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Attorney General's Opinion: A Person Who Holds an Occupational License in One City Does Not Have to Acquire an Occupational License in Another City Where He or She Provides the Service, Even Though There is no Physical Office in the Other City

On May 26, 2011, the Arkansas Attorney General released Opinion No. 2011-035. The opinion addressed the following questions about licensing of businesses by municipalities:

"If a person holds a license to provide pest control services and acquires an occupational license in the city where the person has a physical office building, does that person also have to acquire an occupational license in cities and towns where he or she provides pest control services but does not have a physical office building? Do those cities or towns have the authority to require the person to obtain another occupational license before he or she can provide such services?"

The Attorney General answered both questions "no," assuming as a matter of fact that the person does not maintain a place of business in any of the other cities or towns where services are provided. The Attorney General noted that the authority to impose an occupational licensing fee is expressly delegated to the city by the legislature under Ark. Code Ann. §26-77-102, which gives cities the right to classify and define any trade, business profession, or calling and to fix the amount any person, firm, or corporation shall pay for the privilege of doing business based on the amount of

goods carried in stock, or the kind of vocation, but prohibits classification based on earnings or income.

Regarding subsection (b) of §26-77-102, supra, the Attorney General opined that this subsection plainly conditions the payment of an occupation license fee or tax to more than one city upon the fact that the "person, firm, individual, or corporation . . . maintains a place of business in more than one city." The Attorney General opined that if a person acquires an occupation license in one city and then provides services in other cities or towns where he or she has no place of business, then those other cities and towns may not require a license as a condition of providing such services within the corporate limits.

Opinion: This opinion number is 2011-035, issued by Dustin McDaniel on May 26, 2011. Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which was approved by Dustin McDaniel, Attorney General.

Jeff Harper
City Attorney

Arkansas Supreme Court Reverses Circuit Court's Decision to Apply a Rational Basis Standard When Reviewing a Decision by the Jonesboro City Council to Deny a Conditional Use Permit

Facts Taken From the Opinion: King's Ranch of Jonesboro, Inc. ("King's Ranch") desired to establish and operate a group home for abused and neglected children in a 4900 square-foot home located on a ten and one-half acre tract of property within the

City of Jonesboro ("Jonesboro"). King's Ranch proposed that the home would house up to eight children at a time. The tract is in a district zoned "R-1," a residential zone.

On January 16, 2008, King's Ranch submitted an application for a conditional use permit to allow operation of the proposed home. The Jonesboro Planning Commission staff found that the proposed use was within the "conditional uses" as set out in the Jonesboro Zoning Ordinance (the "Ordinance"). The Jonesboro Planning Commission held a hearing on the application on March 11, 2008. The commission denied the application, and King's Ranch appealed the decision to the Jonesboro City Council. The Jonesboro City Council held a hearing on the application on May 20, 2008, at which time the city council also denied the application.

Appeal to and Decision by the Circuit Court: King's Ranch appealed the decision of the city council to the circuit court. During a trial in front of the circuit court, King's Ranch argued that the city council's decision to grant or deny an application for a conditional use permit was a quasi-judicial act entitled to a de novo review in the circuit court under Arkansas Code Annotated § 14-56-425. Arkansas Code Annotated § 14-56-425 provides for a de novo review in circuit court when the issue is decided based on administrative or quasi-judicial action. The circuit court disagreed with King's Ranch and found that the city council's decision to deny the application for a conditional use permit was a legislative act rather than a quasi-judicial act. Because the circuit court determined that the city council's act was legislative, and not quasi-judicial, the circuit court applied the rational basis standard of review.

Appeal to and Analysis by the Arkansas Supreme Court: King's Ranch appealed

the circuit court's decision to the Arkansas Supreme Court and again asserted that the circuit court erred in applying the rational basis standard of review. This case presented an issue of first impression regarding whether a municipality's decision granting or denying an application for a conditional use under a zoning ordinance is a legislative act, requiring a rational basis review, or a quasi-judicial act, requiring a de novo review by the circuit court under Arkansas Code Annotated § 14-56-425. The Arkansas Supreme Court clarified that, in this type of case, the crucial test for determining what is legislative and what is administrative (or quasi-judicial) is whether the action taken results in a new law or whether the action taken involves a determination based on a law already in existence.

The Arkansas Supreme Court stated that adoption of amendments under the Ordinance clearly constitutes the creation of new law and is therefore a legislative act by the city council. The Arkansas Supreme Court noted that conditional uses are different. In granting or denying a conditional use permit, the city council is not amending any provisions to the Ordinance. Instead, an analysis is undertaken to determine whether the proposed conditional use complies with the already existing provisions of the Ordinance. When a conditional use application is filed, the planning commission and the city council consider eight factors set out in the Ordinance, and a decision must be made that includes findings of whether an applicant has established or satisfied the eight factors. Thus, a decision on a conditional use application under the Ordinance requires an application of the facts to the existing provisions of the Ordinance and a judgment on whether the conditional use should be granted under the existing Ordinance provisions.

Decision by the Arkansas Supreme Court: The Arkansas Supreme Court found that both the planning commission and the city council were asked to apply facts to the existing Ordinance provisions and to decide whether a conditional use should be granted. The provisions of the Ordinance were not amended by the decision on the conditional use. Therefore, there was no legislative act. Rather, it was a quasi-judicial act based on an application of the facts to the existing Ordinance provisions. No new law was created; it was execution of a law already in existence. The Arkansas Supreme Court held that a decision granting or denying an application for a conditional use is a quasi-judicial act subject to a de novo review by the circuit court. The Arkansas Supreme Court concluded that the circuit court erred in applying the rational basis standard of review and, on this basis, reversed and remanded this case for further proceedings.

Case: This case was decided by the Supreme Court of Arkansas on March 31, 2011, and was an appeal from the Craighead County Circuit Court. The case cite is *King's Ranch v. City of Jonesboro*, 2011 Ark. 123 (March 31, 2011).

Jonathan D. Nelson
Deputy City Attorney

Arkansas Court of Appeals Confirms that the Planning Commission is Authorized to Approve Preliminary Plats Within Little Rock's Extraterritorial Jurisdiction but Reverses Circuit Court and Finds that There was Substantial Evidence to Indicate

that Little Rock Failed to Follow its own Procedures in Approving a Subdivision Application and Preliminary Plat

Facts Taken From the Opinion: This case involved a proposed electrical substation on farm land owned by the Minton Family outside the limits of the City of Little Rock ("Little Rock") but within Little Rock's extraterritorial planning jurisdiction. Tammy McLain et al. ("McLain") are neighbors of the property. Entergy Arkansas, Inc. ("Entergy") sought to purchase part of the property and construct an electrical substation there because the nearest substation was at or near capacity. After considering five potential sites, Entergy determined that the Mintons' property, over which existing electrical transmission lines ran, was the best choice. The Mintons authorized Entergy to make two applications to Little Rock's Planning Commission on their behalf. Entergy applied for approval of a preliminary plat subdividing the property into three lots, seeking variances for the development of Lot 3 without public street frontage and an increased depth-to-width ratio for Lot 2. Entergy also applied for a conditional use permit that would allow it to relocate the access road for Lot 3. The planning commission approved the applications on the recommendation of the planning department staff. McLain appealed the grant of the conditional use permit to the Little Rock Board of Directors, which upheld the planning commission's decision.

Appeal to and Decision by the Circuit Court: McLain appealed the approval of the preliminary plat and the conditional use permit to circuit court. The case was tried de novo to a jury. At the conclusion of the evidence, McLain moved for a directed verdict against Little Rock on the grounds

that Little Rock had not followed its own procedures and that the planning commission lacked jurisdiction over matters within Little Rock's extraterritorial jurisdiction. The trial court denied the motion. The jury upheld Little Rock's decision to approve the conditional use permit, but the jury decided that Little Rock had failed to follow its own procedures regarding the subdivision application and preliminary plat and that, therefore, Little Rock's decision to approve the subdivision application and preliminary plat was unlawful. Little Rock then moved for a Judgment Notwithstanding the Verdict ("JNOV") on the ground that there was no substantial evidence to support the jury's decision that Little Rock failed to follow its own procedures. The circuit court agreed with Little Rock and granted the JNOV, which resulted in favorable rulings for Little Rock on all issues in the circuit court.

Appeal to the Arkansas Court of Appeals:

McLain appealed the circuit court's decision to the Arkansas Court of Appeals and made two arguments. First, McLain argued that the planning commission lacked jurisdiction to approve the applications because it is not the legislative body of Little Rock, as contemplated within the applicable statutes. Second, McLain argued that the circuit court erred in granting the JNOV because there was substantial evidence to support the jury's finding that the commission's approval of the subdivision application and preliminary plat was unlawful.

Analysis by and Decision of the Arkansas Court of Appeals on the First Issue:

McLain asserted that the planning commission lacked jurisdiction to approve the applications and that the circuit court erred in rejecting this argument. McLain argued that, if property is located outside the city limits of Little Rock, then the planning commission does not have the authority to

administer land-use regulations, that only the city board of directors as the "legislative body" may do so pursuant to Arkansas Code Annotated § 14-56-413 (Repl. 1998). The Court of Appeals disagreed with this argument. The Court of Appeals construed this statute in the context of the entire municipal-planning subchapter, Arkansas Code Annotated §§ 14-56-401 through 14-56-426 (Repl. 1998 & Supp. 2009), and found that this subchapter permits a city's board of directors to delegate to its planning commission the authority to regulate land use on property outside city limits but within the city's extraterritorial-planning jurisdiction, which includes all land lying within five (5) miles of the corporate limits. The Court of Appeals held that, as a whole, the statutory scheme plainly demonstrates that the planning commission is authorized, as an advisory body to the board of directors, to approve preliminary plats within the city's extraterritorial jurisdiction.

Analysis by and Decision of the Arkansas Court of Appeals on the Second Issue:

The Court of Appeals found that McLain had, in fact, submitted substantial evidence that Little Rock did not follow its own procedures in approving the subdivision application and preliminary plat. The director of Little Rock's planning department, Tony Bozynski, testified about the commission's procedures and stated that the department's staff routinely uses a checklist to ensure that all necessary documents, including a bill of assurance, have been submitted with a preliminary plat application. The parties submitted as evidence to the circuit court the checklist used by the planning department's staff to determine whether Entergy had submitted all of the necessary documents, including a bill of assurance, with its preliminary plat application. The checklist indicated the documents required by various city ordinances and set forth the following boxes

to be checked where applicable: "provided & acceptable," "provided but incomplete," "not provided," and "does not apply." One item stated that a draft bill of assurance was required by City Ordinance 31-93. None of the boxes next to that item in the checklist were checked; instead, the number of the item was circled. The Court of Appeals stated that the jury could have determined that this notation on the checklist indicated that Entergy did not submit the required draft bill of assurance but, in fact, simply submitted a blank form, which did not meet the requirements of the ordinance. Further, none of the boxes relating to five other items were checked, but the corresponding numbers for these items were again simply circled. Again, the Court of Appeals stated that the jury could have determined that these notations on the checklist indicated that Entergy had failed to submit a complete application, as contemplated by the ordinance. Though Bozynski testified that the checklist and the documents submitted by Entergy did comply with the applicable ordinance, the Court of Appeals noted that it was apparent that the jury did not credit Bozynski's testimony on this issue and that it believed that the documents and information submitted by Entergy did not comply with the applicable ordinance.

The Court of Appeals believed that the jury had substantial evidence to conclude that Little Rock failed to follow its own procedures and that, as a result, Little Rock's approval of the subdivision application and preliminary plat was unlawful. Therefore, the Court of Appeals reversed the circuit court's JNOV. In making this decision, the Court of Appeals clarified that Little Rock was not required to strictly follow its own procedures, but that McLain had the burden of proving, by a preponderance of the evidence, that Little Rock failed to substantially comply with its own ordinances.

Case: This case was decided by the Arkansas Court of Appeals on April 20, 2011, and was an appeal from the Pulaski County Circuit Court, Honorable Ellen B. Brantley, Judge. The case cite is *McLain v. City of Little Rock*, 2011 Ark. App. 285.

Jonathan D. Nelson
Deputy City Attorney

Arkansas Court of Appeals Upholds Circuit Court's Decision to Treat the Grant of a Conditional Use Permit as a Legislative Act When the Granting of the Conditional Use Permit Amounts to a Change in the Existing Land Use Authorized by the Zoning Ordinance

Facts Taken From the Opinion: In 2006, the Washington County Quorum Court enacted an ordinance which identified only two zones for the entire county, agricultural and single family residential. The only authorized uses in these zones, and in all unincorporated areas of Washington County, are: livestock production, farming, silviculture (which is the practice of controlling the establishment, growth, composition, health, and quality of forests), aquaculture, and detached dwellings for one family. The ordinance further provided that any other uses must be approved by a conditional-use permit. Big Red Dirt Farm, LLC ("Big Red") engages in a clay and limestone extraction operation in an unincorporated area of Washington County, Arkansas. Big Red's extraction operation was "grand-fathered" in as a nonconforming use. In 2008, Big Red was notified that if it

desired to expand its limestone-extraction operation (which would require dynamite blasting into the formation) it would need a conditional-use permit. In response, Big Red submitted a permit application seeking a transformation of its use of the formation from primarily a surface (red dirt) mining operation to primarily a deep-limestone quarrying operation.

The initial application was denied by the Washington County Planning Board (the Board of Zoning Adjustment), and Big Red appealed the decision to the Washington County Circuit Court. The circuit court remanded the case to the Washington County Quorum Court which, pursuant to Arkansas Code Annotated § 14-17-209 (Repl. 1998), serves as a board of administrative appeal prior to an appeal to circuit court from a decision of the board of zoning adjustment. The Washington County Quorum Court granted Big Red a conditional use permit to operate a rock quarry in the zoned area. However, the quorum court's approval was conditioned on certain restrictions aimed at making the quarry operation compatible with the surrounding residential and agricultural land uses. Specifically, the developmental restrictions included installing a four-foot high chain link fence and an eight-foot high berm with an evergreen vegetation screen and a one hundred-foot buffer and included conditions regarding traffic flow and hours of operation for blasting and crushing. According to the record, the planning director recommended that the quarry be approved because red dirt, rock, and other extraction materials are needed to create homes and infrastructure in Northwest Arkansas, these materials must come from somewhere, and it makes sense from a planning and use standpoint to locate a quarry in the vicinity of other quarries and in an area where rock is already exposed.

Appeal to and Decision by the Circuit Court: Following the quorum court's decision, David Bolen, Marian Bolen and other surrounding landowners (collectively the "Bolens") filed an appeal in Washington County Circuit Court. The Bolens sought a de novo review of the quorum court's decision and a jury trial in accordance with Arkansas Code Annotated § 14-17-211 (Repl. 1998), which permits a de novo and jury trial appeal from an administrative or quasi-judicial act (and not legislative acts). In their appeal, the Bolens argued that the conditional use permit should have been denied because the only two uses permitted by the zoning ordinance were agricultural and single-family residential, and quarry mining was not included in either of the specific definitions for those two defined and limited uses. Big Red argued that the quorum court's decision was legislative in nature, and as such, the Bolens were not entitled to a de novo review or a jury trial on the matter.

The circuit court initially found in favor of the Bolens and set the matter for a jury trial. Then, on October 2, 2009, Big Red filed a notice of appeal from the circuit court's decision. Based on a case decided by the Arkansas Supreme Court on October 22, 2009, *PH, LLC v. City of Conway*, 2009 Ark. 504, which held that all zoning decisions by legislative bodies are legislative in nature, Big Red asked the circuit court to reconsider its decision.

The circuit court reconsidered the matter and found that the holding in *PH, LLC v. City of Conway* was controlling in this case. Specifically, the circuit court found that, when the quorum court granted a conditional use permit to Big Red, it did not make an administrative decision based on an existing zoning law, but it, instead, made a zoning decision because it changed the land use authorized by the zoning ordinance.

Because the circuit court found that the Bolens were appealing a legislative act, the circuit court decided that the Bolens were not entitled to a de novo review or a jury trial.

Appeal to and Analysis by the Arkansas Court of Appeals: The Bolens appealed this decision to the Arkansas Court of Appeals. In order to resolve this appeal, the Court of Appeals had to determine whether the quorum court's decision to allow Big Red's quarry operation was legislative or administrative in nature. The Court of Appeals noted that, if the decision of the quorum court was legislative, then it would uphold the circuit court's refusal to allow a de novo appeal with a jury trial. If the decision of the quorum court was administrative, then the Court of Appeals would reverse the circuit court's decision and remand the case back to the circuit court for a de novo review and a jury trial. The Court of Appeals noted, however, that differentiating a legislative act from an administrative one is not always a simple task.

The Court of Appeals stated that it must look at the character of the act (as opposed to the label) in order to determine whether it is legislative or administrative. If the act sets policy, it is legislative; if it effectuates policy, it is administrative. The enactment and amendment of local zoning is legislative in nature. In contrast, the execution and enforcement of the zoning laws are administrative tasks. The Court of Appeals noted that, in this case, it is clear that the initial creation of the two zones (agricultural and single-family residential) and the designation of uses permitted in those zones are legislative acts. In contrast, the Court of Appeals stated that the execution and enforcement of local zoning through, for example, inspections, setting of fee schedules, and issuance of permits, are

administrative acts. The Court of Appeals stated that the grant or denial of a conditional use permit under a zoning ordinance falls within a confusing middle ground.

The Court of Appeals discussed one of its prior decisions, *Rolling Pines v. City of Little Rock*, 73 Ark. App. 97 (2001), in which the Court of Appeals considered an act by a board of adjustment to approve a conditional use permit for the placement of a manufactured home in a single-family residential zone. Under the zoning ordinance at issue in *Rolling Pines*, manufactured homes were contemplated and discussed. In addition, the zoning ordinance specifically authorized manufactured homes and set out specific requirements for approval. For this reason, the Court of Appeals found that the board of adjustment's grant of a conditional-use permit in the *Rolling Pines* case involved no "policy" decision, did not grant a new land use, simply followed the predetermined land use plan set out in the ordinance, and, thus, was administrative in nature.

The Court of Appeals also noted that, in *King's Ranch v. City of Jonesboro*, 2011 Ark. 123 (2011), the Arkansas Supreme Court recently considered whether a municipality's decision to grant or deny an application for a conditional use under a zoning ordinance was a legislative act requiring a de novo review by the circuit court. In *King's Ranch*, the Arkansas Supreme Court found that the granting or denying of a conditional use permit did not involve an amendment to an existing law or the creation of a new law but, instead, the decision simply involved an application of the facts to the existing provisions of the ordinance and a judgment on whether the conditional use should be granted under the existing ordinance provisions. In sum, the Arkansas Supreme Court found that no new

law was created as a result of the action but that the action was simply an execution of a law already in existence. Based on this finding, the Arkansas Supreme Court held that a decision granting or denying an application for a conditional use is an administrative act subject to a de novo review by the circuit court.

The Court of Appeals noted that the facts in this case are much different. The Court of Appeals stated that, under the Washington County ordinance, there are only two defined zones, agricultural and residential. Based on the Court of Appeals' reading of the ordinance, including the designated potential uses for the zones, the board of adjustment (an administrative arm) was without the delegated power to grant a conditional use permit to allow Big Red to operate a mining business. More precisely, the ordinance in question does not set out mining as a permitted "use" and does not contain a corollary scheme of conditions to guide the board in an administrative review of the mining-use application. In order to make any determination about mining, new land uses and restrictions would have to be defined, all of which are policy determinations, ergo legislative determinations. For these reasons, the Court of Appeals held that the conditional use permit granted to Big Red by the quorum court could not have been issued by the board of adjustment.

The Court of Appeals, however, found that the quorum court was authorized to issue the conditional use permit in this case because the Arkansas legislature has delegated to the quorum court the legislative authority to engage in comprehensive land use planning and to classify various zones and authorize and deny certain land uses within those zones. The Arkansas Supreme Court, in *Mings v. City of Fort Smith*, 288 Ark. 42 (1986), has clearly held that land use

planning is a legislative function into which courts should rarely interfere.

Decision by the Arkansas Court of Appeals: The Court of Appeals noted that the underlying zoning ordinance did not provide for either a quarry or extraction land use and it did not establish any development requirements for a landowner who desired to engage in quarrying as a conditional use. The Court of Appeals found that the quorum court's decision amended the county's land use plan by adding a new use, extraction, in an area previously zoned exclusively agricultural and residential, and the decision also established numerous developmental restrictions which were not included in the land use plan. For these reasons, the Court of Appeals found that the conditional use permit granted in this case was a legislative act. Therefore, the Court of Appeals affirmed the circuit court's decision that the Bolens were not entitled to either a de novo review or a jury trial in circuit court.

Case: This case was decided by the Arkansas Court of Appeals on May 4, 2011, and was an appeal from the Washington County Circuit Court, Honorable Mark Lindsay, Judge. The case cite is *Bolen v. Washington County Zoning Board of Adjustments*, 2011 Ark. App. 319.

Jonathan D. Nelson
Deputy City Attorney

Good News on Graffiti

I wanted to make you aware of some statistics regarding our Graffiti Abatement Program. As you know, the Springdale City Council passed Ordinance No. 4435 on July 13, 2010, which became effective August 13, 2010, in an effort to combat the effects of graffiti within the City. One of the

provisions in the ordinance is the right of the Public Works Department of the City to remove graffiti and a program was established whereby the City would take responsibility for the costs of the removal under certain circumstances. The first graffiti removed by Springdale Public Works was on August 13, 2010. They have had a total of 109 work orders from the start of the program.

As you know, the ordinance was passed in an attempt to reduce the graffiti incidents and so far it appears the ordinance is working. From information we have gathered, including statistics on graffiti incidents from the Police Department, the following is a breakdown comparing reported graffiti incidents from January 1 through August 15th in both 2010 and 2011:

- January 1 through August 15, 2010 – 290 incidents of graffiti (1.27 per day)
- January 1 through August 15, 2011 – 173 incidents of graffiti (0.76 per day)

This is a reduction in the amount of graffiti incidents of just over 40%. Hopefully this trend will continue, but just from driving around the City, it appears that there is a lot less graffiti visible on buildings than there was when the ordinance was passed on July 13, 2010.

Jeff Harper
City Attorney

2011 Acts Affecting City Government

The 2011 Arkansas General Assembly passed over 1,200 Acts. Below are 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 are effective, went into effect on July 27, 2011. I have divided the categories by Acts Affecting City Administration, Acts Affecting Police Administration, and Acts Affecting Courts. Our office previously conducted a class with the Police Department on Acts Affecting Law Enforcements Officers, and a summary of these Acts will also be in the October edition of C.A.L.L.

After you review the laws, if you want a full copy of the Act, please contact our office, or you can also obtain a copy by going to www.arkleg.state.ar.us and click on "Acts" at the left, then put in the number of the Act you want to view. All Acts should be consulted for their detail, as I am only setting out the title of each Act and in some cases, a brief explanation.

Acts Affecting City Administration

Act 10 - An Act to Authorize Extensions of the Deadline for the Burning of Storm Debris After a County is Declared a Disaster Area.

The previous law required all burning to be completed within 120 days of the designation of the county as a disaster area. This Act allows the County Judge to request an extension of that time.

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Act 26 - An Act to Amend Arkansas Code Section 15-22-501 to Add Waste Water Treatment Facility and other Related Entities to the Definition of Water Development Projects.

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Act 72 - An Act to Exempt Cottage Food Operations, Farmer's Markets, and Other Similar Food Sales Entities from Permits Requirements and to Declare an Emergency - approved 2/18/11 with emergency clause.

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Act 93 - An Act to Clarify Arkansas's Rabies Control Act.

This amended Ark. Code Ann. § 20-19-305, which previously required rabies vaccinations of dogs and cats to be performed annually. Under the new Act, all dogs, cats, and other animals shall be vaccinated against rabies as required by the State Board of Health, and the Act further authorizes the State Board of Health to adopt rules necessary to carry out the Act.

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Act 99 - An Act to Continue the Freedom of Information Act Provisions Affecting the Records and Meetings of Public Water Systems.

This Act extends the current law which exempts certain records relating to the security of a public water system from the examination and copy requirements for a public record (until July 1, 2013). The Act contained an emergency clause and went into effect on July 1, 2011.

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Act 110 - An Act Concerning Planning for an Absentee Mayor in Cities of the First Class.

This Act provides that if the mayor is unable to perform the duties of office or cannot be located, the city clerk or other elected official of the city if designated by the

mayor may perform all functions of a mayor during the disability or absence of the mayor. The Act also clarifies that as to city council meetings, the city council shall elect a president pro-tempore to preside at council meetings when the mayor is absent.

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Act 134 - An Act to Clarify the Election Procedure for a Vacancy in Certain Elected Municipal Offices.

This Act clarifies that in case any office of an elected officer, except alderman of the ward, shall become vacant before the expiration of the regular term, then the vacancy shall be filled by the city council until a successor is duly elected and qualified, and the successor shall be elected for the unexpired term at the first general election that occurs after the vacancy shall have happened.

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Act 146 - An Act to Require Low Voltage Carbon Monoxide Detectors in New Home Construction.

This Act provides that under Ark. Code Ann. § 4-86-109 low voltage carbon monoxide detectors are required in new home construction. For a new home constructed after January 1, 2012, a low voltage carbon monoxide alarm shall be installed on each floor. The law also has other requirements about the carbon monoxide detector and makes the violation of the law a Class A misdemeanor. The Act does not apply to all electric homes.

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Act 165 - An Act Regarding the Regulation of Firearms by a Local Government.

This Act changes some of the wording, but does not change current Arkansas law that prohibits a local unit of government from enacting any ordinance or regulation pertaining to, or regulating in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law. This provision, however, does not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm. Again, while different words were used in the Act, the previous law has not changed. The Act goes on to provide that the government body of a local unit of government, following the proclamation by the governor of a state of emergency is prohibited from enacting an emergency ordinance regulating the transfer, transportation, or carrying of firearms or components of firearms. A person who has his or her firearm seized in violation of this provision may bring an action in the circuit court having jurisdiction for the return of the seized firearm.

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Act 168 - An Act Concerning the Inspection and Copying of Public Records by Individuals Incarcerated in a Correctional Facility.

This Act provides that access to inspect and copy public records shall be denied to any 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 the representative of a person described above unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

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Act 196 - An Act to Provide Health Insurance Coverage for Autism Spectrum Disorders.

This Act goes into effect on October 1, 2011.

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Act 197 - An Act to Provide for Certain Water Systems to Maintain a Level of Fluoride to Prevent Tooth Decay.

This Act creates a statewide fluoridation program and provides in part that a municipality that owns or controls a water system shall control the quantity of fluoride in the water so as to maintain a fluoride content established by the Department of Health.

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Act 199 - An Act Concerning the Withholding of an Elected Official's Salary and Benefits Upon the Suspension of a Required Professional License or Registration.

This Act provides that salary of an elected official of a city shall be withheld if the elected official is required to hold a professional license or registration as a qualification of his or her position and the elected official's professional license or registration is suspended. This Act also provides that upon learning that an elected official's required professional license or registration has been suspended, the city shall petition a court of competent jurisdiction for an order mandating that the elected official's salary be withheld. For purposes of this Act, salary includes without limitation any benefits provided to the elected official by virtue of his or her position including without limitation health

insurance, retirement contributions, and retirement benefits.

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Act 209 - An Act to Clarify the Power of Regional Solid Waste Management Boards to Charge and Collect a Fee for Management of Solid Waste.

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Act 263 - An Act to Provide an Exemption for Recreational Vehicle Special Events to Allow Recreational Vehicle Dealers to Display and Sell Recreational Vehicles at Special Events that have a Significant Positive Economic Impact on an Area.

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Act 280 - An Act Concerning Municipal Planning Commissions.

This Act makes some changes, but does not affect the City of Springdale as they are currently operating.

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Act 282 - An Act to Amend the Powers Included in the Public Corporations for Economic Development Act.

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Act 284 - An Act to Authorize a Public Water System to Terminate Water Service for Delinquent Water, Wastewater, or Sewer Service Payment.

This Act provides that a public water system that is not otherwise regulated by a municipality or municipal improvement district may terminate water service to a water user when the water user is more than 25 days past the earliest due date shown on

the face of the bill in making a payment for water, wastewater, or sewer service to the public water system or other public entity, and has been sent notice via United States Postal Service to an address provided by the water user that service shall be terminated in no less than 15 days from the date of mailing if the balance due on the service and any applicable late fees are not paid.

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Act 287 - An Act to Remove the Interest Rate Limitation for Bonds Issued Under the Authority of Amendment No. 62 to the Arkansas Constitution and To Declare an Emergency - approved 3/15/11 with emergency clause.

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Act 518 - An Act Repealing the Arkansas Mold Investigator Licensing Act.

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Act 519 - An Act to Create Consistency in Nominating Petitions in Certain Municipal Elections.

No changes affect the City of Springdale.

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Act 525 - An Act Concerning the Residence Requirements of Commissioners of Certain Municipal Entities.

This Act does not affect City of Springdale.

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Act 568 - An Act Concerning Municipal Regulation of Farmers' Markets.

In part, this Act requires that a charge or assessment, other than those essential for

operations and maintenance, shall not be made or levied against any farmer or producer that is selling items grown or produced on the farmer's or producer's land or property. The law also clarifies that a governing body may authorize the immediate seizure, arrest, or removal from any market of any person violating its regulations, as established by ordinance, together with any article in the person's possession, and the immediate seizure and destruction of tainted or unsound meat, seafood, poultry, vegetable, fruit, or other provisions. The Act further clarifies that under § 20-57-101, et. seq., the Department of Health is the entity authorized to regulate food safety.

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***Act 582 - An Act to Clarify Who is Eligible to Administer an Oath of Office.***

This Act clarifies who can administer the oath of office.

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Act 612 - An Act Concerning Who May Administer an Oath of Office.

This Act relates to a county or district official who is acting as a holdover officer in administering the oath of office to any incoming county or district official.

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***Act 618 - An Act Concerning the Award of Contracts on Public Property.***

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Act 619 - An Act to Amend the Law Concerning Municipal Depository Boards and Depository Agreements.

This Act amends previous law and provides the following persons shall constitute a three member board to designate depository and supervise the depositing of municipal funds: a mayor, a city clerk or recorder-treasurer, and a city council member selected by the city council. Although this board shall not total more than three members, the city council may replace one of the three board members listed with the city finance officer or other official.

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***Act 620 - An Act to Amend the Arkansas Municipal Water and Sewer Department Accounting Law.***

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Act 621 - An Act to Amend Municipal Accounting Laws.

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***Act 622 - An Act Concerning Certain Financial Procedures of Municipalities.***

This Act clarifies that the mayor or his duly authorized representative may sell or exchange any municipal supplies, materials, or equivalent with the value of \$20,000 or less unless the municipal governing body shall, by ordinance, establish a lesser amount. The law further provides that a records shall be maintained of all items disposed of and reported to the governing body. The municipal fixed asset listing shall be amended to reflect all disposal of property made under this statute.

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Act 627 - An Act to Streamline the Process for Criminal History Checks for Emergency Medical Technicians.

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Act 698 - An Act to Extend the Statute of Limitations for Municipal Code Violations.

This Act provides that the statute of limitations for municipal ordinance violations is one year unless a different period of time not to exceed three years is set by ordinance of the municipal government.

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Act 740 - An Act to Extend the Time in Which Certain Lands May be Detached After an Annexation Proceeding.

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Act 752 - An Act to Define "Public Transportation" Related to City and County Turnback Funds Under the Arkansas Highway Revenue Distribution Law.

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Act 757 - An Act to Create a Sales Tax Holiday for Clothing, Clothing Accessories or Equipment, School Supplies, School Art Supplies, and School Instructional Material.

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Act 772 - An Act to Establish Safety Standards for Anchoring Soccer Goals on Playgrounds and Other Recreation Areas (Jonathan's Law).

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Act 778 - An Act to Make Various Corrections to Title 14 of the Arkansas Code of 1987 Concerning Local Government.

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Act 806 - An Act to Amend Certain Provisions of Arkansas Law to Permit Housing Authorities to Register Fictitious Names with the Arkansas Secretary of State.

This Act allows a housing authority to transact business under a fictitious name provided the authority receives approval by its commissioners of the governing body of affairs of the state or, in the absence of the commissioners, approval from the governing body of the city or county and further provides that the housing authority must file with the Secretary of State a form recording the fictitious name under which the applicant housing authority will transact business.

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Act 816 - An Act to Prohibit a Level 3 or Level 4 Sex Offender From Being at a Water Park Owned or Operated by a Local Government.

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Act 828 - An Act to Keep Arkansas Competitive by Promoting Funding for Economic Development Projects; to Authorize the Levy of Local Sales and Use Taxes to Fund Economic Development Projects.

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Act 832 - An Act to Provide Incentives for Converting Motor Vehicles to be Powered by Compressed Natural Gas.

Act 838 - An Act to Amend Arkansas Law Concerning Fire Extinguishers, Fixed Fire Protection Systems, and Fire Protection Sprinkler Systems.

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**Act 884 - An Act Concerning the Membership of a Regional Solid Waste Management Board.**

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Act 888 - An Act Regarding the Damaging or Defacing of Property by a Minor.

This Act was proposed by the City of Springdale and introduced by Representative Jon Woods. The Mayor also testified for the Act at a House Subcommittee. This Act allows the recovery of damages in an amount not to exceed \$5,000 in a court of competent jurisdiction from the parents of any minor under 18 years of age, living with a parent or legal guardian, who shall maliciously or willfully damage or deface real, personal or mixed property belonging to the state or county, city, town, or school district, or any person, corporation, or organization.

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**Act 895 - An Act to Authorize the Creation of Regional Economic Development Partnerships; to Regulate Regional Economic Development Partnerships; to Regulate the Funding of Regional Economic Development Partnerships.**

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Act 903 - An Act to Amend the Definitions Regarding the Regulation of Unsanitary Conditions and to Declare an Emergency. Passed with emergency clause on 3/31/11.

Under this Act, an additional definition of an unsafe and vacant structure or an abandoned home or residential property means also a home or residential property that is (i)

unoccupied; (ii) in violation of a city safety standard; and (iii) located in an area eligible for federal funds under § 14-54-905.

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**Act 994 - An Act to Require Pets Adopted Through a Pound, Shelter, Humane Organization, or Animal Rescue Group to be Sterilized Before the Adoption is Complete.**

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Act 997 - An Act Concerning Fees Collected for Violations of the Arkansas Hot Check Law.

This Act raises the collection fees that a prosecuting attorney may collect from any person issuing a hot check. The fee is raised from \$15 to \$25 on a hot check that does not exceed \$100; from \$30 to \$45 if the hot check is greater than \$100, but does not exceed \$300; from \$50 to \$65 if the hot check is greater than \$300, but does not exceed \$500; and from \$75 to \$90 if the hot check is greater than \$500.

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**Act 1012 - An Act to Increase the Service Charge for Collecting a Hot Check.**

This Act raises the service charge when a hot check is collected for the merchant from \$25 to \$30.

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Act 1028 - An Act to Amend the Law Concerning Removal of Certain Elected Municipal Officials.

This Act clarifies the law that when there is a petition requesting the removal of an officer, the petition which must contain 25%

of the qualified electors, must be filed with the county clerk. If there is a sufficient number of signatures and upon election if a majority of the qualified electors vote for the removal of the officer, then the officer shall vacate the office immediately upon certification of the election.

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Act 1029 - An Act to Amend Arkansas Law Concerning Temporary Appointments by a Board of Civil Service Commissioners.

This Act is amended to provide that if the civil service board creates an eligibles list on an as needed basis and a vacancy is created as a result of death, termination, resignation, demotion, retirement, or promotion, the chief of the fire department or police department shall notify the board within five business days, and the board shall schedule an examination to establish an eligibles list from which an appointment or promotion shall be made and unless the position is determined to be eliminated or not funded by the governing body of the city. The Act also provides that if a temporary promotion or appointment for a vacancy created by death, termination, resignation, demotion, retirement, or promotion is made, it shall not be made for longer than 60 days when there is a current eligibles list. In the absence of a current eligibles list, a temporary promotion or appointment may be allowed for a vacancy created by death, termination, resignation, demotion, retirement, or promotion until and an eligibles list is certified unless the position is determined to be eliminated or not funded by the governing body of the city. A temporary promotion for a vacancy created by death, termination, resignation, demotion, retirement, or promotion shall not last longer than 60 days. If an appeal is filed in connection with a vacancy that is created by a termination or demotion, the vacancy may

be filled by a temporary promotion until all appeals in connection with the termination or demotion are exhausted. The Act further provides that a vacancy that is created by vacation, bereavement leave, medical leave, military leave, or suspension on a day to day basis may be filled by a temporary promotion on a day to day basis as vacancies occur. An increase in salary beyond the limits fixed for the grade by the rules of the commission may be allowed while an employee is working outside of his/her grade while temporarily promoted to fill a vacancy. The Act also provides a promotion shall be made within 60 calendar days of a vacancy created by death, termination, resignation, demotion, retirement, or promotion, unless the position is determined to be eliminated.

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Act 1030 - An Act to Create Arts and Cultural Districts.

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Act 1032 - An Act Concerning Transportation Funding that Amends the State Aid Streets Law.

This Act has an emergency clause and went into effective on July 1, 2011.

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Act 1038 -An Act to Allow an Exception to a Burn Ban to Burn Off a Crop Following Harvest.

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Act 1050 - An Act to Amend the Telecommunications Regulatory Reform Act of 1997.

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Act 1051 - An Act Concerning the Procedures for Annexation of Surrounded Land by a Municipality.

This Act prohibits a municipality from passing an ordinance within 51 days of a scheduled election to consider annexing all or part of the area in question.

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Act 1053 - An Act to Amend the Law Concerning the Purchase of Water Service Properties and Facilities; and for Other Purposes.

If a municipality that owns or operates a water service has an area within its corporate limits that is served by another municipality's water service, the municipality may elect to purchase from the other municipality's service all customers, distribution properties and facilities located within the municipality using the procedures set out in this law.

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Act 1164 - An Act Relating to Leaves of Absence and Re-deployment of Military Personnel Called to Active Duty; and for Other Purposes.

This Act amends some of the language in the previous law and in part provides a person who is called to active state duty as a member of the armed forces of the state or any other state, including without limitation the National Guard, a reserve component of the armed forces, or the militia, as afforded such employment and re-employment rights, privileges, benefits and protection in employment as though that person had been called to active duty in the service of the United States and shall not be denied hiring, retention in employment, promotion, or

other incidents or advantages of employment because of any obligation as a member of the armed forces. The Act provides for similar languages in amending Ark. Code Ann. § 21-4-212 to provide the employees who are members of the armed forces of this state or any other state, including without limitation the National Guard or reserve component of the armed forces, shall be granted leave at a rate of 15 days per calendar year, plus necessary travel time for annual training requirements or other duties performed in official duty status.

Act 1182 - An Act to Clarify the Law Regarding the Lowering of State Flags When a Member of the Armed Services is Killed in Action.

This Act relates to lowering of state flags when a member of the armed services is killed in action. The law previously read that the State of Arkansas shall honor and pay tribute to a member of the armed services who was killed in action by lowering a state flag located on a public building to half staff any time after learning of the death of a member of the armed services for a period of not to exceed three days. The new law reads that the State of Arkansas may honor and pay tribute to a member of the armed services who was killed in action by lowering a state flag half staff for a period of not to exceed three days. This law only applies to a member of the armed services who was or has been a resident of the State of Arkansas.

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Act 1187 - An Act to Extend Certain Powers Granted to Cities of the First Class to all Municipalities.

This Act makes some clarifications, but in some areas gives cities of the second class

and incorporated towns the same power as cities of the first class.

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***Act 1211 - An Act to Modify the Amount of Votes Required to be Elected to a Municipal Position Without a Runoff.***

This Act provides that if there are more than two candidates for election to any municipal office at a general election held in this state in which no candidate for the municipal office receives either a majority of the votes cast or the plurality of 40% of the votes cast then there shall be a run-off. The Act further provides that if a candidate who receives a plurality of 40% of the votes and at least 20% more of the votes than the second place candidate for the municipal office, no run-off take place. If, however, a run-off election is required it shall be held in that municipality within three weeks following the date of the general election with the names of the two candidates placed on the ballot to be voted upon by the qualified electors of the municipality. The bottom line is this new law allows for there not to be a run-off if the top candidate receives 40% - 50% of the votes cast, as long as the top vote getter has 20% more of the votes than the second place candidate.

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Acts Affecting Police Administration

Act 171 - An Act to Allow the Donation of Certain Items Including Bicycles Seized and Forfeited by Law Enforcement Agencies.

This Act allows unclaimed seized property that is a recreational item to be donated at no cost to a local or state agency, a non-profit organization, or an educational program designed to provide education, assistance or

recreation to children. Recreational items includes, without limitation, a bicycle, but does not include a motor vehicle or motorcycle.

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***Act 270 - An Act to Mandate that Law Enforcement be Notified in the Event that a Health Care Provider Treats a Burn that Reasonably Could be Connected to Criminal Activity***

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Act 699 - An Act to Amend Juli's Law; to Require that a DNA Sample be Taken From a Person Arrested for Rape and to Declare an Emergency

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***Act 904 - An act to Allow the Multiyear Registration of Personal-Use Motor Vehicles.***

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Act 908 - An Act to Authorize Electronic Traffic Tickets.

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***Act 995 - An Act to Clarify the Right of Owner's Preference in Removal of a Disabled or Inoperative Vehicle.***

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Act 1004 - An Act to Provide for Adult Abuse and Domestic Violence Reporting

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***Act 1037 - An Act to Amend the Law Concerning Pawnbrokers, Precious Metal***

*Dealer Licensing, and the Purchase of Gold, Silver, and Other Precious Metals.*

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Act 1046 - An Act to Allow Law Enforcement to Impound a Motor Vehicle that does not have the Minimum Liability Insurance Required by Law or a Certificate of Self-Insurance.

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*Act 1199 - An Act to Require a Law Enforcement Officer to Complete Continuing Education and Training Relating to Persons with Disabilities in a Law Enforcement Context.*

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Act 1240 - An Act to Allow an Auxiliary Law Enforcement Officer Appointed as a Reserve Law Enforcement Officer to Administer Blood Alcohol Tests and to Operate a Device to Detect Excessive Speeding.

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Acts Affecting Court

*Act 194 - An Act to Amend the Statutes Regarding the Suspension or Revocation of a Driver's License; to Amend the Statute Regarding the Penalties for Unlawful use of a License; to Make Technical Corrections.*

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Act 44 - An Act to Provide that Courts are not Required to Provide Written Records of Convictions to the Office of Driver Services When the Conviction is Reported Electronically.

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*Act 626 - An Act Regarding the Expungement of Misdemeanor Convictions*

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Act 730 - An Act to Establish Criminal Penalties for the Possession of Less Than Four Ounces of a Schedule VI Controlled Substance

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*Act 876 - An Act to Reinstate the Penalties that were in Effect from 1991 to 2009 for a Person who Drives an Unregistered Motor Vehicle.*

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Act 908 - An Act to Authorize Electronic Traffic Tickets

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*Act 1012 - An Act to Increase the Service Charge for Collecting a Hot Check*

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Act 1174 - An Act Regarding the Arkansas District Courts Accounting Law.

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*Act 1218 - An Act Making Certain Technical Amendments to Title 16*

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Act 1219 - An Act to Create State District Courts; to Designate Geographic Districts for State District Courts; to Amend Arkansas Code §16-17-1101 et seq.; to Amend Arkansas Code § 16-17-901 et seq.