binding, §13-2-302.
Injury to or failure to return books.
Penalty, §13-2-310.
Missing books.
Procuring copies of missing books,
§13-2-304.
Privilege of using books, §13-2-208.
Removal of books, §13-2-309.

Copies.

Expenses of procuring works.
Payment out of contingent fund of
general assembly, §13-2-306.
Missing books.
Procuring copies, §13-2-304.

Documents.

Binding, §13-2-302.

Expenses.

Payment out of contingent fund of
general assembly, §13-2-306.

General assembly.

Acts.
Binding, §13-2-302.
Expenses of procuring works.
Payment out of contingent fund,
§13-2-306.

Librarian.

Binding of books and documents,
§13-2-302.
Designation of secretary as librarian,
§§13-2-202, 13-2-301.
Missing books.
Procuring copies of, §13-2-304.
Secretary of state designated,
§§13-2-202, 13-2-301.

Names.

Designation, §13-2-202.

Penalties.

Injury to or failure to return books or
charts, §13-2-310.

LIBRARY OF SECRETARY OF STATE —Cont'd
Privilege of using books, citizens and strangers, §13-2-308.

State library.
 Effect of subchapter, §13-2-202.

United States.
 Books and documents of United States.
 Binding, §13-2-302.

LIMITATION OF ACTIONS.

Confidentiality of patron's records.
 Disclosure of confidential information, §13-2-702.

LOCAL GOVERNMENTS.

Interlocal cooperation, §§25-20-101 to 25-20-108.

See INTERLOCAL COOPERATION.

State library.
 Depository for local documents, §13-2-210.

State and Local Government Publications Clearinghouse, §13-2-212.

Copies provided clearinghouse. Number, §13-2-213.

University and college libraries. Contracts, §13-2-214.

M

MAPS AND PLATS.

Counties.
 Public buildings, §14-19-103.

MEDICAL RECORDS.

Freedom of information.
 Records deemed not public records, §25-19-105.

MEETINGS.

Freedom of information act.
 Public meetings.
 Defined, §25-19-103.
 Executive sessions.
 Restrictions on, §25-19-106.
 Open meetings, §25-19-106.

MINORS.

Public school Internet filters, §13-2-103.

MOTOR VEHICLES.

County purchasing procedures.
 Definition of used or secondhand motor vehicles, equipment or machinery, §14-22-101.

MULTI-JURISDICTIONAL SYSTEM AGREEMENTS, §13-2-102.

MUNICIPAL CORPORATIONS.

Advertising.

Auditoriums.
 Purchases and supplies.
 Commission to manage auditoriums.
 Advertising for bids, §14-141-110.

Appropriations.

Libraries and reading rooms, §13-2-501.

Attorney general.

Classification of cities and towns.
 Board of municipal corporations.
 Declaration of advancement between census periods, §14-37-108.
 Membership on board, §14-37-106.
 Reduction of city to lower grade, §14-37-111.
 Statement of cities and towns entitled to be advanced according to census, §14-37-107.

Auditoriums.

Commission to manage auditoriums.
 Bids and bidding.
 Purchases and supplies.
 Advertising for bids, §14-141-110.
 Purchases without competitive bidding in certain cities, §14-141-110.
 Cities of 25,500 to 27,000.
 Certain purchases without competitive bidding, §14-141-110.
 Purchases and supplies, §14-141-110.
 Advertising for bids, §14-141-110.
 Bids and bidding.
 Advertising for bids, §14-141-110.
 Purchases without competitive bids in certain cities, §14-141-110.

Auditor of state.

Classification of cities and towns.
 Board of municipal corporations.
 Declaration of advancement between census periods, §14-37-108.
 Membership on board, §14-37-106.
 Statement of cities and towns to be advanced according to census, §14-37-107.

MUNICIPAL CORPORATIONS

—Cont'd

Bids.

- Auditoriums.
 - Commission to manage auditoriums.
 - Purchases and supplies.
 - Advertising for bids, §14-141-110.
 - Purchase without competitive bidding in certain cities, §14-141-110.
 - Purchases and supplies.
 - Auditoriums.
 - Commission to manage auditoriums, §14-141-110.

Board of municipal corporations.

- Ascertainment of cities and towns entitled to be advanced according to census, §14-37-107.
- Composition, §14-37-106.
- Declaration of advancement between census periods, §14-37-108.
- Membership, §14-37-106.
- Reduction of city to lower grade, §14-37-111.

Boards and commissions.

- Libraries and reading rooms.
 - Board of trustees, §13-2-502.
 - Donations for library.
 - Control by board, §13-2-504.
 - Powers of trustees, §13-2-503.
 - Funds.
 - Surplus funds.
 - Use to match federal or other funds, §13-2-504.
 - Report of trustees, §13-2-509.

Cities of the first class, §14-37-104.

- Application to cities and towns existing prior to constitution of 1874, §14-37-101.
- Change in population, §14-37-113.
- Mayors.
 - Reduction of city to lower grade.
 - Mayor to become police judge, §14-37-111.
- Population, §§14-37-103, 14-37-104.
- Reduction of city to lower grade, §14-37-111.
 - Change in population, §14-37-113.
 - Effect of reduction in grade, §14-37-111.
 - Procedure, §14-37-111.
 - Reduction to city of second class, §14-37-114.
 - Reduction to city of second class, §14-37-114.
- Subsequent classification as cities of the first class, §14-37-104.

MUNICIPAL CORPORATIONS

—Cont'd

City councils.

- Open public meetings, §25-19-106.

Classification of cities and towns.

- Advancement to higher classification.
 - Application for advancement between census periods, §14-37-108.

Census.

- Special census to determine classification, §14-37-109.

Evidence of population, §14-37-108.

- Accompanying application for advancement, §14-37-108.

Perfection of organization.

- When statement of advancement received, §14-37-107.

Special census to determine classification, §14-37-109.

- Enumerators.
 - Appointment, §14-37-109.
 - Compensation, §14-37-110.
 - Duties, §14-37-110.
 - Filing of returns, §14-37-110.
 - Oaths, §14-37-110.
 - Pay, §14-37-110.

Statement of advancement, §14-37-107.

- Perfection of organization when statement received, §14-37-107.

- Preparation and transmittal to mayor of city or town, §14-37-107.

Towns.

- Advancement to second-class cities, §14-37-112.

Application to cities and towns existing prior to constitution of 1874, §14-37-101.**Board of municipal corporations.**

- Ascertainment of cities and towns entitled to be advanced according to census, §14-37-107.

Composition, §14-37-106.**Declaration of advancement between census periods, §14-37-108.****Membership, §14-37-106.****Reduction of city to lower grade, §14-37-111.****Change in population, §14-37-113.****County seat of second-class city.**

- When county has two levying courts, §14-37-105.

Division into classes, §14-37-102.**Enumerators.**

- Special census to determine classification, §14-37-110.

MUNICIPAL CORPORATIONS

—Cont'd

Classification of cities and towns

—Cont'd

Population limits, §14-37-103.

Reduction of city to lower grade,
§14-37-111.

Change in population, §14-37-113.

Effect of reduction in grade,
§14-37-111.

Procedure, §14-37-111.

Reduction of city of first class to
second-class city, §14-37-114.Reduction of city of first class to
second-class city, §14-37-114.Subsequent classification as cities of
the first class, §14-37-104.**Contracts.**

Libraries and reading rooms.

Services outside city, §13-2-507.

Cooperation.Interlocal cooperation, §§25-20-101 to
25-20-108.

See INTERLOCAL COOPERATION.

County seats.

Cities of the second class.

When county has two levying courts.

County seats of less than 500,
§14-37-105.**Elections.**

Libraries.

Establishment of libraries,
§13-2-501.

Towns.

Advancement to city of second class,
§14-37-112.

Officers, §14-37-112.

Funds.

Libraries and reading rooms.

Surplus funds.

Use to match federal or other
funds, §13-2-504.**Gifts.**

Libraries and reading rooms.

Donations for libraries, §13-2-505.

Governing bodies.

Open public meetings, §25-19-106.

Injuries.

Libraries.

Injuries to library property,
§13-2-506.

Penalties, §13-2-506.

Joint city-county libraries, §13-2-508.**Joint municipal libraries, §13-2-508.****Judges.**

Mayors.

Reduction of city to lower grade.

Mayor to become police judge,
§14-37-111.**MUNICIPAL CORPORATIONS**

—Cont'd

Libraries and reading rooms.

Appropriations.

Establishment of libraries and
reading rooms, §13-2-501.

Board of trustees, §13-2-502.

Appointment, §13-2-502.

Appointment of librarian and
employees, §13-2-503.

Donations for library.

Control by board, §13-2-505.

Funds.

Surplus funds.

Use to match federal or other
funds, §13-2-504.

Oaths, §13-2-502.

Organization, §13-2-502.

Powers, §13-2-503.

Reports, §13-2-509.

Rules and regulations, §13-2-502.

Terms of office, §13-2-502.

Vacancies, §13-2-502.

City and town library services,
§13-2-510.

City libraries.

Coordination of city with county
library, AR Const Amd 30 §4.

Tax for, AR Const Amd 30 §§1 to 3.

Contracts.

Library services outside city,
§13-2-507.Donations for benefit of library,
§13-2-505.Elections for establishment of
libraries, §13-2-501.

Employees.

Appointment, §13-2-503.

Establishment of libraries and reading
rooms, §13-2-501.

Fees for special services, §13-2-507.

Funds.

Surplus funds.

Use to match federal or other
funds, §13-2-504.

Gifts.

Donations for benefit of library,
§13-2-505.

Injuries to library property, §13-2-506.

Penalties, §13-2-506.

Joint city-county libraries, §13-2-508.

Joint municipal libraries, §13-2-508.

Librarians.

Appointment, §13-2-503.

Penalties.

Injuries to library property,
§13-2-506.

MUNICIPAL CORPORATIONS

—Cont'd

Libraries and reading rooms

—Cont'd

Regional library system.
Generally, §§13-2-901 to 13-2-907.

Reports.

Board of trustees, §13-2-509.
Trustees' report, §13-2-509.

Rules and regulations.

Promulgation by board of trustees,
§13-2-502.

Tax revenues, §13-2-501.

Mayors.

Judges.

Municipal corporations.
Reduction of city to lower grade.
Mayor to become police judge,
§14-37-111.

Reduction of city to lower grade.
Mayor to become police judge,
§14-37-111.

Oaths.

Classification of cities and towns.

Advancement to higher
classification.

Special census to determine
classification.

Oaths of enumerators,
§14-37-110.

Officers.

Towns.

Advancement of towns to city of
second class.

Election of officers, §14-37-112.

Open public meetings.

City councils, §25-19-106.

Governing bodies, §25-19-106.

Penalties.

Libraries and reading rooms.

Injuries to library property,
§13-2-506.

Petitions.

Libraries.

Establishment of libraries and
reading rooms, §13-2-501.

Purchasing.

Auditoriums.

Commission to manage auditoriums,
§14-141-110.

Advertisements, §14-141-110.

Bids and bidding.

Advertising for bids,
§14-141-110.

Purchases without competitive
bidding, §14-141-110.

Purchases without competitive
bidding, §14-141-110.

MUNICIPAL CORPORATIONS

—Cont'd

Purchasing —Cont'd

Bids.

Commission to manage auditorium,
§14-141-110.

Reading rooms.

Establishment of libraries and reading
rooms, §§13-2-501 to 13-2-510.

Reports.

Libraries and reading rooms.
Trustees' report, §13-2-509.

Rules and regulations.

Libraries.

Board of trustees.

Promulgation, §13-2-502.

Second-class cities, §14-37-105.

Advancement of towns to city of
second class, §14-37-112.

Application to cities and towns
existing prior to constitution of
1874, §14-37-101.

Change in population, §14-37-113.

Classification of cities and towns.

General provisions, §§14-37-101 to
14-37-114.

County seat a second-class city.

When county has two levying courts.

County seats of less than 500,
§14-37-105.

Creation of division, §14-37-102.

Population, §§14-37-103, 14-37-105.

Reduction of city to lower grade,
§14-37-111.

Change in population, §14-37-113.

Effect of reduction in grade,
§14-37-111.

Procedure, §14-37-111.

Secretary of state.

Classification of cities and towns.

Board of municipal corporations.

Declaration of advancement
between census periods,
§14-37-108.

Membership on board, §14-37-106.

Reduction of city to lower grade,
§14-37-111.

Statement of cities and towns
entitled to be advanced
according to census,
§14-37-107.

Taxation.

Libraries, AR Const Amd 30 §§1 to 3.

Towns.

Advancement to city of second class,
§14-37-112.

Adoption and publication of
ordinance required, §14-37-112.

MUNICIPAL CORPORATIONS

—Cont'd

Towns —Cont'd

Advancement to city of second class

—Cont'd

Elections, §14-37-112.

Officers, §14-37-112.

Officers of cities, §14-37-112.

Application to cities and towns

existing prior to constitution of
1874, §14-37-101.

Classification of cities and towns.

General provisions, §§14-37-101 to
14-37-114.

Creation of division, §14-37-102.

Library services, §13-2-510.

N**NOTICE.****Counties.**

Initiative and referendum.

Election, §14-14-917.

Personal property.

Sale of surplus county property,
§14-16-106.**Freedom of information.**Notice of request for records,
§25-19-105.**Interstate library compact.**Sending and receiving of notices
required by compact, §13-2-604.**Personal property.**

Counties.

Sale of surplus county property,
§14-16-106.**O****OATHS OR AFFIRMATIONS.****Municipal corporations.**

Classification of cities and towns.

Advancement to higher
classification.Special census to determine
classification.Oaths of enumerators,
§14-37-110.**ORDINANCES.****Appropriations.**County appropriation ordinances,
§14-14-907.**Counties.**

Adoption, §14-14-905.

Amendments, §14-14-905.

Appropriation ordinances, §14-14-907.

ORDINANCES —Cont'd**Counties** —Cont'd

Effective date, §14-14-905.

Initiative and referendum.

General provisions, §§14-14-914 to
14-14-919.

Publication, §14-14-905.

Referral to electors, §14-14-905.

Regional library system, §13-2-903.**P****PERSONAL PROPERTY.****Bids and bidding.**

Counties.

Sale of surplus county property.

Public auctions, §14-16-106.

Notice.

Counties.

Sale of surplus county property,
§14-16-106.**PETITIONS.****Counties.**

Initiative and referendum,

§§14-14-914, 14-14-915, 14-14-919.

County libraries.

Levy of library tax, §13-2-409.

POPE COUNTY.**Boundaries.**

Area and population requirements.

Exemption from provisions,
§14-14-201.**PRISON TERMS.****Confidentiality of patrons' records,**

§13-2-702.

PROCUREMENT.**Bids.**

Municipal corporations.

Auditoriums.

Commission to manage
auditoriums, §14-141-110.**Contracts.**

Bids.

Municipal corporations.

Commission to manage
auditoriums.Advertising for bids,
§14-141-110.Purchases without competitive
bidding in certain cities,
§14-141-110.**Municipal corporations.**

Auditoriums.

Commission to manage auditoriums,
§14-141-110.

Advertisements, §14-141-110.

PROCUREMENT —Cont'd**Municipal corporations —Cont'd****Auditoriums —Cont'd**

Commission to manage auditoriums
—Cont'd

Bids and bidding.

Advertising for bids,
§14-141-110.

Purchases without competitive
bidding, §14-141-110.

Purchases without competitive
bidding, §14-141-110.

Bids.

Auditoriums.

Commission to manage
auditoriums, §14-141-110.

**PUBLIC OFFICERS AND
EMPLOYEES.****Employee evaluation or job
performance.**

Freedom of information.

Availability to employee or
designated representative,
§25-19-105.

Records deemed public records,
§25-19-105.

Freedom of information.

Employee evaluation or job
performance.

Records deemed public records,
§25-19-105.

Personnel records disclosure.

Invasion of personal privacy.

Availability of records to employee
or designated representative,
§25-19-105.

Records deemed not public
records, §25-19-105.

Job performance evaluations.

Availability to employee or designated
representative, §25-19-105.

Freedom of information.

Records deemed public records,
§25-19-105.

Records.

Employee evaluation or job
performance.

Freedom of information.

Records deemed public records,
§25-19-105.

Freedom of information.

Availability to employee or
designated representative,
§25-19-105.

Personnel records disclosure.

Invasion of personal privacy.

Records deemed not public
records, §25-19-105.

**PUBLIC OFFICERS AND
EMPLOYEES —Cont'd****Records —Cont'd**

Job performance evaluations.

Availability to employee or
designated representative,
§25-19-105.

Freedom of information.

Records deemed public records,
§25-19-105.

Personnel records disclosure.

Invasion of personal privacy.

Availability of records to employee
or designated representative,
§25-19-105.

PUBLIC SCHOOLS.**Public school Internet filters,
§13-2-103.****R****RECORDS.****Adoption.**

Freedom of information.

Records deemed not public records,
§25-19-105.

Archeological survey.

Freedom of information.

Site files and records.

Records deemed not public
records, §25-19-105.

Attorney general.

Freedom of information.

Unpublished memoranda, working
papers, etc.

Records deemed not public
records, §25-19-105.

**Confidentiality of patron's records,
§§13-2-701 to 13-2-706.****Counties, §14-14-110.**

Confidentiality of information,
§14-14-110.

Electronic records, §14-14-111.

Public records, §14-14-110.

Freedom of information act.

General provisions, §§25-19-103 to
25-19-110.

Public records.

Defined, §25-19-103.

Examination and copying,
§25-19-105.

General assembly.

Freedom of information.

Unpublished memoranda, working
papers, etc.

Records deemed not public
records, §25-19-105.

RECORDS —Cont'd**Governor.**

- Freedom of information.
- Unpublished memoranda, working papers, etc.
- Records deemed not public records, §25-19-105.

Historical preservation program.

- Freedom of information.
- Site files and records.
- Records deemed not public records, §25-19-105.

Income tax.

- Freedom of information.
- State income tax records.
- Records deemed not public records, §25-19-105.

Library materials security,
§§13-2-801 to 13-2-806.**Public officers and employees.**

- Employee evaluation or job performance.
- Freedom of information.
- Records deemed public records, §25-19-105.
- Freedom of information.
- Availability to employee or designated representative, §25-19-105.
- Personnel records disclosure.
- Invasion of personal privacy.
- Records deemed not public records, §25-19-105.
- Job performance evaluations.
- Availability to employee or designated representative, §25-19-105.
- Freedom of information.
- Records deemed public records, §25-19-105.
- Personnel records disclosure.
- Invasion of personal privacy.
- Availability of records to employee or designated representative, §25-19-105.

Public records.

- Freedom of information.
- Defined, §25-19-103.
- Examination and copying, §25-19-105.
- General provisions, §§25-19-103 to 25-19-110.

Universities and colleges.

- Scholastic records.
- Freedom of information.
- Records deemed not public records, §25-19-105.

REDEVELOPMENT DISTRICTS.**Definitions,** §14-168-301.**Libraries, property taxes levied for.**

- Exemption from chapter, diversion prohibited, §14-168-324.

REGIONAL LIBRARY SYSTEM,

§§13-2-901 to 13-2-907.

REPORTS.**Regional library system,** §13-2-906.**State library.**

- Other libraries, §13-2-208.

S**SEARCHES AND SEIZURES.****Material security.**

- Determination of offense, §13-2-805.

SEBASTIAN COUNTY.**County seats.**

- Two county seats authorized, §14-14-201.

SECRETARY OF STATE.**Library of secretary of state.**

- General provisions, §§13-2-301 to 13-2-310.

Municipal corporations.

- Classification of cities and towns.
- Board of municipal corporations.
- Declaration of advancement between census periods, §14-37-108.
- Membership on board, §14-37-106.
- Reduction of city to lower grade, §14-37-111.
- Statement of cities and towns entitled to be advanced according to census, §14-37-107.

State library.

- Agreements with secretary, §13-2-209.

SHERIFFS.**Bonds, surety,** §14-14-1201.**Conflicts of interest,** §14-14-1202.

- Misdemeanors, §14-14-1202.

Tax collectors, §14-14-1202.

Ethics, §14-14-1202.**Tax collectors.**

- Conflicts of interest, §14-14-1202.
- Misdemeanors, §14-14-1202.

STATE AND LOCAL GOVERNMENT**PUBLICATIONS****CLEARINGHOUSE.****Copies.**

- Number of copies provided clearinghouse, §13-2-213.

STATE AND LOCAL GOVERNMENT PUBLICATIONS**CLEARINGHOUSE** —Cont'd**Generally**, §13-2-212.**Universities and colleges.**

Contracts with libraries, §13-2-214.

STATE ARCHIVES.**State library.**

Agreements with archives, §13-2-209.

STATE DEPARTMENTS AND AGENCIES.**Open public meetings**, §25-19-106.**Sunshine law**, §25-19-106.**STATE LIBRARY.****Boards and commissions.**

State library board.

Chairman.

Selection.

Meetings of board, §13-2-206.

Compensation, §13-2-205.

Creation, §13-2-205.

Expenses, §13-2-205.

Librarian.

Management, §13-2-204.

Meetings, §13-2-206.

Members, §13-2-205.

Terms of office, §13-2-205.

Vacancies, §13-2-205.

Clearinghouses.

State and Local Government

Publications Clearinghouse,
§13-2-212.

College and university libraries.

Contracts, §13-2-214.

Copies provided clearinghouse.

Number, §13-2-213.

Contracts.Agreements with state archives and
secretary of state, §13-2-209.

Depository agreements, §13-2-211.

University and college libraries,
§13-2-214.**Cooperation.**

Other libraries, §13-2-208.

Copies.

State and Local Government

Publications Clearinghouse.

Number of copies provided
clearinghouse, §13-2-213.State and local publications,
§13-2-201.**Creation**, §13-2-203.**Definitions**, §13-2-201.**Depository agreements and
eligibility**, §13-2-211.**Depository copies.**State and local publications,
§13-2-201.**STATE LIBRARY** —Cont'd**Depository for federal, state and
local documents**, §13-2-210.

University and college libraries.

State, city and county documents.

Status as depository, §13-2-214.

Duties generally, §13-2-207.**Education.**

Department of education.

State library established and
created within department,
§13-2-203.**Established**, §13-2-203.**Librarian.**

Appointment, §13-2-204.

Qualifications, §13-2-204.

Terms of office, §13-2-204.

Library of secretary of state.

Effect of subchapter, §13-2-202.

Local governments.Depository for local documents,
§13-2-210.

State and Local Government

Publications Clearinghouse,
§13-2-212.

Copies provided clearinghouse.

Number, §13-2-213.

University and college libraries.

Contracts, §13-2-214.

Local publication.

Defined, §13-2-201.

Other libraries.

Cooperation with, §13-2-208.

Depository agreements and eligibility,
§13-2-211.**Powers generally**, §13-2-207.**Reports.**

Other libraries, §13-2-208.

Secretary of state.

Agreements with secretary, §13-2-209.

Effect of subchapter, §13-2-202.

State and Local Government**Publications Clearinghouse.**

Copies provided clearinghouse.

Number, §13-2-213.

Generally, §13-2-212.

University and college libraries.

Contracts, §13-2-214.

State of Arkansas.Depository for state documents,
§13-2-210.

State and Local Government

Publications Clearinghouse,
§13-2-212.

Copies provided clearinghouse.

Number, §13-2-213.

University and college libraries.

Contracts, §13-2-212.

STATE LIBRARY —Cont'd**State publication.**

Defined, §13-2-201.

United States.

Depository for federal documents,
§13-2-210.

Universities and colleges.

Agreements with libraries, §13-2-214.

Depository agreements and eligibility,
§13-2-211.

Depository of state, city and county
documents.

Libraries of universities and
colleges.

Status, §13-2-214.

STATE OF ARKANSAS.**State library.**

Generally, §§13-2-201 to 13-2-214.

See STATE LIBRARY.

STATUTE OF LIMITATIONS.**Confidentiality of patron's records.**

Disclosure of confidential information,
§13-2-702.

SUNSHINE LAW, §25-19-106.**SUPREME COURT.****Chief justice.**

Freedom of information.

Unpublished memoranda, working
papers, etc.

Records deemed not public
records, §25-19-105.

Freedom of information.

Justices.

Unpublished memoranda, working
papers, etc.

Records deemed not public
records, §25-19-105.

Justices.

Freedom of information.

Unpublished memoranda, working
papers, etc.

Records deemed not public
records, §25-19-105.

T**TAXATION.****Constitution of Arkansas.**

Counties.

Libraries.

Tax levy for, AR Const Amd 38
§§1 to 3.

Municipal corporations.

Libraries, AR Const Amd 30 §§1 to
3.

TAXATION —Cont'd**County libraries.**

Levy of tax for libraries, AR Const
Amd 38 §§1 to 3.

Counties with two districts,
§13-2-403.

TOWNSHIPS.**Bonds, surety.**

Officers and employees thereof,
§14-14-1201.

Governing bodies.

Open public meetings, §25-19-106.

Officers.

Bonds, surety, §14-14-1201.

Open public meetings.

Governing bodies, §25-19-106.

TRADE SECRETS.**Freedom of information.**

Advantage to competitors or bidders if
files disclosed.

Files deemed not public records,
§25-19-105.

U**UNFAIR COMPETITION AND
TRADE PRACTICES.****Freedom of information.**

Advantage to competitors or bidders if
files disclosed.

Files deemed not public records,
§25-19-105.

UNITED STATES.**Library of secretary of state.**

Books and documents of United
States.

Binding, §13-2-302.

State library.

Depository for federal documents,
§13-2-210.

UNIVERSITIES AND COLLEGES.**Freedom of information.**

Scholastic records.

Records deemed not public records,
§25-19-105.

Records.

Scholastic records.

Freedom of information.

Records deemed not public
records, §25-19-105.

Scholastic records.

Freedom of information.

Records deemed not public records,
§25-19-105.

State and local government**publications clearinghouse.**

Contracts with libraries, §13-2-214.

UNIVERSITIES AND COLLEGES

—Cont'd

State library.

Agreements with libraries, §13-2-214.

Depository agreements and eligibility,
§13-2-211.Depository of state, city and county
documents.Libraries of universities and
colleges.

Status, §13-2-214.

UNIVERSITY OF ARKANSAS.**Mullins library.**Depository of state, city and county
documents.Status as affected by state library as
depository, §13-2-214.**W****WATER SUPPLY AND
WATERWORKS.****Public water systems.**

Vulnerability assessments.

Freedom of information act,
§25-19-105.