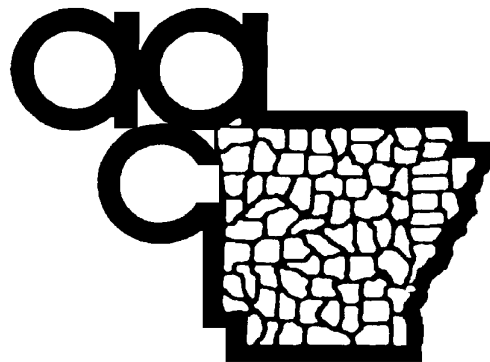


*County Purchasing, Sales and
Leasing*

Procedures Manual



November, 2011

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FOREWORD

This county purchasing, sales and leasing procedures manual was compiled by the Association of Arkansas Counties staff. It reflects the current law through the 2011 legislative session and includes several pertinent Attorney General Opinion numbers as well as information about the Arkansas Purchasing Law. Several substantive changes to county government purchasing, sales and leasing codes were made during the 2011 session of the 88th General Assembly

This manual is not to be construed as legal advice. It presents the law for your information and guidance but specific legal questions should be directed to your county attorney or to the AAC Legal Counsel.

We hope this procedures manual will be helpful in the day-to-day business of your county.

A handwritten signature in black ink that reads "Chris Villines". The signature is written in a cursive, flowing style.

Chris Villines
Executive Director

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PURCHASE

THE COUNTY JUDGE IS CONSTITUTIONALLY AND STATUTORILY AUTHORIZED TO CONDUCT COUNTY PURCHASES

ACA 14-14-1102. Exercise of powers of county judge.

(b)(C)(ii) The county judge shall have the authority to enter into necessary contracts or other agreements to obligate county funds and to approve expenditure of county funds appropriated therefore in the manner provided by law.

(iii)(a) The county judge of each county may promulgate appropriate administrative rules and regulations after notice and hearing thereon, for the conduct of county financial affairs.

(b) the administrative rules and regulations shall be consistent with the provisions of laws relating to financial management of county government and the appropriate ordinances enacted by the quorum court.

(c) All such administrative rules and regulations adopted after hearings by the county judge shall be certified by the county judge and filed in the office of the county clerk to be open to public inspection at all normal hours of business.

(3) (A) Custody of County Property. The county judge, as the chief executive officer of the county, shall have custody of county property and is responsible for the administration, care, and keeping of such county property, including the right to dispose of county property in the manner and procedure provided by law for the disposal of county property by the county court. The county judge shall have the right to lease, assign, or not assign use of such property whether or not the county property was purchased with county funds or was acquired through donations, gifts, grants, confiscation, or condemnation.

(B) In addition to other terms the county court finds reasonable and proper, the contract for the lease of county property shall provide that when the leased property ceases to be used for the purpose expressed in the lease or needs to be used by the county, the lease may be cancelled by the county court after reasonable notice.

See Attorney General Opinions: 97-039; 2006-124, 2007-009; 2007-193; 2008-161

DEFINITIONS

ACA 14-22-101. Definition.

As used in this chapter, unless the context otherwise requires:

(1) "Commodities" means all supplies, goods, material, equipment, machinery, facilities, personal property, and services other than personal services, purchased for or on behalf of the county;

(2) "Formal bidding" shall mean the procedure to be followed in the solicitation and receipt of sealed bids, wherein:

(A) Notice shall be given of the date, time, and place of opening of bids, and the names or a brief description and the specifications of the commodities for which bids are to be received, by one (1) insertion in a newspaper with a general circulation in the county, not less than ten (10) days nor more than thirty (30) days prior to the date fixed for opening such bids;

(B) Not less than ten (10) days in advance of the date fixed for opening the bids, notices and bid forms shall be furnished to all eligible bidders on the bid list for the class of commodities on which bids are to be received, and to all others requesting them; and

(C) At least ten (10) days in advance of the date fixed for opening bids, a copy of the notice of invitation to bid shall be posted in a conspicuous place in the county courthouse;

(3) "Open market purchases" means those purchases of commodities by any purchasing official in which competitive bidding is not required;

(4) "Purchase" means not only the outright purchase of a commodity, but also the acquisition of commodities under rental-purchase agreements or lease-purchase agreements or any other types of agreements whereby the county has an option to buy the commodity and to apply the rental payments on the purchase price thereof;

(5) "Purchase price" means the full sale or bid price of any commodity, without any allowance for trade-in;

(6) "Purchasing official" means any county official, individual, board, or commission, or his or her or its lawfully designated agent, with constitutional authority to contract or make purchases on behalf of the county;

(7) "Trade-in purchases" means all purchases where offers must be included with the bids of each bidder for trade-in allowance for used commodities; and

(8) (A) "Used or secondhand motor vehicles, equipment, or machinery" means any motor vehicles, equipment, or machinery at least two (2) years in age from the date of original manufacture or that has at least five hundred (500) working hours' prior use or ten thousand (10,000) miles' prior use.

(B) (i) Any purchase of a used motor vehicle, equipment, or machinery shall be accompanied by a statement in writing from the vendor on the bill of sale or otherwise documenting that the motor vehicle, equipment, or machinery is at least two (2) years in age from the date of original manufacture or has been used a minimum of five hundred (500) hours or driven a minimum of ten thousand (10,000) miles.

(ii) This statement shall be filed with the county clerk at the time of purchase.

APPLICABILITY AND PENALTIES

ACA 14-22-102. Applicability.

(a) It is unlawful for any county official to make any purchases with county funds in excess of twenty thousand dollars (\$20,000), unless the method of purchasing prescribed in this chapter is followed.

(b) This chapter shall not apply to any purchases under twenty thousand dollars (\$20,000) or to the purchase of commodities set forth in § 14-22-106.

ACA 14-22-103. Penalty.

Any person or official who intentionally violates the provisions of this chapter shall, upon conviction, be fined in any amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). In addition thereto, he may be removed from his office or position of employment with the county.

See Attorney General Opinions: 89-365; 2007-009

WHEN BIDDING PROCESS REQUIRED

ACA 14-22-104. Purchases permitted.

All purchases of commodities made by any county purchasing official with county funds, except those specifically exempted by this chapter, shall be made as follows:

(1) Formal bidding shall be required in each instance in which the estimated purchase price shall equal or exceed twenty thousand dollars (\$20,000);

(2) Open market purchases may be made of any commodities where the purchase price is less than twenty thousand dollars (\$20,000); and

(3) No purchasing official shall parcel or split any items of commodities or estimates with the intent or purpose to change the classification or to enable the purchase to be made under a less restrictive procedure.

PURCHASE OF MOTOR FUELS AND ACCESSORIES

ACA 14-22-105. Purchase of motor fuels and accessories.

For the purpose of this chapter, any county within this state may be considered a state agency for the purpose of purchasing gasoline, oil, and other motor fuels, and batteries, tires, and tubes for motor vehicles. Any county purchasing agent within this state may, by complying with Acts 1955, No. 313, Sec. 13, 14 [repealed], purchase such commodities through the state purchasing agent under the authority set forth in these statutes.

PURCHASES EXEMPTED FROM SOLICITING BIDS

ACA 14-22-106. Purchases exempted from soliciting bids.

The following listed commodities may be purchased without soliciting bids:

- (1) Perishable foodstuffs for immediate use;
- (2) Unprocessed feed for livestock and poultry;
- (3) Advanced emergency medical services provided by a nonprofit corporation and proprietary medicines when specifically requested by a professional employee;
- (4) Books, manuals, periodicals, films, and copyrighted educational aids for use in libraries and other informational material for institutional purposes;
- (5) Scientific equipment and parts therefore;
- (6) Replacement parts and labor for repairs of machinery and equipment;
- (7) Commodities available only from the federal government;
- (8)(A) Any commodities needed in instances in which an unforeseen and unavoidable emergency has arisen in which human life, health, or public property is in jeopardy.
- (B) An emergency purchase under subdivision (8)(A) of this section shall not be approved unless a statement in writing is attached to the purchase order describing the emergency necessitating the purchase of the commodity without competitive bidding;
- (9) Utility services, the rates for which are subject to regulation by a state agency or a federal regulatory agency;
- (10) Sand, gravel, soil, lumber, used pipe, or used steel;
- (11) Used or secondhand motor vehicles, machinery, or equipment, except that a used or secondhand motor vehicle that has been under lease to a county when the vehicle has fewer than ten thousand (10,000) miles of use shall not be purchased by the county when it has been used ten thousand (10,000) miles or more except upon competitive bids as provided in this chapter;
- (12) Machinery, equipment, facilities, or other personal property purchased or acquired for or in connection with the securing and developing of industry under the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq., or any other provision of law pertaining to the securing and developing of industry;
- (13) Registered livestock to be used for breeding purposes;
- (14) Motor fuels, oil, asphalt, asphalt oil, and natural gas;
- (15) Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids;
- (16) All goods and services that are regularly provided to state agencies and county government by the Department of Correction's various penal industries;

(17)(A) New motor vehicles purchased from a licensed automobile dealership located in Arkansas for an amount not to exceed the fleet price awarded by the Office of State Procurement and in effect at the time the county submits the purchase order for the same make and model motor vehicle.

(B) The purchase amount for a new motor vehicle may include additional options up to six hundred dollars (\$600) over the fleet price awarded;

(18) Renewal or an extension of the term of an existing contract;

(19) Purchase of insurance for county employees, including without limitation health insurance, workers' compensation insurance, life insurance, risk management services, or dental insurance;

(20) Purchases made through programs of the National Association of Counties or the Association of Arkansas Counties; and

(21) Goods or services if the Quorum court has by resolution approved the purchase of goods or services through competitive bidding or procurement procedures used by:

(a) The federal government or one of its agencies;

(b) Another state; or

(c) An association of governments or governmental agencies including associations of governments or governmental agencies below the State level.

GENERAL BIDDING PROCEDURE

See ACA 14-22-101(2)(A)(B)(C) for definition of "formal bidding."

ACA 14-22-107. List of eligible bidders.

(a) The county purchasing official shall establish and maintain a list of eligible bidders covering all commodities and shall furnish copies of it to all purchasing officials of the county.

(b) Any firm which desires to bid and have its name on the list of prospective bidders shall notify the purchasing official in writing of this desire, setting forth the class and description of commodities on which it desires to bid and the firm's qualifications as a responsible bidder.

(c) Every effort shall be made by the purchasing official to notify all eligible bidders before purchases are made.

ACA 14-22-108. Bidding procedure.

(a) All bids which require either formal or informal bidding shall be opened in public and read at the time and place specified in the notice.

(b) The awarding of contracts need not be upon the day of the opening of the bids but may be at a later date to be determined by the purchasing official.

(c) In order to assure that the bidder will accept and perform a contract under the terms of his bid, the purchasing official may require bids to be accompanied by certified check or surety bond furnished by a surety company authorized to do business in this state in such a reasonable amount as the purchasing official shall determine.

ACA 14-22-109. Descriptions and specifications.

(a) Descriptions and specifications shall be sufficiently restricted or specific so as to exclude cheap or inferior commodities which are not suitable or practicable for the purpose for which they are to be used, but at no time shall they be so specific in detail as to restrict or eliminate competitive bidding of any items of comparable quality and coming within a reasonable close price range.

(b) Brand names may be used to simplify or indicate the general description of commodities required, but at no time, except for repair parts or items for use with existing equipment and machines or other health aids requested by a professional employee, shall such names be used to indicate any preference or to prevent bidding on commodities of like quality and coming within reasonably close price range.

ACA 14-22-110. Testing and examination of products.

(a) The purchasing official is authorized to establish and enforce standards for all commodities for which formal bidding is required and to make or cause to be made any test, examination, or analysis necessary therefore. He may require samples to be submitted and a certified analysis to accompany bids prior to awarding contracts.

(b) After the bids have been opened, the lowest responsible bidder may be required to submit his product or article to further testing and examination prior to awarding the contract.

BIDDING PROCEDURE FOR PERMANENT IMPROVEMENTS OVER \$20,000.00

ACA 22-9-203. Public Improvements generally - Award procedure.

(a) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state or any agency thereof, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of twenty thousand dollars (\$20,000) unless:

(1) The state or any agency of the state shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks for projects more than the amount of fifty thousand dollars (\$50,000) and published notice of its intention to receive

bids one (1) time each week for not less than one (1) week for projects more than the quote bid limit, as provided under the Arkansas Building Authority minimum standards and criteria, but less than or equal to fifty thousand dollars (\$50,000) in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry; and

(2) Any county, municipality, school district, or other local taxing unit shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.

(b)(1) The date of publication of the last notice shall be not less than one (1) week before the day fixed therein for the receipt of bids.

(2) If there is no newspaper regularly published in the county in which the proposed work is to be done, the notices may be published in any newspaper having a general circulation in the county.

(3) Nothing in this section shall be construed as limiting to two (2) the number of weeks the notices may be published for projects over the amount of fifty thousand dollars (\$50,000), limiting to one (1) the number of weeks the notices may be published for projects more than the quote bid limit, as provided under subsection (a) of this section, and less than or equal to fifty thousand dollars (\$50,000), and as limiting to two (2) the number of weeks the notices may be published for all other projects.

(c)(1) All notices shall contain:

(A) A brief description of the kind or type of work contemplated;

(B) The approximate location thereof;

(C) The place at which prospective bidders may obtain plans and specifications;

(D) The date, time, and place at which sealed bids will be received;

(E) The amount, which may be stated in a percentage, of the bid bond required;

(F) A statement of the taxing unit's reservation of the right to reject any or all bids and to waive any formalities; and

(G) Such other pertinent facts or information which to it may appear necessary or desirable.

(2)(A)(i) Every bid submitted on public construction contracts for any political subdivision of the state shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond.

(ii) Every bid submitted on public construction contracts for the state or any agency or department of the state shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond, except for projects under twenty thousand dollars (\$20,000).

(iii) No bid bond shall be required for public construction contracts for the state or any agency or department of the state under or equal to twenty thousand dollars (\$20,000).

(B) This bid security shall indemnify the public against failure of the contractor to execute and deliver the contract and necessary bonds for faithful performance of the contract.

(C) The bid security shall provide that the contractor or surety must pay the damage, loss, cost, and expense subject to the amount of the bid security directly arising out of the contractor's default in failing to execute and deliver the contract and bonds.

(D) Liability under this bid security shall be limited to five percent (5%) of the amount of the bid.

(d) On the date and time fixed in the notice, the board, commission, officer, or other authority in which or in whom authority is vested to award contracts shall open and compare the bids and thereafter award the contract to the lowest responsible bidder, but only if it is the opinion of the authority that the best interests of the taxing unit would be served thereby.

(e) In the event that all bids submitted exceed the amount appropriated for the award of the contract, the state agency or its designated representatives shall have the authority to negotiate an award with the apparent responsible low bidder, but only if the low bid is within twenty-five percent (25%) of the amount appropriated.

(f)(1) In the event that all bids submitted exceed the amount appropriated for the award of the contract and if bidding on alternates was not required by the plans and specifications, the county, municipality, school district, other local taxing unit, or institution of higher education shall have the authority to negotiate an award with the apparent responsible low bidder but only if the low bid is within twenty-five percent (25%) of the amount appropriated.

(2) If the plans and specifications for the project require bids on alternates in addition to a base bid, there shall be no more than three (3) alternates, and the alternates shall:

(A) Be deductive; and

(B) Be set forth in the plans and specifications in numerical order.

(3) If all bids submitted exceed the amount appropriated for the award of the contract, then the county, municipality, school district, other local taxing unit, or institution of higher education may determine the apparent responsible low bidder by deducting the alternates in numerical order.

(4) After making the deductions, if the cost of the project is less than twenty-five percent (25%) above the amount appropriated, then and only in that event, the county, municipality, school district, other local taxing unit, or institution of higher education may negotiate an award with the low bidder so determined.

(g) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid and that the bid, if accepted, would create a serious financial loss to the bidder because of scrivener error, such as the transposition of figures, the board, commission, officer, or other authority in which or in whom authority is vested has the authority to relieve the bidder from responsibility under the bond and may reject the bid.

(h) For projects of this state or any agency of the state, "amount appropriated" within this section means funds currently available for the project as determined by the state or any agency or department of the state or any county, municipality, school district, or other local taxing unit prior to the opening of any bids.

(i) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state, any agency of the state, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of seventy-five thousand dollars (\$75,000) unless the bid documents contain statements which encourage the participation of small, minority, and women's business enterprises.

(j)(1) Notwithstanding any other provision of law to the contrary, any municipality or sanitation authority may enter into contracts with private persons, firms, associations, corporations, joint ventures, or other legal entities, including a combination of any of those entities, to provide for the design, building, operation, and maintenance of all or any portion of its wastewater treatment system, storm water treatment system, or water treatment system, or any combination of those systems.

(2) The contracts may include provisions for the design, financing, construction, repair, reconditioning, replacement, operation, and maintenance of the system, or any combination of those services and functions.

(3) Prior to entering into a contract under this section, the governing authority shall solicit qualifications-based competitive sealed proposals.

(4) The governing authority shall first establish criteria for evaluation of any entity submitting proposals on the contracts for the purpose of assisting the governing authority in making a review of the entity's previous performance on projects of comparable nature and magnitude and the environmental compliance record of the entity during the five (5) years immediately preceding the execution of the contract.

(5) The governing authority shall take into consideration the information to assist in determining the eligibility of any entity.

(6) The award of a contract under this section shall be made to the responsible and responsive entity whose proposal is determined in writing to be the most advantageous to the governmental authority, taking into

consideration the evaluation factors set forth in the request for proposals.

(7) The governing authority of the municipality or the sanitation authority shall employ an appropriately licensed professional who is independent of the contractor to monitor and perform an independent review and inspection of the design-build-operate-maintenance contract, or any part thereof, during its performance.

(8) Before soliciting proposals for a design-build-operation-maintenance project, the governing authority of the municipality or the sanitation authority shall employ an appropriate licensed professional to perform the necessary studies and preliminary design to clearly establish the parameters for the project, including:

(A) Acceptable processes and structural alternatives; and

(B) Cost estimates for the acceptable alternatives.

(k)(1) The state, an agency of the state, a county, a municipality, a school district, or other local taxing unit shall not require in plans or specifications that a bidder or supplier:

(A) Hold membership in any professional or industry associations, societies, trade groups, or similar organizations;

(B) Posses certification from any professional or industry associations, societies, trade groups or similar organizations as steel building fabricators; or

(C) Be endorsed by an professional or industry association, societies, trade groups, or similar organizations.

(2) However, plans and specifications may include or reference standards adopted by professional or industry associations, societies, trade groups, or similar organizations.

DESCRIPTIONS AND SPECIFICATIONS OR THE USE OF BRAND NAMES

ACA 14-22-109. Descriptions and specifications.

(a) Descriptions and specifications shall be sufficiently restricted or specific so as to exclude cheap or inferior commodities which are not suitable or practicable for the purpose for which they are to be used, but at no time shall they be so specific in detail as to restrict or eliminate competitive bidding of any items of comparable quality and coming within a reasonable close price range.

(b) Brand names may be used to simplify or indicate the general description of the commodities required, but at no time, except for repair parts or items for use with existing equipment and machines or other health aids requested by a professional employee, shall such names be used to indicate any preference or to prevent bidding on commodities of like quality and coming within reasonably close price range.

ACA 14-22-110. Testing and examination of products.

(a) The purchasing official is authorized to establish and enforce standards for all commodities for which formal bidding is required and to make or cause to be made any test, examination, or analysis necessary therefore. He may require samples to be submitted and a certified analysis to accompany bids prior to awarding contracts.

(b) After the bids have been opened, the lowest responsible bidder may be required to submit his product or article to further testing and examination prior to awarding the contract.

AWARDING THE BID

ACA 14-22-111. Awarding of contracts.

(a) All contracts shall be awarded to the lowest responsible bidder, taking into consideration all relevant facts, including, without limitation, quality, time of performance, probability of performance, and location.

(b)(1) Any bid may be rejected by the purchasing official.

(2)(A) Where bids are rejected, but the proposed purchase is not abandoned, and the circumstances indicate that further solicitation for bids would be to the best interest of the county, new bids may be called for.

(B) If the low bid is not accepted, a written statement shall be made by the purchasing agent and filed with the county clerk giving reasons for such refusal.

(c) All bidders shall be given equal consideration under the provisions of this chapter, except that when the bid represents items manufactured or grown in the county or offered for sale by business establishments having their principal place of business in the county with the quality being equal to articles offered by competitors outside the county, then the bidder shall be allowed a differential of not to exceed three percent (3%) of the purchase price in determining the low bid. However, in each instance in which this bid preference is requested, the bidder must so indicate before the date and time fixed for opening the bids and thereafter furnish satisfactory proof if requested.

(d) In all cases where there are equal or tie bids, preference shall be given to residents or firms located and doing business in the county.

ORDER OF APPROVAL FOR PURCHASE

ACA 14-22-112. Order of approval.

(a) No contract shall be awarded or any purchase made until it has been approved by the county court, and no contract shall be binding on any county until the court shall have issued its order of approval.

(b) The order of the court shall be properly docketed. All documents and bids pertaining to the solicitation of bids and awarding of contracts under the purchasing procedure of

this chapter shall be filed with the county clerk, together with the order of the court, which shall be filed by the clerk.

(c) No claim filed with the county for payment of any commodity, the purchase of which is regulated by this chapter, shall be paid; or no warrant shall be issued by the county clerk for the payment of it until the order of the court approving it shall have been issued and filed with the clerk.

HOW TRADE-INS ON A PURCHASE ARE TREATED

ACA 14-22-113. Trade-Ins.

(a) In the case of a purchase contract in which trade-ins are being offered on the purchase of commodities, the full purchase price shall govern the classification or purchase procedure to be followed in the solicitation for bids and the awarding of the contract.

(b) The purchasing official shall determine, with respect to trade-ins, what procedure shall be for the best interest of the county. If he so determines, such equipment or machinery may be sold outright under the law as provided.

RECOURSE BY THE COUNTY IN THE EVENT THE BIDDER FAILS TO PERFORM THE CONTRACT

ACA 14-22-114. Failure of performance.

If any bidder to whom a purchase contract is awarded under the provisions of this chapter shall refuse or fail to perform the contract or to make delivery when required by the contract, or shall deliver commodities which are inferior or do not meet the specifications under the bid, the county may pursue any remedy available at law or in equity, including, without limitation, the voiding of the contract.

LEGAL COUNSEL IS AVAILABLE TO THE COUNTY PURCHASING OFFICIAL

ACA 14-22-115. Legal counsel.

The purchasing official, upon approval of the county court, may call upon the prosecuting attorney of the district in which the county lies, or employ counsel for advice and aid in the preparation of necessary contracts and all other legal matters in connection with those purchases.

See Attorney General Opinion No. 2001-107 and footnote of AG Opinion No. 1998-023.

SUBCONTRACTORS

ACA 22-9-204. Subcontractors exceeding \$20,000 - Penalty.

(a) As a condition to performing construction work for and in the State of Arkansas, all prime contractors shall use no other subcontractors when the subcontractors' portion of the project is twenty thousand dollars (\$20,000) or more, except those licensed by the Contractors Licensing Board and qualified in:

- (1) Mechanical, indicative of heating, air conditioning, ventilation, and refrigeration;
- (2) Plumbing;
- (3) Electrical; and
- (4) Roofing.

(b)(1) In the event the prime contractor is qualified and licensed by the board, he or she may use his or her own forces to perform those tasks listed in this section as subcontractors in one (1) or more of the trades listed.

(2)(A) A subcontractor, including the situation stated in subdivision

(b)(1) of this section, may subcontract a portion of the listed work.

(B) However, a subcontractor is prohibited from subcontracting the work in its entirety.

(c)(1) When the prime contractor makes a definite decision regarding the subcontractors he or she intends to use, he or she shall place the name of each subcontractor in a blank space provided on the form of proposal of his or her bid.

(2) In the event that one (1) or more of the subcontractors named by the prime contractor in his or her successful bid thereafter refuses to perform his or her contract or offered contract, the prime contractor may substitute another subcontractor licensed by the board after having obtained prior approval from the architect or engineer and the owner. Additional approval must be obtained from the Arkansas Building Authority for capital improvement projects under its jurisdiction.

(d) The prime contractor shall submit written evidence that the substituted contractor is costing the same amount of money or less and, if costing less, that the savings will be deducted from the total contract of the prime contractor and rebated to the owner.

(e) It shall be mandatory that the mechanical, plumbing, electrical, and roofing, and sheet metal subcontractors named on the form of proposal by the prime contractor awarded a contract under the provisions of this subchapter be given contracts by the prime contractor in keeping with their proposals to perform the items for which they were named.

(f)(1) It shall be a violation of this section for any prime contractor to submit a bid listing unlicensed contractors or to use unlicensed contractors on a public works project if the listed work of the unlicensed contractors or portion of the unlicensed contractor's work is twenty thousand dollars (\$20,000) or more.

(2) It shall be a violation of this section for any subcontractor who is not licensed by the board to contract to perform work on a public works project if the listed work of

the subcontractor or portion of the subcontractor's work is twenty thousand dollars (\$20,000) or more.

(3) The board has jurisdiction over violations of this subsection under § 17-25-103.

INTEREST ON DELINQUENT PAYMENTS

ACA 22-9-205. Public Improvements generally - Interest on delinquent payments.

Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district enters into a contract covered by the provisions of §§ 22-9-202 – 22-9-204 for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project, and the contract provides that payment therefor shall be made upon completion and acceptance of the project, and the contractor, upon completion and approval of the project, presents a claim for payment of the amount due thereon in accordance with the terms of the contract, and the claim is not paid by the public authority within ninety (90) days from the date of presentation of the claim, then the public authority shall pay to the contractor interest at the rate of ten percent (10%) per annum on the unpaid amount due for all periods of time that the payment under the contract is not made subsequent to ninety (90) days after presentation of the claim.

MEMORIALS, STATUES, BUSTS, ETC.

ACA 22-9-207. Construction or purchase of memorial, statue, bust, etc.

Any state agency, department, board, commission, or other body having the authority to construct or purchase, or negotiate for the construction or purchase of, any memorial, statue, bust, monument, or other similar article which is to be paid for from public funds shall establish specifications for the object, take competitive bids on the cost of constructing or furnishing the object, and award the contract to furnish or construct the object to the lowest responsible bidder meeting the established specifications.

RENOVATION OF HISTORIC SITES

ACA 22-9-208. Renovation of historic sites - Legislative Intent and construction.

(a) The General Assembly finds and determines that:

(1) The mandatory adherence to competitive bidding of all costs in altering, repairing, or renovating historic sites and structures has resulted in increased costs

due to the inability of bidders to accurately determine on the basis of only an external examination of the historic sites and structures the exact quantity of labor, materials, and supplies necessary to meet the restoration standards;

(2) The State of Arkansas would conserve state revenues by giving agencies charged with restoring or maintaining historic properties authority to select the contractors on the basis of the lowest responsible bid price, the bidder's experience in like work, and the techniques he or she proposes to employ, and by giving the agencies authority to reimburse contractors on an actual cost basis for those cost components which cannot be accurately predetermined before undertaking the project; and

(3) The procedures provided in subdivision (a)(2) of this section should be applicable for specific projects only after review and approval by the Chief Fiscal Officer of the State, the Arkansas Building Authority Council, and the Legislative Council. Provided, however, projects undertaken by public institutions of higher education exempt from review and approval of Arkansas Building Authority shall not require review and approval by the Arkansas Building Authority Council.

(b) In the event there is conflict between the provisions of this section and §§ 22-9-209 – 22-9-211 and the provisions of any other act insofar as the restoration of historic structures is concerned, the procedures set forth in this section and §§ 22-9-209 – 22-9-211 shall govern.

ACA 22-9-209. Renovation of historic sites - Advertising of contracts.

(a) No contract for the altering, repairing, or renovation of a recognized historic site or structure owned by the State of Arkansas or with title vested in the name of a state agency or of another taxing authority, where the estimated cost of the work equals or exceeds the sum of ten thousand dollars (\$10,000), shall be entered into between the agency and any contractor unless the agency shall have first published notice of intention to receive bids for improvements one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.

(b) (1) The date of publication of the last notice shall be not less than one (1) week before the date affixed therein for the receipt of bids.

(2) If there is no newspaper regularly published in the county in which the proposed work is to be done, the notices may be published in any newspaper having a general circulation in the county.

(3) Nothing in this section shall be construed as limiting to two (2) the number of weeks the notices may be published.

(c) (1) All notices shall contain a brief description of the kind or type of work contemplated, the approximate

location thereof, the place at which prospective contractors may obtain plans and specifications, the date, time, and place at which sealed bids will be received, and the amount, which may be stated in a percentage, of bond required.

(2) A statement shall be included notifying bidders that the proposed renovation will be contracted under the authority of §§ 22-9-208 – 22-9-211.

(3) The invitation for bids shall include a required resumé of similar restorative work performed by the contractor.

(d) (1) No agency shall advertise for bids under the provisions of this section and §§ 22-9-208, 22-9-210, and 22-9-211 without seeking the advice of the Legislative Council and the Arkansas Building Authority Council.

(2) (A) Provided, however, public institutions of higher education exempt from review and approval of the Arkansas Building Authority shall not be required to seek advice of the Arkansas Building Authority Council.

(B) Provided further, nothing in this section shall prevent an institution of higher education exempt from review and approval of the authority from entering into an agreement with the authority to provide such advice.

ACA 22-9-210. Renovation of historic sites - Award of contracts.

(a) The highest quality of restoration commensurate with reasonable costs and obtainable within available funds is considered to serve the best interests of the state. Cost, proposed method, and experience in similar work shall be considered by the agency as interrelated and inseparable factors in the award of a contract. Therefore, the award may be made other than to the lowest bidder. To permit evaluation of bidder qualifications, bid proposal documents shall include the following:

(1) The types of skills and numbers of persons of each skill needed to accomplish the work, together with the proposed rate of payment of each;

(2) The anticipated quantity of materials estimated to be required, together with the unit price for each;

(3) The proposed factor by which subdivisions (a)(1) and (2) of this section shall be multiplied to provide for overhead and profit;

(4) The calculations contained in subdivisions (a)(1), (2), and (3) of this section shall be extended and totaled to produce an estimated total cost for the project. Bid forms prepared by the contracting agencies shall be provided for the purpose of setting forth the calculations;

(5) A narrative statement of the methods and the techniques proposed for the restoration work;

(6) A listing of previous comparable projects completed by the bidder, including location, cost, date completed, and owner's name and address; and

(7) A resumé of the personal experience of the key supervisory personnel who will be directly involved in the execution of the project.

(b) No contract shall be awarded under the provisions of this section and §§ 22-9-208, 22-9-209, and 22-9-211 until the contracting agency has submitted copies of the invitation for bids, together with all proposals received and the agency's narrative statement of its evaluation and recommendations for approval, to the Chief Fiscal Officer of the State.

ACA 22-9-211. Renovation of historic sites - Payment.

(a) The contracting agency shall establish, as part of the contract, a maximum compensation for the project.

(b) Payment shall be based on the work actually done and the materials actually used.

(c) The contractor shall submit periodic invoices for labor, materials, and overhead and profit in accordance with the rates established in the bid proposal.

OFFICIAL POLICY FOR STATE AND LOCAL GOVERNMENTS FOR THE PROCUREMENT OF PROFESSIONAL SERVICES SUCH AS ARCHITECTURAL, ENGINEERING, LAND SURVEYING, OR LEGAL EXPERTISE

ACA 19-11-801. Policy – Definitions.

(a) It is the policy of the State of Arkansas that state agencies shall follow the procedures stated in this section, except that competitive bidding shall not be used for the procurement of legal, architectural, engineering, construction management, and land surveying professional consultant services if:

(1) State agencies not exempt from review and approval of the Arkansas Building Authority shall follow procedures established by the authority for the procurement of architectural, engineering, land surveying, and construction management services; and

(2) Institutions of higher education exempt from review and approval of the authority shall follow procedures established by their governing boards for the procurement of architectural, engineering, land surveying, and construction management professional consultant services.

(b) It is the policy of the State of Arkansas and its political subdivisions that political subdivisions shall follow the procedures stated in this section, except that competitive bidding shall not be used for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consultant services.

(c) For purposes of this subchapter, a political subdivision of the state may elect to not use competitive bidding for other professional services not listed in subsection (b) of this section with a two-thirds (2/3) vote of the political subdivision's governing body.

(d) (1) As used in this section, "construction management" means a project delivery method based on an agreement in which a state agency, political subdivision,

public school district, or institution of higher education acquires from a construction entity a series of services that include, but are not limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

(2) "Construction management" includes, but is not limited to:

(A) (i) "Agency construction management", in which a public school district selects a construction manager to serve as an agent for the purpose of providing administration and management services.

(ii) The construction manager shall not hold subcontracts for the project or provide project bonding for the project;

(B) "At-risk construction management", in which the construction entity, after providing agency services during the preconstruction period, serves as the general contractor and the following conditions are met:

(i) The construction manager provides a maximum guaranteed price;

(ii) The public school district holds all trade contracts and purchase orders; and

(iii) The portion of the project not covered by the trade contracts is bonded and guaranteed by the construction manager; and

(C) (i) "General contractor construction management", in which the construction entity, after providing agency services during the preconstruction period, serves as the general contractor.

(ii) The general contractor shall hold all trade contracts and purchase orders and shall bond and guarantee the project.

(e) As used in this subchapter:

(1) "Political subdivision" means counties, school districts, cities of the first class, cities of the second class, and incorporated towns; and

(2) "Other professional services" means professional services not listed in subsection (b) of this section as defined by a political subdivision with a two-thirds (2/3) vote of its governing body.

WHAT PROFESSIONAL SERVICE COMPANIES MUST DO TO BE CONSIDERED FOR EMPLOYMENT

ACA 19-11-802. Annual statements of qualifications and performance data - Restrictions on competitive bidding.

a) In the procurement of professional services, a state agency or political subdivision which utilizes these services may encourage firms engaged in the lawful practice of these professions to submit annual statements of qualifications and performance data to the political subdivision or may request such information as needed for a particular public project.

(b) The state agency or political subdivision shall evaluate current statements of qualifications and performance data of firms on file or may request such information as needed for a particular public project whenever a project requiring professional services is proposed.

(c)(1) The political subdivision shall not use competitive bidding for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consulting services.

(2) *A political subdivision shall not use competitive bidding for the procurement of other professional services with a two-thirds (2/3) vote of its governing body.*

(d)(1) A public school district that utilizes construction management services shall encourage construction management firms to submit to the school district annual statements of qualifications and performance data or may request such information as needed for a particular public project.

(2) The public school district shall evaluate current statements of qualifications and performance data on file with the school district or when submitted as requested whenever a project requiring professional services of a construction manager is proposed.

(3) The public school district shall not use competitive bidding for the procurement of professional services of a construction manager.

FACTS TAKEN INTO CONSIDERATION DURING THE EVALUATION OF QUALIFICATIONS OF THESE PROFESSIONAL SERVICE COMPANIES

ACA 19-11-803. Evaluation of qualifications.

In evaluating the qualifications of each firm, the state agency or political subdivision shall consider:

(1) The specialized experience and technical competence of the firm with respect to the type of professional services required;

(2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;

(3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and

(4) The firm's proximity to and familiarity with the area in which the project is located.

SELECTION OF PROFESSIONAL SERVICE COMPANIES

ACA 19-11-804. Selection.

(a) The state agency or political subdivision shall select three (3) qualified firms.

(b) The state agency or political subdivision shall then select the firm considered the best-qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.

PROCESS OF CONTRACT NEGOTIATION

ACA 19-11-805. Negotiation of contracts.

(a) For the basis of negotiations, the state agency or political subdivisions and the selected firm shall jointly prepare a detailed, written description of the scope of the proposed services.

(b)(1)(A) If the state agency or political subdivision is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated.

(B) The state agency or political subdivision shall then undertake negotiations with another of the qualified firms selected.

(2)(A) If there is a failing of accord with the second firm, negotiations with the firm shall be terminated.

(B) The state agency or political subdivision shall undertake negotiations with the third qualified firm.

(c) If the state agency or political subdivision is unable to negotiate a contract with any of the selected firms, the agency shall reevaluate the necessary professional services, including the scope and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of this subchapter.

(d) When unable to negotiate a contract for construction management, a public school district shall also perform a reevaluation of services in accordance with subsection (c) of this section.

CONSTITUTIONAL AMENDMENT 78

The citizens of the State of Arkansas approved Amendment No. 78 to the Arkansas Constitution at the general election held November 7, 2000. The General Assembly enacted enabling legislation in response to the approval from the citizens for Amendment 78. Act 1197 of 2001 was passed by the General Assembly to implement Amendment 78. The original implementing legislation has subsequently been amended by Act 43 of the 2nd Extraordinary Session of 2003, and Acts 1163, 2231 and 2317 of 2005. These acts have been codified as 14-168-301 through 14-168-324. The purpose of this legislation is:

- (1) To create a viable procedure by which a local government may finance redevelopment projects that improve the community;
- (2) To create a more stable and adequate source of funds for local governments to construct improvements and finance rehabilitation of distressed and blighted areas; and
- (3) To benefit the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their living conditions;
- (4) To provide new employment opportunities;
- (5) To prevent, arrest, and alleviate blight and decay in communities;
- (6) To increase the supply of housing available at low rentals; and
- (7) To improve the tax base and to improve the general economy of the State of Arkansas by providing additional and alternative means for local governments to finance public facilities and residential, commercial, and industrial development and revitalization, all to the public benefit and good, in the manner provided in this act.

ACA 14-168-301 - Definitions

As used in this subchapter:

- (1) "Applicable ad valorem rate" means the total ad valorem rate less the debt service ad valorem rate;
- (2) "Base value" means the assessed value of all real property within a redevelopment district subject to ad valorem taxation, as of the most recent assessment preceding the effective date of the ordinance approving the project plan of the redevelopment district;
- (3) (A) "Blighted area" means an area in which the structures, buildings, or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, or open spaces, high density of population, and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals, or welfare.

(B) "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax on special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community;

(4) "Capital improvements of a public nature" has the same meaning as in § 14-164-303(a)(2);

(5) "Current value" means the assessed value of all real property within a redevelopment district subject to ad valorem taxation, as of the most recent assessment after the formation of the redevelopment district;

(6) "Debt service ad valorem rate" means that portion of the total ad valorem rate that, as of the effective date of the creation of the redevelopment district, is pledged to the payment of debt service on bonds issued by any taxing unit in which all or any part of the redevelopment district is located;

(7) (A) "Incremental value" for any redevelopment district, means the difference between the base value and the current value.

(B) The incremental value will be positive if the current value exceeds the base value, and the incremental value will be negative if the current value is less than the base value;

(8) "Local governing body" means the city council, city board of directors, county quorum court, or any other legislative body governing a local government in the State of Arkansas;

(9) "Local government" means any city or county in the State of Arkansas;

(10) (A) "Project costs" means expenditures made in preparation of the project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the local government, which are listed in the project plan as costs of public works or improvements benefiting a redevelopment project district, plus any costs incidental thereto.

(B) Project costs include, but are not limited to:

(i) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures, the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment, and site clearing, grading, and preparation;

(ii) Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance, and any redemption premiums, credit enhancement, or other related costs;

(iii) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the local government of real or personal property within a redevelopment district for consideration which is less than its cost to the local government;

(iv) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services;

(v) Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by local government employees in connection with the implementation of a project plan;

(vi) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(vii) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of redevelopment project areas and the implementation of project plans;

(viii) The amount of any contributions made in connection with the implementation of the project plan;

(ix) Payments made, in the discretion of the local governing body, which are found to be necessary or convenient to the creation of redevelopment areas or the implementation of project plans; and

(x) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities, federal or state highways, or city or county streets or the rebuilding or expansion of highways or streets, the construction, alteration, rebuilding, or expansion of which is necessitated by the project plan for a district, whether or not the construction, alteration, rebuilding, or expansion is within the area;

(11) "Project plan" means the plan which shall be adopted by a local governing body for a redevelopment project as described in § 14-168-306;

(12) "Real property" means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest, and right, legal or equitable, in them, including terms for years and liens by way of judgment,

mortgage, or otherwise, and the indebtedness secured by the liens;

(13) "Redevelopment district" means a contiguous geographic area within a city or county in which a redevelopment project will be undertaken, as defined and created by ordinance of the local governing body;

(14) (A) "Redevelopment project" means an undertaking for eliminating or preventing the development or spread of slums or deteriorated, deteriorating, or blighted areas, for discouraging the loss of commerce, industry, or employment, or for increasing employment, or any combination thereof.

(B) A redevelopment project may include one (1) or more of the following:

(i) The acquisition of land and improvements, if any, within the redevelopment district and clearance of the land so acquired; or

(ii) The development, redevelopment, revitalization, or conservation of the project area whenever necessary to provide land for needed public facilities, public housing, or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise remove or prevent the spread of blight or deterioration;

(iii) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the redevelopment project and other improvements necessary for carrying out the project plan, together with such site improvements as are necessary for the preparation of any sites and making any land or improvements acquired in the project area available by sale or by lease for public housing or for development, redevelopment, or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(iv) The construction of capital improvements within a redevelopment district designed to alleviate deteriorating conditions or a blighted area or designed to increase or enhance the development of commerce, industry, or housing within the redevelopment district; or

(v) Any other projects the local governing body deems appropriate to carry out the purposes of this subchapter;

(15) "Special fund" means a separate fund for a redevelopment district established by the local government into which all tax increment revenues and other pledged revenues are deposited and from which all project costs are paid;

(16) "Tax increment" means the incremental value of a redevelopment district multiplied by the applicable ad valorem rate;

(17) "Taxing unit" means the State of Arkansas and any city, county, or school district; and

(18) (A) "Total ad valorem rate" means the total millage rate of all state, county, city, school, or other property taxes levied on all taxable property within a redevelopment district in a year.

(B) The total ad valorem rate shall not include any:

(i) Increases in the total millage rate occurring after the effective date of the creation of the redevelopment district if the additional millage is pledged for repayment of a specific bond or note issue;

(ii) Property taxes levied for libraries under Arkansas Constitution, Amendment 30, or Arkansas Constitution, Amendment 38;

(iii) Property taxes levied for a fireman's relief and pension fund or policeman's relief and pension fund of any municipality or county; or

(iv) Property taxes levied for any hospital owned and operated by a county.

ACA 14-168-302 - Construction

The General Assembly declares that this subchapter is necessary for the welfare of this state and its inhabitants, and it is the intent of the General Assembly that it is to be broadly construed to effect its purpose.

ACA 14-168-303 – Powers Supplemental

The powers conferred by this subchapter are in addition and supplemental to the powers conferred upon local governments and improvement districts by the General Assembly relating to the issuance of bonds.

ACA 14-168-304 – Powers Generally

In addition to any other powers conferred by law, a local government may exercise any powers necessary and convenient to carry out the purpose of this subchapter, including the power to:

(1) Create redevelopment districts and to define the boundaries of redevelopment districts;

(2) Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;

(3) Issue redevelopment bonds, notes, or other evidences of indebtedness, in one or more series, and to pledge tax increments and other redevelopment revenues for repayment of them;

(4) Deposit moneys into the special fund for any redevelopment project district;

(5) Enter into any contracts or agreements, including agreements with bondholders, determined by the local governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(6) Receive from the federal government or the state loans and grants for or in aid of a redevelopment

project and to receive contributions from any other source to defray project costs;

(7) (A) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan.

(B) The rules and procedures set forth in §§ 18-15-301 – 18-15-307 shall govern all condemnation proceedings authorized in this subchapter;

(8) Make relocation payments to such persons, businesses, or organizations as may be displaced as a result of carrying out the redevelopment project;

(9) Clear and improve property acquired by it pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration, or repair of the property;

(10) Cause parks, playgrounds, or water, sewer, or drainage facilities, or any other public improvements, including, but not limited to, fire stations, community centers, and other public buildings which it is otherwise authorized to undertake to be laid out, constructed, or furnished in connection with the redevelopment project;

(11) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct sidewalks in, or adjacent to, the redevelopment project;

(12) Cause private ways, sidewalks, ways for vehicular travel, playgrounds, or water, sewer, or drainage facilities and similar improvements to be constructed for the benefit of the redevelopment district or those dwelling or working in it;

(13) Construct any capital improvements of a public nature, as such term is defined in § 14-164-303(a)(2), as now or hereafter amended;

(14) Construct capital improvements to be leased or sold to private entities in connection with the goals of the redevelopment project;

(15) Designate one (1) or more officials or employees of the local government to make decisions and handle the affairs of redevelopment districts created pursuant to this subchapter;

(16) Adopt ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws regulating the design, construction, and use of buildings within the redevelopment district;

(17) Sell, mortgage, lease, transfer, or dispose of any property, or interest therein, acquired by it pursuant to the project plan for development, redevelopment, or rehabilitation in accordance with the project plan;

(18) Invest project revenues as provided in this subchapter; and

(19) Do all things necessary or convenient to carry out the powers granted in this subchapter.

ACA 14-168-305 - Creation of District

(a) The local governing body, upon its own initiative or upon request of affected property owners or upon request of the city or county planning commission, may designate the boundaries of a proposed redevelopment district.

(b) (1) The local governing body shall hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a redevelopment district and its proposed boundaries.

(2) (A) Notice of the hearing shall be published in a newspaper of general circulation in the city or county at least fifteen (15) days prior to the hearing.

(B) Prior to this publication, a copy of the notice shall be sent by first-class mail to the chief executive officers of all local governmental and taxing units having the power to levy taxes on property located within the proposed redevelopment district and to the superintendent of any school district which includes property located within the proposed redevelopment district.

(c) The local governing body shall adopt an ordinance which:

(1) Describes the boundaries of a redevelopment district sufficiently definitely to identify with ordinary and reasonable certainty the territory included, which boundaries may create a contiguous district;

(2) Creates the redevelopment district as of a date provided in it;

(3) (A) Assigns a name to the redevelopment district for identification purposes.

(B) The name may include a geographic or other designation, shall identify the city or county authorizing the district, and shall be assigned a number beginning with the number one (1).

(C) Each subsequently created district shall be assigned the next consecutive number;

(4) Contains findings that the real property within the redevelopment district will be benefited by eliminating or preventing the development or spread of slums or blighted, deteriorated, or deteriorating areas, or discouraging the loss of commerce, industry, or employment, or increasing employment, or any combination thereof; and

(5) Contains findings whether the property located in the proposed redevelopment district is in a wholly unimproved condition or whether the property located in the proposed redevelopment district contains existing improvements.

(d) The local governing body shall not approve an ordinance creating a redevelopment district, unless the local governing body determines that the boundaries of the proposed redevelopment district are in a blighted area that includes the presence of at least one (1) of the following factors:

(1) Property located in the proposed redevelopment district is in an advanced state of dilapidation

or neglect or is so structurally deficient that improvements or major repairs are necessary to make the property functional;

(2) Property located in the proposed redevelopment district has structures that have been vacant for more than three (3) years;

(3) Property located in the proposed redevelopment district has structures that are functionally obsolete and cause the structures to be ill-suited for their original use; or

(4) Vacant or unimproved parcels of property located in the redevelopment district are in an area that is predominantly developed and are substantially impairing or arresting the growth of the city or county due to obsolete platting, deterioration of structures, absence of structures, infrastructure, site improvements, or other factors hindering growth.

(e) (1) No county shall establish a redevelopment district, any portion of which is within the boundaries of a city.

(2) However, one (1) or more local governments through interlocal agreement may join in the creation of a district, the boundaries of which lie in one (1) or more local governments.

(f) (1) The ordinance shall establish a special fund as a separate fund into which all tax increment revenues, and any other revenues generated under the Arkansas Constitution or Arkansas law and designated by the local government for the benefit of the redevelopment district shall be deposited and from which all project costs shall be paid.

(2) The special fund may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing is used.

(3) If the local governing body determines that the property located in the proposed redevelopment district is in a wholly unimproved condition, the ordinance shall state that the revenues deposited into the special fund shall be used only for project costs incurred in connection with capital improvements of a public nature.

(g) (1) The boundaries of the redevelopment district may be modified from time to time by ordinance of the local government.

(2) However, in the event any bonds, notes, or other obligations are outstanding with respect to the redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure such tax increment financing.

ACA 14-168-306 - Project Plan - Approval

(a) (1) Upon the creation of the redevelopment district, the local governing body shall cause the preparation of a project plan for each redevelopment district, and the project plan shall be adopted by ordinance of the local governing body.

(2) This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number, and location of all proposed public works or improvements benefiting the district;

(2) (A) An economic analysis prepared by a third party independent of the local governing body that shall include the projected aggregate tax impact, if any, to taxing units as a result of the creation of a redevelopment district.

(B) The economic analysis shall include a comparison of the projected ad valorem tax revenue diverted from taxing units to the redevelopment district special fund against all projected sales, income, and ad valorem taxes received by taxing units or recaptured by taxing units from neighboring states as a result of the creation of the redevelopment district.

(C) (i) The local governing body shall submit the economic analysis to the Arkansas Economic Development Commission for review.

(ii) The department shall review the economic analysis and provide written comments as to its economic feasibility to the local governing body no later than thirty (30) days after submission by the local governing body;

(3) A list of estimated project costs;

(4) A description of the methods of financing all estimated project costs, including the issuance of tax increment bonds;

(5) A certification by the county assessor of the base value as of the date of certification;

(6) A certification by the county clerk or county tax collector, if the county operates under the unit tax ledger system, of the total ad valorem rate, debt service ad valorem rate, and applicable ad valorem rate for the redevelopment district as of the date of certification;

(7) The type and amount of any other revenues that are expected to be deposited to the special fund of the redevelopment district;

(8) A map showing existing uses and conditions of real property in the district;

(9) A map of proposed improvements and uses in the district;

(10) Proposed changes of zoning ordinances;

(11) Appropriate cross-references to any master plan, map, building codes, and city ordinances affected by the project plan;

(12) A list of estimated nonproject costs;

(13) A statement of the proposed method for the relocation of any persons to be displaced; and

(14) An estimate of the timing, number, and types of jobs to be created by the redevelopment project.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) An estimate of the amount of indebtedness to be incurred pursuant to this subchapter;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this subchapter, together with any provision for adjustment of the method of calculation;

(4) Any other revenues, such as payment-in-lieu-of-taxes revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the redevelopment project.

(d) If less than all of the tax increment is to be used to fund a redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the special fund of the redevelopment district, and provide for the distribution of the remaining portion of the tax increment to the taxing units in which the district lies.

(e) (1) The local governing body shall hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed project plan.

(2) (A) Notice of the hearing shall be published in a newspaper of general circulation in the city or county at least fifteen (15) days prior to the hearing.

(B) Prior to this publication, a copy of the notice shall be sent by first-class mail to the chief executive officers of all local governmental and taxing entities having the power to levy taxes on property located within the proposed redevelopment district and to the superintendent of any school district which includes property located within the proposed redevelopment district.

(3) The hearing may be held in conjunction with the hearing set forth in § 14-168-305(b)(1).

(f) (1) Approval by the local governing body of a project plan must be within one (1) year after the date of the county assessor's certification required by subdivision (b)(5) of this section.

(2) The approval shall be by ordinance which contains a finding that the plan is economically feasible.

ACA 14-168-307 - Project Plan - Amendment

(a) The local governing body may adopt by ordinance an amendment to a project plan.

(b) (1) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the local governing body as provided in § 14-168-306(e)(1), at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(2) (A) Notice of the hearing shall be published in a newspaper of general circulation in the city or county at least fifteen (15) days prior to the hearing.

(B) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officers of all

local governments or entities having the power to levy taxes on property within the district and to the superintendent of any school district that includes property located within the proposed district.

(c) (1) One (1) or more existing redevelopment districts may be combined pursuant to lawfully adopted amendments to the original plans for each district.

(2) Provided that the local governing body finds that the combination of the districts will not impair the security for any bonds previously issued pursuant to this subchapter.

ACA 14-168-308 - Termination of Districts

(a)(1) A redevelopment district shall not be in existence for a period longer than twenty-five (25) years, unless under the original redevelopment plan or by amendment of the original redevelopment plan bonds have been issued and the bonds would not be fully paid until after the date that is twenty-five (25) years from the date of creation of the district.

(2) In any event, a redevelopment district shall not be in existence for a period longer than forty (40) years.

(b) The local governing body may set a shorter period for the existence of the district and may also provide that bonds shall not have a final maturity on a date later than the termination date of the district.

(c) Upon termination of the district, further ad valorem tax revenues shall not be distributed to the special fund of the district.

(d)(1) The local governing body shall adopt upon the expiration of the time periods set forth in this section an ordinance terminating the redevelopment district.

(2) A district shall not be terminated so long as bonds with respect to the district remain outstanding.

ACA 14-168-309 - Costs of Formation

(a) The local government may pay, but shall have no obligation to pay, the costs of preparing the project plan or forming the redevelopment district.

(b) If the local government elects not to incur those costs, they shall be made project costs of the district and reimbursed from bond proceeds or other financing, or may be paid by developers, property owners, or other persons interested in the success of the redevelopment project.

ACA 14-168-310 - Overlapping Districts

The boundaries of any redevelopment districts shall not overlap with any other redevelopment district.

ACA 14-168-311 - Valuation of Real Property

(a) (1) Upon and after the effective date of the creation of a redevelopment project district, the county assessor of the county in which the district is located shall transmit to the county clerk, upon the request of the local governing body, the base value, total ad valorem rate, debt service ad valorem rate, and applicable ad valorem rate for the redevelopment district and shall certify to it.

(2) (A) The assessor shall undertake, upon request of the local governing body, an investigation, examination, and inspection of the taxable real property in the district and shall reaffirm or revalue the base value for assessment of the property in accordance with the findings of the investigation, examination, and inspection.

(B) The assessor shall determine, according to his or her best judgment from all sources available to him or her, the full aggregate value of the taxable property in the district, which aggregate valuation, upon certification thereof by the assessor to the clerk, constitutes the base value of the area.

(b) (1) (A) (i) The assessor shall give notice annually to the designated finance officer of each taxing unit having the power to levy taxes on property within each district of the current value and the incremental value of the property in the redevelopment district.

(ii) The assessor shall also determine the tax increment by applying the applicable ad valorem rate to the incremental value.

(B) The notice shall also explain that the entire amount of the tax increment allocable to property within the redevelopment district will be paid to the special fund of the redevelopment district.

(2) The assessor shall identify upon the assessment roll those parcels of property which are within each existing district specifying on it the name of each district.

ACA 14-168-312 - Division of Ad Valorem Real Property Tax Revenue

(a) For so long as the redevelopment district exists, the tax assessor shall divide the ad valorem tax revenue collected, with respect to taxable property in the district, as follows:

(1) The assessor shall determine for each tax year:

(A) The amount of total ad valorem tax revenue which should be generated by multiplying the total ad valorem rate times the current value;

(B) The amount of ad valorem tax revenue which should be generated by multiplying the applicable ad valorem rate times the base value;

(C) The amount of ad valorem tax revenue which should be generated by multiplying the debt service ad valorem rate times the current value; and

(D) The amount of ad valorem revenue which should be generated by multiplying the applicable ad valorem rate times the incremental value;

(2) The assessor shall determine from the calculations set forth in subdivision (a)(1) of this section the percentage share of total ad valorem revenue for each according to subdivisions (a)(1)(B) – (D) of this section, by dividing each of such amounts by the total ad valorem revenue figure determined by the calculation in subdivision (a)(1)(A) of this section; and

(3) On each date on which ad valorem tax revenue is to be distributed to taxing units, such revenue shall be distributed by:

(A) Applying the percentage share determined according to subdivision (a)(1)(B) of this section to the revenues received and distributing such share to the taxing entities entitled to such distribution pursuant to current law;

(B) Applying the percentage share determined according to subdivision (a)(1)(C) of this section to the revenues received and distributing such share to the taxing entities entitled to such distribution by reason of having bonds outstanding; and

(C) Applying the percentage share determined according to subdivision (a)(1)(D) of this section to the revenues received and distributing such share to the special fund of the redevelopment district.

(b) In each year for which there is a positive tax increment, the county treasurer shall remit to the special fund of the redevelopment district that portion of the ad valorem taxes that consists of the tax increment.

(c) Any additional moneys appropriated to the redevelopment district pursuant to an appropriation by the local governing body and any additional moneys dedicated to the fund from other sources shall be deposited to the redevelopment district fund by the treasurer of the local government.

(d) Any funds so deposited into the special fund of the redevelopment district may be used to pay project costs, principal and interest on bonds, and to pay for any other improvements of the redevelopment district deemed proper by the local governing body.

(e) Unless otherwise directed pursuant to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other municipal funds.

(f) If less than all of the tax increment is to be used for project costs or pledged to secure tax increment financing as provided in the plan for the redevelopment project, the assessor shall account for such fact in distributing the ad valorem tax revenues.

ACA 14-168-313 - Payments In Lieu of Taxes and Other Revenues

(a) The local governing body may elect to deposit into the special fund of the redevelopment district all or any portion of payments in lieu of taxes on property within the redevelopment district, including that portion of the

payments in lieu of taxes that would have been distributed to other local political subdivisions under § 14-164-703.

(b) Other revenues to be derived from the redevelopment project may also be deposited in the special fund at the direction of the local governing body.

ACA 14-168-314 - Bonds Generally

(a) (1) Bonds may be issued for project costs which may include interest prior to and during the carrying out of a project and for a reasonable time thereafter, with such reserves as may be required by any agreement securing the bonds and all other expenses incidental to planning, carrying out, and financing the project.

(2) The proceeds of bonds may also be used to reimburse the costs of any interim financing entered on behalf of the redevelopment district.

(b) Bonds issued under this subchapter shall be payable solely from the tax increment or other revenues deposited to the credit of the special fund of the redevelopment district and shall not be deemed to be a pledge of the faith and credit of the local government.

(c) Every bond issued under this subchapter shall recite on its face that it is a special obligation bond payable solely from the tax increment and other revenues pledged for its repayment.

ACA 14-168-315 - Redevelopment Bonds or Notes – Authority to Issue

For the purpose of paying project costs or of refunding bonds, notes, or other evidences of indebtedness issued under this subchapter for the purpose of paying project costs, the local governing body may issue bonds, notes, or other evidences of indebtedness, in one (1) or more series, with the bonds or notes payable out of positive tax increments and other revenues deposited to the special fund of the redevelopment district.

ACA 14-168-316 - Redevelopment Bonds or Notes – Authorizing Resolution

(a) Redevelopment bonds and notes shall be authorized by ordinance of the local governing body.

(b) (1) The ordinance shall state the name of the redevelopment project district, the amount of bonds or notes authorized, and the interest rate to be borne by the bonds or notes.

(2) The ordinance may prescribe the terms, form, and content of the bonds or notes and such other matters as the local governing body deems useful, or it may include by reference the terms and conditions set forth in a trust indenture or other document securing the redevelopment bonds.

ACA 14-168-317 - Redevelopment Bonds or Notes – Terms, Conditions, Etc.

(a) (1) Redevelopment bonds or notes may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the bonds or notes.

(2) The redevelopment bonds and notes shall not be included in the computation of the constitutional debt limitation of a local government.

(b) (1) The bonds or notes shall mature over a period not exceeding the date of termination of the redevelopment district, as determined pursuant to § 14-168-308.

(2) The bonds or notes may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the local government on any interest payment date and, if so, shall provide the method of selecting the bonds or notes to be redeemed.

(3) The principal and interest on the bonds and notes may be payable at any place set forth in the resolution, trust indenture, or other document governing the bonds.

(4) The bonds or notes shall be issued in registered form.

(5) The bonds or notes may be in any denominations.

(6) Each such bond or note is declared to be a negotiable instrument.

(c) The bonds or notes may be sold at public or private sale.

(d) Insofar as they are consistent with subdivision (a)(1) and subsections (b) and (c) of this section, the provisions of §§ 14-169-220 and 14-169-221 relating to procedures for issuance, form, contents, execution, negotiation, and registration of municipal bonds and notes are incorporated by reference in subdivisions (a)(1) and subsections (b) and (c) of this section.

(e) (1) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount.

(2) Provided, that the last maturity of the refunding bonds shall not be later than the last maturity of the bonds being refunded.

ACA 14-168-318 - Redevelopment Bonds or Notes – Security – Marketability

To increase the security and marketability of redevelopment bonds or notes, the local government may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed by the bonds; or

(2) Make such covenants and do any and all such actions, not inconsistent with the Arkansas Constitution, which may be necessary or convenient or desirable in order to additionally secure the bonds or notes or which tend to

make the bonds or notes more marketable according to the best judgment of the local governing body.

ACA – 14-168-319 - Redevelopment Bonds or Notes – Special Fund For Repayment

(a) Redevelopment bonds and notes are payable out of the special fund created for each redevelopment district under this subchapter.

(b) (1) The local governing body shall irrevocably pledge all or part of the special fund to the payment of the bonds or notes.

(2) The special fund, or the designated part thereof, may thereafter be used only for the payment of the bonds or notes and their interest until they have been fully paid.

(c) A holder of the bonds or notes shall have a lien against the special fund for payment of the bonds or notes and interest on them and may bring suit, either at law or in equity, to enforce the lien.

ACA 14-168-320 - Redevelopment Bonds or Notes – Tax Exemption

Bonds and notes issued under this subchapter, together with the interest and income therefrom, shall be exempt from all state, county, and municipal income taxes.

ACA 14-168-321 - Excess Funds

(a) Moneys received in the special fund of the district in excess of amounts needed to pay project costs may be used only by the local governing body for the redemption of outstanding bonds, notes, or other evidences of indebtedness issued by the redevelopment district or for distribution to any taxing unit in such amounts as may be determined by the local governing body.

(b) Upon termination of the district, all amounts in the special fund of the district may be used by the local governing body for any lawful purpose.

ACA 14-168-322 - Impact Reports

(a) The local governing body annually shall report to the Assessment Coordination Department the current value and incremental value of a redevelopment district and the properties adjacent to the redevelopment district.

(b) The department, in cooperation with other state agencies and local governments, shall make a comprehensive impact report to the Governor and to the General Assembly at the beginning of each biennium as to the economic, social, and financial effect and impact of community redevelopment financing projects.

ACA 14-168-323 – Value of assessed property in a redevelopment district

(a) If state funding to a school district is calculated with regard to the value of assessed property located in the school district, the incremental value of real property within a redevelopment district shall not be included in the assessed value of the real property within the school district for purposes of computing school district funding if the real property is located within the redevelopment district and within the school district and the assessed value of the real property increases above the base value.

(b) Subsection (a) of this section shall apply for each school year during which the tax increment for real property within the redevelopment district is distributed pursuant to § 14-168-312.

ACA 14-168-324 – Exemption – Library millage

Property taxes levied for libraries under Arkansas Constitution, Amendment 30, or Arkansas Constitution, Amendment 38, are exempt from this subchapter and shall not be diverted from the use for which they were levied.

Repealer

ACA § 14-168-201 through 14-168-220 were repealed by Act 1197 of 2001.

SHORT TERM FINANCING – ACT 1808 of 2001

In response to the passage of Amendment 78, the General Assembly passed Act 1808 of 2001. Act 1808 authorizes the issuance of short-term financing obligations by municipalities and counties.

ACA 14-78-102 - DEFINITIONS

As used in this chapter, unless the context otherwise requires:

(1) “Chief executive” means the mayor of a municipality or the county judge of a county;

(2) “County” means any county in the State of Arkansas;

(3) “Issue” means, depending on the type of obligation, to issue, enter into, or incur;

(4) “Issue date” means the date on which the obligation commences to bear interest;

(5) “Issuer” means a municipality or a county;

(6) “Legislative body” means the quorum court of a county or the council, board of directors, board of commissioners, or similar elected governing body of a municipality;

(7) “Mortgage lien” means a lien on or security interest in real property or personal property, financed or refinanced, in whole or in part, with the proceeds of obligations;

(8) “Obligations” means short-term financing obligations;

(9) “Short-term financing agreement” means any loan agreement, line of credit agreement, note purchase agreement, security agreement, mortgage, trust indenture, or other agreement, other than the short-term financing obligation itself, pursuant to which a short-term financing obligation is secured, sold, or otherwise provided for; and

(10) “Short-term financing obligations” means “short-term financing obligations” within the meaning of Arkansas Constitution, Amendment 78.

ACA 14-78-103 - AUTHORIZATION FOR ISSUANCE OF OBLIGATIONS

(a)(1) Municipalities and counties are authorized to issue obligations for the purpose of acquiring, constructing, installing, and renting real property or tangible personal property having an expected useful life of more than one (1) year.

(2) The maximum term and maximum interest rate for the obligations shall be as set forth in Arkansas Constitution, Amendment 78.

(3) The amount of obligations issued shall be sufficient to pay all or a portion of the cost of accomplishing the specified purpose.

(4) Proceeds of the obligations may pay all or a portion of the costs of issuing the obligations.

(5) The obligations shall be issued pursuant to ordinance adopted by the legislative body specifying the principal amount of the obligations to be issued, the purpose or purposes for which the obligations are to be issued, and provisions with respect to the obligations.

(6) A municipality shall not authorize the issuance of obligations unless at the time of issuance, the aggregate principal amount of short-term financing obligations, including the obligations to be issued, outstanding and unpaid, will equal five percent (5%) or less of the assessed value of taxable property located within the municipality as determined by the last tax assessment completed prior to the issuance of the obligations to be issued.

(7) A county shall not authorize the issuance of obligations unless at the time of issuance, the aggregate principal amount of short-term financing obligations, including the obligations to be issued, outstanding and unpaid, will equal two and one-half percent (2.5%) or less of the assessed value of taxable property located within the county as determined by the last tax assessment completed prior to the issuance of the obligations to be issued.

(b) The obligations may:

(1) Be in registered or other form;

(2) Be in denominations exchangeable for obligations of another denomination;

(3) Be payable in or out of the state;

(4) Be issued in one (1) or more series, bearing the date or dates of maturity;

(5) Be payable in the medium of payment, subject to terms of redemption; and

(6) Contain other terms, covenants, and conditions as the ordinance or short-term financing agreement may provide, including, without limitation:

(A) Terms pertaining to custody and application of proceeds;

(B) Remedies on default;

(C) The rights, duties, and obligations of the officers and legislative body of the issuer and the trustee, if any; and

(D) The rights of the owners of the obligations.

(c) Successive obligations may be issued for the purpose of financing the same property.

(d)(1) The total annual principal and interest payments in each fiscal year on the obligations shall be charged against and paid from the general revenues of the issuer for the fiscal year, including road fund revenues.

(2) The obligations shall not be deemed to be revenue bonds for purposes of any statute, and it shall not be necessary for a public hearing to be held by the legislative body or a delegate thereof on the issuance of the obligations.

(e)(1) The ordinance authorizing the obligations may provide for execution by the chief executive officer of the issuer of a short-term financing agreement or agreements defining the rights of the owners of obligations and, in the case of a trust indenture, provide for the appointment of a trustee for the owners of the obligations.

(2) The ordinance or short-term financing agreement may provide for priority between and among successive issues and may contain any of the provisions set forth in subsection (b) of this section and any other terms, covenants, and conditions that are deemed desirable.

(f) The obligations may be sold at public or private sale for the price, including, without limitation, sale at a discount and in a manner as the legislative body of the issuer may determine.

(g) The obligations shall be signed by the chief executive officer of the issuer and shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq.

(h) It shall be plainly stated in the obligation, ordinance, or short-term financing agreement that the obligation has been issued under the provisions of this chapter and Arkansas Constitution, Amendment 78.

See Attorney General Opinion No. 2008-152.

ACA 14-78-104 - REFUNDING OBLIGATIONS

(a) Obligations may be issued under this chapter to refund any outstanding short-term financing obligations issued pursuant to Arkansas Constitution, Amendment 78, whether or not issued under this chapter.

(b)(1) Refunding obligations may be either sold for cash or delivered in exchange for the outstanding obligations being refunded.

(2) If sold for cash, the proceeds may be applied to the payment of the obligations refunded or deposited in irrevocable trust for the retirement thereof, either at maturity or on an authorized redemption date.

(c) Refunding obligations shall in all respects be authorized, issued, and secured in the manner provided in this section.

(d) Refunding obligations shall mature not later than five (5) years beyond the issue date for the obligations being refunded.

ACA 14-78-105 - OBLIGATIONS MAY BE SECURED BY MORTGAGE LIEN

(a) The ordinance or short-term financing agreement may impose or authorize the imposition of a forecloseable mortgage lien upon the property financed or refinanced, in whole or in part, with the proceeds of obligations issued under this chapter.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance or short-term financing

agreement, including provisions pertaining to the release of all or part of the land, buildings, facilities, and equipment from the mortgage lien, the priority of the mortgage lien in the event of successive issues of obligations, and authorizing any owner of obligations, or a trustee on behalf of all owners, either at law or in equity, to enforce the mortgage lien and, by proper suit, compel the performance of the duties of the officials of the issuer set forth in this chapter, the ordinance or short-term financing agreement authorizing the securing of the obligations.

(c) Obligations which are discharged or are secured by deposit in irrevocable trust shall not be taken into account in determining the aggregate principal amount outstanding for the purpose of Arkansas Constitution, Amendment 78, § 2.

See Attorney General Opinion No. 2003-152.

ACA 14-78-106 - TAX EXEMPTION

Obligations issued under this chapter and all amounts treated as interest thereon shall be exempt from all state, county, and municipal taxes.

ACA 14-78-107 - OBLIGATIONS ARE NEGOTIABLE INTERESTS

Unless set forth in the ordinance, obligation, or short-term financing agreement, all obligations issued under the provisions of this chapter are negotiable instruments within the meaning of the negotiable instruments law of the state.

ACA 14-78-108 - NON-LIABILITY

No officer, employee, or member of the legislative body of the issuer shall be personally liable for any obligations issued under the provisions of this chapter or for any damages sustained by any person in connection with any contracts entered into to carry out the purposes and intent of this chapter, unless the person acted with corrupt intent.

See Attorney General Opinion No. 2003-152

ACA 14-78-109 - SUPPLEMENTAL NATURE OF ACT

(a) The provisions of this chapter are supplemental to constitutional or statutory provisions now existing or later adopted which may provide for the financing of real or personal property.

(b) Nothing contained in this chapter shall be deemed to be a restriction or limitation upon alternative means of financing previously available or made available to municipalities or counties for the purposes of this chapter.

(c)(1) It is hereby recognized that Arkansas Constitution, Amendment 78, is self-executing.

(2) Nothing contained in this chapter shall be deemed to require a municipality or county to utilize the provisions of this chapter in authorizing and issuing short-term financing obligations under Arkansas Constitution, Amendment 78.

ACA 14-78-110 - CONSTRUCTION

This chapter shall be construed liberally to effectuate the legislative intent and the purposes of this chapter as complete and independent authority for the performance of every act and thing authorized, and all powers granted under this chapter shall be broadly interpreted to effectuate the intent and purposes, and not as a limitation of powers.

OUTLINE OF STEPS FOR AUTHORIZING ISSUANCE OF A SHORT-TERM FINANCING AGREEMENT

Outline of steps necessary for authorizing the issuance of a short-term financing agreement under Amendment 78 to the Arkansas Constitution.

1. An ordinance is adopted by the quorum court specifying the principal amount of the obligation, its purpose and provisions.
2. The obligation is paid from general revenues, including road fund revenues.
3. A public hearing is not necessary.
4. The obligation must state that it is issued under the provisions of Act 1808 of 2001 and Amendment 78 to the Arkansas Constitution.
5. Must be filed with the County Clerk within thirty (30) days after the adoption of such measure.

SALE OF COUNTY PROPERTY

THE COUNTY HAS THE AUTHORITY TO SELL COUNTY PROPERTY.

THE GENERAL GUIDELINES FOR THE SALE OF COUNTY PROPERTY

ACA 14-16-105. Sale of county property generally.

(a) The county court of each county shall have power and jurisdiction to sell and cause to be conveyed any real estate or personal property belonging to the county and to appropriate the proceeds of the sale for the use of the county by proceeding in the manner set forth in this section.

(b)(1) When the county judge of a county shall consider it advisable and to the best interest of the county to sell and convey any real or personal property belonging to the county, he or she shall cause an order to be entered in the county court setting forth:

(A) A description of the property to be sold;

(B) The reason for the sale; and

(C) An order directing the county assessor to cause the property to be appraised at its fair market value and to certify his or her appraisal of the property to the county court within a time to be specified in the order.

(2) A certified copy of the order shall be delivered to the county assessor by the county clerk, and the county clerk shall certify the date of the delivery of the copy on the margin of the record where the order is recorded.

(3) An order and the procedures as used in this section shall not be required for any sale by the county of any materials separated, collected, recovered, or created by a recycling program authorized and operated by the county. However, the county judge shall maintain a record of the recyclable materials sold, whether they were sold at public or private sale, a description of the recyclables sold, the name of the purchaser, and the terms of the sale. All the proceeds of the sale shall be deposited with the county treasurer.

(4) An order and the procedures described in this section shall not be required for any conveyance by the county of a conservation easement as described in the Conservation Easement Act, § 15-20-401 et seq. However, this conveyance shall not be made unless authorized by a majority vote of the quorum court.

(5) If the property is sold under § 14-16-106, the requirements of this section are not applicable.

(c)(1) Upon receipt of the certified copy of the order, the county assessor shall view the property described in the order and shall cause the property to be appraised at its fair market value.

(2) Within the time specified in the order, the assessor shall file with the county clerk his or her written certificate of appraisal of the property.

(d)(1) If the appraised value of the property described in the order is less than the sum of two thousand dollars (\$2,000), the property may thereafter be sold and conveyed by the county judge, either at public or private sale, by sealed bids or internet sale for not less than three-fourths (3/4) of the appraised value as shown by the certificate of appraisal filed by the assessor.

(2)(A) If the property will be sold by internet sale, the notice of sale shall be placed on the website of the internet vendor for no less than eight (8) consecutive days before the date of sale and shall contain a description of the property to be sold and the time of the sale.

(B) An additional notice may be posted on a county-owned or county-affiliated website, trade website, or business website for no less than eight (8) consecutive days before the date of sale.

(3) (A) When the sale has been completed, the county court shall enter its order approving the sale.

(B) The order shall set forth:

(i) The description of the property sold;

(ii) The name of the purchaser;

(iii) The terms of the sale;

(iv) That the proceeds of the sale have been deposited with the county treasurer; and

(v) The funds to which the proceeds were credited by the county treasurer.

(e)(1)(A)(i) If the appraised value of the property to be sold exceeds the sum of two thousand dollars (\$2,000), the county judge may sell the property to the highest and best bidder, upon sealed bids received by the judge or by internet sale.

(ii) The sheriff, the treasurer, and the circuit clerk of the county in which the property is to be sold shall constitute a board of approval for the sales, and the judge shall be the ex officio chair of the board without a vote.

(B) When the property exceeds the appraised value of two thousand dollars (\$2,000), it shall not be sold for less than three-fourths (3/4) of its appraised value as determined by the certificate of the assessor.

(2)(A) Notice of the sale shall be published in two (2) consecutive weekly insertions in some newspaper published and having a general circulation in the county.

(B) The notice shall specify:

(i) The description of the property to be sold;

(ii) The time and place for submitting written bids, including that the sale may be conducted on the Internet; and

(iii) The appraised value of the property to be sold.

(C) The notice shall be dated and signed by the judge.

(D) If the sale is conducted on the internet, the notice shall be placed on the internet under this section, and

the invoice from the internet vendor or publisher shall be accompanied by a statement from the internet vendor or publisher that the sale was published and conducted on the Internet.

(3) The judge shall have the right to reject any and all bids received by him or her under the notice.

(4)(A) When the judge has accepted a bid for the property, he or she, as chair of the approval board, shall immediately call a meeting of the board, and the proposals to sell at the acceptable bid shall be submitted to the board for its approval.

(B)(i) If a majority of the board approves the sale, then the judge may sell and convey the property to the highest bidder.

(ii) When the sale has been approved and completed, the county court shall enter an order approving the sale, which shall set forth the details of the sale as provided in subdivision (d)(2)(B) of this section.

(f)(1)(A)(i) Any sale or conveyance of real or personal property belonging to any county not made under the terms of this section shall be null and void.

(ii) The county fixed-asset list shall be amended to reflect all sales or conveyances made by the county under this section.

(B)(i) Any taxpayer of the county may bring an action to cancel the sale and to recover possession of the property sold within two (2) years from the date a sale is consummated.

(ii) This action for the use and benefit of the county is to be taken in the circuit court of the county in which the sale is made or in any county where personal property so sold may be found.

(iii) If the property is recovered for the county in the action, the purchaser shall not be entitled to a refund of the consideration paid by him or her for the sale.

(2) The procedures for sale and conveyance of county property set forth in this section shall not apply in these instances:

(A) When personal property of the county is traded in on new or used equipment and credit approximating the fair market price of the personal property is given to the county toward the purchase price of new equipment;

(B) When the sale of the personal property of the county involves the sale by the county of any materials separated, collected, recovered, or created by a recycling program authorized and operated by the county;

(C) When the county is conveying an easement, including, but not limited to, easements granted upon county lands for water improvements, sewer improvements, gas lines, electric lines, phone lines, utilities, railways, public roads, highways, and conservation easements as described in § 15-20-401 et seq. for any of the purposes enumerated in § 15-20-401 et seq., as the same may be amended from time to time; or

(D) When the county is leasing county property, including, but not limited to, leasing county lands or property

under § 14-16-108, § 14-16-109, § 14-16-110, or the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq.; or

(E) When a sale or disposal of property is conducted under another section of the Arkansas Code.

(g)(1) County hospitals constructed or maintained in whole or part by taxes approved by the voters shall not be sold unless the sale is approved by the majority of electors voting on the issue at a general or special election. This subsection applies to county hospitals constructed before and after July 20, 1987.

(2) An election shall not be required for the sale of a county hospital that has been vacant or not used as a county hospital for more than one hundred twenty (120) days.

See Attorney General Opinions No. 2009-128; 2007-193; 2005-185; 2004-159; 2004-055.

GENERAL GUIDELINES FOR THE SALE OR DISPOSAL OF SURPLUS COUNTY PERSONAL PROPERTY

ACA 14-16-106. Sale or disposal of surplus property.

(a) If it is determined by the county judge to be surplus, any personal or real property owned by a county may be sold at public auction or internet auction to the highest bidder.

(b)(1) Notice of the public auction shall be published at least one (1) time a week for two (2) consecutive weeks in a newspaper having general circulation in the county.

(2) The notice shall specify the description of the property to be sold and the time and place of the public auction.

(3)(A) If the property will be sold by internet sale, the notice of sale shall be placed on the website of the internet vendor for no less than eight (8) consecutive days before the date of sale and shall contain a description of the property to be sold and the time of the sale.

(B) An additional notice may be posted on a county-owned or county-affiliated website, trade website, or business website for no less than eight (8) consecutive days before the date of sale.

(c)(1) If it is determined by the county judge and the county assessor that any personal property owned by a county is junk, scrap, discarded, or otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the county judge.

(2) However, the county judge shall report monthly to the quorum court any property that has been disposed of under subdivision (c)(1) of this section.

(d) If the sale is conducted on the internet, the invoice from the internet vendor or publisher shall be accompanied by a statement from the internet vendor or publisher that the sale was published and conducted on the internet.

(e)(1) When the sale is complete, the county court shall enter an order approving the sale.

(2) The order shall set forth:

(A) The description of the property sold;

(B) The name of the purchaser;

(C) The terms of the sale;

(D) That the proceeds of the sale have been deposited with the county treasurer; and

(E) The funds to which the proceeds were credited by the county treasurer.

See Attorney General Opinions No. 2009-128; 2008-179.

GUIDELINES FOR THE SALE OF COUNTY REAL PROPERTY TO CERTAIN NON-PROFIT ORGANIZATIONS

ACA 14-16-107. Sale of realty to certain organizations.

Whenever a portion of county lands are dedicated for the benefit of any lawfully incorporated, quasi-public, nonprofit, nonsectarian organizations including, but not limited to, medical clinics, that county real property may be sold to any buyer, upon the approval of the county judge and a two-thirds (2/3) vote of the quorum court of the county, without the necessity of soliciting for competitive bids.

See Attorney General Opinion No. 2009-128.

GUIDELINES FOR THE DISPOSITION OF FUNDS DERIVED FROM THE SALE OF COUNTY PROPERTY THAT WAS ORIGINALLY PURCHASED WITH COUNTY ROAD FUND MONEYS

ACA 14-16-113. Sale proceeds paid into county road fund.

Upon the sale of county property which the county purchased with funds from the county road fund, the proceeds of the sale shall be paid into the county road fund. If, in addition to county road funds, other funds were used by the county to purchase the property, then the amount to be paid into the county road fund shall be a portion of the proceeds determined by using the ratio of the amount of county road funds used by the county in purchasing the property to the full purchase price paid by the county.

ACA 14-16-116 – Property exchange by counties.

Counties are authorized to exchange properties, real or personal, with other counties or with municipalities. Provided, any such exchange shall be approved by ordinances of the quorum court and shall be accomplished in accordance with procedures prescribed by the quorum court.

See Attorney General Opinion No. 1999-293.

THE ROLE OF ETHICS IN COUNTY PURCHASING AND CONTRACTING

It is unlawful for any county government official or employee to be interested, directly or indirectly, in any financial contract or transaction of the county or an entity created by the county. A county officer or employee may be removed from office/employment and fined if found in violation of the rules of conduct found in ACA 14-14-1202.

ACA 14-14-1202 – Ethics for county government officers and employees.

(a) PUBLIC TRUST. (1) The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of officers and employees of county government.

(2) An officer or employee shall carry out all duties assigned by law for the benefit of the people of the county.

(3) The officer or employee may not use his or her office, the influence created by his or her official position, or information gained by virtue of his or her position to advance his or her individual personal economic interest or that of an immediate member of his or her family or an associate, other than advancing strictly incidental benefits as may accrue to any of them from the enactment or administration of law affecting the public generally.

(b) OFFICERS AND EMPLOYEES OF COUNTY GOVERNMENT DEFINED. (1) For purposes of this section, officers and employees of county government shall include:

(A)(i) All elected county and township officers;

(ii) All district judicial officers serving a county; and

(iii) All members of county boards, advisory, administrative, or subordinate service districts; and

(B) All employees thereof.

(2) Officials who are considered to be state officers or deputy prosecuting attorneys are not covered by this subsection.

(c) RULES OF CONDUCT. (1) No officer or employee of county government shall:

(A)(i) Be interested, either directly or indirectly, in any contract or transaction made, authorized, or entered into on behalf of the county or an entity created by the county, or accept or receive any property, money, or other valuable thing for his or her use or benefit on account of, connected with, or growing out of any contract or transaction of a county.

(ii)(a) If in the purchase of any materials, supplies, equipment, or machinery for the county, any discounts, credits, or allowances are given or allowed, they shall be for the benefit of the county.

(b) It shall be unlawful for any officer or employee to accept or retain them for his or her own use or benefit;

(B) Be a purchaser at any sale or a vendor of any purchase made by him or her in his or her official capacity;

(C) Acquire an interest in any business or undertaking which he or she has reason to believe may be directly affected to its economic benefit by official action to be taken by county government;

(D)(i) Perform an official act directly affecting a business or other undertaking to its economic detriment when he or she has a substantial financial interest in a competing firm or undertaking.

(ii) Substantial financial interest is defined for purposes of this section as provided in Acts 1971, No. 313, § 7 [Repealed].

(2)(A)(i) If the quorum court determines that it is in the best interest of the county, the quorum court may by ordinance permit the county to purchase goods or services directly or indirectly from quorum court members, county officers, or county employees due to unusual circumstances.

(ii) The ordinance permitting the purchases must specifically define the unusual circumstances under which the purchases are allowed and the limitations of the authority.

(B) Any quorum court member having any interest in the goods or services being considered under these procedures shall not be entitled to vote upon the approval of the goods or services.

(C) If goods or services are purchased under these procedures, the county judge must file an affidavit, together with a copy of the voucher and other documents supporting the disbursement, with the county clerk certifying that each disbursement has been made in accordance with the provisions of the ordinance.

(3)(A) No person shall simultaneously hold office and serve as an elected county justice of the peace and hold office and serve as an elected city council member.

(B) This subdivision (c)(3) shall not cut short the term of any office holder serving as such on September 1, 2005, but shall be implemented during the next election cycle of each office.

(d) REMOVAL FROM OFFICE OR EMPLOYMENT. (1) COURT OF JURISDICTION. Any citizen of a county or the prosecuting attorney of a county may bring an action in the circuit court in which the county government is located to remove from office any officer or employee who has violated the rules of conduct set forth in this section.

(2) SUSPENSION PRIOR TO FINAL JUDGMENT. (A) Pending final judgment, an officer or employee who has been charged as provided in this section may be suspended from his or her office or position of employment without pay.

(B) Suspension of any officer or employee pending final judgment shall be upon order of the circuit court or judge thereof in vacation.

(3) PUNISHMENT. (A) Judgment upon conviction for violation of the rules of conduct set forth in this section shall be deemed a misdemeanor.

(B) Punishment shall be by a fine of not less than three hundred dollars (\$300) nor more than one thousand

dollars (\$1,000), and the officer or employee shall be removed from office or employment of the county.

(4) ACQUITTAL. Upon acquittal, an officer or employee shall be reinstated in his or her office or position of employment and shall receive all back pay.

(5) LEGAL FEES.

(A) Any officer or employee charged as provided in this section and subsequently acquitted shall be awarded reasonable legal fees incurred in his or her defense.

(B)(i) Reasonable legal fees shall be determined by the circuit court or Arkansas Supreme Court on appeal.

(ii) Such legal fees shall be ordered paid out of the general fund of the county treasury.

See Attorney General Opinions: 98-275; 2007-218; 2007-269; 2008-014; 2008-006

LEASING COUNTY PROPERTY TO OTHERS

THE COUNTY JUDGE IS AUTHORIZED TO LEASE COUNTY PROPERTY.

THE COUNTY MAY LEASE A COUNTY-OWNED HOSPITAL

ACA 14-16-108. Sale or lease of county hospital to municipality.

(a) Any other law notwithstanding in this state, from and after the passage of this act, the county court of each county of the State of Arkansas shall have the right to sell or lease any county-owned hospital, where there is no outstanding bonded indebtedness, upon such terms and conditions as the court may deem advisable for the best interests of the county, to any municipality located within the county.

(b)(1) Before any such sale or lease shall be entered into, the proposition shall be submitted to the county quorum court for approval or rejection.

(2) If a majority of the county quorum court voting thereon approves it, then the county court is authorized to execute other instruments that may be necessary to facilitate the sale or lease.

(c) Each sale or lease shall recite in the instrument of conveyance that should the municipality that has been granted the sale or lease of the county-owned hospital have any reason to discontinue to use it for hospital or nursing home purposes, then, in that event, the property shall revert back to the county, and title to the hospital shall be revested in the county.

LEASING PROCEDURE OF COUNTY LANDS TO A MUNICIPALITY.

ACA 14-16-109. Lease of county lands to municipality.

a) Any county in this state may lease any lands owned by the county to any municipality in the county to be used for such purposes, subject to such restrictions, and for such consideration or compensation as shall be agreed upon by the contracting county and municipality.

(b) In addition to other terms the county court finds reasonable and proper, the contract for the lease of county property shall provide that when the leased property ceases to be used for the purpose expressed in the lease or needs to be used by the county, the lease may be cancelled by the county court after reasonable notice.

GUIDELINES FOR LEASING COUNTY PROPERTY TO EDUCATIONAL INSTITUTIONS.

ACA 14-16-110. Lease of county property to educational institutions.

(a) Any lawfully incorporated nonprofit, nonsectarian educational institution; any lawfully incorporated nonprofit, nonsectarian boys' club or girls' club; or any lawfully incorporated quasi-public, nonprofit, nonsectarian organizations including, but not limited to, community mental health centers may petition the county court of any county or county district in which the institution, club, or organization is located to lease to it real or personal property belonging to the county for use by the institution, club or organization.

(b)(1) Immediately upon the filing of the petition, the judge of the county court shall make an order fixing a time and place for a public hearing on the petition, notice of which order shall be given by the county clerk by publication one (1) time in a legal newspaper having a bona fide legal circulation in the county or county district at least ten (10) days prior to the date fixed for the hearing.

(2)(A) The notice shall state the time of filing, the substance and the purpose of the petition, and the time and place of hearing it.

(B) (i) The hearing shall be public, and all persons having an interest in the subject matter of the petition shall be entitled to be heard either in person or by attorney.

(ii) The hearing may be continued or adjourned to a further date, at the discretion of the court, but no further notice thereof by publication shall be required.

(c)(1) When satisfied from the petition or the evidence, if any, at the hearing that any real or personal property belonging to the county or county district is not, and in the future will not be, needed for use by the county and that the property may be used by any lawfully incorporated, quasi-public, nonprofit, nonsectarian institution, club, or organization in the county or county district, then the county court may order the lease of any property to the legally constituted directors or trustees of the institution, club or organization for such time and upon such terms and conditions as the county court, in its discretion, shall find just, reasonable, and proper.

(2) The lease shall be signed and approved by the judge of the county court and by the directors or trustees of the institution, club, or organization and shall thereafter be and become a binding and valid contract when the order authorizing it shall have become final as provided in this section.

(3) Any such lease shall provide, in addition to any other terms as the county court shall deem reasonable and proper, that when the property ceases to be used for the foregoing purposes, or needs to be used by the county, the lease may be canceled by the court, after reasonable notice.

(d)(1)(A) When a hearing shall have been had pursuant to notice, as provided in this section, and an order granting or denying the petition shall have been made, the order shall become final and binding thirty (30) days after entry unless within that thirty (30) days any interested person or taxpayer of the county or county district shall appeal to the circuit court of the county or county district, the appeal from the order to be prosecuted and determined in the same manner as provided by law for appeals from the county court to the circuit court in municipal annexation cases.

(B) In like manner, the final judgment of the circuit court may be appealed by any interested person or taxpayer to the Supreme Court likewise as in such cases.

(2) Any appeal to the circuit court or from the circuit court to the Supreme Court must be taken and transcript lodged in the appellate court not later than thirty (30) days after the judgment or order of the court appealed from, and that appeal shall be advanced on motion of any party thereto.

(3) In the event of any appeal from the order of the county court as provided in this subsection, the order shall not become final until the appeal is finally determined.

LONG TERM LEASES OF COUNTY OWNED REAL PROPERTY TO PRIVATE CORPORATIONS

Attorney General Opinion No. 88-369

The county judge is authorized to execute such leases on behalf of the county. Such authority is granted by Amendment 55 to the Arkansas Constitution which provides in section 3 that the county judge shall have custody of county property. Prior to the adoption of Amendment 55, authority was granted to the county court. (Arkansas Constitution Art. 7 & 28, and Pogue V. Cooper, 284 Ark. 105, 679 S.W. 2d 207 (1984).

In addition, the legislature in Act 742 of 1977, (the enabling legislation to Amendment 55), has granted the county judge this authority. ACA 14-14-1102(3) provides:

CUSTODY OF COUNTY PROPERTY. The county judge, as the chief executive officer of the county, shall have custody of county property and shall be responsible for the administration, care, and keeping of such county property, including the right to dispose of county property in the manner and procedure provided by law for the disposal of county property by the county court. (The "manner and procedure provided by law for disposal of county property by the county court" is found at ACA 14-16-105 (Supp. 1987), and contains provisions requiring appraisal, public notice, bidding, and a sale price limitation.) The county judge shall have the right to assign or not assign use of such property whether or not the county property was

purchased with county funds or was acquired through donations, gifts, grants, confiscation, or condemnation.

It appears that there is one decision of the Arkansas Supreme Court which disagrees with this conclusion. In *Maroney v. Universal Leasing Corp.* 263 Ark. 8, 562 S.W. 2d 77 (1978), the court held that the county judge had no authority to convey county property to an individual for industrial purposes without the approval of the county court. In the *Maroney* case, however, the actual conveyance took place before the adoption of Amendment 55, and in fact, although the case was decided in 1978, some four years after adoption of the Amendment, the court did not cite, and in no way relied upon Amendment 55 in rendering its decision.

MECHANISMS ESTABLISHED IN ORDER FOR COUNTIES TO MAKE LONG TERM COMMERCIAL LEASES OF COUNTY REAL PROPERTY

Attorney General Opinion No. 88-369.

ACA 14-164-201, et seq. provides that counties may lease land to secure or develop industry in the area without complying with 14-16-105. (See ACA 14-164-204, 205; and *Dumas v. Jerry*, 257 Ark. 1031, 521 S.W. 2d 539 (1975). If the prospective lessee's operations come within the definition of industry found at ACA 14-164-203(9), the county need not comply with the provisions of ACA 14-16-105, and the county judge may simply execute the lease.

COUNTY JUDGE CAN LEASE LANDS DONATED TO THE COUNTY TO FOR-PROFIT BUSINESS

Attorney General Opinion No. 2007-193: The Arkansas Constitution and Arkansas Code provide that county judges have exclusive authority to lease county lands.

The court in *Pogue v. Cooper*, 284 Ark. 105 (1984) indicated in dictum that a county judge may lease county lands or real property to private interests. Also, there is a long history of the leasing of public property for private use with the only issue raised as relating to property taxation treatment. The opinion noted that there are several sections of the code that provide for leasing of county lands for industrial development, for airports, for hospitals, leasing to cities and leasing to non-profits, etc. The authority to lease county lands is not restricted to those particular instances affirmatively set forth in the law. The Attorney General concluded the county judge is empowered to assign county property not dedicated to specific use and to determine the measure of consideration to be accepted; and in the absence of fraud, a court should not disturb a valid contract between a county and private parties.

ARKANSAS'S COOPERATIVE PURCHASING PROGRAM

LOCAL GOVERNMENT USE OF STATE CONTRACTS

WHAT IS IT?

On March 21, 1979, Governor Bill Clinton signed into law Arkansas's Purchasing Law (ACA 19-11-201). Effective July 1, 1979, this bill allows Arkansas's local public procurement units to buy goods and services from State of Arkansas purchasing contracts.

With the passage of the Purchasing Law, Arkansas joins a majority of states that have enacted legislation that offers local governments the advantage of buying from centralized state purchasing contracts. These programs benefit local governments by providing them an option to procure needed goods and services at lower prices.

HOW DOES THE PROGRAM WORK?

Arkansas's Procurement Law provides that any local public procurement unit may participate in a state procurement contract. To do so, the local government must pass an ordinance or resolution that requests participation in state contracts awarded by the Arkansas Department of Finance and Administration, Office of State Procurement. The ordinance or resolution must further provide that the government unit will agree to all state contract terms and conditions and will assume responsibility for directly paying the vendor. The local government is required to file a certified copy of the ordinance or resolution with:

Arkansas Department of Finance and Administration
Administrator, Office of State Procurement
1509 West Seventh Street, Suite 300
P.O. Box 2940
Little Rock, Arkansas 72203-2940

A sample of a model resolution authorizing cooperative purchasing follows:

Model Resolution Authorizing Local Government Cooperative Purchasing

WHEREAS, Arkansas's State Purchasing Law (ACA 19-11-201) was signed into law by Governor Bill Clinton on March 21, 1979; and

WHEREAS, effective July 1, 1979, Arkansas's State Purchasing Law provides the opportunity for local public procurement units to participate in contracts of the State of Arkansas, Department of Finance and Administration, Office

of State Purchasing, for the purchase of supplies, services, equipment and certain materials; now therefore,

BE IT ORDAINED BY THE (LOCAL GOVERNMENT UNIT)

Section 1. That the (AUTHORIZED AGENT OF THE LOCAL GOVERNMENT UNIT) hereby requests authority in the name of the (LOCAL UNIT) to participate in state contracts with the Department of Finance and Administration, Office of State Procurement, has entered into for the purchase of supplies, services, equipment and certain materials pursuant to the State Purchasing Law and Amendment 54 to the Arkansas Constitution.

Section 2. That the (AGENT) is hereby authorized to agree in the name of the (LOCAL UNIT) to be bound by all contract terms and conditions as the Department of Finance and Administration, Office of State Procurement, prescribes. Such terms and conditions may include a reasonable fee to cover the administrative costs which the Department of Finance and Administration incurs as a result of (LOCAL UNIT) participation in a contract. Further, that the (AGENT) does hereby agree to be bound by all such terms and conditions.

Section 3. That the (AGENT) is hereby authorized to agree in the name of the (LOCAL UNIT) to directly pay the vendor, under such state contract in which it participates, for items it receives pursuant to the contract, and that the (AGENT) does hereby agree to directly pay the vendor.

(RESOLUTION/ORDINANCE MUST BE CERTIFIED AND FILED WITH THE OFFICE OF STATE PROCUREMENT.)

WHEN MAY I BUY FROM A STATE CONTRACT?

You may elect to purchase or not to purchase from a state contract after a copy of your resolution is on file in the Office of State Procurement.

Certain contracts require the vendor to sell to local public procurement units. Not all state contracts are available; however, the Office of State Procurement will consult with local public procurement units and develop additional contracts for their utilization as the need arises.

WHAT ABOUT LOCAL BID REGULATIONS?

Under the Arkansas State Procurement Law, local government compliance with local competitive bidding law

and regulations is exempted when purchases are made from state purchasing contracts.

ACA 19-11-249 – Cooperative Purchasing.

Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any commodities or services with one (1) or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

HOW WILL THE OFFICE OF STATE PURCHASING BE INVOLVED?

The Office of State Purchasing will work with Arkansas' local public procurement units to identify and select those contracts most appropriate for local government use. Assistance will be available from State Procurement to ensure contract compliance. However, local governments will be required to report quarterly to State Procurement specific usage for each term contract, if any.

WHO SHOULD LOCAL GOVERNMENTS CONTACT FOR MORE INFORMATION?

Office of State Procurement
Cooperative Purchasing Program
1509 West Seventh
P.O. Box 2940
Little Rock, Arkansas 72203-2940
(501) 324-9316
Email: osp@dfa.state.ar.us

STATEWIDE CONTRACTS FOUND AT:
http://www.arkansas.gov/dfa/procurement/pro_contracts.html

ARKANSAS COUNTY PURCHASES FROM ARKANSAS DEPARTMENT OF CORRECTION EXEMPT FROM BID PROCESS

ACA 12-30-204. Purchase of goods by state and local agencies.

(a)(1) All offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state, and all political subdivisions of this state, may purchase, at the discretion of the office, department, institution, or agency, from the Board of Corrections any products required by the offices, departments, institutions,

agencies, or political subdivisions of this state produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(2)(A)(i) The Revenue Division of the Department of Finance and Administration may request that the board propose the purchase of license plates which are necessary as evidence of registration of motor vehicles and trailers to be issued by the division's revenue offices.

(ii) The license plates would be produced or manufactured by the Department of Correction utilizing prison labor.

(B) The provisions of this subdivision (a)(2) shall be applicable beginning with the contracts for purchase or any purchases of license plates which are required after the expiration of any contracts for the purchase or manufacture of license plates that are in effect.

(b) Such offices, departments, institutions, and agencies shall not be required to submit an invitation for bid to the board for all products known to be produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(c)(1) The Department of Correction may enter into an agreement with the Old State House Commission to utilize inmate labor in the production or manufacture of items for resale by the Old State House Museum.

(2) Except as provided in subdivision (c)(3) of this section, the proceeds from the sales of the items produced or manufactured under subdivision (c)(1) of this section shall be used by the Old State House Museum to:

(A) Develop exhibits and programs about the history of the Department of Correction; or

(B) Maintain the Old State House Museum's collection of the Department of Correction artifacts.

(3) The Department of Correction and the commission may by rule modify the use of the proceeds from the sale of items produced or manufactured under subdivision (c)(1) of this section.

(d) All purchases made pursuant to this section shall be made through the Department of Correction's purchasing department, upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of this state requiring the articles or products.

NOTE:

Purchases made by Arkansas Counties through programs of the National Association of Counties (U.S. Communities Government Purchasing Alliance) or the Association of Arkansas Counties may be purchased without soliciting bids [ACA 14-22-106(20)]