

# The M.A.P.

The Municipal Attorney Periodical

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**Springdale  
Public Library**

**More than  
Meets the Eye!**

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## **2013 Acts of Interest to Municipalities**

The Acts passed by the 2013 Arkansas General Assembly that are of interest to administrative personnel are contained on pages 3 through 12. Those laws without an emergency clause, which do not set out a later date in which they become effective, went into effect on August 16, 2013. A full copy of each Act can be obtained at [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us), or by contacting the City Attorney's Office.

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## **Springdale Public Library- More than Meets the Eye**



As you walk into the Springdale Public Library located at 405 South Pleasant Street, you might think the library, from the outside, does not seem that big. But you would be wrong! In the 1960s the original part of the building, now the children's library, was not very large, but in the building additions since then including the latest in 1999-2000, the library now totals a whopping 43,800 square feet! The library, also known as "Library in the Park" sits within Murphy Park at the corner of Pleasant and Maple Streets. There are several sides of the building where you can sit, read quietly, and watch the infamous Murphy Park ducks go by.

You may become a member of the Springdale Public Library and get a library card if you live, work, or go to school in Washington County and there is no charge for the library card. If you live outside Washington County, the charge is \$25 per year. The Springdale Public Library is funded through the Washington County Library System and through the city of Springdale. One of the perks of being part of that system is that you may reserve or hold any book in the Washington County

Library system. Also available are temporary library cards if someone such as a traveler passing through town needs to use the computers or internet in the library, although the entire library is equipped with Wifi capabilities.

As you enter the Springdale Public Library, you will first notice the electronic book check-in where you place your book face up on a conveyer belt and the computer scans it "checks" it in and then sends it to a sorter to be sorted before being reshelfed. This is known as RFID technology. Long gone are the days of one big book bin and one person to sort and shelf books. Also, long gone are the old "card catalogs" which have been replaced, thankfully, with a computer index system. In using this system, any one of the library staff members can assist you in looking for a particular book, DVD, or audio book on the library shelves.



Marcia Ransom, Director

In speaking with Marcia Ransom, Director of the Springdale Public Library for 17 years, the library is going to go through some great changes. First, the library will be getting laptops in order to have a mobile classroom instead of just using the computers in the computer room [which are in use much of the time the library is open]. These laptops are made possible through a grant from Cox Communications. Also,

through the Cox grant, the library now has iPads that can be borrowed for use in the library only. One library service that is also provided is assisting people with applying for jobs online. As more and more employers go to digital and online employment applications, people still need assistance with navigating the employment websites and the library staff is happy to help in any way.

Another service provided is the "home bound" service where books and library materials are delivered once a month to the patrons of the library who happen to be house bound. The Springdale Public Library services about 30 to 40 people in this way. A person on the home bound service can fill out a profile and a library staff member will pick books and library materials based on that profile if the person wishes to receive materials this way, or a member can specifically request certain books and materials.

In other digital medium; books, audio books and magazines may be "loaned" digitally for up to two weeks through the library. Soon, the library will be putting Kindles with pre-loaded books in their collection. This is a good way to get hard-to-find and out-of-print editions of books. In the library's "Library 2 Go" you can also go to the "virtual library" service which allows patrons to download eBooks, audio books and magazines to your mobile devices.

Other parts of the library include study rooms and study carrels for those who wish to read and study in complete quiet. In these rooms and on various tables, you can still plug in your computer for there are electrical outlets all throughout the library. Other services provided are a copy machine, for 15 cents per page for black and white copies or 50 cents per page for color copies and there

is a change machine next to the copier. As Karen Goodkin, Assistant Director, can tell you, the library is equipped with 38 public computer stations, including some "express" stations when a person needs to get something from a computer and quickly leave. The time limit on these express stations is 15 minutes.

Included in the library's vast collection are Spanish language sections in each section such as magazines, teen books, and children's books including audio books. The library also has a bookstore where some donations end up if the donated item does not fit in the library collections. Donations are accepted at the library.



Trudy Hill  
Children's Services Coordinator

During the summer, the library has many programs to keep children and adults reading: "Toddler time" for children birth to age three; "Pre-school Story Time" for ages three to five; "Spanish Story Time" which welcomes families; "School Age Program" for ages six to nine; "Junior Book Club" for

ages 10 and 11; and even "Kibbles and Books" which is a therapy dog program through the library. Many of the children's programs include arts and crafts and singing too.



For more information on the Springdale Public Library go to [www.springdalelibrary.org](http://www.springdalelibrary.org). The hours are: Monday through Thursday- 9 a.m. to 8 p.m.; Friday- 9 a.m. to 6 p.m.; Saturday- 9 a.m. to 5 p.m. and Sunday- 1 p.m. to 5 p.m.

Brooke Lockhart  
Former Deputy City Attorney



### 2013 Acts of Interest to Municipalities

The 2013 Arkansas General Assembly passed over 1500 Acts. Below is a compilation of certain laws selected from those passed which affect municipalities. Those laws without an emergency clause, which do not set out a later date in which they become effective, went into effect on August 16, 2013. The following is just the title and brief synopsis of each Act affecting municipalities. A full copy of each Act can be obtained at [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

#### ***Act 88 – "An Act to Amend the Law Concerning Persons Required to File a Statement of Financial Interest"***

This Act amends Ark. Code Ann. §21-8-701 to add members of an advertising and promotion commission to those individuals who must file an annual statement of financial interest. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



#### ***Act 152 – "An Act to Provide Incentives for Converting Diesel-Powered Motor Vehicles and Gasoline-Powered Vehicles to Motor Vehicles Powered by Compressed Natural Gas or Propane Gas"***

This Act amends Ark. Code Ann. §15-13-306 to extend rebate incentives for modification of motor vehicles from diesel or gasoline power to compressed natural gas or propane. The Act should be consulted for the details. This Act contained an Emergency Clause and went into effect on February 26, 2013.



#### ***Act 170 – "An Act to Amend the Law Concerning the Operation of Golf Carts on City Streets"***

This Act amends Ark. Code Ann. §14-54-1410 regarding the operation of golf carts on city streets. Previously, a municipality could only authorize the operation of golf carts on city streets if the person was traveling to and from their house to the golf course. This Act provides that a municipality can authorize the operation of golf carts on city streets for any purpose and at any time. This Act contained no

Emergency Clause and will go into effect on August 16, 2013.



**Act 229 – “An Act Amending the Number of Days in Which a Person Must File an Answer in a Garnishment Proceeding”**

This Act amends Ark. Code Ann. §16-110-401 to increase the number of days to answer a writ of garnishment from 20 days to 30 days. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



**Act 233 – “An Act to Amend the Sales and Use Tax Exemption for Certain Machinery and Equipment”**

This Act amends Ark. Code Ann. §26-52-402 and 26-53-114 regarding the sales and use tax exemption for certain machinery and equipment. The Act should be consulted for the details. This Act goes into effect on the first day of the calendar quarter following August 16, 2013.



**Act 235 – “An Act to Amend the Freedom of Information Act of 1967 Concerning Public Water System Security; to Remove the Sunset Clause for Public Water System Security”**

This Act amends Ark. Code Ann. §25-19-103, 105, and 106 to extend perpetually the exemption of information concerning public water systems from the Freedom of Information Act. Previously, this exemption was set to expire on July 1, 2013.



**Act 276 – “An Act to Establish the Arkansas Video Service Act”**

This Act creates a new section of statutes, Ark. Code Ann. §23-19-201, *et seq.*, called the Arkansas Video Service Act. The Act should be consulted for the details. This Act contained an Emergency Clause and went into effect on March 6, 2013.



**Act 312 – “An Act to Amend Arkansas Law Concerning the Use of Public Funds to Support or Oppose Ballot Measures”**

This Act creates a new statute, Ark. Code Ann. §7-1-111 to prohibit a public servant or governmental body to expend or permit the expenditure of public funds to support or oppose a ballot measure, and a violation of this is a Class A Misdemeanor. The Act should be consulted for the details. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



**Act 315 – “An Act to Create a New Benefit Program under the Arkansas Local Police and Fire Retirement System”**

This Act amends Ark. Code Ann. §24-10-602 to create a new benefit program (Benefit Program 4) under LOPFI. The Act should be consulted for the details. This Act contained an Emergency Clause and went into effect on March 11, 2013.



**Act 405 – “An Act to Amend the Law Concerning Certain County and Municipal Public Finance Matters”**

This Act amends Ark. Code Ann. §19-8-107, regarding depository agreements between municipalities and financial institutions. The Act should be consulted for the details. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



***Act 468 – “An Act to Amend the Law Concerning the Eligibles List for Civil Service Commissions for Municipal Police and Fire Departments”***

This Act amends Ark. Code Ann. §14-51-301 to provide that the eligible list for promotion shall be certified within 90 days upon completion of the examination process for advancement. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



***Act 489 – “An Act Concerning Asbestos Abatement; to Create the Asbestos Abatement Grant Program; to Allow the Arkansas Department of Environmental Quality to Award Grants for Certain Activities Relating to Asbestos Abatement, Stabilization, and Remediation; to Regulate the Requirements for the Asbestos Abatement Grant Program; to Provide for the Funding of the Asbestos Abatement Grant Program”***

This Act creates a new section of statutes, Ark. Code Ann. §20-27-1008, *et seq.*, to create an Asbestos Abatement Grant Program, to provide for ADEQ grants for the removal of asbestos. The Act should be consulted for the details. This Act contained no Emergency Clause and will go into effect on August 16, 2013.

***Act 520 – “An Act to Resolve Issues and Requirements of the Arkansas Fire and Police Pension Review Board”***

This Act amends Ark. Code Ann. §24-11-820 to provide that the surviving spouse of a retired firefighter may be entitled to a pension if the marriage lasted for at least five years AND the marriage occurred within five years of the retirement. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



***Act 563 – “An Act to Clarify the Procedures for the Creation and Governance of Certain Municipal Improvement Districts”***

This Act amends Ark. Code Ann. §14-88-202, regarding the purposes for which a municipal improvement district may be created, repeals Ark. Code Ann. §14-88-208, and amends Ark. Code Ann. §14-88-301, regarding the appointment of commissioners of a municipal improvement district. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



***Act 565 – “An Act to Repeal the Requirement that Low Voltage Carbon Monoxide Detectors be Placed in Newly Constructed Homes”***

This Act repeals Ark. Code Ann. §20-7-138, which had required low voltage carbon monoxide detectors be placed in any home constructed after January 1, 2012. This Act contained no Emergency Clause and will go into effect on August 16, 2013.

**Act 572 – "An Act Concerning Salaries for County and Municipal Employees"**

This Act creates a new statute, Ark. Code Ann. §14-42-120, dealing with salaries for municipal employees. The Act should be consulted for the details. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



**Act 598 – "An Act to Permit a Private Employer or a Local Government Employer to have a Voluntary Veterans' Preference Employment Policy; to have the Department of Workforce Services Maintain a Registry of Employers with a Veterans' Preference Employment Policy; to have the Department of Workforce Services and Department of Veterans' Affairs Assist an Employer in Determining Whether or not an Employee is a Veteran"**

This Act creates the Voluntary Veterans' Preference Employment Policy Act, codified at Ark. Code Ann. §11-15-101, *et seq.*, which allows a local government to have a voluntary veterans' preference employment policy. The Act should be consulted for the details. This Act contained no Emergency Clause and will go into effect on August 16, 2013.



**Act 712 – "An Act to Permit Cities with an Advertising and Promotion Tax to Share the Cost of an Audit; to Require that Certain Records be Provided to a Joint Auditor"**

This Act amends Ark. Code Ann. §26-75-619 to allow two or more cities that have levied an advertising and promotion tax to agree to a joint audit to reduce the costs of

the audit. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 724 – "An Act to Define the Term "Infamous Crime" for the Purposes of Who Shall not Be a Candidate for or Hold Public Office"**

This Act amends Ark. Code Ann. §7-1-101 to define "infamous crime" for the purposes of who shall not be a candidate for or hold public office. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 749 – "An Act to Amend the Law Concerning Appeals to Circuit Court in Certain Municipal Planning Matters"**

This Act amends Ark. Code Ann. §14-56-425 to apply the procedure for appealing administrative municipal planning matters to the appeal of rezoning matters. Previously, rezoning matters were not subject to this procedure. The standard on appeal for rezoning matters is still the arbitrary and capricious (rational basis) standard, however. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 750 – "An Act to Modify the Definition of a Quorum in Civil Service Matters in Cities of the First Class"**

This Act amends Ark. Code Ann. §14-51-208 to set the quorum for Civil Service

Commission meetings at a majority of the total members of the Commission. Previously, the quorum was three. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 752 – “An Act to Amend the Law Concerning Commissioners of Waterworks Commissions”**

This Act amends Ark. Code Ann. §14-234-303 to increase the maximum number of commissioners on a municipal waterworks commission from 5 to 7, and amends Ark. Code Ann. §14-234-304 regarding the length of the terms the commissioners shall serve. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 753 – “An Act Concerning Planning for an Absentee Mayor in Cities of the First Class, Cities of the Second Class, and Incorporated Towns”**

This Act amends Ark. Code Ann. §14-43-501 to provide who may perform the functions of the Mayor in the Mayor's absence. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 764 – “An Act to Permit the Highway Department to Transfer Land in Fee Simple when Right of Way is Transferred to a County or Municipality”**

This Act amends Ark. Code Ann. §27-65-109 and 27-67-322 regarding the State Highway Commission's ability to exchange highways with a municipality. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 767 – “An Act to Proclaim the City of Springdale, Arkansas, to be the Poultry Capital of the World”**

This Act creates a new statute, Ark. Code Ann. §1-4-131 to proclaim the City of Springdale, Arkansas, the "Poultry Capital of the World". This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 992 – “An Act to Amend the Law Concerning a Municipality that Operates a Sewage Collection System or Sewage Works and Contracts with Other Political Subdivisions”**

This Act amends Ark. Code Ann. §14-235-212 to extend the maximum length of a contract between a municipality that operates a sewage collection system or sewage works and another political subdivision from 15 years to 30 years. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 994 – “An Act to Allow Attorney's Fees in Certain Actions Arising from Civil Service Employment”**

This Act amends Ark. Code Ann. §14-51-308 to allow the circuit court to award

attorney's fees to the prevailing party in an appeal of a municipal civil service commission matter related to the suspension, discharge, or reduction in rank or compensation of a civil service employee. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



***Act 995 – “An Act to Promote the Integrity of a Public Servant or Public Official; to Require that a Public Servant or Public Official Found Guilty of Certain Offenses Repay his or her Debt and a Certain Amount of his or her Salary and Benefits”***

This Act amends the various Code sections dealing with public servants or public officials who are convicted of offenses relating to their office, position, or employment. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



***Act 1020 – “An Act to Assist Not-For-Profit Organizations; to Allow Not-For-Profit Organizations to Purchase Surplus Public Commodities”***

This Act creates a new statute, codified at Ark. Code Ann. §22-1-101, to provide that before a municipality offers surplus commodities for sale to the public, the municipality shall consider offers by not-for-profit organizations for the surplus commodities, and may accept a reasonable bid from a not-for-profit organization. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



***Act 1038 – “An Act to Permit Housing Authorities to Register Fictitious Names with the County Clerk”***

This Act amends Ark. Code Ann. §14-169-207, to change the place of recording of a fictitious name for a housing authority from the Secretary of State to the County Clerk. The Act sets forth what information must be contained in the fictitious name statement. This Act goes into effect on January 1, 2014.



***Act 1053 – “An Act to Modify the Limits of Municipal Territorial Jurisdiction”***

This Act amends Ark. Code Ann. §14-56-413, to change the territorial jurisdiction of cities with a population between 60,000 and 150,000 from 5 miles to 2 miles beyond the corporate limits of the city. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



***Act 1061 – “An Act Extending the Probationary Period for Prospective Certified Law Enforcement Officers”***

This Act amends Ark. Code Ann. §14-51-301 to provide that the probationary period for potential law enforcement officers is a minimum of 1 year and a maximum of 2 years. Previously, the maximum was 1 year. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



***Act 1065 – “An Act to Address Member Deposit Accounts in the Arkansas Local Police and Fire Retirement System; to Address Technical Changes in the Arkansas Local Police and Fire Retirement System; to Extend the Deferred Retirement***

**Option Plan in the Arkansas Local Police and Fire Retirement System; to Address Cost of Living Increases for Certain Members of the Arkansas Local Police and Fire Retirement System"**

This Act amends various provisions of LOPFI. The Act should be consulted for the details. This Act went into effect on July 1, 2013.



**Act 1066 – “An Act Concerning the Filing for a Municipal Office”**

This Act amends Ark. Code Ann. §14-14-42-206 to provide that a person filing for municipal office may file for only 1 municipal office during the municipal filing period. This Act contained no Emergency Clause and goes into effect on August 16, 2013. See also Act 1471.



**Act 1071 – “An Act to Modify the Law Concerning Detachment after Annexation in Certain Circumstances”**

This Act amends Ark. Code Ann. §14-40-504 to provide that a city shall *whenever practicable* annex lands that are contiguous and in a manner that does not create enclaves. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1072 – “An Act to Amend the Law Concerning the Requirements of Annexation”**

This Act amends Ark. Code Ann. §14-40-302 to provide that a city shall *whenever*

*practicable* annex lands that are contiguous and in a manner that does not create enclaves. This Act also amends Ark. Code Ann. §14-40-302 to provide that contiguous lands shall not be annexed if the lands are "lands that do not include residents, except as agreed upon by the Mayor and County Judge" or "are lands that do not encompass the entire width of public right-of-way or public road easements within the lands sought to be annexed, except as agreed upon by the Mayor and County Judge". This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1074 – “An Act to Create Jobs, Retain Wealth, and Grow Arkansas's Economy by Enabling Property Assessed Clean Energy Financing; to Authorize the Establishment of Energy Improvement Districts to Fund Loans for Energy Efficiency Improvements, Renewable Energy Projects, and Water Conservation Improvements”**

This Act creates the Property Assessed Clean Energy (PACE) Act, codified at Ark. Code Ann. §8-15-101, *et seq.* This Act authorizes the creation of property assessed energy improvement districts. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1117 – “An Act Concerning Medicaid Eligibility and Application for a Person in the Custody of a County Jail”**

This Act creates a new statute, codified at Ark. Code Ann. §12-41-106, providing that a local correctional facility may apply for Medicaid coverage for medical services provided to an inmate. The Act should be

consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1160 – “An Act Providing Legal Protection to Animal Owners and Their Animals; to Ensure that only Law Enforcement Agencies Investigate Charges of Animal Cruelty”**

This Act amends Ark. Code Ann. §5-62-106 to provide that an owner of an animal that has been seized shall be responsible only for reasonable expenses that were incurred for the care of the animal while the animal was in the appropriate place of custody. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1206 – “An Act to Amend the Statutes Concerning the Local Police and Fire Pension and Relief Funds”**

This Act amends Ark. Code Ann. §24-11-430 to provide death benefits upon the death of an active or retired police officer. Previously, the statute only authorized funeral expenses. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1225 – “An Act Concerning the Naming of Public Buildings, Structures, or Facilities”**

This Act creates a new statute, codified at Ark. Code Ann. §25-1-121, regarding the regulations on the naming of public buildings, structures, and facilities. The Act

should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1241 – “An Act to Amend the Local Government Bond Act of 1985; to Allow Revenues from the Temporary Sales and Use Tax Levied under Amendment 91 to the Arkansas Constitution to be Pledged to Retire Local Capital Improvement Bonds Issued for Certain Projects”**

The Act should be consulted for the details. This Act contained an Emergency Clause and went into effect on April 16, 2013.



**Act 1337 – “An Act to Prohibit the Import, Possession, Sale, and Breeding of Apes, Macaques, and Baboons, Except by Qualified Facilities; to Require Registration of all Primates; to Protect Public Safety and Prohibit Mistreatment of Primates”**

This Act creates a new section of statutes dealing with primates, codified at Ark. Code Ann. §20-19-601, *et seq.*, and a violation is a Class A Misdemeanor. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1364 – “An Act to Provide Authority to the Arkansas Towing and Recovery Board to Regulate Individuals and Entities that use Wheel Clamps and Tire Clamps; Otherwise Regulate the use of Wheel Clamps or Tire Clamps”**

This Act creates a new statute, codified at Ark. Code Ann. §27-50-1103 to allow a city to pass an ordinance to regulate the use of wheel clamps, a device fixed onto a wheel of a parked motor vehicle that renders the motor vehicle immobile. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1428– “An Act to Amend the Law Concerning Accountability of Municipal Improvement Districts”**

This Act creates a new statute, codified at Ark. Code Ann. §14-88-505, requiring municipal improvement districts to maintain records of meetings. This Act also amends Ark. Code Ann. §14-89-1402 to require the municipal improvement district to include an itemization of revenues and expenditures and statue of district projects in its annual filing with the City Clerk. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1471 – “An Act to Prevent Candidates from Running for More than One (1) Office under Certain Circumstances”**

This Act creates a new statute, codified at Ark. Code Ann. §7-5-111 to provide that a person shall not run for election for more than 1 state, county, or municipal office if the elections are to be held on the same date. This Act contained no Emergency Clause and goes into effect on August 16, 2013. See also Act 1066.



**Act 1480 – “An Act to Prohibit an Employer from Requiring or Requesting a Current or Prospective Employee from Disclosing his or her Username or Password for a Social Media Account or to Provide Access to the Content of his or her Social Media Account”**

This Act creates a new statute, codified at Ark. Code Ann. §11-2-124, to prohibit an employer from requiring or requesting a current or prospective employee from disclosing his username or password for a social media account. There is an exception relating to a formal investigation by the employer regarding allegations of an employee's violation of the employer's written policies. The Act should be consulted for the details. This Act contained no Emergency Clause and goes into effect on August 16, 2013.



**Act 1502 – “An Act to Amend the Law to Allow More Transparency in Annexation and Detachment Proceedings”**

This Act creates two new statutes, codified at Ark. Code Ann. §14-40-2201 and 2202, to provide that beginning March 1, 2014, and each successive year thereafter, the Mayor shall file annually with the City Clerk and County Clerk a written notice describing any annexation elections that have become final in the previous 8 years. The written notice shall include the schedule of services to be provided to the inhabitants of the annexed lands, and a statement as to whether the scheduled services have been provided to the inhabitants of the annexed lands. If the scheduled services have not been provided within 3 years after the date of annexation, the written notice shall include a statement of the rights of the inhabitants of the annexed land to seek detachment from the

city, and a city will not be allowed to proceed with any further annexation elections until the scheduled services have been provided. The Act should be consulted for the details. This Act goes into effect on March 1, 2014.



**Act 1506 – “An Act Concerning Annexation of Unincorporated Land if the Land is Currently Permitted by a County for a Construction or Development Project”**

This Act creates a statute, codified at Ark. Code Ann. §14-40-206, to provide that if a county had issued a permit or approval for construction, operation, or development before a municipal annexation proceeding begins for a project in the area that the municipality intends to annex, the municipality shall honor and give full effect to county permits and approvals on lands to be annexed. This Act contained no Emergency Clause and goes into effect on August 16, 2013.

Ernest Cate  
City Attorney



**Jailer's Sexual Harassment, Discrimination, and Retaliation Claims Against County Dismissed**

On March 5, 2013, the United States Court of Appeals for the 8<sup>th</sup> Circuit issued its opinion in the case of *Butler v. Crittenden County, et al.* Butler, an African American woman, had worked as a deputy jailer in the Crittenden County jail from 2000 until her employment was terminated in 2008.

Following her termination Butler filed claims against the county and its officials alleging, among other things, sexual harassment, sex discrimination, and retaliation, pursuant to 42 U.S.C. §§ 1983. The United States District Court granted summary judgment to the county and its officials. Butler then appealed to the 8<sup>th</sup> Circuit Court of Appeals.

Factual Background

Butler was hired in December 2000 as a deputy jailer at the Crittenden County jail. Beginning in 2008 Butler received several disciplinary warnings for tardiness. She was informed that there would be no future warnings concerning tardiness. Rodney Strong became Butler's supervisor in August 2008. According to Butler, Strong began harassing her by asking her out on dates and inviting her to his house for dinner. Butler estimated that Strong invited her out between thirty and forty times. On September 19, Butler was written up for being insubordinate to Strong, but she refused to sign the disciplinary report.

On October 7, Butler wrote a letter to Bonner and a jail administrator stating that Strong has been making sexual advances towards her for approximately 3 months. After meeting with Butler to discuss her complaint, jail administrators advised Strong to speak with Butler only regarding work matters and to stop complimenting her and offering to buy her lunch. Strong agreed with these restrictions but remained Butler's supervisor. Strong changed his conduct toward Butler after his meeting with jail administrators. Thereafter Strong was relocated to another part of the jail so that he no longer supervised Butler.

Butler continued to be tardy for work. She was tardy more than sixty times in 2008, and

was written up for tardiness several times. Thereafter on December 26, 2008, she was suspended for two days for chronic tardiness. Butler was then terminated on December 30, 2008. Butler was terminated because she failed to respect the chain of command, was disrespectful to superiors, and accused others of being evil, claiming the jail was full of evil spirits.

Butler filed a claim with the EEOC for sexual harassment and retaliation. She received a right to sue letter on September 25, 2009 which permitted her to file a federal lawsuit against the county and its officials. On July 22, 2010, Butler filed her complaint against Crittenden County, Sheriff Busby, Strong, and Chief Enforcement Officer W. A. Wren. She alleged, among other things, that they had violated 42 U.S.C. §§ 1983. Butler stated in particular that the county and its officials had unlawfully suspended and terminated her based on her gender and her complaints about sexual harassment. She also alleged that they had conspired to deprive her of federally protected rights and state property rights. The federal district court granted summary judgment to the county and its officials. Specifically, the court concluded that Butler had failed to show race or gender discrimination under any of her theories.

Butler appealed to the 8<sup>th</sup> Circuit Court of Appeals, contending that the reasons given for her termination were pretextual and in retaliation for her complaints about Strong, that her termination was evidence of sexual and racial discrimination, that her "rights of freedom of speech and equal protection" under the First and Fourteenth Amendments had been denied, and that Strong's conduct amounted to quid pro quo sexual harassment.

### Sexual Harassment Claim

The Court first examined Butler's sexual harassment claims. Specifically, she contended that her suspension and termination amounted to quid pro quo harassment under § 1983. To prove quid pro quo harassment, the Court found that Butler must present evidence demonstrating that "submission of unwelcome advances was an express or implied condition for receiving job benefits or that refusal to submit resulted in a tangible job detriment. The district court had concluded that Butler had suffered tangible job detriments in the form of her suspension and termination, but it determined that Butler had failed to show that her rejection of Strong's advances caused that detriment. The 8<sup>th</sup> Circuit agreed. Butler was suspended before complaining about Strong's behavior, which indicates that her suspension was not caused by that complaint. Also, there was dispute that Strong stopped bothering Butler after the October 6<sup>th</sup> meeting, and she was not terminated until December 30<sup>th</sup>.

The Court then examined Butler's claim of a hostile work environment under § 1983. To establish a prima facie hostile work environment claim for harassment, Butler must prove that (1) she was a member of a protected group; (2) unwelcome harassment occurred; (3) there was a causal nexus between the harassment and her membership in a protected group; and (4) the harassment affected a term, condition, or privilege of employment. In other words, Butler must show that the jail was subjectively and objectively permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment.

The 8<sup>th</sup> Circuit found that the district court had correctly determined that Butler could not establish a prima facie case of a hostile work environment because she did not allege "sufficiently severe or pervasive" conduct. Although there was evidence that Strong asked Butler on several dates, sought to touch her hair, and complimented her perfume, he never touched her inappropriately or engaged in "physically threatening or humiliating" conduct. In addition, his advances stopped after jail administrators confronted him about Butler's complaint and later removed him from supervision over her. As such, the 8<sup>th</sup> Circuit concluded that in these circumstances, Strong's acts did not rise to the level of a prima facie case of a hostile work environment.

#### Race and Sex Discrimination

The Court then addressed Butler's race and sex discrimination claims. To succeed on a race or sex discrimination claim, Butler must show either direct evidence of discrimination or evidence that is sufficient to create an inference of discrimination. The Court found that Butler offered no direct evidence of discrimination, so it looked to see if there was an inference of discrimination. To create an inference of discrimination, Butler must establish a prima facie case, which requires proof that she (1) is a member of a protected class, (2) was qualified, (3) suffered an adverse employment action, and (4) can provide facts that give rise to an inference of unlawful sex or race discrimination. The Court found that only the fourth element was at issue, which Butler may meet by showing more favorable treatment of similarly situated employees outside the protected class.

Butler contends that other jail employees

were treated differently from her, and that if "she had been a white woman, her complaints against Mr. Strong would have been resolved immediately with separation of the two in the work environment." She claims that another employee who alleged misconduct by Strong in a separate log was not suspended, and that other employees who had been regularly tardy to work were never terminated. However, she offered no evidence about the race or gender of the other employee. Butler similarly failed to show that any other employee with a similar tardiness record was not terminated. As such, the Court concluded that Butler's allegations of different treatment are insufficient to establish a prima facie case of discrimination.

#### Retaliation

The Court then addressed Butler's retaliation claim. The Court found that to establish a prima facie case of retaliation, Butler must show that (1) she engaged in protected activity, (2) she suffered an adverse employment action, and (3) a causal connection existed between the two.

Butler had alleged that she was suspended and terminated for rejecting Strong's advances, and for filing a claim with the EEOC. The Court concluded that these facts did not reasonably state a claim of race discrimination on this record. Also, it concluded that Butler had failed to establish the requisite causal relationship to show a violation of the First Amendment in respect to her EEOC charge and her complaints about Strong. Butler was suspended before filing her EEOC charge and before she complained about Strong's advances. She was also terminated almost three months after she complained and more than one month after Strong's removal as her supervisor.

This case is cited as *Butler v. Crittenden County, et al*, 708 F3d. 1044 (2013).

Ernest Cate  
City Attorney



**Arkansas Attorney General  
Opinion Addresses Release of  
City Employee Information  
Under FOIA**

On August 1, 2013, the Arkansas Attorney General released Attorney General Opinion No. 2013-088. This opinion was issued in response to a request from the Parking Enforcement Coordinator for the City of Little Rock after a reporter with the Arkansas Democrat Gazette had requested, pursuant to the Arkansas Freedom of Information Act (FOIA), the name, job title, department, salary, over time, comp time and pay grade for all regular and limited service full-time and part-time city employees for the last full fiscal year and the first six months of the current fiscal year.

The City of Little Rock had determined that the requested records were personnel records subject to release under the FOIA. The Parking Enforcement Coordinator had objected to the release of his name in association with his job title, citing the possible risk for both personal injury and financial harm from certain members of the public.

The Attorney General determined that the public is entitled to know, via FOIA requests, the names of public employees. In reviewing the FOIA request, the Attorney General cited general standards governing disclosure under the FOIA.

The Attorney General stated that a document must be disclosed in response to a FOIA request if all three of the following elements are met. First, the FOIA request must be directed to an entity subject to the act. Second, the requested document must constitute a public record. Third, no exceptions allow the document to be withheld.

The first two elements were obviously met in this case, as the City of Little Rock is an entity subject to FOIA, and the requested documents constituted a public record. FOIA defines “public record” as:

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 which constitute a record of the performance or lack of performance of official functions.

All the data requested were clearly public records. The data, whether in electronic or paper form, are kept and reflect the performance of the official functions of both the employees and the City. Therefore, the documents are public records and must be disclosed unless some specific exception provides otherwise.

The Attorney General then explained the exceptions to disclosure, known as the “personnel records exception”. This exception provides that, under certain conditions, the FOIA exempts two kinds of public records normally found in employees’ personnel files. For purposes of the FOIA, these items can usually be divided into two mutually exclusive groups: “personnel records” or “employee evaluation or job performance records”.

When custodians assess whether either of these exceptions applies to a particular record, they must make two determinations. First, they must determine whether the record meets the definition of either exception. Second, assuming the record does meet one of the definitions, the custodian must apply that exception's test for disclosure to determine whether the FOIA requires that record be disclosed.

The first of the two most relevant potential exceptions is the one for "personnel records,". Basically, "personnel records" are any records which are not employee evaluation and job performance records. If a document meets this definition, then it is open to public inspection and copying except "to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy."

The Attorney General has stated (1) that a public employees' name, salary, job title, and department all meet the definition of a personnel record and (2) that the personnel-records exception does not shield this data from disclosure because the release of this data does not constitute a clearly unwarranted invasion of personal privacy.

The second exception is for "employee evaluation or job performance records". The Arkansas Supreme Court has adopted the view that the term refers to any records (1) created by or at the behest of the employer (2) to evaluate the employee (3) that detail the employee's performance or lack of performance on the job. This exception includes records generated while investigating allegations of employee misconduct that detail incidents that gave rise to an allegation of misconduct. If a document meets the definition of an "employee evaluation or job performance record", the document cannot be released unless, among other things, the employee, whose records they are, was suspended or fired.

Note: Even if a document, when considered as a whole, meets the test for disclosure, it may contain discrete pieces of information that have to be redacted. Some items include dates of birth of public employees, social security numbers, and medical information.

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