



COUNTY JUDGES ASSOCIATION OF ARKANSAS PROCUREMENT GUIDEBOOK:

PERSONAL SERVICES

PROFESSIONAL SERVICES

COMMODITIES AND OTHER SERVICES

AMENDMENT 78 SHORT TERM FINANCING

COOPERATIVE PURCHASING

CONSTRUCTION CONTRACTING

SALE & LEASING COUNTY PROPERTY

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COUNTY EMPLOYMENT/PURCHASES: PERSONAL SERVICES

THE COUNTY JUDGE IS AUTHORIZED CONSTITUTIONALLY & STATUTORILY TO CONDUCT COUNTY PURCHASES:

AMENDMENT 55, § 3: The County Judge is authorized to approve disbursement of appropriated county funds... and hire county employees, except those persons employed by other elected officials of the county.

ACA 14-14-1101: Powers of county judge generally.

(a) Arkansas Constitution, Amendment 55, § 3, established the following executive powers to be administered by the county judge:

(1) To preside over the county quorum court, without a vote but with the power of veto;

(2) To authorize and approve disbursement of appropriated county funds;

(3) To operate the system of county roads;

(4) To administer ordinances enacted by the quorum court;

(5) To have custody of county property; and

(6) To hire county employees, except those persons employed by other elected officials of the county.

(b) In the performance of such executive duties, the county judge shall be bonded in the manner provided by law, as required in Arkansas Constitution, Amendment 55, § 6.

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...

(b)(5)(A), concerning the employment of necessary personnel, is amended to read as follows:

(5) Hiring of County Employees, Except Those Persons Employed by Other Elected Officials of the County.(A) The county judge, as the chief executive officer of the county, is responsible for the employment of the necessary personnel or for the purchase of labor or services performed by individuals or firms employed by the county, or an agency thereof, for salaries, wages, insurance, or other forms of compensation.

. The county judge has authority and responsibility under law to enter into necessary contracts for the county, to approve disbursements on claims for

appropriated county funds and to hire employees except those persons employed by other county officials.

These responsibilities make it important for the county judge to hire and/or concur in the hiring of county employees except those persons employed by other county officials. These responsibilities also require the county judge to be knowledgeable of contract law, contracts previously entered into by the county, to sign and/or concur in contracts subsequently entered into by the county for personal services, professional services, construction and to make decisions and/or concur in the actual employment of personal services by the county. Personal services may be engaged by virtue of a contract or in the form of an employee.

Generally, Personal Services Contracts:

- Are contracts of engagement or hiring of employees for services other than those defined as "commodities" under ACA 14-22-101 et seq.;
- Are contracts for labor or services or hiring of employees other than those for construction work under ACA 22-9-201, et. seq.;
- Are for services of a personal nature in which the persons performing the service have such a relation of personal confidence' that the parties intend performance solely by the party obligated;
- Are not generally subject to assignment;
- Are those services that require special skill, experience, or business judgment;
- Are those services that are to be provided by a specific person;
- Are services that the individual qualities of the contractor are so important to the arrangement that the substitution of another contractor, even one with similar skills, likely would frustrate the purpose;

SUMMARY OF CASELAW & ATTORNEY GENERAL OPINIONS ON PERSONAL SERVICES

Generally, contracts for personal services are not subject to competitive bidding under Arkansas county procurement laws. This is for the same reasons that such contracts terminate at death and are not assignable—the individual qualities of the contractor are so important to the arrangement that the substitution of another contractor, even one with similar skills, likely would frustrate the purpose. The scope of work is for an act done personally by an individual. In this sense, a personal service is an economic service involving either the intellectual or manual personal effort of an individual, as opposed to the salable product of the person's skill. "Personal services" are those services that require special skill, experience, or business judgment. See, e.g., Ops. Att'y Gen. Nos. [1994-286](#); 93-412; 91-308; 90-037; 90-030. Op. Att'y Gen. [2007-015](#), and Op. Att'y Gen. [99-136](#). Normally, the term "personal services" refers to services that are to be provided by a specific person.

Attorney General Opinion No. 2010-005: This recent AG Opinion provides legal analysis for ascertaining whether a service is a personal service or commodity. The AG found that waste tire services are not personal services and concluded that a regional solid waste management board may not award a contract in an amount anticipated to be \$20,000 or more "to process waste tires and establish waste tire collection centers" (i.e., a non-personal services contract) without soliciting bids under county procurement laws, regardless of whether the board created the corporation that is awarded the contract. See also: Op. Att'y Gen. [2007-015](#), 96-283 and Regulation 14.

Attorney General Opinion no. 2007-015: In my opinion, it follows that the district can contract for waste management services in its own name. Waste management services are not personal services and will be obliged to obtain competitive bids if the value of the contract exceeds \${20,000}. A contract for trash pickup in the county is clearly one for services, raising the question of whether such a contract is one for "personal services," thus exempting it from the bidding requirement set forth at A.C.A. § [14-22-111\(a\)](#). In Att'y Gen. Op. No. [99-136](#), one of my predecessors offered the following with respect to the meaning of "personal services": Although the term "personal services" is not defined in the statute, the Attorney General has consistently adhered to the view, based upon generally recognized authority, that "personal services" are those services that require special skill, experience,

or business judgment. See, e.g., Ops. Att'y Gen. Nos. [1994-286](#); 93-412; 91-308; 90-037; 90-030.

In accordance with this definition, my predecessor concluded that a **park caretaker was providing a "personal service"** and hence did not fall within the ambit of the statute. See also Ark. Ops. Att'y Gen. Nos.

90-030 (opining that **debt collection was a "personal service"**); compare Ark. Op. Att'y Gen. No. [94-286](#) (opining that providing **meals to prisoners was not a "personal service"**). These statutes require that counties obtain bids for purchases of "commodities" under A.C.A. § [14-22-102](#); A.C.A. § [14-22-104\(1\)](#). The term "commodities" as used in this statute is defined to include "services other than personal services." A.C.A. § [14-22-101\(2\)](#). Solid waste collection is clearly a service within the meaning of this statute. I therefore conclude that if the contract for solid waste collection service is estimated to exceed \$ {20,000.00} the county must obtain bids for such contracts, but must also comply with any direction of the regional solid waste management board that is given pursuant to A.C.A. § [8-6-712](#). Accord Ark. Op. Att'y Gen. No. [93-418](#). I agree with my predecessor's conclusion that waste management services are not "personal services" exempt from the bidding requirement set forth at A.C.A. § [14-22-111](#). A.C.A. § [8-6-704\(c\)](#) obligates a district to adopt county purchasing procedures as the district's own "approved purchasing procedures."

Attorney General Opinion no. 2007-256: Question 1: Is the procurement of health insurance for county employees a "personal service" under A.C.A. [14-14-1102](#), which explicitly includes, "for salaries, wages, or other forms of compensation"? Although this office has previously opined that the procurement of insurance for county personnel appears to be a "personal service" that does not fall within the statutory definition of "commodity," Op. Att'y Gen. No. 83-225, hence exempting such service from any requirement of competitive bidding, I believe the law on this question is not entirely clear. I am not prepared, however, to opine that my predecessor was mistaken in his conclusions.

Act 410 of 2009 amended ACA 14-14-1102 to include insurance as a personal service: "The county judge, as the chief executive officer of the county, shall be responsible for the employment of the necessary personnel or for the purchase of labor or services performed by individuals or firms employed by the county, or an agency thereof, for salaries, wages, insurance, or other forms of compensation".

{ Also, [Act 410 of 2009](#) amended ACA 14-22-106 to make explicit that purchases of insurance for county employees, including without limitation health insurance, workers' compensation insurance, life insurance, risk management services, or dental insurance; and purchases made through programs of the National Association of Counties or the Association of Arkansas Counties are exempt or not included in commodities to be subject to bidding}.

Attorney General Opinion No. 2004-129: **Service and maintenance on a copy machine is not a "personal services" within the meaning of the statutory language.** This office has consistently adhered to the view, based upon generally recognized authority and common usage, that "personal services" are those services that require special skill, experience, or business judgment. See, e.g., Ops. Att'y Gen. Nos. [99-357](#); [99-136](#); [95-294](#); [94-286](#); [93-418](#); [93-412](#); [91-308](#); [90-037](#); [90-030](#). Normally, the term refers to services that are to be provided by a specific person. See, e.g., *Interstate Freeway Service v. Houser*, [310 Ark. 302](#), [835 S.W.2d 872](#) (1992). I concur in the view of this matter that has been expressed by my predecessors in the cited opinions. In interpreting the term "professional services," I must likewise be guided by common usage. The term traditionally refers to services provided by an individual who has received particular professional training to provide the service. For example, legal, architectural, engineering, and land surveying services are typically regarded as professional services. See, e.g., A.C.A. § [19-11-801](#) (exempting such services from the state competitive bidding requirement). A lease-purchase agreement under which a school district obtains a new copy machine and associated service and maintenance constitutes a "commodity" within the meaning of A.C.A. § [6-21-304\(a\)\(1\)](#), and that the district must therefore solicit bids if the purchase price will exceed {\$20,000.00}.

Attorney General Opinion No. 2003-061: Counties are required to solicit "bids" prior to entering into contracts for property reappraisal services. Counties must also be cognizant of the requirements created under Act 1185 of 1999, codified at A.C.A. § [26-26-1901](#) et seq. These issues are discussed below. As an initial matter, I must note that prior to the passage of Act 1185 of 1995, my predecessor took the position that the county bidding requirements of A.C.A. § [14-22-101](#) et seq. did not apply to the procurement of appraisers' contracts. See Ops. Att'y Gen. Nos. [93-412](#); [90-239](#); [90-037](#). The conclusion in those opinions was based upon the fact that the

county bidding requirements, as stated in A.C.A. § [14-22-101](#) et seq., apply only to purchases of "commodities." The definition of the term "commodities," which is set forth at A.C.A. § [14-22-101\(1\)](#), excludes "personal services." The opinions interpreted the term "personal services" to encompass the services of professional property appraisers. They therefore concluded that bidding was not required for such services.

Act 1185 of 1995 (codified at A.C.A. § [26-26-1901](#) et seq.) created various new requirements pertaining to the reappraisal process. Most significantly, the Act directed the Assessment Coordination Department to develop and implement rules relating to reappraisal procedures. The Act further imposed the requirement that counties comply with those rules. A.C.A. § [26-26-1905](#). Among the rules that have been promulgated by the Department pursuant to Act 1185 is Rule 3.39, which states in pertinent part: Each county that contracts reappraisal services will be required to advertise for bids for the planned reappraisal and to mail a copy of the ACD approved bid specifications to all companies listed on the ACD Annual Register of Appraisal companies at the time of advertising. Any bids submitted by a contractor that do not meet the ACD approved specifications shall be rejected by the county. The county shall submit to the ACD a copy of all bids received. In the event the county chooses to employ an appraisal firm other than the firm that submits a low bid, the county assessor must submit a written narrative explaining the county's choice of firms. The narrative must be attached to the proposed appraisal contract, and explain in detail what criteria were utilized to make the decision to hire a firm other than the low bidder. Failure to comply with this rule will result in rejection of the proposed appraisal contract. Rule 3.39, Rules & Regulations of the Arkansas Assessment Coordination Department. The requirements of this rule are clear and unequivocal, as is the requirement stated in Act 1185 that counties comply with the Department's rules. Accordingly, I conclude that counties must solicit bids prior to entering into contracts for property re-appraisal services.

Attorney General Opinion no. 1999-136: As a general matter, counties are prohibited by state law from using Competitive bidding to procure "professional services." See A.C.A. § [19-11-801](#). "Professional services," as used in that statutory prohibition, are described as including "legal, architectural, engineering, land surveying, and such

other consulting services as the political subdivision shall designate by two-thirds vote of its governing body." A.C.A. § [19-11-801](#)(c). If the "professional services" to which you refer would fall within this description, the county may not use competitive bidding to procure them. Given the context of your question, it is possible that in referring to "professional services," you may be referring to positions such as the positions of caretaker and maintenance for the park. Although it is unclear whether positions such as these would constitute "professional services" within the meaning of A.C.A. § [19-11-801](#), it is my opinion that the county nevertheless need not use competitive bidding to fill them, because they constitute "personal services," which are exempt from bidding requirements under the statutes governing county purchasing procedures.

Under these purchasing requirements, counties are required to solicit bids only for purchases of "commodities." See A.C.A. § [14-22-104](#). The term "commodities" is explicitly defined to exclude "personal services." More specifically, the definition states: "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. . . ." A.C.A. § [14-22-101](#)(2). Although the term "personal services" is not defined in the statute, the Attorney General has consistently adhered to the view, based upon generally recognized authority, that "personal services" are those services that require special skill, experience, or business judgment. See, e.g., Ops. Att'y Gen. Nos. [94-286](#); 93-412; 91-308; 90-037; 90-030. I concur in this view. I must conclude that the positions of caretaker and maintenance for the park (as described in the materials attached to your correspondence) clearly are positions of "personal service," and are thus exempt from the bidding procedures set forth in state law. (Accordingly, it is unnecessary for me to address the applicability of County Compliance Guide, Section [14-22-108](#).)

See Attorney General Opinions (hire undesignated county employees and enter contracts):

2006-124: (sheriff impermissibly entered contract);
2011-087: county judge, not quorum court, official to hire, fire or engage undesignated county employee such as county attorney, whether as an employee or by contract.

See Attorney General Opinions (authorize and approve disbursement of appropriated county funds):

2008-161: County contracts are subject to Article 12, section 4: which bars county from incurring obligations or making allowances in any given fiscal year in excess of the available revenues.

2012-007: ACA 14-14-1102 requires appropriation of county funds in hands of treasurer;

2012-066: summer youth programs authorized;

2010-146: county judge may hire or engage election coordinator but may delegate duty to hire or supervise;

The purchase of "commodities" under ACA 14-22-101 et seq. will be addressed in another segment of the procurement seminar. Under ACA 14-22-101: "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. ACA 22-9-201, et. seq. involves the procurement of construction work and construction services. Procurement of construction work and services will be covered at a subsequent segment of the procurement seminar.

COUNTY PROCUREMENT OF PROFESSIONAL SERVICES

SUMMARY: PROFESSIONAL SERVICES

“Competitive Bidding” is the process used in selecting a firm based upon low bid.

“Comparative Bidding” is the process of selecting a firm based upon: initially qualifications and then subsequently based upon agreed fair price.

Official policy for local governments for the procurement of professional services: Architectural, financial advisory, engineering, land surveying, or legal expertise is set forth in ACA 19-11-801 et seq. For Construction management see: Attorney General Opinion Nos: 2009-033 and 2009-038.

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.

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 to consider during 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.

ACA 19-11-807. Design-build construction. (a) As used in this section: (1) "Design-build" means a

project delivery method in which the school district acquires both design and construction services in the same contract from a single legal entity, referred to as the "design-builder", without competitive bidding; (2)(A) "Design-builder" means any individual, partnership, joint venture, corporation, or other legal entity that is appropriately licensed in the State of Arkansas and that furnishes the necessary design services, in addition to the construction of the work, whether by itself or through subcontracts, including, but not limited to, subcontracts for architectural services, landscape architectural services, and engineering services. (B) Architectural services, landscape architectural services, and engineering services shall be performed by an architect, landscape architect, or engineer licensed in the State of Arkansas. (C) Construction contracting shall be performed by a contractor qualified and licensed under Arkansas law; and (3) "Design-build contract" means the contract between the school district and a design-builder to furnish the architecture, engineering, and related services as required and to furnish the labor, materials, and other construction services for the same project. (b)(1) Any school district may use design-build construction as a project delivery method for building, altering, repairing, improving, maintaining, or demolishing any structure, or any improvement to real property owned by the school district. (2) The design-builder shall contract directly with subcontractors and shall be responsible for the bonding of the project. (3) A project using design-build construction shall comply with state and federal law. (c) The Division of Public School Academic Facilities and Transportation of the Department of Education shall develop and promulgate rules consistent with the provisions of this section concerning the use of design-build construction by school districts.

The law under ACA 19-11-801 et seq. expresses clear public policy for engaging the highest quality professional services for architects and engineers by "comparative bidding" or selection based on qualifications and subsequent negotiation; and prohibits "competitive bidding" or low bid selection of architects and engineers. The Arkansas Constitution under Article 19, Section 16 and ACA 22-9-201 et seq. mandate contracting for construction work on the basis of awarding the contract to the lowest responsible bidder. Arkansas Constitution under Article 19, Section 16 explicitly mandates: "All contracts for erecting and repairing public buildings or bridges in any county, or for the materials therefor; or for providing for the care and

keeping of paupers, where there are no almshouses, shall be given to the lowest responsible bidder, under regulations as may be provided by law. See: Gatzke v. Weiss, 375 Ark. 207 (2008); and Attorney General Opinion No. 2009-033.

SUMMARIES OF CASELAW & ATTORNEY GENERAL OPINIONS ON PROFESSIONAL SERVICES

In the case of Graham v Forrest City Housing Authority, 304 Ark. 632 (1991) the Supreme Court of Arkansas explained that under procurement of professional services under ACA 19-11-801 et seq. the law specifically provides that negotiations are to be terminated with a firm or professional that is qualified as the most qualified should the negotiations fail to result in a fair and reasonable contract; and thereupon the owner shall begin negotiations with the second most qualified firm for a fair and reasonable contract. The Court also explained that objective of the process is to result in the owner negotiating the most fair and reasonable price and contract terms with the most qualified professional services firm. Professional services firms are to be evaluated based upon and ranked first solely on the basis of qualifications and capability to perform the desired work. The most qualified firm is then given the opportunity to negotiate a contract for the services at a fair and reasonable price. Competitive bids from professional firms are prohibited; and consideration of price is not allowed until after the most qualified firm is selected and negotiations have completed. See also Attorney General Opinion No. 1998-134.

Attorney General Opinion no. 2009-033: Explains that there is no legal way for a county to contract for the construction or renovation of county public buildings for value of a construction contract in excess of \$20,000 without using competitive bidding (awarding the construction contract to the lowest responsible bidder). After the issuance of previous Attorney General Opinions, legislation has been acted to make it unlawful to award construction management services by use of competitive bidding. A political subdivision is prohibited from awarding by competitive bid professional services such as: legal, financial advisory, architectural, engineer, construction management, and land surveying professional services. A governing body of a political subdivision may elect to award other professional services on the basis of comparative bidding process upon 2/3 vote. 801(D) prohibits the use of competitive bidding

for award of “construction Management”, which is defined as a project delivery method based upon an agreement in which the government acquires from a construction entity services include, but not limited to, design review, scheduling, costs control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. other sections of ACA 19-8-801(d) allow public schools (Only) to award “agency Construction Management” and “at-risk Construction Management” by use of comparative bidding. Public Schools are allowed by this law to avoid low bid of construction work.

Attorney General Opinion No. 2007-256: A county judge may engage the assistance of a professional to assist in the selection of a health plan or health insurance for county employees. ACA 14-14-1102 authorizes the county judge to employ county personnel not employed by other elected officials and to contract for services with independent contractors. the list of professional services under ACA 19-11-801 is not exhaustive; rather the quorum court may elect to not sue competitive bidding in other professional services and consultant contracts. The law already includes “financial advisory” services. See also: **Attorney General Opinion no. 2009-038:** which reiterates the position of the AG indicating that a county may not procure construction management services under ACA 19-11-801 and thereafter allow competitive bidding between a low bid contractor and the construction manager firm.

Attorney General Opinion No. 2012-005: Counties are by law required to low bid the construction work on public works projects. Arkansas Constitution, Article 19, Section 16, provides: “All contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor...shall be given to the lowest responsible bidder” under such regulations as may be provided by law. Pursuant to ACA 22-9-201 et seq. counties, cities, schools and taxing units are mandated to award of construction contracts to the lowest responsible bidder as “competitive bidding”. Meanwhile, pursuant to ACA 19-11-801 et seq counties and political subdivisions are prohibited by public policy in law from awarding professional services on the basis of competitive or low bid. Rather, professional services such as engineering, architect, legal, financial advisory, and construction management are explicitly required to follow the process of “comparative bidding”. This opinion makes clear that a county may procure by “comparative bidding”

an “agency” construction manager to perform a professional consultant on professional services. The “agency” construction manager may be procured to provide consulting services, not to perform the actual construction work, but to: “design review, scheduling, costs control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration”. In essence, the county may let the various construction contracts to construction contractors in phases as per lowest responsible bid. However, the construction contracts entered on the project may not be between construction manager and the contractors, but between the county and the contractors. Also, the process known as design-build is prohibited by the Constitution by counties since counties must award contracts for construction work to the lowest responsible bidder. This opinion can be read along with former opinions AG Opinion Nos. 2009-033 and 2009-038 which previously made clear that counties are required by Arkansas Constitution and law to award the actual construction work on public works projects to the lowest responsible bidder.

Act 494 of 2013 amended ACA 22-9-202 to provide that the counties on public works projects clearly may procure separately own labor, commodities, professional services (architect or agency construction manager) or construction work from one or more separate contractors under separate invoice is lawful and not to be included in calculating \$20,000 threshold for construction public works projects. Act 494 of 2103 also made consistent the bid threshold of \$20,000 for construction including public works or renovation of historic sites under ACA 22-9-209.

PURCHASE OF COMMODITIES

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; 2011-87

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.

(22) {as per Act 465 of 2013} (A) Goods or services available only from a single source. (B) A purchase under this subdivision shall e supported with: (i) Documentation concerning the exclusivity of the single source; and (ii) A county court order filed with the county clerk that sets forth the basis for the single source procurement.

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.

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.

ATTORNEY GENERAL OPINIONS: COMMODITIES

Attorney General Opinion Nos. 2010-005 and 2007-015: Waste management services are services but not personal services and will be obliged to obtain competitive bids if the value of the contract exceeds \$20,000. The county must obtain bids for such contracts, but must also comply with any direction of the regional solid waste management board that is given pursuant to A.C.A. § 8-6-712. Accord Ark. Op. Att'y Gen. No. 93-418. Waste management services are not "personal services" exempt from the bidding requirement set forth at A.C.A. § 14-22-111. A.C.A. § 8-6-704(c) obligates a district to adopt county purchasing procedures as the district's own "approved purchasing procedures."

Attorney General Opinion no. 2004-129: Service and maintenance on a copy machine is not a "personal services" within the meaning of the statutory language. This office has consistently adhered to the view, based upon generally recognized authority and common usage, that "personal services" are those services that require special skill, experience, or business judgment. See, e.g., Ops. Att'y Gen. Nos. 99-357; 99-136; 95-294; 94-286; 93-418; 93-412; 91-308; 90-037; 90-030. A lease-purchase agreement under which a school district obtains a new copy machine and associated service and maintenance constitutes a "commodity" within the meaning of A.C.A. § 6-21-304(a)(1), and that the district must therefore solicit bids if the purchase price will exceed {\$20,000.00}.

Attorney General Opinion No. 1994-025: The Attorney General has interpreted the bid preference for "articles" under ACA 14-22-111 to mean or imply tangible items. See also: Attorney General Opinion No. 1989-312.

Attorney General Opinion No. 2003-061: Counties are required to solicit "bids" prior to entering into contracts for property reappraisal services. Counties must also be cognizant of the requirements created under Act 1185 of 1999, codified at A.C.A. § 26-26-1901 et seq. which directed the Assessment Coordination Department to develop and implement rules relating to reappraisal procedures. The Act further imposed the requirement that counties comply with those rules. A.C.A. § 26-26-1905. Among the rules that have been promulgated by the Department pursuant to Act 1185 is Rule 3.39, which states in pertinent part: Each county that contracts reappraisal services will be required to advertise for bids for the planned reappraisal and to mail a copy of the ACD approved bid specifications to all companies listed on the ACD Annual Register of Appraisal companies at the time of advertising. Any

bids submitted by a contractor that do not meet the ACD approved specifications shall be rejected by the county. The county shall submit to the ACD a copy of all bids received. In the event the county chooses to employ an appraisal firm other than the firm that submits a low bid, the county assessor must submit a written narrative explaining the county's choice of firms. The narrative must be attached to the proposed appraisal contract, and explain in detail what criteria were utilized to make the decision to hire a firm other than the low bidder. Failure to comply with this rule will result in rejection of the proposed appraisal contract. Rule 3.39, Rules & Regulations of the Arkansas Assessment Coordination Department. The requirements of this rule are clear and unequivocal, as is the requirement stated in Act 1185 that counties comply with the Department's rules. Accordingly, I conclude that counties must solicit bids prior to entering into contracts for property re-appraisal services.

Attorney General Opinion No. 1994-025: The Attorney General has interpreted the bid preference for “articles” under ACA 14-22-111 to mean or imply tangible items. See also: Attorney General Opinion No. 1989-312.

Attorney General Opinion Nos. 2009-070, 1996-213 and 2005-293: A county ordinance may not effectively add to the list of commodities exempt from formal bidding and notice requirements. Neither can the quorum court direct a county judge to bid on commodities less than the threshold under the law {currently \$20,000}. However, Attorney General Opinion No. 1996-213 provides that a quorum court may by ordinance require formal notice and bidding requirements for an item or article exempt from bidding under the state law. Attorney General Opinion No. 2005-293 states: Similar to Op. Att'y Gen. [96-213](#), where one of my predecessor's opined that a Quorum Court could require competitive bidding on contracts for items exempted from the state law as a more stringent bidding requirement, it is my opinion that the Quorum Court may impose a more stringent requirement by requiring a formal bidding procedure for any county purchases equal to or exceeding \$5,000.00.

Attorney General Opinion No. 2009-213: ACA 14-22-106 exempts renewals and extensions from the terms of all existing county contracts from the bid solicitation requirements of ACA 14-22-101 et seq.

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.

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)]

CONSTRUCTION LAW IN ARKANSAS

Counties are required under the Arkansas Constitution to award contracts for construction of public bridges and buildings to the “lowest responsible bidder”. **Article 9, § 16. Contracts for public buildings or bridges.** “All contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor, or for providing for the care and keeping of paupers where there are no almshouses, shall be given to the lowest responsible bidder under such regulations as may be provided by law.”

Chapter 9 of Title 22 of the Arkansas Code sets forth other legal requirements for public works contracts of counties in Arkansas including:

- REQUIREMENT FOR PLANS, SPECIFICATIONS AND ESTIMATES TO BE PREPARED BY PROFESSIONAL AND LICENSED: ENGINEER FOR PROJECTS IN EXCESS OF \$25,000 OR ARCHITECT FOR PROJECTS IN EXCESS OF \$100,000 {ACA 22-9-101}
- COUNTIES CAN PERFORM OWN CONSTRUCTION WORK WITH ITS OWN EMPLOYEES. {ACA 22-9-202}
- REQUIREMENT THAT CONTRACTS FOR PUBLIC WORKS IN EXCESS OF \$20,000 BE ADVERTISED IN A NEWSPAPER OF A GENERAL CIRCULATION IN THE COUNTY OR IN A TRADE JOURNAL REACHING THE CONSTRUCTION INDUSTRY. {ACA 22-9-203}
- REQUIREMENTS FOR 5% BID BOND OR CASHIERS CHECK {ACA 22-9-203}
- AWARD TO “LOWEST RESPONSIBLE BIDDER” IF IN BEST INTERESTS {ACA 22-9-203}
- USE OF LICENSED SUBCONTRACTORS WHEN AMOUNT OF WORK SUBCONTRACTED EXCEEDS \$20,000 {ACA 22-9-204}
- INTERESTS ALLOWED ON DELINQUENT PAYMENTS, 90 DAYS FROM PRESENTATION OF CLAIM {ACA 22-9-205}
- HISTORIC SITE RENOVATION, ALTERNATION, REPAIR: AUTHORIZING COST PLUS, SELECTION BASED ON EXPERIENCE, AND TECHNIQUES, ETC {ACA 22-9-208}
- COMPLIANCE WITH OSHA FOR TRENCHING OR EXCAVATING IN EXCESS OF 5 FEET DEPTH {ACA 22-9-212}
- MINIMUM WAGE REQUIREMENTS AND EXEMPTIONS {ACA 22-9-301 THROUGH 304}

- SURETY PAYMENT BONDS {ACA 22-9-401 THROUGH 404}

BIDDING PROCEDURE FOR PERMANENT IMPROVEMENTS OVER \$20,000.00

22-9-101. Observation by registered professionals required. (a) Neither the state nor any township, county, municipality, village, or other political subdivision of the state shall engage in the capital improvement of any public works involving engineering or architecture for which the plans, specifications, and estimates have not been made by and the capital improvement executed under the observation of a registered professional engineer or architect, in their respective areas of expertise, who are licensed to practice under the laws of Arkansas. (b) Nothing in this section shall be held to apply to any public works wherein the contemplated capital improvement expenditure: (1) For an engineering project does not exceed twenty-five thousand dollars (\$25,000); or (2) For an architectural project does not exceed one hundred thousand dollars (\$100,000). (c) This section shall not apply to any school district, county, municipality, or township project that is planned and executed according to plans and specifications furnished by authorized state agencies.

17-15-302. Exemptions. (a) The following shall be exempt from the provisions of this chapter: (1) Professional engineers duly licensed or registered, but only insofar as concerns work incidental to engineering practice, provided such persons do not use the designation "architect" or any term derived therefrom; (2) Employees of those lawfully practicing architecture who are acting under the instruction, control, or supervision of their employer; (3) Officers and employees of the government of the United States while engaged within this state in the practice of architecture for the government; (4) Residents of this state who do not use the title "architect" or any term derived therefrom who act as designers for: (A) Buildings that are to be constructed for personal use, such as residences, if the buildings are not intended or adaptable for public employment, assembly, or any other use under which they will be open to the public; (B) Single family detached, duplex, triplex, and

quadruplex dwellings; or (C) Buildings whose total cumulative and fair market value to complete, not including site, does not exceed one hundred thousand dollars (\$100,000); and (5) Owners and employees of planing mills, woodworking establishments, sash and door manufacturers, and jobbers in the designing, planning, detailing, and preparation of data on millwork, woodwork, and cabinetwork, provided they do not use the designation "architect" or any term derived therefrom. (b)(1) The terms of this chapter shall not apply to: (A) Any public school district exempted from the provisions of this chapter; or (B) Every public school district embracing a city with a population in excess of thirty thousand (30,000) which maintains a full-time superintendent of buildings with engineering and architectural experience. (2) This exception shall only apply: (A) If the total cumulative and fair market value to complete the repair and maintenance of buildings already constructed and alterations thereof does not exceed the sum of one hundred thousand dollars (\$100,000); and (B) If the total cumulative and fair market value to complete the new structures will not exceed the sum of one hundred thousand dollars (\$100,000). (c) The provisions of this chapter shall not apply to any public school district, place of assembly, daycare, church, or building not more than one (1) story high where: (1) The total cumulative and fair market value to complete the building, alteration, or structure does not exceed the sum of one hundred thousand dollars (\$100,000); and (2) The plans are approved by the State Fire Marshal.

17-25-103. Penalties — Enforcement. (a) Any contractor shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) for each offense, with each day to constitute a separate offense, who: (1)(A) For a fixed price, commission, fee, or wage attempts to or submits a bid or bids to construct or demolish or contracts to construct or demolish, or undertakes to construct or demolish, or assumes charge in a supervisory capacity or otherwise, or manages the construction, erection, alteration, demolition, or repair of, or has constructed, erected, altered, demolished, or repaired, under his or her or its direction, any building, apartment, condominium, highway, sewer, utility, grading, or any other improvement or structure, when the cost of the work to be done or done, in the State of Arkansas by the contractor including, but not limited to, labor and materials, is twenty thousand dollars (\$20,000) or more, without first having procured a license with the proper classification to engage in the business of contracting in this state.

(B) Subdivision (a)(1) of this section shall not apply to any demolition work or other work necessary to clean up a natural disaster within seventy-two (72) hours following the natural disaster; (2) Shall present or file the license certificate of another; (3) Shall give false or forged evidence of any kind to the Contractor Licensing Board or any member thereof in obtaining a certificate of license; (4) Shall impersonate another; or (5) Shall use an expired or revoked certificate of license. (b) The doing of any act or thing herein prohibited by any applicant or licensee shall, in the discretion of the board, constitute sufficient grounds to refuse a license to an applicant or to revoke the license of a licensee. (c) Regarding any violation of this chapter, the board shall have the power to issue subpoenas and bring before the board as a witness any person in the state and may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence. (d) No action may be brought either at law or in equity to enforce any provision of any contract entered into in violation of this chapter. No action may be brought either at law or in equity for quantum meruit by any contractor in violation of this chapter. (e)(1)(A) Any contractor who, after notice and hearing, is found by the board to have violated or used a contractor in violation of this chapter shall pay to the board a civil penalty of not less than one hundred dollars (\$100) nor more than four hundred dollars (\$400) per day for the activity. However, the penalty shall not exceed three percent (3%) of the total project being performed by the contractor. (B) The penalty provided for in this chapter plus interest at ten percent (10%) per annum shall be paid to the board before the contractor can be issued a license to engage in the business of contracting in this state. In addition to the assessment of the penalty, the board, upon a finding of a violation of this chapter, may issue an order of abatement directing the contractor to cease all actions constituting a violation of this chapter. (2) The board shall have the power to withhold approval for up to six (6) months of any application from any person who, prior to approval of the application, has been found in violation of this chapter. (3) All hearings and appeals therefrom under this chapter shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § [25-15-201](#) et seq. (4) No proceedings under this chapter may be commenced by the board after three (3) years from the date on which the act or omission which is the basis for the proceeding occurred. (5) The board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any

penalty not paid within thirty (30) days of service on the contractor of the order assessing the penalty, unless the circuit court enters a stay pursuant to the provisions of this chapter. (6) The board shall have the power to file suit in the Pulaski County Circuit Court to enforce any order of abatement not complied with within fifteen (15) days, excluding Saturdays, Sundays, and legal holidays, of service on the contractor of the order of abatement. If the circuit court finds the order of abatement to have been properly issued, it may enforce the order by any means by which injunctions are ordinarily enforced. However, nothing shall be construed herein to diminish the contractor 's right to appeal and obtain a stay pursuant to the procedures provided for in this chapter.

22-9-201. Applicability of §§ 22-9-202 – 22-9-204.

(a) The provisions of §§ [22-9-202](#) – [22-9-204](#) shall not apply to contracts awarded by the State Highway Commission for construction or maintenance of public highways, roads, or streets under the provisions of §§ [27-67-206](#) and [27-67-207](#). (b) The provisions of § [22-9-204](#) shall not apply to projects designed to provide utility needs of the state or any agency thereof, a municipality, or a county. Those projects shall include, but shall not be limited to, pipeline installation, sanitary projects, light earth work and foundation work, local flood control, sanitary landfills, drainage projects, site clearing, water lines, streets, roads, alleys, sidewalks, water channelization, light construction sewage, water works, and improvements to street and highway construction.

(c)(1)(A) The notice and bid security provisions of §§ [19-4-1401](#), [19-4-1405](#), and [22-9-203](#) pertaining to the project amount and the time frames of the advertisement shall not apply to contracts for the performance of any work or the making of any capital improvements due to emergency contracting procedures. (B) Nothing shall prohibit the contracting authority from requiring a bid security if the contracting authority determines to require a bid security. (2)(A) The percentage requirements of § [22-9-203](#)(e) shall not apply to contracts for the performance of any work or the making of any capital improvements due to emergency contracting procedures. (B) If negotiations are unsuccessful and the contracting authority determines further negotiations with the lowest responsible bidder are not in the contracting authority's best interests, nothing shall prohibit the contracting authority from terminating negotiations and negotiating the award of the contract to the next lowest responsible bidder. (3) "Emergency contracting procedures" means the acquisition of services and materials for capital

improvements that are in accordance with the Arkansas Building Authority minimum standards and criteria.

(4) Emergency contracting procedures may include sole sourcing or competitive quote bids. (5) The Director of the Arkansas Building Authority or a designee may make or authorize others to make emergency contracting procedures as defined in subdivision (c)(3) of this section and in accordance with the authority minimum standards and criteria.

22-9-202. Construction of this section and §§ 22-9-203 and 22-9-204. 22-9-202. Construction of this section and §§22-9-203 and 22-9-204.

(a) It is the intent of this section and §§ 22-9-203 and 22-9-204 to provide a uniform procedure to be followed by a taxing unit when work is to be done under formal contract.

(b) (1) This section and §§ 22-9-203 and 22-9-204 do not:

(A) Prevent a taxing unit from performing any of the work or making any of the improvements referred to in this section and §§ 22-9-203 and 22-9-204 by the use of its own employees; or

(B) Require that bids must be received from contractors as a condition precedent to the right to use the taxing unit's own employees.

(2) **This section and §§ 22-9-203 and 22-9-204 do not prevent a county government from separately procuring:**

(A) Commodities in accordance with § 14-22-101 et. seq'

(B) Professional services in accordance with § 19-11-801 et seq:

(C) Construction work from one (1) or more separate contractors under separate contract or invoice so that the work is not included in calculating the bid requirement threshold of twenty thousand dollars (\$20,000). {as per Act 494 of 2013}

(c) This section and §§ 22-9-203 and 22-9-204 do not amend or repeal any law that requires the publication of notice in those instances in which the estimated amount of the cost of the proposed improvements is less than twenty thousand dollars (\$20,000).

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. (G) 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 of specifications that a bidder or supplier: (A) Hold membership in any professional or industry associations, societies, trade groups, or similar organizations; (B) Possess certification from any professional Or industry associations, societies, trade groups, or similar organizations as steel building fabricators; or (C) Be endorsed by any professional or industry associations, societies, trade groups, of similar organizations. (2) However, plans and specifications may include or reference standards adopted by professional or industry associations, societies, trade groups, or similar organizations.

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, 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.

(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.

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

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.

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.

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 or of another taxing unit would conserve state revenues by giving agencies or taxing unit 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 or taxing unit 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.

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~~), 2ok? shall be entered into between the agency or taxing unit and any contractor unless the agency or taxing unit 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 resume 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 or taxing unit are exempt from review and approval 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.

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 or taxing unit. Cost, proposed method, and experience in similar work shall be considered by the agency or taxing unit 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 resume 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_.

22-9-211. Renovation of historic sites – Payment. (a) The contracting agency or taxing unit 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.

22-9-212. Public improvements generally – Trench or excavation safety systems. (a) 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 in which the public work or public improvement construction project involves any trench or excavation which equals or exceeds five feet (5') in depth, the agency, county, municipality, school district, local taxing unit, or improvement district shall require: (1) That the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 C.F.R. 1926, Subpart P, be specifically incorporated into the specifications for the project; and (2) That the contract bid form include a separate pay item for trench or excavation safety systems to be included in the base bid. (b) In the event a contractor fails to complete a separate pay item in accordance with the applicable provisions of subsection (a) of this section, the agency, county, municipality, school district, local taxing unit, or improvement district shall declare that the bid fails to comply fully with the provisions of the specifications and bid documents and will be considered invalid as a nonresponsive bid. The owners of the above-stated project shall notify the Safety Division of the Department of Labor of the award of a contract covered by this section.

22-9-213. Exemption of state projects from local regulation. Public works construction projects conducted by Arkansas Building Authority or other state agencies are exempt from permit fees or inspection requirements of county or municipal ordinances.

22-9-214. Hold harmless clause in public construction contracts unenforceable. (a) As used in this section: (1) "Construction" means any of the following services, functions, or combination of the following services or functions to construct a building, building site, or structure, to construct a permanent improvement to a building, building site, or structure, including sitework: (A) Alteration; (B) Design; (C) Erection; (D) Reconditioning; (E) Renovation; (F) Repair; or (G) Replacement; (2)(A) "Public construction agreement" means an agreement in which one (1) party is a public entity and the agreement is the bargain of the parties in fact as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in §

[4-1-303](#). (B) "Public construction agreement" does not include an insurance contract, a construction bond, or a contract to defend a party against liability; and (3)(A) "Public construction contract" means a contract in which one (1) party is a public entity and the contract is the total legal obligation that results from the parties' agreement under this section and as supplemented by any other applicable law. (B) "Public construction contract" does not include an insurance contract, a construction bond, or a contract to defend a party against liability. (b) A clause in a public construction agreement or public construction contract entered into after July 31, 2007, is unenforceable as against public policy to the extent that a party to the public construction contract or public construction agreement is required to indemnify, defend, or hold harmless another party against: (1) Damage from death or bodily injury to a person arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier; or (2) Damage to property arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier. (c) A provision or understanding in a public construction agreement or public construction contract that attempts to circumvent this section by making the public construction agreement or public construction contract subject to the laws of another state is unenforceable as against public policy. (d) A clause described under subsections (b) and (c) of this section is severable from the public construction agreement or public construction contract and shall not cause the entire public construction agreement or public construction contract to become unenforceable. (e) The parties to a public construction contract or public construction agreement may enter into an agreement in which: (1) The first party indemnifies, defends, or holds harmless the second party from the first party's negligence or fault or from the negligence or fault of the first party's agent, representative, subcontractor, or supplier; (2) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault if the public construction contract or public construction agreement requires the second party to obtain insurance and the public construction contract or public construction agreement limits the second party's obligation to the cost of the required insurance; (3) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault under a separate insurance contract with an insurance provider; or (4) The first party requires the second party to name the first party as an additional insured as a part of the

public construction agreement or public construction contract.

22-9-301. Payment required. It is declared to be the policy of the State of Arkansas that a wage of not less than the minimum prevailing hourly rate of wages for work of a similar character in the county or locality in which the work is performed and not less than the prevailing hourly rate of wages for holiday and overtime work shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

22-9-302. Definitions. As used in this subchapter: (1) "Construction" means construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, where the cost of all labor and material exceeds seventy-five thousand dollars (\$75,000); (2) "County" means the county where the physical work upon the public works is performed; (3) "Department" means the Department of Labor; (4) "Locality" means a specific county or a specific group of counties in the same geographic area of the state as determined by administrative regulation of the Department of Labor; (5) "Maintenance work" means the repair, but not the replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased; (6) "Minimum prevailing wage rates" means the wages paid, generally, in the county in which the public works are being performed, to workers engaged in work of a similar character; (7) "Public body" means the State of Arkansas or any officer, board, or commission of the state, any county, city, municipality or other political subdivision, or any of the agencies thereof; (8) "Public works" means all works constructed for public use, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, but it does not include any work done for or by any drainage, improvement, or levee district; and (9) "Workers" means laborers, workers, and mechanics, but special rates for apprentices shall apply only when the apprentices are registered in a recognized management-labor apprenticeship training program.

22-9-303. Exceptions. (a) The provisions of this subchapter shall not apply to workers who are employed as part-time or full-time employees of any public body; it is not the intent of this subchapter to prohibit any public body from performing necessary improvements of its public property, either by

construction or maintenance, with public employees. (b) Nothing contained in this subchapter shall be construed to apply to or affect highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department. (c) This subchapter shall not affect any public school construction unless federal matching funds are employed in paying for the construction.

22-9-304. Construction of subchapter. (a) Nothing in this subchapter shall be construed to prohibit the payment to any worker employed on any public works of more than the prevailing rate of wages. (b) Nothing in this subchapter shall be construed to limit the hours of work which may be performed by any worker in any particular period of time.

22-9-401. Coverage. (a) All surety bonds required by the State of Arkansas or any subdivisions thereof by any county, municipality, school district, or other local taxing unit, or by any agency of any of the foregoing for the repair, alteration, construction, or improvement of any public works, including, but not limited to, buildings, levees, sewers, drains, roads, streets, highways, and bridges shall be liable on all claims for labor and materials entering into the construction, or necessary or incident to or used in the course of construction, of the public improvements. (b) Claims for labor and materials shall include, but not be limited to, fuel oil, gasoline, camp equipment, food for workers, feed for animals, premiums for bonds and liability and workers' compensation insurance, rentals on machinery, equipment, and draft animals, and taxes or payments due the State of Arkansas or any political subdivision thereof which shall have arisen on account of, or in connection with, wages earned by workers on the project covered by the bond.

22-9-402. Authorized bonding companies — Agents. (a) All bonds enumerated in § [22-9-401](#) and bid bonds enumerated in § [19-4-1405](#) shall be made by surety companies which have qualified and are authorized to do business in the State of Arkansas. (b)(1) The bonds shall be executed by a resident or nonresident agent. (2) The resident or nonresident agent shall: (A) Be licensed by the Insurance Commissioner to represent the surety company executing the bond; and (B) File with the bond the power of attorney of the agent to act on behalf of the bonding company.

22-9-403. Statutory liability as integral part of bond – Limitation of action. (a) The liability imposed by § [22-9-401](#) on any bond furnished by a public works contractor shall be deemed an integral part of the bond, whether or not the liability is explicitly set out or assumed therein. (b)(1) No action shall be brought on a bond after one (1) year from the date final payment is made on the contract, nor shall an action be brought outside the State of Arkansas. (2) However, with respect to public works contracts where final approval for payment is given by the Arkansas Building Authority or by an institution of higher education exempt from construction review and approval by the authority, all persons, firms, associations, and corporations having valid claims against the bond may bring an action on the bond against the corporate surety, provided that no action shall be brought on the bond after twelve (12) months from the date on which the authority or the public institution of higher education approves final payment on the state contract, nor shall any action be brought outside the State of Arkansas in accordance with § [18-44-503](#).

22-9-404. Subcontractor bonds. (a)(1) If required by the general contractor, each subcontractor must provide the general contractor with a payment and performance bond made by a surety company qualified under § [22-9-401](#) et seq., or a cash bond in a sum equal to the full amount of the subcontractor's bid on a portion of a public works contract when: (A) The subcontractor is the low responsible bidder for that portion of the contract; (B) The state, pursuant to § [22-9-204](#), requires the general contractor to list the subcontractor in the general contractor's bid; and (C) The work value of the subcontractor's bid is in excess of fifty thousand dollars (\$50,000). (2) If the general contractor requires the subcontractor to provide a bond, the subcontractor shall provide the bond to the general contractor within five (5) days after the award of the contract by the general contractor to the subcontractor. (b) If the subcontractor fails to provide a payment and performance bond when required by the general contractor, the subcontractor shall lose the bid and shall pay to the general contractor a penalty equivalent to ten percent (10%) of the subcontractor's bid or the difference between the low bid and the next responsible bid and the next responsible low bid, whichever is less, plus cost of recovery of the penalty, including attorney's fees. The purpose of this section is to compensate the general contractor for the difference between the low bid and the next responsible low bid. (c) The general contractor may enforce this section by a civil action in circuit court. (d) The provisions of this section shall

not apply to contracts awarded by the State Highway Commission for construction or maintenance of public highways, roads, or streets.

ATTORNEY GENERAL OPINIONS & CASES ON CONSTRUCTION LAW

Attorney General Opinion No. 2009-033: Explains that there is no legal way for a county to contract for the construction of renovation of county public buildings for value of a construction contract in excess of \$20,000 without using competitive bidding (awarding the construction contract to the lowest responsible bidder). After the issuance of previous Attorney General Opinions, legislation has been enacted to make it unlawful for counties to award “agency Construction Management” and “at-risk Construction Management” by use of competitive bidding. 19-8-801(D) prohibits the use of competitive bidding for award of “construction Management”, which is defined as a project delivery method based upon an agreement in which the government acquires from a construction entity services include, but not limited to, design review, scheduling, costs control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. Other sections of ACA 19-8-801(d) allow public schools (Only) to award “agency Construction Management” and “at-risk Construction Management” by use of comparative bidding. Public Schools are allowed by this law to avoid low bid of construction work. A political subdivision is prohibited from awarding by competitive bid professional services such as: legal, financial advisory, architectural, engineer, construction management, and land surveying professional services, such services are awarded by comparative bidding. A governing body of a political subdivision may elect to award other professional services on the basis of comparative bidding process upon 2/3 vote. {Further Ag Opinions may be rendered explaining that: an owner-county may award contracts to a construction project to various contractors, rather than to one general contractor. Also, an owner-county may engage a construction manager based upon comparative bidding, however, the work identified as construction work must be awarded to the lowest responsible bidder}.

Attorney General Opinion No. 2004-322: Taxing units such as county library boards, administrative boards, and hospital boards, airport commissions, suburban improvement districts and improvement districts must comply with county public works bidding, advertising requirements and opening bids in public meeting. See also: AG Op Nos: 1992-101, 2007-262, 2002-063, 2005-2001. Also, the AG says a private corporation acting on behalf of a taxing unit may be held to comply with taxing unit public works bidding and advertising requirements. *Conway Corp. v. Construction Engineers, Inc.* 300 Ark. 225, 782 S.W. 2d 36 (1989). ACA 22-9-205 expressly references improvement districts.

Attorney General Opinion Nos. 2000-255, 1998-111 and 1999-067: The court has consistently interpreted the term "lowest responsible bidder," as used in statutory language, broadly enough to allow the deciding body to reject the lowest bidder (as well as other bidders) on the grounds of factors other than the amounts of the bids. Indeed, the court has made the general observation that "the phrase 'lowest responsible bidder' in a statute providing for competitive bids before awarding contracts for certain public improvements implies skill, judgment and integrity necessary to a faithful performance of the contract, as well as sufficient financial resources and ability." *Fletcher v. Cherry*, 207 Ark. 650, 651, 182 S.W.2d 211 (1944), quoting *Williams v. City of Topeka, et al.*, 85 Kas. 857, 118 P. 864, 38 L.R.A., N.S., 672. The Fletcher court also noted that "where a statute requires municipal contracts to be let to the 'lowest responsible bidder' the duty of the officer letting the contract is not merely ministerial, but partakes of a judicial character, requiring the exercise of discretion." *Fletcher*, supra, 207 Ark. at 651. The court most recently considered this issue in *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997). In that case, it was argued that a county had unlawfully rejected the lowest bid for solid waste disposal, in violation of A.C.A. § 14-22-111. That statute, like A.C.A. § 14-58-303 and A.C.A. § 22-9-203, required the county to award the contract to the "lowest responsible bidder," but (also like A.C.A. § 14-58-303 and A.C.A. § 22-9-203) allowed the county to reject all bids. The court held that this statutory language did not require the county to accept the lowest bid. Similarly, in *Conway Corp. v. Construction Eng'rs.*, 300 Ark. 225, 782 S.W.2d 36 (1989), the lowest bidder for a city construction contract sued the Conway Corporation, the non-profit organization that operated the City of Conway's utilities, for rejecting its low bid, and awarding the contract to a higher bidder. The court found that the case was governed by A.C.A.

§ 22-9-203 (quoted above), and that under that statute, the Conway Corporation" had the discretion to reject [the lowest bid] so long as the rejection was for good cause and in good faith." *Conway Corp.*, supra, 300 Ark. at 231, citing *Worth James Constr. Co. v. Jacksonville Water Comm'n*, 267 Ark. 214, 590 S.W.2d 256 (1979). The Conway Corporation had rejected the lowest bid after having received information indicating that the quality of that bidder's workmanship was undesirable. The court found that under A.C.A. § 22-9-203, the Conway Corporation "had the discretion to reject [the lowest bid] so long as the rejection was for good cause and in good faith." *Conway Corp.*, supra, 300 Ark. at 231, citing *Worth James Constr. Co. v. Jacksonville Water Comm'n*, 267 Ark. 214, 590 S.W.2d 256 (1979). The court specifically found that the Conway Corporation had acted in good faith in rejecting the bid. In reaching this conclusion, the court appears to have relied substantially on the fact that the Conway Corporation's concerns were based on substantiated allegations concerning the low bidder (thus indicating a lack of bad faith) and on the fact that the Conway Corporation took the extra step of instigating a post-bid investigation of the two highest bidders (thus furthering its lack of bad faith). The court indicated that a finding of bad faith would require a showing of "dishonest, malicious or oppressive conduct with a state of mind characterized by hatred, ill will or a spirit of revenge." *Id.* at 232, citing *Stevenson v. Union Standard Ins. Co.*, 294 Ark. 651, 746 S.W.2d 39 (1988). In this regard, the court noted that the Conway Corporation had received both negative and positive comments about the low bidder and had not reported them in a manner that obscured the truth. {See also: ACA 14-22-111 on commodities and AG OP No. 1994-025 which provides for rejection by county of lowest responsible bidder where county can file written statement for rejection with county clerk setting for basis for rejection, such as, quality, time of performance, probability of performance and location. }

Attorney General Opinion No. 1993-445: The AG opined that ACA 22-9-203 appears to require the county have the money appropriate prior to solicitation of bids for the project. And where all bids submitted exceeded the amount appropriated for the project, deductive alternatives should be subtracted from bids first to ascertain which contractor is the apparent lowest responsible bidder.

Attorney General Opinion No. 2012-005: Counties are by law required to low bid the construction work

on public works projects. Arkansas Constitution, Article 19, Section 16, provides: "All contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor...shall be given to the lowest responsible bidder" under such regulations as may be provided by law. Pursuant to ACA 22-9-201 et seq. counties, cities, schools and taxing units are mandated to award of construction contracts to the lowest responsible bidder as "competitive bidding". Meanwhile, pursuant to ACA 19-11-801 et seq counties and political subdivisions are prohibited by public policy in law from awarding professional services on the basis of competitive or low bid. Rather, professional services such as engineering, architect, legal, financial advisory, and construction management are explicitly required to follow the process of "comparative bidding". This opinion makes clear that a county may procure by "comparative bidding" an "agency" construction manager to perform a professional consultant on professional services. The "agency" construction manager may be procured to provide consulting services, not to perform the actual construction work, but to: "design review, scheduling, costs control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration". In essence, the county may let the various construction contracts to construction contractors in phases as per lowest responsible bid. However, the construction contracts

entered on the project may not be between construction manager and the contractors, but between the county and the contractors. Also, the process known as design-build is prohibited by the Constitution by counties since counties must award contracts for construction work to the lowest responsible bidder. This opinion can be read along with former opinions AG Opinion Nos. 2009-033 and 2009-038 which previously made clear that counties are required by Arkansas Constitution and law to award the actual construction work on public works projects to the lowest responsible bidder.

Act 494 of 2013 amended ACA 22-9-202 to provide that the counties on public works projects clearly may procure separately own labor, commodities, professional services (architect or agency construction manager) or construction work from one or more separate contractors under separate invoice is lawful and not to be included in calculating \$20,000 threshold for construction public works projects. Act 494 of 2103 also made consistent the

bid threshold of \$20,000 for construction including public works or renovation of historic sites under ACA 22-9-209.

SALE AND LEASING 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 PROPERTY

ACA 14-16-106. Sale or disposal of surplus property.[As per Acts 614 and 1014 of 2011]

(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 or Internet sale shall be published at least one (1) time a week for two (2) consecutive weeks in a newspaper having general circulation in the county.

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

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

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

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

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

(d) The county fixed asset listing shall be amended to reflect all sales or disposal of county property that has been disposed under subdivision (c)(1) of this section.

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

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

(2) The order shall set forth:

(A) The description of the property sold;

- (B) The name of the purchaser;
- (C) The terms of the sale;
- (D) That the proceeds of the sale have been deposited with the county treasurer; and
- (E) The funds to which the proceeds were credited by the county treasurer.

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.

APPENDIX

PERSONAL SERVICES

APPENDIX

PROFESSIONAL SERVICES

APPENDIX

PURCHASING OF COMMODITIES AND OTHER SERVICES

APPENDIX

AMENDMENT 78 SHORT TERM FINANCING

APPENDIX

COOPERATIVE PURCHASING

APPENDIX

CONSTRUCTION CONTRACTING

