

The M.A.P.

Arkansas Court of Appeals Holds that Trial Court Erred in Awarding Attorney's Fees to Landowners in City Condemnation Case

FACTS TAKEN FROM THE CASE

On September 1, 2011, the Arkansas State Highway Commission (ASHC) filed a complaint and a declaration of taking against Larry and Kathy Muruaga, stating that it was taking title to the Muruaga's real property pursuant to its power of eminent domain under the authority of Arkansas Code Annotated sections 27-61-301 to 321. In the declaration, the ASHC stated that just compensation for the real property being condemned was \$13,950, which was placed into the court's registry. An order of possession was entered on September 9, 2011, granting the ASHC the right to immediate possession of the property pursuant to sections 27-67-301 to 309. The Muruagas answered, claiming that they were entitled to just compensation for the condemned property in excess of the amount offered by the ASHC, and they requested a jury trial.

On June 8, 2012, an order substituting the City for ASHC was entered. The order stated that the ASHC filed the condemnation action, the City should be substituted as the proper plaintiff, and the ASHC was dismissed from the action. The order directed the City to file an amended complaint setting forth its condemning authority. The order expressly stated that the Muruagas consented to the substitution of the City. On January 7, 2014, the City filed an amended complaint for condemnation and an order of

immediate possession. The city alleged that it was authorized to proceed with condemnation under the authority granted to municipalities pursuant to A.C.A. sections 18-15-301 to 309. The City sought immediate possession of the property and stated that compensation for the taking, \$13,950, had been deposited into the court's registry.

The Muruagas answered the City's amended complaint. They admitted that the City was proceeding pursuant to sections 18-15-301 to 309, but they denied that the amount of money in the court registry was just compensation for the taking. A trial was held on February 20, 2014, and the jury rendered a verdict in favor of the Muruagas, finding

*New Administrative Laws
passed by the Arkansas
General Assembly in
2015 are found on page
5-10.*

that they were entitled to just compensation in the amount of \$22,253. On February 28, 2014, the Muruagas filed a motion for attorney's fees pursuant to section 27-67-317(b). On May 6, 2014, the trial court entered a judgment detailing the jury verdict and awarding the Muruagas attorney's fees. That same day, the trial court entered a separate order granting the Muruagas' motion for attorney's fees. The trial court found that pursuant to the authority and provisions of sections 27-67-301 to 321, the Muruagas' property was acquired by the ASHC and that the City affirmatively sought and received court approval to assume the ASHC's liability for just compensation owed. The City appealed the ruling to the Arkansas Court of Appeals, arguing that the trial court erred as a matter of law in awarding attorney's fees against it in the absence of statutory authority. The City also claimed that the trial court clearly erred in finding that it assumed state liability for attorney's fees.

ARGUMENT AND DECISION BY THE COURT OF APPEALS

Attorneys Fees as a Matter of Law

The City's first argument on appeal was that section 27-67-317(b) cannot support the attorney's fees awarded as a matter of law. In setting forth the rule on attorney's fees in condemnation cases, the Arkansas Court of Appeals (Court) quoted Section 27-67-317(b) as follows:

If the compensation finally awarded exceeds the amount of money deposited by ten percent (10%) or more, the court shall enter judgment against the State of Arkansas and in favor of the party entitled thereto for the amount of the deficiency and shall award the party entitled to judgment its costs, expenses, and reasonable attorney's fees incurred in preparing and conducting the final hearing and adjudication, including without limitation the cost of appraisals and fees for experts.

The Court concluded that the plain meaning of the language used in section 27-67-317(b) authorizes attorney's fees against the State of Arkansas, but not against the City. The Court also noted that the Supreme Court of Arkansas has said that attorney's fees are not allowed except where expressly provided for by statute. Therefore, the Court held that the trial court erred as a matter of

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law in granting the Muruagas' motion for attorney's fees against the City based on section 27-67-317 (b).

City's Assumption of Liability

Next, the City claimed that the trial court clearly erred in finding that the City assumed ASHC's liability under sections 27-67-301 et seq., including liability for attorney's fees authorized in section 27-67-317(b). The Arkansas Court of Appeals agreed with the City and held that there were no facts in the case to support the trial court's ruling that the City assumed the liabilities of ASHC. The Court noted that the City could not have and never stated that it was proceeding pursuant to state-condemnation authority authorized in sections 27-67-301 et seq. The Court also pointed-out that the order substituting the City for the ASHC as the plaintiff did not provide that the City assumed the liabilities of ASHC, and that the City's amended complaint stated that the City was proceeding under the authority of a different statute, sections 18-15-301 to 309. The Court said that the City consistently and expressly stated that it was proceeding under the authority granted to municipalities in sections 18-15-301 et seq.

Finally, the Court reasoned that the Muruagas in their answer to the City's amended complaint admitted the allegation that the City was

proceeding under the municipal-condemnation authority found in sections 18-15-301 et seq. Also, the Court said that the Muruagas did not lodge any objection to the City proceeding under sections 18-15-301 to 309 until after the jury's verdict. In conclusion, the Court stated that these facts demonstrate that the Muruagas admitted and agreed to the City's position throughout the case up until the point that the Muruagas filed their post-trial motion for attorney's fees. Therefore, the Court held that the trial court clearly erred in finding that when the City was substituted as plaintiff for the ASHC, the City assumed the ASHC liabilities for attorney's fees pursuant to section 27-67-317(b).

Case: This case was decided by the Arkansas Court of Appeals on February 25, 2015, and was an appeal from the Benton County Circuit Court, Thomas E. Smith, Judge. The case citation is *La-de, LLC (S/K/A De-La, LLC), Larry Muruaga and Kathy Muruaga, Husband and Wife, Et Al.*, 2015 Ark. App. 130.

This Article Presented by

Taylor Samples, Senior Deputy City Attorney

Condemnation Procedure is Lawful; Testimony Does Not Have to be Directly Related to Fair Market Value of Property

Overview:

This is an appeal of an eminent domain condemnation lawsuit in Benton County. The plaintiff, Southwest Arkansas Utilities Corporation ("SWEPCO"), acquired property for an easement across properties owned by Safari Real Estate, LLC ("Safari"). SWEPCO submitted that just compensation for the property they acquired was \$36,000. Safari submitted an appraisal of value of \$399,000. After trial, jury awarded the property owners \$87,539. Safari appealed. The two big takeaways from this Court of Appeals case are 1) the statutory process used to acquire the property *ex parte* is lawful under Arkansas law and 2) there is no requirement that each witness in an eminent domain case be able to directly relate his or her testimony to the fair market value of the property.

Procedural background

Before trial, Safari sought to have its witnesses testify as to elements of severance damages to the remaining tract and whether it could continue to be used as a wild-animal safari park. The circuit

court excluded the testimony, ruling that the only proper testimony was that concerning the before-and-after value of the property.

Opinion

Safari's first point on appeal was that the "circuit court erred in issuing the order of possession on an *ex parte* basis, thereby violating Safari's due-process right to contest the seizure of its property, the amount of the deposit, and the manner, timing, and necessity of the taking." In other words, Safari alleged that SWEPCO's taking of the property without notice violated their due process rights.

The court found no merit¹ in this point and only briefly addressed it. The court stated that the United States Supreme Court and the Arkansas Supreme Court held that the United States Constitution does not require that property owners be compensated before a taking likely does not require a hearing, either. The Arkansas Court of Appeals noted that the Arkansas statute goes above what is constitutionally required, as it requires the condemnor to deposit a fair-market

value for the property with the registry of the court to take the property, and then a jury will determine the full amount of compensation.

The second point on appeal was that the Circuit Court erred in preventing Safari from submitting evidence that was not directly related to the fair market value of the easement taken by SWEPCO. The Court of Appeals found that the Circuit Court abused its discretion by preventing the testimony of one of the proffered witnesses but affirmed as to the exclusion of the other witnesses.

In its analysis, the Court of Appeals focused on the meaning of "just compensation" that the property owner is entitled to under law. The Court stated that just compensation is not just the difference in before-and-after fair market value; it extends to consequential damages "with the extent of the damage to be established by the opinions of witnesses who show themselves to be acquainted with the property and with the effect of the construction and operation of the transmission upon it." The Court pointed out that there are limits to such testimony, of course – the testimony must fall within the general rule of damages claimed being direct and certain, and in this case "such as may be reasonably expected to follow from the invasion of the premises by SWEPCO."

Using that as the standard, the Court of Appeals found that proffered rebuttal testimony from the property manager, Leon Wilmoth, regarding a gate being left open was not admissible because "any severance damages for the diminution in value of the remaining property caused by leaving gates open is conjectural at best in that they are not reasonably expected to follow from the appropriation of the Safari property." The Court opined that matters such as these would be proper for a separate damage suit.

The Court also found that excluding the proffered testimony of a broker involved in the sale of

neighboring property that Safari purchased was admissible. Williams did not have a comprehensive option as to the before-and-after value of the property at issue in the lawsuit, and the Court opined that "the jury's consideration of a naked opinion of value of an expert witness which is not based upon a recognized method of appraisal should be approached with caution and permitted only in unusual cases."

However, the Court of Appeals found that Wilmoth's testimony regarding the loss of use of part of the property as a wildlife park should have been admitted. The proffered testimony would have been used to show what would be necessary to acquire a replacement. The Court stated that it should have been admitted because it laid the foundation for the contractors' testimony and provided a foundation for the appraiser's expert opinion regarding economic viability of one of the tracts.

The Court of Appeals stated that testimony regarding danger of transmission lines and the frightening of animals on the property has long been recognized as a proper element of damages in condemnation cases. Impairment of view is also compensable under Arkansas law. Taking these things into consideration, the Court of Appeals found that Wilmoth's testimony regarding these matters should have been admitted.

The Court of Appeals reversed the ruling of the Circuit Court regarding a portion of Wilmoth's testimony and remanded for a new trial.

Citation:

This case was an appeal to the Arkansas Court of Appeals from the Benton County Circuit Court. Its citation is *Wilmoth v. Southwest Ark. Utils. Corp.*, 2015 Ark. App. 185.

¹ It appears that the court did, in fact, reach this argument on the merits despite the fact that they noted that this issue was not raised in Circuit Court.

This Article Presented by
Sarah Sparkman, Deputy City Attorney

Acts of Interest to Municipalities

Act 106 - "An Act to Allow Municipalities to Contract for Fire Service"

This Act amends Ark. Code Ann. §14-53-101 to allow a city to enter into a contract or interlocal agreement for city fire protection in lieu of establishing its own fire department. This Act contained no Emergency Clause.

Act 109 - "An Act to Amend the Law Concerning Annexation and Enclaves"

This Act amends Ark. Code Ann. §14-40-501, the "island annexation statute", to provide that "completely surrounded" includes those situations where the property is surrounded on 3 sides by the same municipality and the 4th side is a lake or river. This Act contained no Emergency Clause.

Act 137 - "An Act to Amend the Law Concerning Ordinances of Cities and Counties by Creating the Intrastate Commerce Improvement Act"

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §14-1-401, *et seq.* to provide that a city shall not adopt or enforce any ordinance, resolution or policy that creates a protected classification or that prohibits discrimination on a basis not contained in state law. This new law, however, does not apply to employee rules or policies. This Act contained no Emergency Clause.

Act 186 - "An Act to Exempt Certain Customer and Critical Infrastructure Records of Municipally Owned Utility Systems from Disclosure under the Freedom of Information Act of 1967"

This Act amends Ark. Code Ann. §25-19-105 to exempt personal information of current and former public water system customers and municipally owned utility system customers from disclosure under the Freedom of Information Act, including their telephone numbers, addresses, and usage data. **This Act contained an Emergency Clause and went into effect on February 24, 2015. See also Act 878.**

Act 235 - "An Act to Amend the Law Concerning the Organizational Procedures of City Councils"

This Act amends Ark. Code Ann. §14-43-501 to provide that the Mayor shall have a vote to establish a quorum of the City Council at any regular or special meeting of

the City Council. This Act contained no Emergency Clause.

Act 236 - "An Act to Amend Arkansas Sales and Use Tax Laws to Conform to the Streamlined Sales Tax Agreement; to Require a Winery to Collect Local Taxes on Direct Shipments of Wine"

This Act amends Ark. Code Ann. §3-5-1704 to remove that part of the statute that stated "a winery does not have to collect a local tax that would be imposed by a municipality, town, or other political subdivision of the state". So they now must collect such taxes. **This Act contained an Emergency Clause and goes into effect on July 1, 2015.**

Act 261 - "An Act Concerning the Membership of a Parks and Recreation Commission"

This Act amends Ark. Code Ann. §14-269-302 to provide that if no qualified electors live within the city limits, then a qualified elector living in the same county in which the municipality is situated may serve on the parks and recreation commission. This Act contained no Emergency Clause.

Act 335 - "An Act to Amend the Laws Pertaining to the Promulgation of Water Quality Regulations and the Issuance of Wastewater Discharge Permits; to Authorize the Implementation of Nutrient Water Quality Trading, Credits, Offsets, and Compliance Associations"

This Act creates a new statute, to be codified at Ark. Code Ann. §8-4-232 regarding nutrient water quality trading programs. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 336 - "An Act to Amend the Sewer Utility Collection Act; to Regulate Cooperation Between Water and Sewer Utilities in the Collection of Delinquent Sewer Bills; to Allow Cooperative Billing Arrangement"

This Act amend Ark. Code Ann, §14-234-703, regarding terminating water service for non-payment of sewer bills, and creates a new statute, to be codified at Ark. Code Ann. §14-234-704, to allow cooperative billing arrangements for the billing of water, sewer, and trash collection services. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 339 - "An Act to Amend the Law Concerning Mayoral Appointments"

This Act amends Ark. Code Ann. §14-43-401 to provide that an election must be held to fill a vacancy in the office of Mayor if there is one (1) year or more remaining in the term. Previously, an election was required if 6 months or more remained in the term. This Act contained no Emergency Clause.

Act 341 - "An Act to Amend the Payment for Claims to Covered Public Employees, Designated Beneficiaries, or Survivors of Public Employees; to Create a Presumption that Firefighters who Develop Certain Forms of Cancer Developed Those Cancers Through Their Work as Firefighters"

This Act amends Ark. Code Ann. §21-5-705 to create a presumption that firefighters who develop certain types of cancer developed those cancers due to working as a firefighter. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 378 - "An Act to Authorize the State Highway Commission to Enter into Agreements to Exchange or Transfer Highways with County and Municipal Authorities"

This Act amends Ark. Code Ann. §27-65-109 to allow the State Highway Commission to enter into an agreement with a county or a municipality to transfer highways, and also amends the same statute to provide that an agreement to exchange or transfer a highway does not require an exchange or money or other consideration. This Act contained no Emergency Clause.

Act 386 - "An Act Concerning Firefighter Special License Plates; to Remove the Limitation on the Issuance of Firefighter License Plates; to Redirect the Remittance of the Additional Monthly Fee"

This Act amends Ark. Code Ann. §27-24-1303 and 27-24-1311 by removing the two vehicle limit on the number of firefighter and professional firefighter special license plates may be obtained by a firefighter or professional firefighter. It also redirects that the fees collected for these special license plates are to go to the Arkansas State Firefighters Association and the Arkansas Professional Firefighters Association. This Act contained no Emergency Clause.

Act 400 - "An Act to Regulate Audit Requirements for Providers of Water and Sewer Service"

This Act amends Ark. Code Ann. §14-234-119 to increase the number of service connections that trigger a financial audit of water and sewer providers (from 500 to 750 service connections for sewer providers and

from 750 to 1,000 service connections for water providers). This Act contained no Emergency Clause.

Act 600 - "An Act to Create the Fair and Open Competition in Governmental Construction Act; to Prohibit Public Agencies from Entering into Certain Contracts; to Prohibit Certain Items in Certain Documents; to Prohibit Public Agencies from Making Certain Awards; to Prohibit Certain Persons from Placing Certain terms in Certain Documents; and to Provide Exemptions"

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §22-9-801, *et seq.*, which basically prohibits a city from requiring a contractor or subcontractor to be part of a collective bargaining agreement, or punishing a contractor or subcontractor for being part of a collective bargaining agreement. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 606 - "An Act to Amend the Fire Prevention Act Concerning Security Devices"

This Act creates a new statute, to be codified at Ark. Code Ann. §12-13-117, to provide that a person may install and use a temporary door barricade device or security lockdown device for security purposes to protect individuals during active shooter events or other similar situations. This Act contained no Emergency Clause.

Act 685 - "An Act to Create a Program for Licensure of Community Paramedics"

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §20-13-1601, *et seq.*, to allow the licensure of "community paramedics". The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 826 - "An Act to Amend the Law Concerning a Municipal Boundary Line and Annexation"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-40-207, to provide that if a building is situated upon the boundary line between two cities, or if an expansion of a building would cause it to be located upon the boundary line between two cities, the property owner may choose to annex the building and up to 2 acres surrounding the building into either of the cities. The Act should be consulted for the details.

This Act contained an Emergency Clause and went into effect on March 29, 2015. NOTE: Act 845 also purports to create a new statute to be codified at Ark. Code Ann. §14-40-207, so not sure exactly where these two Acts will be codified.

Act 845 - "An Act Concerning the Annexation of Territory under Municipal Territorial Jurisdiction"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-40-207, to require a city to annex property within its territorial jurisdiction area within 5 years of the passage of any ordinance or resolution stating an intent to annex such property. The Act should be consulted for the details. This Act contained no Emergency Clause. **NOTE: Act 826 also purports to create a new statute to be codified at Ark. Code Ann. §14-40-207, so not sure exactly where these two Acts will be codified.**

Act 864 - "An Act to Create the Business Rapid Response to State Disasters Facilitation Act; to Exempt Out-of-State Businesses and their Employees from Certain Taxes and Regulatory Requirements During a Disaster Response Period"

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §12-88-101, *et seq.*, and to be known as the "Business Rapid Response to State Disasters Facilitation Act". In a nutshell, this Act provides that an out-of-state business that conducts operations within the State of Arkansas for the purpose of performing work or services related to a declared state disaster or emergency during a disaster response period is exempt from state or local taxes and is exempt from complying with state and local business and occupational licensing and registration requirements. The Act should be consulted for the details. **This Act contained an Emergency Clause and went into effect on March 31, 2015.**

Act 866 - "An Act to Regulate the Fairness in the Bidding Practices for the Construction of Publicly Funded Projects; to Modify the Retainage Laws of the State of Arkansas"

This Act amends Ark. Code Ann. §22-9-604 to provide instances when a public agency may forego withholding a retainage amount. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 874 - "An Act to Amend the Fire Prevention Act; to Amend the Law Concerning Fire Prevention"

This Act amends Ark. Code Ann. §12-13-117, to provide that when the Arkansas Fire Prevention Code conflicts with the 2010 Americans with Disability Act Standard for Accessible Design, the latter shall control. **This Act contained an Emergency Clause and went into effect on April 1, 2015.**

Act 878 - "An Act Permitting a Process Service to Access Certain Utility Company or Utility System Information"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-199-105 to provide that a utility shall

release the last known address of a current or former customer to a process server who is attempting to effect service of process of legal documents on that person. The utility may require proof of the process server's court appointment prior to releasing the information. This Act contained no Emergency Clause. **See also Act 186.**

Act 881 - "An Act to Amend the Freedom of Information Act of 1967; to Exempt Records Maintained by Disaster Recovery Systems from the Disclosure Requirements of the Freedom of Information Act of 1967"

This Act amends §25-19-105 to add an exemption from disclosure under the FOIA for "electronic data information maintained by a disaster recovery system". A disaster recovery system is defined in the Act, and should be consulted for the details. This Act contained no Emergency Clause.

Act 882 - "An Act to Amend the Law Concerning Annexation and Municipal Services"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-40-2006, to provide that if a landowner detaches from one city into another city using "Act 779", that the property shall go back to the original city if the landowner does not use the services provided by the new city within 180 days of those services becoming available. This Act contained no Emergency Clause.

Act 895 - "An Act to be Known as the Criminal Justice Reform Act of 2015; to Implement Measures Designed to Enhance Public Safety and Reduce the Prison Population"

Section 14 of this Act creates a new statute, to be codified at Ark. Code Ann. §12-41-107, to provide that a healthcare professional shall not charge a local correctional facility more than the Medicaid reimbursement rate for services provided to an inmate. **This Act contained an Emergency Clause and went into effect on April 1, 2015.**

Act 897 - "An Act to Regulate Certain Waterworks Commissions; to Regulate the Terms and Qualifications of Members of the Waterworks Commissions"

This Act amends Ark. Code Ann. §14-201-104 regarding the terms of office of members of the Water & Sewer Commission. This Act also amends Ark. Code Ann. §14-201-109 to provide that a Water & Sewer Commission can be abolished by a majority vote of the City Council (previously required a majority vote at a special election). This Act contained no Emergency Clause.

Act 908 - "An Act to Amend the Arkansas Underground Facilities Damage Prevention"

Act"

This Act amends Ark. Code Ann. §14-271-113 to provide that the operator of an "underground facility" shall respond and examine damage to an underground facility within two business days of notification and shall complete the necessary repairs to the damaged facilities within a reasonable amount of time. It also requires notification of such damage to be given to the One Call Center. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 914 - "An Act to Amend the Law Concerning the Filing of Maps upon Annexation, Consolidation, Detachment, Incorporation, or Unincorporation Proceedings"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-40-101, to provide that before the City undertakes an annexation, consolidation, or detachment, it must first coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the relevant annexation, consolidation, or detachment areas. This Act contained no Emergency Clause.

Act 916 - "An Act to Require City Approval of a Dedication of Land to the City for City Park Purposes"

This Act amends Ark. Code Ann. §26-37-212 to provide that delinquent general taxes against land shall be cancelled upon the land being dedicated to a city for park purposes if the city formally accepts the dedication of the land within one year. This Act contained no Emergency Clause.

Act 963 - "An Act to Allow Owners of Property Adjoining an Arkansas State Highway right-of-way to Install, Use, and Maintain a Sprinkler System"

This Act amends Ark. Code Ann. §27-64-103 to provide that the owner of property abutting a state highway may, upon receiving a permit from the Highway Department, install, use, and maintain a sprinkler system on the portion of the right-of-way adjoining the property. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 975 - "An Act to Amend Arkansas Law Concerning the Free Exercise of Religion; to Enact the Religious Freedom Restoration Act"

This Act creates the "Religious Freedom Restoration Act", to be codified at Ark. Code Ann. §16-123-401, *et seq.*, to provide that a governmental regulation cannot "substantially burden" a person's exercise of religion, unless the regulation is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. The Act should be consulted for the details. **This Act**

contained an Emergency Clause and went into effect on April 2, 2015.

Act 991 - "An Act to Amend the Law Concerning Annexations by One Hundred Percent (1005) Petition"

This Act creates a new statute, to be codified as Ark. Code Ann. §14-40-609, to provide another mechanism by which property may be annexed from the County into the City. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 1002 - "An Act to Restrict the Ability of Local Governments and Other Entities to Regulate Private Property Rights; to Protect Private Property Rights; to Create the Private Property Protection Act; to Regulate the Power of Eminent Domain by Certain Public Utilities"

This Act creates the "Private Property Protection Act", and will be codified at Ark. Code Ann. §18-15-1701, *et seq.* In a nutshell, this Act prohibits any governmental regulation which will diminish a property's value by more than 20%, and provides for monetary payment to the property owner from the governmental entity. The Act should be consulted for the details. **This Act contained an Emergency Clause and went into effect on April 2, 2015.**

Act 1015 - "An Act to Protect the Identity and Contact Information of Children; to Create an Exemption to Freedom of Information Act"

This Act amends Ark. Code Ann. §25-19-105, the Arkansas Freedom of Information Act, to exempt from disclosure the date of birth, home address, email address, phone number, and other contact information from municipal parks and recreation department records of a person who was under the age of 18 at the time the request is made. This Act contained no Emergency Clause.

Act 1043 - "An Act to Amend the Law Concerning Improvement Districts"

This Act amends various statutes dealing with improvement districts. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 1048 - "An Act to Amend the Law Concerning the Cost of Work and Materials Requiring a General Contractor's License"

This Act amends various statutes pertaining to the requirement to obtain a general contractor's license, and increases the project cost threshold amount from \$20,000 to \$50,000. The Act should be consulted for the details. This Act contained no Emergency Clause. **NOTE: However that it did NOT amend Ark. Code**

Ann. §22-9-203, as that will remain at \$20,000. See also Act 1059.

Act 1059 - "An Act to Amend the Law Concerning the Preference of Municipal Bidding"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-58-105, to create a preference among bidders in certain situations. The Act should be consulted for the details. This Act contained no Emergency Clause. **See also Act 1048.**

Act 1063 - "An Act to Promote the Rights Guaranteed by the First Amendment of the United States Constitution; to Protect a Citizen's Right to Observe and Record Public Events"

This Act creates a new statute, to be codified at Ark. Code Ann. §21-1-106, to provide that a public officer or employee shall not prohibit a person from using a recording device in a public place unless one of the enumerated exceptions are present. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 1093 - "An Act to Amend the Law Concerning Municipal Referendum Petitions; to Extend the Time for Circulation of Municipal Referendum Petitions"

This Act creates a new statute, to be codified at Ark. Code Ann. §14-55-303 to allow the sponsor of a municipal referendum petition 60 days to file the petition. It was 30 days previously. This Act contained no Emergency Clause.

Act 1101 - "An Act to Establish a Bill of Rights for a Property Owner"

This Act creates a new statute, to be codified at Ark. Code Ann. §18-15-103, to establish standards to be followed in any proceeding that involves an entity authorized by law to exercise the power of eminent domain. The Act should be consulted for the details, but won't affect us much, since we already have a policy which mirrors this Act. This Act contained no Emergency Clause.

Act 1102 - "An Act to Exempt Certain Advertising and Promotion Tax Records from Being Released under the Freedom of Information Act of 1967"

This Act amends Ark. Code Ann. §25-19-101, to exempt from disclosure under the Freedom of Information Act information related to taxes collected by the Advertising and Promotion Commission, but the total amount of the taxes collected may still be released. This Act contained no Emergency Clause.

Act 1103 - "An Act to Amend Arkansas Law

Concerning the Prevention and Detection of Fraud and Other Improper Activities within State Government"

-Section 1 of this Act amends Ark. Code Ann. §21-1-603 to provide that a public employer shall not take action against a public employee because of a report of a loss of public funds under §25-1-124.

-Section 2 of this Act amends Ark. Code Ann. §21-1-607 to provide that certain records compiled in an investigation of a whistleblower report are exempt from the Freedom of Information Act.

-Section 3 of this Act amends Ark. Code Ann. §21-1-608 to require a public employer to post notice of how to report fraud or abuse of public funds (form to be provided by the State online).

-Section 4 of this Act amends Ark. Code Ann. §21-1-610 to further define "in the normal course of duties". The Act should be consulted for the details.

-Section 5 of the Act creates a new statute, to be codified at Ark. Code Ann. §25-1-123, to require a criminal background check for public positions involving supervisory authority over public funds. The public employer may either pay for such background check, or may require the prospective employee to pay for it.

-Section 5 of this Act also creates a new statute, to be codified at Ark. Code Ann. §25-1-124 to require a public employee with supervisory fiduciary responsibility over all fiscal matters of a public employer to report (within 5 days) a loss of public funds involving apparent theft or misappropriation of public funds, or an unauthorized disbursement of public funds, to the Arkansas Legislative Audit, and a failure to timely report such loss is punishable by a Class A Misdemeanor. This Act contained no Emergency Clause.

Act 1107 - "An Act to Amend the Laws Concerning the Sales and Use Tax Applicable to the Partial Replacement and Repair of Certain Machinery and Equipment used in Manufacturing"

The Act should be consulted for the details. **It contained an Emergency Clause and went into effect on April 6, 2015.**

Act 1110 - "An Act to Prohibit Enforcement of Certain Provisions in Construction Agreements and Construction Contracts"

Act 1120 - "An Act to Promote Fair and Equitable Allocation of Liability in Construction Contracts"

Each of these Acts amend Ark. Code Ann. §22-9-214 to make void and unenforceable any provision in a

public construction contract that requires any litigation, arbitration, or other alternative dispute resolution proceeding to be conducted in another state. The Acts should be consulted for the details. These Acts contained no Emergency Clause.

Act 1182 - "An Act Concerning Sales and Use Tax Exemptions Related to Aircraft; to Exempt from the Sales and Use Tax Certain Services and Parts and Other Property Incorporated into Commercial Jet Aircraft of a Certain Weight; to Provide a Sales and Use Tax Exemption for Sales of Aircraft under Certain Circumstances"

This Act creates a new statute, to be codified at Ark. Code Ann. §26-52-451, to exempt the sales of certain aircraft from sales and use tax under certain circumstances. This Act also amends Ark. Code Ann. §26-52-401(28) regarding exemptions from sales and use tax. The Act should be consulted for the details. **This Act contained an Emergency Clause and went into effect on April 7, 2015.**

Act 1184 - "An Act to Allow the Award of Flags upon the Death of an Emergency Medical Services Licensee"

This Act creates a new statute, to be codified at Ark. Code Ann. §20-13-215, to provide that a US flag shall be awarded to the family or spouse of an EMS who dies in the course of employment. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 1275 - "An Act to Provide Enabling Legislation for Energy Efficient Project Bonds Issued by a Municipality or County Under Arkansas Constitution, Amendment 89; to Create the Local Government Energy Efficiency Project Bond Act"

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §14-164-801, *et seq.*, to be known as the "Local Government Energy Efficiency Project Bond Act". The Act should be consulted for the details. This Act contained no Emergency Clause.

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