

# ARKANSAS COUNTY JUDGES 2018 PROCEDURES MANUAL



**Association of Arkansas Counties**

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## FOREWORD

This County Judge's procedures manual was compiled by the Association of Arkansas Counties staff and reviewed by AAC staff. It reflects the current law through the 2017 session and includes a description of the duties, responsibilities, and procedures of the Judge's office. It is not to be construed as legal advice. It presents the law for your information and guidance but specific legal questions should be directed to your county attorney.

We hope this procedures manual will be of help to you as you do the day-to-day business of your county.



Chris Villines  
Executive Director

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# Chapter One - INTRODUCTION TO COUNTY GOVERNMENT

County government is a political subdivision of the state. County government provides services to all of the citizens of the county, and every resident of Arkansas lives in a county. The services that every county must provide include: (1) the administration of justice through the courts; (2) law enforcement protection and the operation of the jail (3) real and personal property tax administration, including assessments, collection, and custody of tax proceeds; (4) court and public records management; and (5) the required services prescribed by state law provided through the various elected county officers or departments of county government such as providing and managing a county road system, elections and financial management just to name a few things. Counties may provide for the establishment of any service or performance of any function that is not expressly prohibited by law. These services and functions include, but are not limited to, things like agricultural extension services; community and rural development services; libraries; park and recreation services; emergency medical services; fire prevention and protection services; solid waste collection and disposal services; public health services; and any other services related to county affairs (A.C.A. § 14-14-802).

County government elects nine executive officers and a countywide legislative body called the Quorum Court to provide these various services. The nine elected officials are county judge, sheriff, county clerk, circuit clerk, collector, assessor, treasurer, coroner and surveyor. Some counties combine two of these offices into one, such as county clerk/circuit clerk, sheriff/collector, or treasurer/collector. Also, not all counties elect a surveyor and in the counties that do elect them, this job is usually not a full-time position. The county legislative body is entitled the Quorum Court and is composed of 9-15 members called Justices of the Peace. These justices of the peace are district officers and not county officials because they represent a district within the county.

The chief executive officer for county government in Arkansas is the county judge. As chief executive, the judge authorizes and approves the disbursement of all appropriated county funds, operates the system of county roads, administers ordinances enacted by the quorum court, has custody of county property, accepts grants from federal, state, public and private sources, hires county employees except those persons employed by other elected officials of the county, and presides over the quorum court without a vote, but with the power of veto. (A.C.A. § 14-14-1101 - 1102)

All powers not vested in the county judge as the chief executive officer of the county shall continue to be exercised and administered by the county court, over which the county judge shall preside. The county court, in fact, is the county judge sitting in a judicial role.

The county court of each county has exclusive original jurisdiction in all matters relating to:

1. County Taxes: Including real and personal ad valorem taxes collected by county government. The county court's authority in this area includes jurisdiction over the assessment of property, equalization of assessments on appeal, tax levies, tax collections, and the distribution of tax proceeds.
2. Paupers: The court's jurisdiction includes all county administrative actions affecting the conduct of human services programs serving indigent residents of the county where such services are financed in total or in part by county funds.
3. Jurisdiction in each other case that may be necessary to the internal improvement and local concerns of the respective counties including county financial activities and works of general public utility or advantage designed to promote intercommunication, trade and commerce, transportation of persons and property, or the development of natural resources, which are not otherwise transferred to the county judges to be administered in an executive capacity.
4. The county court shall have all other jurisdiction now vested by law in the county court except with respect to those powers formerly vested in the county court under the provisions of Section 28 of Article 7 of the Constitution which were transferred to the county judge under the provisions of Section 3 of Amendment 55 to the Arkansas Constitution, (and those powers removed by Amendment 67 as they pertain to the apprenticeship of minors. (A.C.A. § 14-14-1105)

In addition to the duties of the county court, the county judge is responsible for coordinating the day-to-day inter-governmental relations between the various state and federal agencies operating at the county level. The judge must also apply for all federal and state assistance moneys for which the county is eligible, and appoints the members to all administrative and advisory boards in the county, some of which have to be confirmed by the quorum court.

The county sheriff is the sheriff of the courts, maintains public peace, and has custody of the county jail. As chief enforcement officer of the circuit courts, the sheriff's office, which includes the sheriff and deputies, is charged by constitutional and statutory laws with the execution of summons, enforcement of judgments, orders, injunctions, garnishments, attachments, and the making of arrests on warrants issued by the courts. The sheriff also opens and attends each term of circuit court, notifies residents selected to jury duty and assists in handling witnesses and prisoners during a given court term.

The sheriff, or a member of that staff, often prepares and assembles evidence of the Prosecuting Attorney's case against defendants charged with both felonies and misdemeanors. The sheriff also transports convicted

prisoners and others declared by the court to the various penal and mental institutions of the state.

The sheriff in every county has the custody, rule, and charge of the county jail and all prisoners committed in his county (A.C.A. § 12-41-502). The sheriff shall be conservator of the peace in his county (A.C.A. § 14-15-501). It shall be the duty of each sheriff to quell and suppress all assaults and batteries, affrays, insurrections, and unlawful assemblies; and he shall apprehend and commit to jail all felons and other offenders (A.C.A. § 14-14-1301). The sheriff also works with the various local municipal law enforcement officials or other state and federal officials charged with law enforcement.

The county clerk is the official bookkeeper of county government and serves as the clerk for the county, quorum and probate courts.

As clerk of the county court, the clerk has the duty of keeping a regular account between the treasurer and the county. The clerk charges the treasurer with all moneys received and credits the treasurer with all moneys dispersed. In addition, the clerk keeps an accurate account of all financial transactions within the county and files all documents, vouchers, and other papers pertaining to the settlement of any account to which the county is involved. It is the responsibility of the county clerk to prepare all checks on the treasury for moneys ordered to be paid by the county court and to keep complete and accurate records of all these financial transactions ready for the court's inspection at any time (A.C.A. § 16-20-402). [An alternate method of the county treasurer issuing checks, allowed by A.C.A. § 14-24-204, is used by many counties.]

The county clerk shall serve, unless otherwise designated by county ordinance, as the secretariat of the quorum court. These duties involve keeping a complete permanent record of the proceedings of the Quorum Court including minutes, ordinances, resolutions and an index to provide easy access to the information (A.C.A. § 14-14-902 and 14-14-903).

As clerk to the probate court, the clerk files all instruments making them a matter of record in decedent estate cases, and swears in all witnesses in contested estates. The clerk, also in this capacity, maintains all records relative to adoptions and guardianship cases within the county.

The county clerk, or the clerk's designee, serves as the secretary of the Board of Equalization and records the minutes of their meetings (A.C.A. § 26-27-307). Also, if the clerk is the preparer of tax books for the county, the clerk is responsible for extending the taxes in the information provided by the assessor and the Board of Equalization (A.C.A. § 26-28-101 through 26-28-108).

The clerk became the official voter registrar with the adoption of Amendment 51 to the Arkansas Constitution in 1966. The clerk maintains an accurate and up-to-date voter registration list within the office and stores the ballot boxes between elections. In addition, the clerk is the custodian of absentee ballots and is responsible for early

voting. It is common practice in many counties for the county clerk to assist the county election commission in the overall performance of the election process. With the increasing complexity of elections, however, there is an increasing trend towards the hiring of election coordinators to aid the county election commission and the county clerk in their respective election responsibilities. (A.C.A. § 7-5-401 et seq.)

The clerk issues marriage licenses (A.C.A. § 9-11-201), and keeps a record of all firms in the county which have incorporated (A.C.A. § 4-26-1201). The clerk issues special licenses allowing certain activities (A.C.A. § 26-76-102).

The circuit clerk is the clerk of the circuit court and juvenile court and usually acts as the ex-officio recorder of the county.

Unless otherwise provided by law, the county recorder is the circuit clerk of the county. In a county that under law has assigned the duties of the county recorder to the county clerk, all Code references to circuit clerk that concern recording functions shall mean the county clerk.

The administrative duties of the circuit clerk are to maintain a record of all proceedings of the circuit courts to enter docket number and name of the defendant and to prepare the dockets for these courts (A.C.A. § 16-20-102). The circuit clerk prepares summons, warrants, orders, judgments, and injunctions authorized by the circuit court for delivery by the county sheriff. The circuit clerk also maintains a file of all cases pending in either court, as well as a record of all past court cases and their disposition (A.C.A. § 16-20-303 and 16-20-304). The clerk has 20 days before commencement of each of the dockets in all cases. In addition, the circuit clerk acts as a secretary to the jury commission by keeping a list of all prospective jurors (A.C.A. § 16-32-101 et seq.).

The circuit clerk is also the ex-officio county recorder; and is responsible for recording deeds, mortgages, liens, and surety bonds, and many other orders and instruments which involve property within the county (A.C.A. § 14-15-401 et seq.). The circuit clerk maintains a record of many miscellaneous items, and files certain licenses. The circuit clerk also swears in all notaries public and files regulations of state agencies which license trade or professional workers.

The county collector is the collector of taxes for the county and collects municipal, county, school and improvement district taxes and turns them over to the county treasurer. The collector is responsible for collecting all property taxes from the first day of March to the fifteenth day of October during the calendar year after they are assessed. By statute, the collector is required to turn over all tax revenue to the treasurer at least once a month (A.C.A. § 26-39-201). The County Depository Board may require the collector and other county officials to settle with the county treasurer more frequently than once a month (A.C.A. § 19-8-106). Taxpayers may pay their taxes in installments, with one-fourth of the total being due between March and April

inclusive, one-fourth being due between the third Monday in April and the second Monday in June inclusive, and the remaining one-half between the second Monday in June and October 15 inclusive in the year succeeding the year in which the levy is made. (A.C.A. § 26-35-501)

Any real or personal property taxes not paid by the fifteenth day of October, or falling within one of the exceptions to the requirement that taxes be paid by October 15 of each year (i.e., postmarked prior to October 15 or paid after October 15 if the fifteenth falls on a weekend or holiday), are considered delinquent and the collector extends a 10% penalty against the taxpayer (A.C.A. § 26-36-201). Before December 1st of each year, the collector of taxes shall prepare a list of delinquent personal property taxes and deliver a copy of the list to a legal newspaper in the county. Within seven (7) days thereafter, the newspaper shall publish the list. If there is no newspaper in the county or district, the publication shall be in the nearest newspaper having a general circulation in the county or districts for which the list is being published. (A.C.A. § 26-36-203)

The duty of the county assessor is to appraise and assess all real property between the first Monday of January and the first of July, and all personal property between the first Monday in January and the thirty-first of May. (A.C.A. § 26-26-1408 and 26-26-1101). All property in the state shall be assessed according to its value on the first of January except merchants and manufacturers inventory that is assessed at its average value during the year immediately preceding the first of January (A.C.A. § 26-26-1201).

The assessor must make an abstract of assessment showing the total assessed value of the county. On August 1st, the assessor turns over to the County Equalization Board his/her Real Property Assessment Book and his/her Personal Property Assessment Book.

The assessor is required to maintain current appraisal and assessment records by securing necessary filed data and making changes in valuations as they occur in land use and improvements. He/she is also charged with staying abreast of all property transactions within the county and keeping a file on all properties updated throughout the year (A.C.A. § 26-26-715).

The county treasurer is the disbursement officer of the county, and is the unofficial or quasi comptroller. A few counties do have a county comptroller. The treasurer is responsible for the custody and disbursement of all county funds and school district funds. The treasurer, therefore, receives county property tax collections, county sales tax collections, county turnback funds, grant funds, fees and fines from other county officials and departments, and revenues from various other sources. The treasurer, after receiving this revenue, distributes the money to the various taxing entities and the other units of the county. The county treasurer signs checks, prepared and signed by the county clerk indicating that the expenditure has been authorized by the county court, to pay employees and creditors of the county. A copy of each check serves as a warrant and is filed in the county financial records. A.C.A. §

14-24-204 provides for an alternate method whereby the county treasurer prepares and issues the check.

The treasurer must keep an accurate and detailed account of all receipts and disbursements of the county (A.C.A. § 14-15-807). The treasurer is required to make a monthly financial report to the quorum court on the fiscal condition of the county (A.C.A. § 14-20-105).

The county treasurer is required to charge a two percent commission on all funds coming to his/her office. There are a few exceptions. No commission is allowed for the handling of borrowed money, proceeds of school bond sales, the teacher's salary fund, money collected from insurance on losses, fire protection premium taxes (Act 833 funds for fire departments, but inactive fire departments will not receive funding under this section) and all non-revenue receipts, which is defined as reimbursement of all or a part of a payment made by a county (A.C.A. § 21-6-302, 6-17-908, 6-20-221 and 14-284-403). Also, the county treasurer is allowed a smaller commission, 1/4 of 1%, on funds from school districts that employ their own treasurer (A.C.A. § 6-13-701) and 1/8 of 1% on funds from municipal improvement districts (A.C.A. § 14-90-913). The commission is not kept by the treasurer but is intended to create a source of revenue accruing to the office from which the salary and operation of the office is paid. Any excess treasurer's commission shall be redistributed to the various entities that were charged on a pro-rata basis (AG Opinion #78-112).

The county coroner is charged with the responsibility of determining the cause of death for those deaths properly the responsibility of the coroner. Although the duties of the county coroner are, necessarily, intermittent, the office is a full-time position. The coroner is tasked with the investigation of deaths occurring within the county 24 hours a day, 7 days a week and 365 days per year. At any time the coroner is required to investigate deaths. When a death is reported to the coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death. (A.C.A. § 14-15-301). These duties are mandated to be completed in very short timeframes.

The county surveyor locates boundaries of specific properties at the request of the assessor, and establishes disputed property lines upon request of the county, circuit or chancery court (A.C.A. § 14-15-702). The surveyor is also county timber inspector and determines the amount of timber cut, records the log markings, and prosecutes persons who remove timber from state owned lands (A.C.A. § 15-32-201).

A constable is a constitutional township official not a county official as some might think. A constable is charged, by law, to conserve the peace in his township (A.C.A. § 16-19-301). In order for a constable to have access to information from the Arkansas Crime Information Center

and to carry a firearm, the officer must receive required training. Uniform and vehicle requirements are also mandated for constables in the performance of official duties (A.C.A. § 14-14-1314).

The legislative body of county government is called the quorum court and is composed of 9, 11, 13 or 15 members depending on the population of the county. The quorum court members are called justices of the peace and are elected for two-year terms from districts within the county. These district officials meet each month, more often if necessary, to conduct county business and review ordinances and resolutions for passage. The county judge is the presiding officer over the quorum court without a vote, but with the power of veto. This veto can be overridden with a 3/5ths vote of the total membership of the quorum court. (See generally A.C.A. § 14-14-801 et seq and 14-14-901 et seq.)

As provided by Amendment No. 55 of the Arkansas Constitution, a county government acting through its quorum court may exercise local legislative authority not expressly prohibited by the Constitution or by law for the affairs of the county (A.C.A. § 14-14-801). Some limitations are: The quorum court cannot declare any act a felony (felonies are covered by the State Criminal Code); quorum courts may not participate in the day-to-day administration of county executive branch offices and exercise no authority unrelated to county affairs (A.C.A. § 14-14-806).

The quorum court may exercise the following powers, but not limited to: A) the levy of taxes in manner prescribed by law; B) appropriate public funds for the expenses of the county in a manner prescribed by ordinance; C) preserve the peace and order and secure freedom from dangerous or noxious activities; provided, however, that no act may be declared a felony; D) for any public purpose, contract, or

join with another county, or with any political subdivision or with the United States; E) create, consolidate, separate, revise, or abandon any elected office or offices except during the term thereof; provided, however, that a majority of those voting on the question at a general election have approved said action; F) fix the number and compensation of deputies and county employees; G) fix the compensation of each county officer with a minimum and maximum to be determined by law; H) fill vacancies in elected county offices; I) provide for any service or performance of any function relating to county affairs; J) to exercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions (A.C.A. § 14-14-801).

In the 2016 November General Election, Arkansans approved Issue 1 with 70.22% voting yes, resulting in the 95<sup>th</sup> amendment to the Arkansas Constitution. Amendment 95 extended the term limits of county offices from two to four years. Beginning in the 2018 General Election, persons elected to the following positions shall serve four (4) year terms: (1) County Judge; (2) Sheriff; (3) Circuit Clerk; (4) County Clerk; (5) Assessor; (6) Coroner; (7) Treasurer; (8) County Surveyor; and (9) Collector of taxes.” Amendment 95 also amended Article 7 of the Arkansas Constitution to add § 53 precluding county officers from being appointed or elected to any civil office under the state during the term for which he or she had been elected.

## Chapter Two - DUTIES OF THE OFFICE

The county judge is an elected official in county government. The Constitution of the State of Arkansas provides for the election of the county judge to a four-year term of office with the requirements that he/she be at least 25 years of age, a qualified elector, and a resident of the county. In the event of a vacancy in office, the quorum court fills the vacancy by appointment, the appointee serving until the next general election, when a successor is elected. Before beginning his/her duties, the county judge must enter into an official bond, to guarantee his/her proper performance of the duties. This may be accomplished either through the State Fidelity Bond Program, which covers all employees on the payroll, or a Fidelity Bond purchased for the officer. Before entering their duties, the County Judge shall take, before some person authorized by law to administer oaths, the following oath:

Senators and Representatives, and all judicial and executive, State and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices, shall take and subscribe to the following oath of affirmation: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of \_\_\_\_\_, upon which I am now about to enter." Arkansas Constitution Article 19 § 20.

The county judge is entitled to that salary fixed for his/her office by applicable law and quorum court appropriation. To assist the county judge in the performance of his/her duties, the county judge may appoint such number of assistants as the quorum court may approve by funding. The county judge generally supervises the personnel within his/her employment and may discharge them and regulate their employment, within the guidelines established by the quorum court.

The office of the county judge is to be operated according to all constitutional and statutory provisions of law in concurrence with the annually approved budget for the office.

The chief executive officer for county government is the county judge. As chief executive, the county judge authorizes and approves the disbursement of all appropriated county funds, operates the system of county roads, administers ordinances enacted by the Quorum Court, has custody of county property, accepts grants from federal, state, public and private sources, hires county employees, except those persons employed by other

elected officials of the county, and presides over the quorum court without a vote, but with the power of veto.

All powers not vested in the county judge as the chief executive officer of the county shall continue to be exercised and administered by the county court, over which the county judge shall preside. The county court, in fact, is the county judge sitting in a judicial role. (A.C.A. § 14-14-1102)

The county court of each county has exclusive original jurisdiction in all matters relating to:

1. **County Taxes:** Including real and personal ad valorem taxes collected by county government. The county court's authority in this area includes jurisdiction over the assessment of property, equalization of assessments on appeal, tax levies, tax collections, and the disbursement of tax proceeds.
2. **Paupers:** The court's jurisdiction includes all county administrative actions affecting the conduct of human services programs serving indigent residents of the county where such services are financed in total or in part by county funds.
3. **Jurisdiction** in each other case that may be necessary to the internal improvement and local concerns of the respective counties including county financial activities and works of general public utility or advantage designed to promote intercommunication, trade, and commerce, transportation of persons and property, or the development of natural resources, which are not otherwise transferred to the county judges to be administered in an executive capacity.
4. **The county court** shall have all other jurisdiction now vested by law in the county court excepting with respect to those powers formerly vested in the county court under the provisions of Section 28 of Article 7 of the Constitution that were transferred to the county judge under the provisions of Section 3 of Amendment 55 to the Arkansas Constitution. (A.C.A. § 14-14-1105)

In addition to the duties of the county court, the county judge is responsible for supervising the activities of the various state and federal agencies operating at the county level. The county judge must also apply for all federal and state assistance moneys for which the county is eligible, and appoints the members to all administrative and advisory boards in the county.

## Chapter Three - TIMETABLE

This section was included to assist newly elected county judges by outlining the most pertinent activities of the office and placing them in a calendar format. This allows the county judge or member of his/her staff to review the major activities of the office.

The various activities are listed in the month in which they should take place and the Arkansas Code Annotated reference is listed for each.

## **COUNTY JUDGES' TIMETABLE**

### **JANUARY**

The county judge shall act as presiding officer over all regular and special meetings of the quorum court, without a vote, but with the power of veto; (Amendment 55 to the Arkansas Constitution of 1874 and A.C.A. § 14-14-1101 - 14-14-1103)

The justices of the peace elected in each county shall assemble and organize as a county quorum court body on the first regular meeting date after the beginning of the justices' term in office, or the county judge may schedule the biennial meeting date of the quorum court on a date in January other than the first regular meeting date of the quorum court after the beginning of the justices' term. At the first regular meeting, the quorum court shall establish the date, time, and location of meetings of the quorum court. The organizational ordinance adopted at the first regular meeting of the quorum court shall be effective upon adoption. Thereafter, the justices shall assemble each calendar month at a regular time and place as established by ordinance and in their respective counties to perform the duties of a quorum court, except that more frequent meetings may be required by ordinance. By declaration of emergency or determination that an emergency exists and the safety of the general public is at risk, the county judge may change the date, place, or time of the regular meeting of the quorum court upon twenty-four-hour notice. (A.C.A. § 14-14-904)

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day next following the last day of each calendar month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

County Depository Board designates the bank which funds will be deposited into. (A.C.A. § 19-8-107). The board shall designate depositories and supervise the depositing of all county funds and all other public funds held by the county treasurer, except funds of a school district, and shall also designate depositories and supervise the depositing of all funds collected and held by the county collector. The board may also require county officials to settle with the county treasurer more frequently than required by Arkansas law. (A.C.A. § 19-8-104 and 19-8-106)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

Each county intergovernmental cooperation council shall meet at least one (1) time annually.

All meetings of the council shall be open to the public and shall be held in a public meeting room.

All meetings of the cooperation council shall be at the call of the chair unless a majority of the council's membership shall petition for a meeting to be held.

The secretary of each council shall notify the public and the press of council meetings no later than ten (10) days prior to the date of such meetings.

The County Judge shall serve as chairman of the council and shall have full voting power and shall have veto power over any action taken by the council. It shall require a two-thirds (2/3) majority vote of all council members to override a veto. (A.C.A. § 14-27-101 through 14-27-103)

### **FEBRUARY**

Preliminary sales to assessment ratio studies report from the Assessment Coordination Department made to the assessor and the county judge before March 1 of the assessment year. (A.C.A. § 26-26-304)

The preparer of the tax book shall compile and deliver to the Assessment Coordinator Department by February 15 the Uniform Property Tax Assessment, Settlement, and Collection Information Report. Failure to do so shall result in loss of "reappraisal funding" to the county. (Assessment Coordination Department Rule 3.31, 5.03)

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

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### **MARCH**

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The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the fifth day of each month. (A.C.A. § 21-6-310)

The clerk of the county court for each county shall annually cause to be published one (1) time, in one (1) newspaper published, a financial statement of the county, including the receipts and expenditures for that period and a detailed statement of the indebtedness and financial condition of said county. Such financial statement shall be published by March 15 of each year for the previous fiscal year. (A.C.A. § 14-21-102)

#### **APRIL**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the fifth day of each month. (A.C.A. § 21-6-310)

#### **MAY**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the fifth day of each month. (A.C.A. § 21-6-310)

The County Judge and the quorum court shall make appointment of their members of the Equalization Board for the term of the expiring member during the month of May of each year in which the term of any of their members of the Equalization Board expire. (A.C.A. § 26-27-304)

Deadline for listing all real and personal property that is required to be listed for taxation is May 31st of each year. (A.C.A. § 26-26-201)

#### **JUNE**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

#### **JULY**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

#### **AUGUST**

Board of Equalization meets on August 1<sup>st</sup> to equalize assessments within the county. However, if August 1 falls on a Saturday, a Sunday, or a legal holiday the meeting shall be held the next business day. (A.C.A. § 26-27-309)

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

#### **SEPTEMBER**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the fifth day of each month. (A.C.A. § 21-6-310)

Begin work, along with county treasurer, on the anticipated revenues for the county in the next calendar year. Also, begin work, along with the quorum court on the proposed appropriations of the expenses of the county for the next calendar year. (A.C.A. § 14-14-904[b])

## **OCTOBER**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

All personal and real estate taxes are due and payable on the fifteenth day of October. In the event the 15<sup>th</sup> day of October falls on a Saturday, Sunday, or a holiday observed by the United States Postal Service, the taxes are due on the following business day. (A.C.A. § 26-35-501 and 26-36-201)

## **NOVEMBER**

The quorum court at its regular meeting in November of each year shall levy the county, municipal, and school taxes for the current year, and before the end of each fiscal year, the court shall make appropriations for the expenses of county government for the following year. The Director of the Assessment Coordination Department may authorize an extension of up to sixty (60) days of the date for levy of taxes upon application by the county judge and county clerk of any county for good cause shown resulting from reappraisal or rollback of taxes. (A.C.A. § 14-14-904)

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

## **DECEMBER**

The county treasurer should receive highway and general turnback from the state treasurer by the tenth day of each month. (A.C.A. § 27-70-207[a] and A.C.A. § 19-5-602[b])

The county treasurer shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand. (A.C.A. § 14-20-105)

Fees and fines collected by each county official are to be deposited with the county treasurer on the first day of each month and no later than the tenth day of each month. (A.C.A. § 21-6-310)

All county tax collections settlements shall be made and filed with the county courts on or before the fourth Monday of December each year (A.C.A. § 26-39-402)

It is hereby made the duty of the county courts to pass upon the settlements of county collectors and to approve, reject or restate the same on or before the thirty-first of December of each year. Failure of the county judge to so approve, reject or restate said settlements of said collectors within said period of time shall constitute a misfeasance in office and shall be deemed a violation, punishable by a fine of \$100.00 or removal from office. (A.C.A. § 26-39-402)

The quorum court, at its regular meeting in November of each year, shall levy the county, municipal and school taxes for current year; and, before the end of each fiscal year, the county shall make appropriations for the expenses of county government for the following year. The Director of the Assessment Coordination Department may authorize an extension of up to sixty (60) days of the date for levy of taxes upon application by the county judge and county clerk of any county for good cause shown resulting from reappraised or rollback of taxes. Provided that nothing in this Section shall prohibit the quorum court from making appropriation amendments at any time during the current fiscal year. (A.C.A. § 14-14-904[b])



## Chapter Four - REVENUE SOURCES

Investments	§§19-8-104 - 19-8-107
A. Ad Valorem Property Taxes	Article 16, Section 9 of Arkansas Constitution
1. General Purpose Tax	Amendment 61 & §26-79-101
2. Road Tax	Amendments 62 & 65
3. Construction Tax	Amendment 32
4. Hospital Tax	Amendment 38
5. Library Tax	
B. Non-Property Taxes	
1. Vehicle Tax	§§26-78-101 - 120
2. Liquor Tax	§§3-4-201, 3-4-202, 3-4-208
3. Beer Tax	§§3-5-101, 3-5-103, 3-5-201 - 225
4. Privilege Tax – Public Exhibitions	§26-26-202
5. Privilege Tax - Ferries	§26-76-108
6. Marriage License Tax	§14-20-111
7. Mixed Drink Tax	§3-9-213
8. Private Club Tax	§§3-9-221 - 225
9. County Sales & Use Tax	§§26-74-201, 26-74-301, §26-74-401, and 14-164-301
10. County Sales Tax for Capital Improvements	§§14-164-301 – 340
11. County Sales & Use Tax	§§26-74-401 – 414
12. County Income Tax	§§26-73-101 – 115
13. Timber Tax	§§26-61-101
C. Ad Valorem Bonds	
1. Construction	Amendments 62 & 65
2. Industrial Development	Amendments 62 & 65
D. Revenue Bonds	
1. Highways	§§26-78-102 - 120
2. Hospital, Nursing or Rest Home	§§14-265-101 - 111
3. Industrial Development Bonds	§§14-164-401 - 419
4. Parks & Rec. Facilities	Amendment 65; §§19-9-601 - 607
5. Pollution Control	§§14-267-101 - 113
6. Port Facilities	§§14-16-111, and 14-186-101, 14-186-203 - 213, 14-186-301 – 312 and 4-186-401 – 417
7. Solid Waste Management	§§8-6-212 – 222; 8-6-301 – 307; 8-6-401 – 416; 8-6-501 – 510, & 8-6-601 - 611
8. Tourism	§§14-170-201 – 214
E. Fines, Forfeitures - Court Costs	§§16-96-403, 16-68-301
F. Fees and Commissions	
1. Prisoner Commissary Services	§12-41-105
2. Prisoner Telephone Service	§12-41-105
G. Intergovernmental Transfers	
1. State General Turnback (County Aid)	§19-5-602
2. State Highway Turnback	§§27-70-207
3. State Aid/Secondary Roads	§§27-72-301 - 321 & 27-72-101
4. State Severance Taxes	§26-58-124
5. State Sale of Tax Forfeited Land Delinquent Lands	§26-37-205
6. Revenue-Forest Reserves	§19-7-404
7. Sale or Lease of Public Domain	§19-7-402
8. State Aid/ Unpaved Roads	§14-305-101
H. Miscellaneous	
1. Lease of County Property	§14-16-110
2. Lease/Sale of County Hospital	§14-16-108
3. Sale of County Property	§14-16-105
4. Solid Waste Management Fee	§8-6-212

## **COUNTY GOVERNMENT FINANCE**

County government is supported financially from three basic sources: the federal government, the state government and the local government.

The federal revenues include payments-in-lieu of taxes (commonly referred to as PILT) on federally owned land in the county, and various federal grant-in-aid programs.

The state revenues include severance taxes, county aid (or general turnback), motor fuel taxes (or road turnback), and various state grant-in-aid programs.

The local revenues include up to 5 mill general property tax, up to 3 mill road tax, fines and costs, fees and commissions. Also, the local option sales and use taxes are considered local revenue.

The reliance on these sources of funding has changed significantly over the past two decades. For instance, in 1971, 54% of the county revenue was collected at the local level, 43% at the state level, and only 3% at the federal level. The county revenue resources in the early eighties were divided approximately 1/3 from the federal level, 1/3 from the state level, and 1/3 from the local level. However, with the demise of federal revenue sharing and the decrease in the percentage of state dollars allocated to local government, the county budget process has taken on a different look today.

The local property tax system in this state is based on the assessment of real and personal property one year and the collection of taxes on that assignment the following year. The collection period is from the first business day in March until October 15th of each year. This seven (7) month tax collection period causes a majority of taxpayers to wait until close to the October 15th deadline to pay their taxes. (A.C.A. § 26-35-501 and 26-36-201)

The current collection system of local property tax was designed to collect revenue in one year (by October 15) to be appropriated and spent in the next year. This is a good system and has worked well for years, but state mandates and pressure on counties to provide services has caused most counties to utilize part of these revenues before the next fiscal year. Once a county starts to appropriate and spend these revenues early, it just compounds the problem and causes a more severe cash flow dilemma the next year. (A.C.A. § 26-35-501 and 26-36-201)

### **INVESTMENTS**

Counties may invest funds in (1) Arkansas Bank certificates of deposit; (2) Arkansas financial institution repurchase agreements, defined as the purchase of permitted government securities as an obligation in which the seller agrees to repurchase at full value plus interest as determined in the repurchase agreement; and (3) bonds of the United States of America, defined as direct obligations of the United States of America and obligations, the

principal and interest on which are fully guaranteed. All of these are insured by the Federal Deposit Insurance Corporation (FDIC) or the "full faith and credit of the Federal Government".

The county judge, the county treasurer and the county collector (sheriff/collector if it is a dual office) make up the County Depository Board. The board shall designate depositories and supervise the depositing of all county funds and all other public funds held by the county treasurer, except funds of a school district, and shall also designate depositories and supervise the depositing of all funds collected and held by the county collector. (A.C.A. § 19-8-106)

A comprehensive investment program will generate additional revenues for the involved taxing units. Properly organized, the program will have two facets, one geared to the short-term investment of "working" funds and the other involving longer terms of investment of "idle" funds.

## **COUNTY REVENUES**

### **A. AD VALOREM PROPERTY TAXES**

Ad valorem property taxes are those levied on real and personal property located within the county. Taxes are levied at a fixed rate in terms of mills (one mill equals \$.001) on the assessed value of the property.

Arkansas law provides the assessed value shall not exceed twenty percent (20%) of true and full market or actual value. Further, if assessed value in any county falls below eighteen percent (18%) of true and full market or actual value, State aid or turnback will be withheld from the county in an amount based on the percentage it falls below eighteen percent (18%). (A.C.A. § 26-26-303 and 26-26-304)

Whenever the September 15 ratio for the classifications of market value real estate, personal property (business), or personal property (auto and other) or agricultural and timber falls below eighteen percent (18%) or above twenty-two percent (22%) of full fair market value, the county shall be deemed to have failed the ratio study and shall be subject to penalties and corrective actions. (A.C.A. § 26-26-304)

Furthermore, when a ratio study determines that the county does not meet the ratio standards found in the International Association of Assessing Officers' standards on ratio studies, the county shall be deemed to have failed the ratio study and shall be subject to the corrective actions.

### **1. General Purpose Tax**

**Source:** Tax not to exceed five (5) mills on the assessed value of real and personal property within the county.

**Use:** Support all purposes of county government.

**Implementation:** Imposed annually by action of the quorum court.

**Authority:** Constitution of Arkansas, Article 16, Section 9.

## **2. Road Tax**

**Source:** Tax not to exceed three (3) mills on the assessed value of real and personal property within the county.

**Use:** For making and repairing of public roads and bridges of the respective counties and for no other purpose. It is permissible to pay up to one-half of the county judges' salary from this fund. (A.C.A. § 14-14-811)

One half of the amount collected upon property within the corporate limits of any city or town shall be apportioned back to that city by the county collector for use in making and repairing the streets and bridges in the respective cities or towns (except where a greater amount is now authorized by law). (A.C.A. § 26-79-104)

**Implementation:** Since the passage of Amendment 61 in 1982, the quorum court of all counties has the option of levying up to three mills of tax on all real estate and personal property in the County.

**Authority:** Constitution of Arkansas, Amendment 61 and A.C.A. § 26-79-101.

## **3. Construction Tax**

**Source:** Tax not to exceed five (5) mills on the assessed value of real and personal property within the county or a local sales and use tax in the amount of .125, .25, .50, .75, or 1.0 percent ( $\frac{1}{8}$ ,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$ , or 1%) to retire bonds in accordance with law. May levy multiple taxes, but aggregate rate at any one time may not exceed 1%.

**Use:** For capital improvements of a public nature, as defined by the General Assembly in amounts approved by a majority of those voting on the question.

**Implementation:** Whenever a legislative body shall determine the need to issue bonds for capital improvement or industrial development purposes, it shall authorize the issuance of such bonds by ordinance specifying the principal amount of bonds to be issued, the purpose or purposes for which the bonds are to be issued and the maximum rate of any ad valorem tax or local sales and use tax for that purpose to be levied and pledged to the retirement of such bonds. The election shall be held no earlier than thirty (30) days after it is called by the legislative body.

If a majority of those voting on the question vote for the "construction" and the "building tax", the quorum court may impose the tax at either annual or special session which tax

will remain in effect until sufficient funds are collected to pay off and discharge the cost.

**Authority:** Constitution of Arkansas, Amendment 62 and A.C.A. § 14-164-301 through A.C.A. § 14-164-340.

## **4. Hospital Tax**

**Source:** Tax not to exceed one (1) mill on the assessed value of real and personal property within the county.

**Purpose:** For operation, maintenance, and support of any public hospital owned by the county or municipal corporation therein, whether operated by the court or municipal corporation or by a benevolent association as the agent or lessee of such county or municipal corporation.

**Implementation:** By petition of 100 or more electors to the county judge, who then shall submit the question to the voters at a general election. If a majority of those voting on the question vote for a tax, it shall be continually levied until raised, lowered or abolished at a subsequent general election.

**Authority:** Constitution of Arkansas, Amendment 32.

## **5. Library Tax**

**Source:** Tax not to exceed five (5) mills for library operations on the assessed value of real or personal property within the county and tax not to exceed three (3) mills for capitol improvements or construction on the assessed value of real and personal property within the county.

**Use:** For the purpose of maintaining a public county library or a county library service or system to include coordinated services of a city public library and a county public library or coordinated services of libraries of different counties. The construction of or capitol improvements to existing county public library for up to the three (3) mills.

**Implementation:** By petition of 100 or more electors to the county court which shall then submit the question to the voters at a general election. If a majority of those voting on the question vote for a tax, it will be continually levied until raised, lowered, or abolished at a subsequent general election. County quorum court may establish a filing fee not to exceed \$2000 for petitions for special election.

**Authority:** Constitution of Arkansas, Amendments 38 and 72, A.C.A. § 13-2-409

# **COUNTY REVENUES**

## **B. NON-PROPERTY TAXES**

Non-property taxes are taxes imposed in return for the privilege of carrying out some specified activity within the county. While in some instances the tax is imposed because of ownership and use of property, the

distinguishing feature is that it is imposed for the privilege of using the property and no tax would be imposed for mere ownership. Taxes are imposed by the counties at a uniform rate within the limits provided in the various sections of the Arkansas Code Annotated. These taxes are also sometimes referred to as license fees. Funds so collected are public funds which must be deposited in the county treasury and may not be withheld by the official effecting collection for salaries, emoluments or expenses.

### **1. Vehicle Tax**

**Source:** Tax not to exceed five dollars (\$5.00) on owners of vehicles residing within the county for the privilege of using and operating motor vehicles on the public roads and highways of the State. May be upon owners residing anywhere within the county or only upon those residing outside corporate limits of municipalities.

**Use:** Credited to the County Highway Fund for use, to include securing of bonds, in the maintenance, construction and reconstruction of roads, bridges and other public ways in the county highway system, except that funds collected from persons within the corporate limits of municipalities are remitted to the respective municipalities. Revenues may also be used for providing county ambulance services and for purchasing firefighting equipment. (A.C.A. § 26-78-108)

**Implementation:** Adopted by resolution of the quorum court and submitted in a special election to the voters (in case tax is on those residing outside municipalities only those are eligible to vote). If a majority of those voting on the question vote for the tax, a tax can be continually imposed annually by the quorum court not to exceed the amount approved by the voters.

**Authority:** A.C.A. § 26-78-101 through A.C.A. § 26-78-120.

### **2. Liquor Tax**

**Source:** Tax on the sale and manufacture of vinous (except wines), spirituous or malt liquors on premises located outside the limits of a municipal corporation. Tax shall not exceed one-half (1/2) of the license fee collected by the Director of Alcoholic Beverage Control for the State of Arkansas.

**Use:** Support all purposes of county government.

**Implementation:** By the county court.

**Authority:** A.C.A. § 3-4-201, 3-4-202 and 3-4-208.

### **3. Beer Tax**

**Source:** Tax on the retail sale of light wine and/or beer on premises located outside the corporate limits of municipality. Tax is in form of a license fee not to exceed fifteen dollars (\$15.00) on gross sales not to exceed one thousand dollars (\$1,000.00); twenty dollars (\$20.00) on

gross sales not to exceed two thousand dollars (\$2,000.00); and not to exceed five dollars (\$5.00) on each one thousand dollars (\$1,000.00) of gross sales in excess of two thousand dollars (\$2,000.00) of gross sales. (A.C.A. § 3-5-212)

**Use:** Support all purposes of county government.

**Implementation:** By the County Court.

**Authority:** A.C.A. § 3-5-201 through A.C.A. § 3-5-224, 3-5-101 and 3-5-103.

### **4. Privilege Tax: Public Exhibitions**

**Source:** Tax in an amount fixed by the county court for each and every public exhibition given by any person or persons, any part of the proceeds of which is for his or her personal profit. Does not apply to theaters and opera houses in cities of the first or second class and incorporated towns where no liquor is sold on premises or by management. Provided further that in cities of twenty thousand (20,000) inhabitants and over, the license for theaters and opera houses where no liquor is sold on the premises shall be one hundred dollars (\$100.00) for county purposes.

**Use:** Support all purposes of county government.

**Implementation:** Imposed by county court.

**Authority:** A.C.A. § 26-76-202.

### **5. Privilege Tax: Ferries**

**Source:** A tax of not less than one dollar (\$1.00) nor more than one hundred dollars (\$100.00) on any person operating any ferry over or across any navigable stream so as to charge any compensation for crossing same.

**Use:** Support all purposes of county government.

**Implementation:** A.C.A. § 27-87-205.

**Authority:** A.C.A. § 27-87-101 through 27-87-209.

### **6. Additional Marriage License Tax**

**Source:** A tax not to exceed five dollars (\$5.00) in addition to any other tax on each application for marriage license.

**Use:** Proceeds of the tax credited to County General Fund and appropriated by the quorum court for use as provided by law.

**Implementation:** Imposed by the quorum court.

**Authority:** A.C.A. § 14-20-111.

### **7. Mixed Drink Tax**

**Source:** A license fee and/or supplemental tax on licensed premises within the county if located outside incorporated limits of hotels and restaurants selling alcoholic (other than beer or native wine) beverages for on-premises consumption. Fees shall not exceed:

Hotel having fewer than 100 rooms: .....\$750.00

Hotel having 100 or more rooms: .....\$1,500.00

Restaurant having a seating capacity of less than 100 persons:.....\$750.00

Restaurant having a seating capacity of 100 or more persons:.....\$1,500.00

Large meeting or attendance facility as defined in A.C.A. § 3-9-202(16)(B);.....\$2,500.00

The county may also levy a supplemental tax on ten percent (10%) upon gross receipts from sale of such beverages. In addition to the tax levied under the previous sentence, a supplemental tax of four percent (4%) is levied on the gross proceeds or gross receipts from the sale of alcoholic beverages. However, the four percent (4%) tax shall not apply to gross proceeds or gross receipts from the sale of beer or wine. (A.C.A. § 3-9-212, A.C.A. § 3-9-213)

**Use:** Support all purposes of county government.

**Implementation:** A.C.A. § 3-9-212, 3-9-213 and county court.

**Authority:** A.C.A. § 3-9-201 through A.C.A. § 3-9-219 and 3-9-232.

**8. Private Club Tax**

In addition to the fee or supplemental tax as levied herein, any city or incorporated town or any county in which the permitted premises are located, if located outside the limits of a city or incorporated town, may levy an additional permit fee or supplemental tax or both additional permit fee and supplemental tax not to exceed one-half (1/2) of the amount of the fee or rate provided in this section. (A.C.A. § 3-9-223(f)(1))

All fees and taxes levied hereunder by any city or county shall be used for city or county general purposes or for city or county economic development purposes. (A.C.A. § 3-9-223)

**Use:** Support all purposes of county government.

**Implementation:** A.C.A. § 3-9-221 through 3-9-225 and county court.

**Authority:** A.C.A. § 3-9-221 through 3-9-225

**9. County Sales & Use Tax**

**Source:** A .125, .25, .50, .75, or 1.0 percent (1/8, 1/4, 1/2, 3/4, or 1%) countywide sales and use tax is now permissible in counties beginning with the passage of Act 26 of 1981 (Extraordinary Session) as amended. This is Arkansas Code Annotated 26-74-207. Up to a one percent (1%) tax shall apply on the gross receipts from the sale of retail, within the county, on all items which are now subject to the Arkansas Gross Receipts Tax, as set forth in the provisions of A.C.A. § 26-52-101 et seq. In counties where a .125, .25, .50, .75, or 1.0 percent (1/8, 1/4, 1/2, 3/4, or 1%) sales and use tax is levied, the tax imposed also applies an excise tax on the storage, use or consumption within such county of tangible personal property purchased, leased or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use or other consumption in such county at a rate of .125, .25, .50, .75, or 1.0 percent (1/8, 1/4, 1/2, 3/4, or 1%) of the sale price of the property or, in the case of leases or rentals, of said lease or rental price, the rate of said use tax to correspond to the rate of the sales tax portion of said tax. Provided that the use tax portion of said local sales and use tax shall be collected according to the provisions of the Arkansas Compensating Use Tax. (A.C.A. § 26-53-101 et seq.)

**Maximum tax limitation.**

(a) Any county general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes, and vendors shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(b)(1) Each vendor who is liable for one (1) or more county sales or use taxes shall report a combined county sales tax and a combined county use tax on his or her sales and use tax report.

(2) The combined county sales tax is equal to the sum of all sales taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(3) The combined county use tax is equal to the sum of all use taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(c) This provision applies only to taxes collected by the Director of the Department of Finance and Administration. (A.C.A. § 26-74-220)

**Use:** Support all purposes of county government.

**Implementation:** The quorum court shall pass an ordinance calling an election that shall be held from thirty (30) days to one hundred and twenty (120) days of the ordinance calling the election. The revenue is distributed to

all incorporated cities within the county and the county government based on the portion of the population which a city or the rural population for the county bears to the entire county population, unless an inter-local agreement is entered into by the county and all cities which stipulates a different distribution formula.

**Authority:** A.C.A. § 26-74-201 through 26-74-223

**Note:** Since the legislation regarding sales and use taxes is now complex and so complicated, the Association of Arkansas Counties recommends obtaining the services of adequate legal counsel on all county sales and use tax matters.

## **10. County Sales Tax for Capital Improvements**

**Source:** A .125, .25, .50, .75, or 1.0 percent ( $\frac{1}{8}$ ,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$ , or 1%) countywide sales and use tax is now permissive in counties with the passage of Act 871 of 1985 as amended. This is Arkansas Code Annotated 14-164-301 through 14-164-339. The Act was passed to implement Amendment 62 of the Arkansas Constitution to allow the financing of capital improvements of a public nature and the financing of facilities for the securing and developing of industry. The financing may be done by bonded indebtedness or if a legislative body determines that a .125, .25, .50, .75, or 1.0 percent ( $\frac{1}{8}$ ,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$ , or 1%) sales or use tax or any other local tax authorized by law would, if levied for no longer than twenty-four (24) months, and thirty-six (36) months for criminal justice facilities, produce sufficient revenue to finance capital improvements of a public nature without resorting to a bond issue, the legislative body may dispense with the issuance of bonds, levy the tax for no longer than twenty-four (24) months and thirty-six (36) months for criminal justice facilities, and appropriate the resulting revenues, subject to the Arkansas Constitution, Article 12, Section 4, paragraphs 2 through 4.

**Use:** Support of capital improvements as defined in 14-164-303 and 14-164-339.

**Implementation:** The quorum court shall pass an ordinance calling an election that shall be held from thirty (30) days to one hundred and twenty (120) days of the ordinance calling the election. All revenues collected under this sales and use tax for any county are pledged to secure the retirement of bonds authorized by the adoption of this sales and use tax.

**Authority:** 14-164-301 through 14-164-340.

**Note:** Since the legislation regarding sales and use taxes is now complex and so complicated, the Association of Arkansas Counties recommends obtaining the services of adequate legal counsel on all county sales and use tax matters.

## **11. County Sales and Use Tax**

**Source:** The county quorum court of any county not having a countywide one percent (1%) sales and use tax on March 14, 1991 may call an election for the levy of a one-half percent (0.5%) countywide sales and use tax for any purpose for which the county general fund or county road fund may be used including allocating portions of this tax to the municipalities located therein. The election shall be held within one hundred twenty (120) days of the ordinance calling the election. (A.C.A. § 26-74-402)

The quorum courts shall notify their respective county board of election commissioners that the measure has been referred to the vote of the people and shall submit a copy of the ballot title to their respective boards.

**Use:** Support all purposes of county government.

**Implementation:** The quorum court shall pass an ordinance calling an election on the issue. The proceeds of the sales and use tax are to be distributed on a base of per capita to the cities and towns within the county that do not levy a local (city) sales and use tax.

**Authority:** A.C.A. § 26-74-401 through 26-74-414.

**Note:** Since the legislation regarding sales and use taxes is now complex and so complicated, the Association of Arkansas Counties recommends obtaining the services of adequate legal counsel on all county sales and use tax matters.

## **12. County Income Tax**

**Source:** A local government may levy a tax upon income of its individual residents, and corporations and individuals owning a business within the boundaries of the local government levying the tax, but no tax shall be levied on the income of corporations or other business entities in any local governmental unit unless a like tax is levied on the income of individual residents of such governmental unit. (A.C.A. § 26-73-104)

**Use:** Support all purposes of county government.

**Implementation:** The quorum court shall pass an ordinance calling an election on the issue. Any taxes proposed by ordinance at the quorum court of the county shall be designed to benefit not only the county, but also the municipalities located wholly or partially within the county. (A.C.A. § 26-73-103)

**Authority:** A.C.A. § 26-73-101 through 26-73-115.

## **13. Timber Tax**

**Source:** ACA 26-61-107, Classification of Lands, provides for the classification of lands upon the assessment records by the Assessor as per ACD standards and submission to the county clerk for extension of the tax books, as per the rate per acre--**twenty (20) cents per acre**. These taxes are not property taxes (ACA 26-61-104) but to be collected

by the Collector at the same time property taxes are collected (ACA 26-61-108).

Use: The timber tax is for the maintenance, operations and improvement of the Arkansas Forestry Commission in the statewide program for the detection, prevention and suppression of forest fires.

**Implementation:** For those counties that do not place the tax on timber on their levy ordinance, please just be sure that you properly extend the timber tax on the tax books at the increased rate of **twenty (20) cents per acre** as provided by Act 1391 of 2013 for the 2013 assessment year and in accordance with ACA 26-61-107.

Several counties place the levy of the timber tax on the levy ordinance (despite that the timber tax is affixed by the General Assembly by virtue of state law; the timber tax is explicitly declared not to be a property tax under ACA 26-61-104; ACA 26-61-107 directs extension of the tax levied by the state on the tax books and does not require a levy ordinance). For those counties, please review your levy ordinance to verify if the levy ordinance reflects the rate increase to **twenty (20) cents per** as provided by Act 1391 of 2013, effective for the 2013 assessment year.

Apparently some counties that place the timber tax in their levy ordinance have made an error in the drafting of the levy ordinance by not adopting the increase placed into effect by the General Assembly. County officials should properly extend the timber tax on the tax books at the increased rate in accordance with Act 1391 of 2013 for the 2013 assessment year. State law prevails over a flawed ordinance creating a conflict (ACA 14-14-805 and 808)--Act 1391 of 2013, ACA 26-61-103 prevails.

Also, to assure no conflict or confusion exists or persists the county judge, acting as the county court, may enter a county court order as authorized by ACA 14-14-904 to correct clerical errors or scrivener's errors. In essence, while it may not be necessary, in counties that place the state timber tax on their levy ordinance and have in error not reflected the increased timber tax of **twenty (20) cents per acre**, the county court may avoid any conflict or confusion (and assure compliance with the law) by entering a county court order that finds that: a clerical error was made in the drafting of the levy ordinance; that Act 1391 of 2013 increased the tax on timberlands from fifteen (15) cents to **twenty (20) cents per acre**; and that the levy ordinance shall be deemed amended to conform to law, to correct the clerical error and to assure the increase of the tax on timber enacted under Act 1391 of 2013, ACA 26-61- 103, from fifteen (15) cents to **twenty (20) cents per acre** shall be extended on the tax books in accordance with ACA 26-61- 107.

**Authority:** ACA 26-61- 107

## COUNTY REVENUES

### C. AD VALOREM BONDS

Issuance of bonds is a means by which counties can generate revenues over and above that provided by recurring sources and can incur indebtedness in excess of the revenue from all sources for the current fiscal year, prohibited in general by the Arkansas Constitution, Amendment 10. Two kinds or classes of bonds may be issued which are identified by the means in which the bonds are secured and paid off, ad valorem property taxes and revenues.

#### **1. Construction: Source, Use & Conditions**

The legislative body of a municipality or county, with the consent of a majority of the qualified electors voting on the question at an election called for that purpose, may authorize the issuance of bonds for capital improvements of a public nature, as defined by the general assembly, in amounts approved by a majority of those voting on the question either at an election called for that purpose or at a general election. (Ark. Const. Amendment 62, § 1)

A tax is pledged as security for the indebtedness and the tax continually levied by the quorum court at the regular levying session until the indebtedness is discharged or liquidated.

**Authority:** Constitution of Arkansas, Amendments 17, 25, 62 and 65 and A.C.A. § 14-164-301 et al

#### **2. Industrial Development: Source, Use & Conditions**

In addition to the authority for bonded indebtedness set forth in the above article, any municipality or county may, with the consent of the majority of the voters voting on the question at an election held for that purpose, issue bonds in sums approved by such majority at that election for the purpose of financing facilities for the securing and developing of industry within or near the county holding the election.

To provide for payment of principal and interest of the Bonds, the county may levy a special tax not to exceed five (5) mills on the dollar of the taxable real and personal property therein.

**Authority:** Constitution of Arkansas, Amendments 49 & 62.

## COUNTY REVENUES

### **D. REVENUE BONDS**

#### **1. Highways/ Roads**

**Source:** Issuance and sale by county court of bonds bearing interest not to exceed four and one-half percent (4 1/2%) interest per annum. Such bonds are special obligations and not general obligations of the county. (A.C.A. § 26-78-114)

**Use:** Alone or with other available revenues for construction and re-construction of roads, bridges and other public ways in the County Highway System.

**Conditions:** Issuance of bonds and sums to be issued must be approved by a majority of those voting on the question at an election for that purpose. Additionally, a county vehicle tax must have previously been approved by the voters or must be approved at the same time, the proceeds of which will be pledged to liquidate the bonds.

**Authority:** A.C.A. § 26-78-102 through 26-78-120.

## **2. Hospital, Nursing Home or Rest Home**

**Source:** Issuance and sale by county court of bonds bearing interest not to exceed ten percent (10%) per annum. Such bonds shall be special obligations and not general obligations of the county.

**Use:** For purposes in connection with the county authority to own, acquire, construct, reconstruct, extend, equip, improve, maintain, operate, sell, lease, contract concerning, or otherwise deal in or dispose of any land, buildings or facilities of any and every nature that can be used for a hospital, nursing home or rest home in the county.

**Conditions:** Issuance of the bonds shall be by order of the county court. Referral to the voters is not required. A statutory mortgage lien on the property will exist in favor of the bondholders.

**Authority:** A.C.A. § 14-265-101 through 14-265-111.

## **3. Industrial Development – Revenue Bonds.**

**Source:** Issuance and sale by order of the county court or by ordinance of the quorum court of bonds bearing an interest rate as set by the order or ordinance. But in no instance shall the interest for the issue exceed the limits set by Amendment 60.

**Use:** For purposes in connection with the county authority to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of, any land, building or facilities of any and every nature whatever that can be used in securing or developing industry within the county.

**Conditions:** Issuance of bonds and sums to be issued may or may not have to be approved by the electorate depending on the nature of the improvement being financed. Whenever the governmental body makes the determination as to issuance, certain public hearings, as prescribed by law, must be held.

**Authority:** A.C.A. § 19-9-601 through 19-9-607 and Amendment 65.

## **4. Parks and Recreational Facilities**

**Source:** Issuance and sale by order of the county court or by ordinance of the quorum court of bonds bearing an interest rate as set by the order or ordinance. But in no instance shall the interest for the issue exceed the limits set by Amendment 60.

**Use:** For purposes in connection with the county authority to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of, any land, building improvements or facilities of any and every nature necessary or desirable for the developing and providing of public parks and facilities and any leisure time facilities within the county.

**Conditions:** Issuance of the Bonds shall be by the county court or the quorum court. A statutory mortgage lien on the property will exist in favor of the bondholders. Such bonds shall be special obligations and not general obligations of the county.

**Authority:** A.C.A. § 19-9-601 through 19-9-607 and Amendment 65.

## **5. Pollution Control Facilities**

**Source:** Issuance and Sale by county court or quorum court of bonds bearing an interest rate not to exceed the provisions of Amendment 60. Such bonds are special obligations and not general obligations of the county.

**Use:** For purposes in connection with the county authority to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of pollution control facilities for the disposal or control of sewerage, solid waste, water pollution, air pollution, or any combination thereof.

**Conditions:** Referral to the voters is not required, provided however, no revenue bonds shall be issued by or on behalf of any county if the primary purpose of the bonds is to loan the proceeds of the bonds or to lease or sell the facilities financed with the proceeds of the bonds.

**Authority:** A.C.A. § 19-9-601 through 19-9-607 and Amendment 65.

## **6. Port Facilities**

**Source:** Issuance of sale by the county court or quorum court of bonds bearing an interest rate not to exceed the provisions of Amendment 60. Such bonds shall be special obligations and not general obligations of the county.

**Use:** For purposes in connection with the authority of any county in the state which is partially bounded by a navigable stream or through which a navigable stream flows, to independently, or jointly with another county or with one or more municipalities, establish, equip, maintain, and operate a river port or facility.

**Conditions:** Whenever a governmental unit shall determine the need to issue revenue bonds for capital improvements of a public nature or industrial enterprise, no proclamation order or ordinance shall be entered into by the government body until the governmental unit shall have conducted public hearings in the locality to be affected by the issuance of the bonds.

**Authority:** A.C.A. § 14-16-111 and A.C.A. § 14-186-401 through 14-186-417.

## **7. Solid Waste Management**

**Source:** The Bonds may be sold for such price, including without limitation, sale at a discount, and in such a manner as the county may determine by order or ordinance. Note: The Constitutional limits on interest in Amendment 60 would apply.

**Use:** For purposes in connection with the collection and disposal of solid wastes and the authority of the county to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in facilities of any nature necessary or desirable for the control, collection, removal, reduction, disposal, treatment or other handling of refuse.

**Conditions:** Issuance and sale by order of the county court. Referral to the voters is not required.

**Authority:** A.C.A. § 8-6-201 through 8-6-214 and 14-232-101 through 14-232-116.

## **8. Tourism**

**Source:** Issuance and sale by the county court or quorum court of bonds bearing an interest rate not to exceed the provisions of Amendment 60. Such bonds shall be special obligations and not general obligations of the county.

**Use:** For purposes in connection with the authority of the county to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in or dispose of any lands, buildings, improvements of facilities of any and every nature whatever to secure and develop tourism within the county.

**Conditions:** Issuance and sale by the county court or quorum court of bonds bearing an interest rate not to exceed the provisions of Amendment 60. Such bonds shall be special obligations and not general obligations of the county.

**Authority:** A.C.A. § 19-9-601 through 19-9-607 and Amendment 65.

## **COUNTY REVENUES**

### **E. FINES, FORFEITURES AND COURT COSTS**

**Source:** All fines, penalties and forfeitures imposed by any court or board of officers whatsoever, except fines and penalties of city courts and courts of incorporated towns for violations of city and town ordinances, shall be paid into the county treasury.

Costs taxed for the trial in the circuit court on cases appealed from police or municipal courts shall be paid into the county treasury.

Costs taxed for proceedings in chancery court and probate courts are paid into the county treasury.

**Use:** As defined by court order or Statute on that specific fine forfeiture or court cost.

**Implementation:** By provisions of the Arkansas Code Annotated.

**Authority:** A.C.A. § 16-92-114, 16-96-403, 16-68-301 and 16-84-202

## **COUNTY REVENUES**

### **F. FEES AND COMMISSIONS**

Fees and commissions represent charges authorized to be made by county officials for providing a specific service. Fees are charges made at a specified rate for a particular act such as a fee authorized to be charged by the county sheriff for serving each warrant of arrest. Commissions are also charges for services rendered but are in terms of a percentage of the amount of funds handled, e.g., the county collector is authorized a percentage commission of all vehicle taxes collected. Not all fees and commissions represent revenues for the county since some are paid from county funds.

**Use:** Fees charged for a specific service are to be reported by that county officer once a month and may be appropriated for any general purpose of county government. Commissions allowed likewise have to be turned over to the county treasurer once a month but after a final county tax settlement, whereas all costs of assessment and collection are reconciled, excess commissions are divided among the millage units.

A.C.A. § 12-41-105. Commissions derived from prisoner telephone services and profits earned from prisoner commissary services provided in the various counties and regional detention facilities in the state shall be deposited with the county treasurer of the county in which the detention facility is located, and the county treasurer shall credit the funds to the county sheriff's office fund. The county sheriff's office fund is an agency fund defined by the County Financial Management System as a fund used to account for funds held by the county treasurer as an agent for a governmental unit until transferred by check or county court order to the county sheriff for the intended uses of the funds. As an agency fund, the transfer of funds is not subject to an appropriation by the quorum court or to the county claims process. Arkansas Legislative Audit shall

review for substantial compliance with this section. Of the commissions and profits deposited into the county sheriff's office fund in each county under subsection (a) of this section, one hundred percent (100%) shall be credited to the county sheriff's office communications facility and equipment fund under § 21-6-307. Each county sheriff's office shall allocate for the maintenance and operation of the county jail up to seventy-five percent (75%) of the commissions and profits deposited into the county sheriff's office communications facility and equipment fund. This section does not apply to funds derived from prisoner telephone services or prisoner commissary services provided in Department of Correction facilities or Department of Community Correction facilities or in municipally owned detention facilities or in county detention facilities in counties with a population of one hundred seventy-five thousand (175,000) or more according to the latest federal decennial census.

## **COUNTY REVENUES**

### **G. INTERGOVERNMENTAL TRANSFERS**

The term Intergovernmental Transfers as used herein, is defined as fund made available to all counties by the State and Federal governments -- although not in equal amounts - - without specific application being required by the respective counties. Generally, few restrictions are placed on the use of the funds, other than the broad designations of "for all purposes of county government" or "for use to support the county highway system".

Not included herein are the many State and Federal grant-in-aid programs for which specific application must be made on a project-by-project basis with the fund being earmarked for the specific project. Information on the availability of the various grant-in-aid programs, which are constantly changing, is furnished on a regular basis by the Association of Arkansas Counties.

#### **1. State General Turnback (County Aid)**

**Source:** Apportionment to counties of moneys appropriated by the General Assembly biennially to the County Aid Fund from State General Revenues. Seventy-five percent (75%) is divided equally among the seventy-five (75) counties of the State; and, twenty-five percent (25%) is divided in the proportion that the population of each county bears to the total population of the State, as shown by the most recent decennial or special federal census.

**Use:** For general county purposes unless otherwise appropriated by the quorum court.

**Authority:** A.C.A. § 19-5-301 through 19-5-307 and 19-5-602.

#### **2. State Highway Revenue Turnback**

**Source:** Apportioned to counties from highway revenues -- primarily fees for registration and licensing of motor vehicles and gasoline tax.

Funds are apportioned to counties on the following basis:

- a. thirty-one percent (31%) to be divided in proportion that the area of each county bears to the area of the state;
- b. seventeen and one-half percent (17 1/2%) divided in proportion that motor vehicle licenses fees collected in each county;
- c. seventeen and one-half percent (17 1/2%) divided in proportion that the population of each county bears to the total population of the state;
- d. thirteen and one-half percent (13 1/2%) divided in proportion that the rural population of each county bears to the total population of the state; and
- e. twenty and one-half percent (20 1/2%) divided equally among the seventy-five (75) counties.

**Use:** For maintenance, construction, and reconstruction of roads and bridges in the County Highway System, provided, however, that no more than twenty percent (20%) of the revenues received by a county during any fiscal year may also be used for public transportation. A county may also use these funds to construct and maintain parking for county courthouses, county administration buildings, county health units, and county parks and to construct and maintain sidewalks that serve county courthouses, county administration buildings, county health units, county parks, public schools, regional mobility authorities, and other publicly owned property.

**Authority:** A.C.A. § 27-70-207.

#### **3. State Aid to Secondary Roads**

**Source:** Apportioned to counties from State Aid Road Fund of moneys collected from an excise tax of one cent (1¢) per gallon on motor fuel and distillate special motor fuel. For a county to receive funds, they must be matched in the ratio of ninety percent (90%) state aid road funds to not less than ten percent (10%) county matching funds. Funds are apportioned to the counties on the basis of mileage in the state aid system which shall be allocated in the following proportions:

- a. fifty percent (50%) to be divided equally among the seventy-five (75) counties;
- b. twenty-five percent (25%) to be divided in the proportion that the area of each county bears to the area of the state; and
- c. twenty-five percent (25%) to be divided in the proportion that rural population of each county bears to rural population of the state as shown by the most recent decennial federal census.

**Use:** State Aid Road Funds shall be used exclusively for the construction, reconstruction, and improvement of roads on the State Aid Road System. No funds can be spent on any project which shall not culminate directly in a paved, hard surface road and provided not more than twenty-five percent (25%) of a county's annual allotment from the State Aid Road Fund shall be used for the purpose of maintenance on previously constructed hard surface State Aid roads. Roads within the system are by designation of the several county judges with the consent and approval of State-Aid Engineer and the Highway Commission.

**Authority:** A.C.A. § 27-72-301 through 27-72-321 and 27-72-101.

#### **4. State Severance Taxes**

**Source:** Twenty-five percent (25%) of amounts collected by the State on certain severance taxes, except those timber products, (which are exclusively for use by the State Forestry Commission) plus three cents (3¢) per ton on stone and crushed products are returned to the respective counties in the proportion that the total severance tax, produced from each county, bears to the total of such taxes produced from all counties.

**Use:** On the twenty-five percent (25%) portion of severance tax, fifty percent (50%) must be apportioned by the county treasurer to the County Highway Fund and fifty percent (50%) credited to the county General School Fund. The revenue derived from the severance tax on stone, crushed stone, and such is divided by the first twenty-five percent (25%) to the County Aid Fund whereas the county treasurer distributes fifty percent (50%) to the County General School Fund and fifty percent (50%) to the County Highway Fund. The balance of seventy-five percent (75%) is considered special revenues and is distributed to the counties in State Turnback for roads.

**Authority:** A.C.A. § 26-58-113.

Beginning January 1, 2009, the tax shall be 1.5% on new discovery gas for the first 24 months; 1.5% on high-cost gas for the first 36 months with a possible extension of 12 additional months; 1.25% on marginal gas; and 5% on all other natural gas. (A.C.A. § 26-58-127) These new tax rates will be based on market value. Five percent of the tax, interest, and penalties collected will be deposited in general revenues and 95% of the funds will be classified as special revenues and distributed pursuant to the Arkansas Highway Revenue Distribution Law. (Distribution is 70% to State, 15% to counties, and 15% to municipalities for highway road and street use.)

**Authority:** A.C.A. § 26-58-124

#### **5. State Sale of Tax Forfeited Land**

**Source:** Funds received by the State from the sale of tax forfeited lands are, after deducting the cost of sale, deposited to the County Aid Fund and subsequently

returned to the county in which such tax forfeited lands are situated.

**Use:** Funds shall be distributed to the various taxing units within the county in the proportion that the millage levied by each such taxing unit at the time of such distribution bears to the total millage levied by all taxing units within the county. Those funds accruing to the county from such distribution can be used to support all purposes of county government.

**Authority:** A.C.A. § 26-37-205

#### **6. Revenue from Forest Reserves**

**Source:** Moneys received by the State from the Federal Government which have derived from the Forest Reserves within the state are apportioned to the counties from which such funds are derived.

**Use:** Twenty-five percent (25%) of the moneys received by the county shall be credited to the County Highway Fund for use for the same purposes as other moneys credited to that fund. The remaining seventy-five percent (75%) shall be apportioned to the public schools.

**Authority:** A.C.A. § 19-7-404.

#### **7. Revenue from Sale or Lease of Public Domain**

**Source:** Moneys received by the State from the Federal Government for sale of public domain lands or lease of lands acquired by the United States for flood control purposes, from the Federal Leasing Mineral Act, and Federal Taylor Grazing Act shall be distributed to the counties in which the land is located.

**Use:** Twenty percent (20%) of the moneys received shall be credited to the County Highway Fund for use for the same purposes as other moneys credited to that fund. The remaining eighty percent (80%) shall be apportioned to the public schools.

**Authority:** A.C.A. § 19-7-402, 19-7-403 and 19-7-801.

#### **7. State Aid/ Unpaved Roads**

**Source:** Money received by the state through grants to counties. This money is used for unpaved road projects and for the creation of the Arkansas Unpaved Roads Program Fund.

**Authority:** A.C.A. § 14-305-101 through A.C.A. § 14-305-110; A.C.A. § 19-5-1255.

### **COUNTY REVENUES**

#### **H. MISCELLANEOUS**

##### **1. Lease of County Property**

**Source:** Revenues may be derived by lease of county real or personal property belonging to the county to nonsectarian educational institutions or any lawfully incorporated nonprofit, nonsectarian Boy's Club or Girl's Club. Terms and conditions of the lease are fixed by the county court.

**Use:** Support all purposes of county government.

**Authority:** A.C.A. § 14-16-110.

## **2. Lease or Sale of County Hospital**

**Source:** Revenues may be derived from lease or sale of a county hospital located within the county where there is no outstanding bonded indebtedness. Provided, however, that the quorum court shall approve the conditions of a lease and a sale requires voter approval. 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.

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.

**Use:** Support all purposes of county government.

**Authority:** A.C.A. § 14-16-105, 14-16-108 and 14-263-106.

## **3. Sale of County Property**

**Source:** The county court of each county shall have the power to sell any real estate or personal property of the county. Sale of property with an appraised value of less than two thousand dollars (\$2,000.00), the property may be sold and conveyed by the county judge, either at public or private sale, for not less than three-fourths (3/4) of the appraised value as shown by the certificate of appraisal filed by the assessor. Sale of property with an appraised value of over two thousand dollars (\$2,000.00) must be sold to the highest and best bidder upon sealed bids. The sheriff, the treasurer, and the circuit clerk of the county shall constitute a board of approval for the sales, and the judge shall be the ex-officio chairman of the board without a vote. Such property, when it exceeds the appraised value of two thousand dollars (\$2,000.00), shall not be sold for less than three-fourths (3/4) of its appraised value as determined by the certificate of the assessor.

**Use:** Support all purposes of county government.

**Authority:** A.C.A. § 14-16-105

Also, 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 to the highest bidder. Notice of the public auction shall be published at least once a week for two (2) consecutive weeks in a newspaper having general circulation in the county. The notice shall specify the

description of the property to be sold and the time and place of the public auction. If it is determined by the county judge and the county assessor that any personal property owned by the 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. However, the county judge shall report monthly to the quorum court any property that has been disposed of. (A.C.A. § 14-16-106)

## **4. Solid Waste Management Fees**

**Source:** The quorum court has the authority to levy and collect such fees, charges and require such licenses as may be appropriate to discharge the county's responsibility for solid waste management. Fees, charges and licenses shall be based on a fee schedule contained in an ordinance established by the quorum court.

**Use:** Support the county's solid waste management system.

**Authority:** A.C.A. § 8-6-212.

## **5. Prisoner Telephone Commission & Profits from Prisoner Commissary Services**

**Source:** Commissions derived from prisoner telephone services and profits earned from prisoner commissary services provided in the various county and regional detention facilities in the state shall be deposited with the county treasurer of the county in which the detention facility is located, and the county treasurer shall credit the funds to the county sheriff's office fund. The county sheriff's office fund is an agency fund used to account for funds held by the county treasurer as an agent for a governmental unit until transferred by check or county court order to the county sheriff for the intended uses of the funds. The transfer of funds is not subject to an appropriation by the quorum court or to the county claims process.

**Use:** One hundred percent (100%) of the commissions and profits deposited shall be credited to the county sheriff's office communications facility and equipment fund under § 21-6-307. Each county sheriff's office shall allocate for the maintenance and operation for the county jail up to seventy-five percent (75%) of the commissions and profits deposited into the county sheriff's office communications facility and equipment fund.

**Authority:** A.C.A. § 12-41-505

## **Best Practices for Receiving, Disbursing and Reporting Prisoner Telephone Commissions & Profits Earned from Prisoner Commissary Services (A.C.A. § 12-41-105)**

Step 1

Sheriff's Office/Jail or vendor sends check to the Treasurer for the amount of commissions from prisoner telephone services (revenue code 7804) and profits from prisoner commissary services (revenue code 7805). Commissary service profits are derived from the sale of any products/services to inmates. [ACA 12-41-105(a)(1)]

Step 2

Treasurer credits these monies to the County Sheriff's Office Fund (Fund 6017), an agency fund. This fund is used to account for monies held by the Treasurer as an agent for the Sheriff until transferred. The transfer of monies is not subject to appropriation by the Quorum Court. [ACA 12-41-105 (a)(2)(A)(B)]

Step 3

The transfer of 100% of these monies is made to the Communications Facility and Equipment Fund monthly. If the Sheriff has this fund on his/her books, as established by law, issue a Treasurer's check from the County Sheriff's Office Fund to the Sheriff. If the Treasurer has this fund on the books of the county, as requested by the Sheriff, use a county court order to transfer these monies from the County Sheriff's Office Fund to the Communications Facility and Equipment Fund (Fund 3014). [ACA 12-41-105(b)(1)]

Step 4

The County Sheriff **must** annually allocate a percentage (up to 75%) of the commissions and profits credited to the Communications Facility and Equipment Fund for the maintenance and operation of the county jail. [ACA 12-41-105(b)(2)]

Step 5

The Sheriff shall provide a reconciled accounting of the Sheriff's Communication Facility and Equipment Fund, including the receipts, disbursements and balance, to the County Treasurer by the tenth day of each calendar month. This same type reporting is required for any other operational fund that is held by the Sheriff and not on the books of the County Treasurer. [ACA 14-25-112(f)]

## Chapter Five - COUNTY GOVERNMENT OPERATIONS

This section of the manual is designed to assist county judges, newly elected and experienced, with daily office operations. The operations enumerated were selected because they comprise the major functions of the county judge's office. These functions are divided into two categories; administrative/executive and county court.

In reading the operations described on the following pages, it should be remembered that these are only examples of ways to perform the functions and not the only way to perform them. Also, it should be noted that the operations described do not attempt to replace the various constitutional and statutory directives, but only to present them.

The office of the county judge in Arkansas County Government is one that is very unique. The county judge is both a judicial and an executive-administrative official for the county. This chapter on county government operations outlines the major duties and responsibilities of the county judge in these two areas.

The county judge is the judge of the county court and has jurisdiction in matters relating to:

- A. County Taxes  
Approval of Final Settlement  
Appeals from Equalization Board
- B. Incorporation  
Petition for Consolidation  
Petition for Incorporation
- C. Annexation  
By Adjoining Landowners  
By Municipality by Election
- D. County Roads  
Condemnation Procedure  
Road Improvement District  
Securing Right of Way  
Viewing, Reviewing, Altering or Vacating
- E. Paupers

The county judge is the chief executive officer or administrator for county government. The duties and responsibilities of the county judge as executive-administrator are the following:

- A. County Purchasing Procedure
- B. Presiding over the Quorum Court
- C. Administer Ordinance Enacted by Quorum Court
- D. Custody of County Property
- E. County Boards
- F. Establishing Special District
- G. Paying County Claims
- H. County Budgeting Procedure

### I. Administrative Rules

#### A) COUNTY TAXING MATTERS

The General Assembly hereby determines that all powers not vested in the county judge under the provisions of Amendment 55 to the Constitution of Arkansas, to be exercised by the county judge as the chief executive officer of the county, shall continue to be exercised and administered by the county court, over which the county judge shall preside. The county court of the several counties shall have exclusive jurisdiction in all matters relating to:

"County taxes"; jurisdiction shall include all real and personal ad valorem taxes collected by a county government, including all related administrative processes: assessment of property, equalization of assessments on appeal, tax levies, tax collection, and distribution of tax proceeds; provided, however, that such jurisdiction shall be exercised pursuant to law. (A.C.A. § 14-14-1105)

#### APPROVAL OF FINAL SETTLEMENT

All county tax collectors' settlements shall be made and filed with the county courts on or before the fourth Monday of December of each year. (A.C.A. § 26-39-402) It is hereby made the duty of the county courts to pass upon the settlements of the county collectors and to approve, reject or restate the same on or before the thirty-first of December of each year, provided that the county court has the duty to reconsider and adjust any error discovered within three (3) years from the date of such settlement. (A.C.A. § 26-39-220)

Failure of the county judge to so approve, reject or restate said settlements of said collectors within said period of time shall constitute a misfeasance in office and shall be deemed a violation, punishable by a fine of \$100 or removal from office. Any county collector of taxes who shall fail to file with the county clerk a full and complete list of all delinquent personal taxes on the day required by law, shall be deemed guilty of a violation, punishable by a fine of \$100 or removal from office. Any county clerk who fails to set up the settlement of the county collector setting forth the amount due the various funds, on or before the fourth Monday of December of each year shall be deemed guilty of a violation punishable by a fine of \$100 or removal from office. (A.C.A. § 26-39-301, 26-39-401 and 26-39-402)

#### APPEALS FROM EQUALIZATION BOARD

Appeals from the action of the equalization board must be filed on or before the second Monday of October of each year and shall have preference over all matters in the court and shall be heard and order made on or before the fifteenth day of November. (A.C.A. § 26-27-318)

Appeals from the action of the equalization board when in special session shall be to the county court in the manner as now provided by law, except that any such appeal shall be filed within ten (10) days from date of notice of action by said board, and shall be heard and order made by the county court not later than forty-five (45) days prior to the date on which the tax books for the year are required to be delivered to the county collector. (A.C.A. § 26-27-311)

**B) PETITION FOR INCORPORATION**

1. Notice - When the inhabitants of a part of any county, not embraced within the limits of any city or incorporated town, shall desire to be organized into a city or town, they may apply by petition, in writing, signed by the greater of either 200 or a majority of the qualified voters residing within the described territory, to the county court of the proper county which petition shall describe the territory proposed to be embraced in such incorporated town, and have annexed thereto an accurate map or plat thereof, shall state the name proposed for such incorporated town, and also name the person or persons authorized to act in behalf of the petitioners in prosecuting said petition. The county court shall not approve the incorporation of any municipality if any portion of the territory proposed to be embraced in such incorporated town shall lie within three (3) miles from the corporate limits of an existing municipal corporation unless the governing body of said municipal corporation has, by written resolution, affirmatively consented to said incorporation. The planning territorial jurisdiction limitation shall not apply if the area proposed to be incorporated is land upon which a real estate development by a single developer, containing not less than four thousand (4,000) acres, has been or is being developed under a comprehensive plan for a community containing streets and other public services, parks, and other recreational facilities for common use by the residents of the community, churches, schools, and commercial and residential facilities, and which has been subdivided into sufficient lots for residential use to accommodate a projected population of not fewer than one thousand (1,000) persons, and for which a statement of record has been filed with the Secretary of Housing and Urban Development under the Interstate Land Sales Full Disclosure Act. When any petition shall be presented to the court, it shall be filed in the office of the county clerk, to be kept there, subject to the inspection of any persons interested, until the time appointed for the hearing of it. The court shall, at or before the time of the filing, fix and communicate to the petitioners, or their agent, a time and place for the hearing of the petition, which time shall not be less than thirty (30) days after the filing of the petition. Thereupon, the petitioners or their agent shall cause a notice to be published in some newspaper

of general circulation in the county for not less than three (3) consecutive weeks.

If there is no newspaper of general circulation in the county, a notice shall be posted at some public place within the limits of the proposed incorporated town for at least three (3) weeks before the time of the hearing. The notice shall contain the substance of the petition and state the time and place appointed for the hearing. (A.C.A. § 14-38-101)

2. Every incorporation hearing shall be public, and may be adjourned from time to time, and any person interested may appear and contest the granting the prayer of said petition; and affidavits in support or against said petition which may be prepared and submitted, shall be examined by said court, and they may, in their discretion, permit the agent or agents named in the original petition to amend or change the same, except no amendment shall be permitted, whereby territory not before embraced shall be added, or the character of the proposed incorporated town changed from special to general, or from general to special, without appointing another time for hearing, and requiring new notice to be given as above provided in A.C.A. § 14-38-101. (A.C.A. § 14-38-103)

3. If the county court shall make out and endorse on the petition an order to effect that the city or incorporated town as named and described in the petition may be organized if the count shall be satisfied, after hearing the petition, that the greater of either 200 or a majority of the qualified voters residing within the described territory have signed the petition; that said limits have been accurately described, and an accurate map or plat thereof made and filed; that the name proposed for the said town is proper and sufficient to distinguish it from others of like kind in the State; and, moreover, it shall be deemed right and proper, in the judgment and discretion of the court, that said petition shall be granted, then the court shall make out and endorse on said petition an order to the effect that the incorporated town as named and described in the petition may be organized. The order shall be signed and delivered by the court, together with the petition and the map or plat, to the recorder of the county, whose duty it shall be to record it as soon as possible in the proper book or records and to file and preserve in his office the original papers, having certified thereon that the same have been properly recorded. The order shall also include the effective date upon which the petition for incorporation is granted and the municipality is considered organized. It shall also be the duty of recorder to make out and certify, under his official seal, two (2) transcripts of said record. He shall forward one (1) copy to the Secretary of State and deliver one (1) copy to the agent of the petitioners, with a

certificate thereon that a similar transcript has been forwarded to the Secretary of State as provided in this section. (A.C.A. § 14-38-104)

4. As soon as said record shall be made, and said transcript certified, forwarded and delivered, the inhabitants within the limits described in the petition, shall be deemed an incorporated town, to be organized and governed under the provisions of this act in like manner as if specially named therein, and so soon as said incorporated town shall be actually organized, by election of its officers as hereinafter provided, notice of its existence as such shall be taken in all judicial proceedings in the State. (A.C.A. § 14-38-105)
5. One (1) month shall elapse from the time such transcripts are for-warded and delivered, before notice shall be given of an election of officers in such incorporated town, and any person interested may, at any time within the said one (1) month, make complaint in writing, in the nature of an application for an injunction to the circuit court, or the judge thereof in vacation, having given at least five (5) days notice thereof, and furnished a copy of the complaint to the agent or agents of the petitioners, for the purpose of having the organization of such proposed incorporated town prevented. (A.C.A. § 14-38-106)
6. It shall be the duty of the court or judge to hear such complaint in a summary manner, receiving answers, affidavits and proofs, as may be deemed pertinent; and if it shall appear to the satisfaction of the court or judge that the proposed incorporated town does not contain the requisite number of inhabitants, or that the limits of said proposed incorporated town are unreasonably large or small, or are not properly and sufficiently described, then the said court or judge shall order the record of said incorporated town to be annulled; and it shall be the duty of the court recorder to endorse on the record the order so made, and to certify and transmit to the secretary of state a copy thereof, and thereupon the record shall be of no effect, but such proceeding shall in no manner bar a subsequent petition to the county court, on the same subject, by complying with the provisions of this section of the code. (A.C.A. § 14-38-107)
7. Unless the agent or agents of the petitioners shall, within thirty (30) days after a transcript shall be delivered as hereinbefore provided, be notified of a complaint having been made to the circuit court of the county, or a judge thereof, then at the end of said thirty (30) days after the dismissing of said complaint the said agent or agents shall give public notice, by posting the same at three (3) or more public places within the limits of said incorporated town, of the time and place of holding the first election for officers of said incorporated

town, which election shall be conducted and the officers elected and qualified in the manner prescribed by law in like cases; provided that, if said election shall be held at any other time than that prescribed by law for the regular election of such officers, the officers elected shall continue in office so long and in like manner as if they had been elected at the next preceding period of such regular election. (A.C.A. § 14-38-108)

**C) PROCEDURE USED FOR ANNEXATION BY ADJOINING LANDOWNERS**

1. Annexation has to be contiguous to an adjoining city owning more than 1/2 of acreage. Majority of real estate owners in affected area apply for annexation by petition in writing to county court. The "majority of real estate owners" referred to in this section means a majority of the total number of real estate owners in the area affected, if the majority of the total number of owners own more than one-half (1/2) of the acreage affected. (A.C.A. § 14-40-601)
2. Petition shall be presented to the court - the county clerk files it - the county court sets a date for hearing petition - date shall be not less than 30 days after filing of petition. (A.C.A. § 14-40-602)
3. After the filing and before the hearing on the petition, the petitioners shall cause a notice to be published in some newspaper of general circulation. Notice is published once a week for three consecutive weeks. Notice shall contain substance of petition and state time and place appointed for the hearing. (A.C.A. § 14-40-602)
4. Hearing Procedure  
Every incorporation hearing under this chapter shall be public and may be adjourned from time to time. Any person interested may appear and contest the granting of the prayer of the petition, and affidavits in support of or against the petition, which may be prepared and submitted, shall be examined by the county court. The court may, in its discretion, permit the agent named in the original petition to amend or change it. However, no amendment shall be permitted whereby territory not before embraced shall be added or the character of the proposed city or incorporated town changed from special to general, or from general to special, without appointing another time for a hearing and requiring new notice to be given. (A.C.A. § 14-38-103)
5. After the hearing, if the county court is satisfied that the allegations of the petitions were sustained by the proof and; If the court is satisfied that the requirements for signature have been complied with, If the court is satisfied that the limits of the

territory to be annexed have been accurately described and an accurate map thereof made and filed, Then the court shall enter its order granting the petition and annexing the territory, which order shall be recorded by the clerk. (A.C.A. § 14-40-603)

6. No action shall be taken for a period of thirty (30) days within that time any person interested may institute a proceeding to have the annexation prevented in circuit court. If the court or judge shall determine that the order of the county court was proper, then the order of the county court shall be affirmed and the proceedings to prevent the annexation shall be dismissed. (A.C.A. § 14-40-604)
7. If no such notice shall be given within thirty (30) days from the making of the order of annexation by the county court, the proceeding before said court shall, in all things, be confirmed. Provided, the city or town council shall, by ordinance or resolution, accept the territory. (A.C.A. § 14-40-605)
8. If the city council accepts the territory, the county clerk shall certify one (1) copy of the plat of such annexed territory, one (1) copy of the said order of the county court and the resolution or ordinance of the city or town council and forward a copy of each to the secretary of state and shall forward one copy of the plat of the annexed territory and one copy of the order of the county court to the Director of the Tax Division of the Public Service Commission and the clerk shall forward a certified copy of the order of the county court to the town or city council. (A.C.A. § 14-40-605)

#### **PROCEDURE USED FOR ANNEXATION BY THE MUNICIPALITY BY ELECTION**

1. The county clerk files the petition and the county court sets a date for hearing the petition. The date set shall be not less than thirty (30) days after filing the petition. (A.C.A. § 14-40-602)
2. After the filing and before the hearing on the petition, the petitioners shall publish a notice in a newspaper of general circulation. This notice shall contain the substances of the petition and state the time and place appointed for the hearing and shall be published one (1) time per week for three (3) consecutive weeks (A.C.A. § 14-40-602)
3. Every hearing should be public and may be adjourned from time to time. Any person interested may appear to speak for or against the petition. Any person interested has been defined as any person who has some interest in the city or the area to be annexed. (A.C.A. § 14-38-103)

A petition cannot be amended during the hearing to add or remove territory not mentioned in the

petition. If the petition is amended, then another time for the hearing is required and a new notice is given to the public. (A.C.A. § 14-38-103)

4. After the hearing has been held and if the county court is satisfied that the allegations of the petition were sustained by the proof and; If the court is satisfied that the requirements for signatures have been complied with; and If the court is satisfied that the limits of the territory to be annexed has been accurately described; and an accurate map of the territory has been made and filed, and that the prayer of the petitioner is right and proper, then the court shall enter its order granting the petition and annexing the territory. (A.C.A. § 14-40-603)
5. If at the end of thirty (30) days, after the county court ruling, there is no action filed preventing the annexation, then the county court ruling stands. The city or incorporated town council shall, by ordinance or resolution, accept the territory. The territory shall, in law, be deemed and taken to be included in and shall be part of said corporation and the inhabitants thereof shall, in all respects, be residents thereafter of said municipal corporation. (A.C.A. § 14-40-605)

#### **ANNEXATION BY ONE HUNDRED PERCENT PETITION (A.C.A. § 14-40-609)**

- (a) As used in this section, "city or town" means:
  - (1) A city of the first class;
  - (2) A city of the second class; and
  - (3) An incorporated town.
- (b) (1) Individuals who own property in a county that is contiguous to a city or town may petition the governing body of the city or town to annex the property that is contiguous to the city or town.
  - (2) The petition under subdivision (b)(1) of this section shall:
    - (A) Be in writing;
    - (B) Contain an attestation signed before a notary or notaries by the property owner or owners of the relevant property or properties confirming the desire to be annexed;
    - (C) Contain an accurate description of the relevant property or properties;
    - (D) Contain a letter or title opinion from a certified abstractor or title company verifying that the petitioners are all owners of record of the relevant property or properties;
    - (E) Contain a letter or verification from a certified surveyor or engineer verifying that the relevant property or properties are contiguous with the annexing city or town and that no enclaves will be created if the property or properties are accepted by the city or town; and
    - (F) Include a schedule of services of the annexing city or town that will be extended to the area within three (3) years after the date the annexation becomes final.
  - (3) The petition shall be filed with the county assessor and the county clerk, and within fifteen (15) days of the filing, the county assessor and the county clerk shall verify that

the petition meets the requirement of subdivision (b)(2) of this section.

(c)(1) Upon completion of the requirements under subsection (b) of this section, the county clerk shall present the petition and records of the matter to the county judge who shall review the petition and records for accuracy.

(2) Within fifteen (15) days of the receipt of the petition and records, the county judge shall:

(A) Review the petition and records for completeness and accuracy;

(B) Determine that no enclaves will be created by the annexation;

(C) Confirm that the petition contains a schedule of services;

(D) Issue an order articulating these the findings under subdivisions (c)(2)(A)-(C) of this section and forward the petition and order to the contiguous city or town ; and

(E) Require at his or her discretion that the city or town annex dedicated public roads and rights of way abutting or traversing the property to be annexed

(d)(1)(A) By ordinance or resolution, the city or town may grant the petition and accept the property for annexation to the city or town.

(B) The city or town is not required to grant the petition and accept the property petitioned to be annexed.

(2) The ordinance or resolution shall contain an accurate description of the property to be annexed.

(3) (A) If the governing body of the city or town accepts the contiguous property, the clerk or recorder of the city or town shall certify and send one (1) copy of the plat of the annexed property and one (1) copy of the ordinance or resolution of the governing body of the city or town to the county clerk.

(B)(i) The county clerk shall forward a copy of each document received under subdivision (d)(3)(A) of this section to the county judge.

(ii) If the county judge determines the requirements of this section have been complied with and the annexation is in all respects proper, the county judge shall enter an order confirming the annexation.

(e) Upon receipt of the order of the county judge confirming the annexation, the county clerk shall forward a copy of each document received under subdivision (d)(3) of this section to the Secretary of State, who shall file and preserve each copy.

(f) (1) Notwithstanding any other provisions in this chapter, thirty (30) days after passage of the ordinance or resolution by the governing body of the city or town under this section, the annexation shall be final and the property shall be within the corporate limits of the city or town.

(2) The inhabitants residing in the newly annexed property shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or town.

(g) (1) During the thirty-day period under subdivision (f)(1) of this section, a cause of action may be filed in the circuit court of the county of the annexation by a person asserting and having an ownership right in the property objecting to the petition or by any person asserting a failure to comply with this section.

(2) After the thirty-day period, an action under subdivision (g)(1) of this section is not timely.

## **ANNEXATION UPDATES FOR the 89<sup>th</sup> GENERAL ASSEMBLY**

Act concerning annexation of unincorporated land if the land is currently permitted by a county for a construction or development project:

Territory annexed with prior county permit or approval in use- If a county had issued a permit or approval for construction, operation, or development before a municipal annexation proceeding begins for a project in the area that the municipality intends to annex, the municipality shall honor and give full effect to county permits and approvals on lands to be annexed. (A.C.A. § 14-40-206)

Act to amend the law concerning the requirements for annexation:

Contiguous lands shall not be annexed if they: At the time of the adoption of the ordinance, has a fair market value, of lands used only for agricultural or horticultural purposes; are lands upon which a new community is to be constructed with funds guaranteed, in whole or in part, by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII of the Housing and Urban Development Act of 1970; are lands that do not include residents, except as agreed upon by the mayor and county judge; or are lands that do not encompass the entire width of public road right-of-way or public road easements within the lands sought to be annexed, except as agreed upon by the mayor and county judge. (A.C.A. § 14-40-302(b)(1))

Whenever practicable, a city or incorporated town shall annex lands that are contiguous and in a manner that does not create enclaves. As used in this section, "enclave" means an unincorporated improved or developed area that is enclosed within and bounded on all sides by a single city or incorporated town. (A.C.A. § 14-40-302(d)(1-2))

Act amending the law concerning annexation of surrounded lands:

Whenever the incorporated limits of a municipality have completely surrounded an unincorporated area, the governing body of the municipality may propose an ordinance calling for the annexation of the land surrounded by the municipality. (A.C.A. § (a)(1)(A)(i))

Subdivision (a)(1)(A)(i) of this section shall include situations in which the incorporated limits of a municipality have surrounded an unincorporated area on only three (3) sides because the fourth side is a boundary line with another state, a military base, a state park, or a national forest. (A.C.A. § (a)(1)(A)(ii))

Act modifying the law concerning detachment after annexation in certain circumstances; to prohibit enclaves:

## **ANNEXATION UPDATES FOR the 90<sup>th</sup> GENERAL ASSEMBLY**

Whenever practicable, a city or an incorporated town shall annex lands that are contiguous and in a manner that does not create enclaves. As used in this section, "enclave" means an unincorporated improved or developed area that is enclosed within and bound on all sides by a single city or incorporated town. (A.C.A. § 14-50-504(a)-(b))

When a majority of the real estate owners of any part of a county contiguous to and adjoining any city or incorporated town desired to be annexed to the city or town, they may apply, by attested petition in writing, to the county court of the county in which the city or town is situated, shall name the persons authorized to act on behalf of the petitioners, and may include a schedule of services of the annexing municipality that will be extended to the area within three (3) years after the date of the annexation becomes final. (A.C.A. § 14-40-601(a))

Act amending the law to allow more transparency in annexation and detachment proceedings:

Beginning March 1, 2014, and each successive year thereafter, the mayor or city manager of a city or incorporated town shall file annually with the city clerk or recorder, town recorder, and county clerk a written notice describing any annexation elections that have become final in the previous eight (8) years. The written notice shall include: the schedule of services to be provided to the inhabitants of the annexed portion of the city; and a statement as to whether the scheduled services have been provided to the inhabitants of the annexed portions of the city. If the scheduled services have not been provided to the new inhabitants within three (3) years after the date the annexation becomes final, the written notice reporting the status of the extension of scheduled services shall include a statement of the rights of inhabitants to seek detachment. A city or incorporated town shall not proceed with annexation elections if there are pending scheduled services that have not been provided in three (3) years as prescribed by law. (A.C.A. § 14-40-2201 (a)-(c))

In all annexations under § 14-40-303 and in accordance with § 14-040-606, after the territory declared annexed is considered part of a city or incorporated town, the inhabitants residing in the annexed portion shall: have all the rights and privileges of the inhabitants of the annexing city or incorporated town; and be extended the scheduled services within three (3) years after the date the annexation becomes final. The mayor of the municipality shall file a report with the city clerk or recorder, town recorder, and county clerk of the extension of scheduled services. If the scheduled services have not been extended to the area and property boundaries of the new inhabitants within three (3) years after the date annexation becomes final, the written notice reporting the status of the extension of scheduled services shall: include a written plan for completing the extension of services and estimated date of completion; and include a statement of the rights of inhabitants to seek detachment. A city or incorporated town shall not proceed with any additional annexation elections if there are pending scheduled services that have not been extended as required under this subchapter. (A.C.A. § 14-40-2202 (a)-(c))

Arkansas Code Title 14, Chapter 40, Subchapter 20, is amended to add an additional section to read as follows: 14-40-2006. Provision of municipal services. In a municipal services matter under this subchapter, if a city or incorporated town from which the inhabitants detached determines that the scheduled services are available or become available to the detaching inhabitants by the city or incorporated town to which the inhabitants were annexed into, the inhabitants shall automatically be detached and annexed back into the original city or incorporated town after the expiration of one hundred eighty (180) days following the date the schedule of services became available to the inhabitants and the inhabitants have not used the services. (A.C.A. § 14-40-2006).

To amend the law concerning annexation and enclaves. Arkansas Code Section 14-40-501(a)(1)(A), concerning exceptions to annexation, is amended to read as follows:

(a)(1)(A)(i) Whenever the incorporated limits of a municipality have completely surrounded an unincorporated area, the governing body of the municipality may propose an ordinance calling for the annexation of the land surrounded by the municipality.

(ii) Subdivision (a)(1)(A)(i) of this section includes situations in which the incorporated limits of a municipality have surrounded an unincorporated area on only three (3) sides because the fourth side is a boundary line with another state, a military base, a state park, a national forest, a lake, or a river.

## **ANNEXATION UPDATES FOR THE 91<sup>ST</sup> GENERAL ASSEMBLY**

Arkansas Code Title 14, Chapter 40, Subchapter 2, is amended to add section (c) to § 14-40-204. Annexation of city owned parks and airports. Section (c) reads as followed: (c) All city-owned parks with a minimum of thirty (30) acres and owned by cities in this state having a population of not less than fifteen thousand (15,000) and not more than eighteen thousand (18,000) and located in counties having a population of not less than two hundred twenty thousand (220,000) and not more than two hundred sixty thousand (260,000), according to the most recent federal decennial census, are annexed to the cities owning the parks.

To amend the law concerning annexation within one-half mile of a state park. A.C.A. § 14-40-205 was amended to add subdivision (a)(4) providing, "The area to be annexed contains a public or private school."

## **D) COUNTY ROADS**

Various judges view the county judges' powers over the county road system differently. Most county judges view this power as stated in Article 7, Section 28 of the Arkansas Constitution of 1874 as county courts shall have exclusive original jurisdiction in all matters relating to county roads.

Additionally, Section 3 of Amendment 55 of the Arkansas Constitution states that a judge in addition to other powers and duties provided for by the Constitution and by law, shall operate a system of county roads. Arkansas Code Annotated 14-14-1101(A3) states that Section 3 of Amendment 55 to the Arkansas Constitution established that the executive powers to be administered by the County Judge included the operation of the system of county roads. Also, Arkansas Code Annotated 14-14-1105 paragraph 6, states that the county court shall have all other jurisdiction now vested by law in the county court excepting with respect to those powers formerly vested in the county court under the provisions of Section 28 of Article 7 of the Constitution which were transferred to the county judge under the provisions of Section 3 of Amendment 55 to the Arkansas Constitution.

**Note:**

The County Judges Association of Arkansas conducts a comprehensive "County Road Seminar" during each term of office and it is suggested that all County Judges and key road department personnel attend this seminar.

**CONDEMNATION PROCEDURE**

1. The county courts shall have power to open new roads, to make such changes in old roads as they may deem necessary and proper, and to classify the roads and bridges in their respective counties for the purpose of this act, and when the change shall be made or any new road opened, the same shall be located on section lines as nearly as may be, taking into consideration the conveniences of the public travel, contour of the county, etc., and roads hereafter established or opened shall not be less than fifty (50') feet wide, providing a minimum of twenty-five feet (25') of right of way on either side of the centerline. An appropriate order of the county court shall be made and entered of record. (A.C.A. § 14-298-121)
2. Any five (5) or more interested land owners may petition the county court for the opening of any road as a public road; such petition shall give the starting point and terminus of said road or roads, as well as intermediate points, and such other description or plat as will permit the location of the road or roads by the county surveyor. (A.C.A. § 14-298-121)
3. The petition shall be accompanied by a bond signed by at least one (1) of the petitioners and by other good and sufficient sureties, which bond shall provide for reimbursing to the county any claims that may be sustained against the county for lands taken by opening of such road or roads. (A.C.A. § 14-298-121)
4. On filing of such petition, the county court shall set a date for the hearing. It shall be the duty of one (1) of the petitioners to give at least thirty (30)

days' notice in writing to the owners. If service is not obtained, then by one (1) insertion for two (2) weeks in some newspaper published and having a general circulation in the county, the county clerk shall publish a notice as to the filing of the petition and naming the day on which the county court will hear the parties and those for and against the opening of the road. (A.C.A. § 14-298-121)

5. On the day named, the county court shall hear those for and against the opening of said petitioned for road or roads and shall grant or deny the prayer of the petitioners as they may be deemed wise and expedient by the court and shall make and cause to be entered and appropriate court order either laying out the road or denying the petition. (A.C.A. § 14-298-121)
6. If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right-of-way therefore, or to agree upon the damages therefore, then such owner shall have the right to present his or her claim to the county court duly verified for such damages as he or she may claim by reason of said road being laid out on his or her land and if the owner is not satisfied with the amount allowed by the court, he or she shall have the right to appeal as now provided by law from judgments of the county court; provided, however, no claim shall be presented for such damages after twelve (12) months from the date of the order laying out or changing any road; provided further, that when such order is made and entered on record laying out or changing any road, the county court or county judge thereof shall have the right to enter upon the lands of such owner and proceed with the construction of such road. Provided further, all damages allowed under this act shall be paid out of any funds appropriated for roads and bridges and if no such funds exist, then to be paid out of the general revenue fund of the county. (A.C.A. § 14-298-121)

**NOTE:** This condemnation procedure outlined above is taken from the Arkansas Code Annotated 14-298-121. There has been considerable case law on this subject and it is recommended that you contact your prosecuting attorney, county attorney or civil attorney to assist you with the complexities of this procedure.

**FORMATION OF RURAL ROAD AND STREET IMPROVEMENT DISTRICT**

The law provides for the people to be able to petition the county court at an advertised public (court hearing) for the formation of a road and street improvement district for a given land area. Provided two-thirds (2/3) of the land owners, two-thirds (2/3) of the acreage, or two-thirds (2/3) of the assessed value (one of any three) are represented on the petition the county court shall lay off the described area into a district. The petition, as approved, would include the

names of three road commissioners that would administer the district. (A.C.A. § 14-317-103)

The act provides that all or portions of incorporated towns or cities may be included in such districts provided that the area of the district located within such incorporated towns or cities, shall be less than a majority of the area of the entire district and provided further that no incorporated town or city or portion thereof shall be included in such district unless it shall be found that two-thirds (2/3) majority in value of the owners of real property within the affected area of such incorporated town or city irrespective of a majority elsewhere in the district, have petitioned for formation of the district. (A.C.A. § 14-317-103)

If land in more than one (1) county is embraced in the proposed district, the commissioners of the district shall be selected so as to name at least one (1) property holder in the affected territory of each county in which the district embraces land. Provided however, that the district embraces land in more than three (3) counties, the commissioners of the district shall be selected so that not more than one (1) commissioner shall be a property holder in the territory of any county in which the district embraces land. (A.C.A. § 14-317-103)

When the initial assessment of benefits of such districts has been determined, the petition for formation of such districts shall once again be upon such review it does not appear that persons who would be liable for at least fifty-one percent (51%) of the initial assessed benefits have signed the petition, then said assessment shall not be levied until additional signatures are obtained on the petition which would represent the approval of persons who would be liable for at least fifty-one percent (51%) of said assessments. Furthermore, the first assessment of benefits by such districts shall not be increased for a period of five (5) years subsequent to the first levy. Thereafter, the assessment of benefits shall be as otherwise provided by law. (A.C.A. § 14-317-118)

After the taking of the oath of performance, the commissioners may employ such engineers, assessors, attorneys and other assistants as is necessary to work up the total bonding capacity of the district and determine estimates of costs of the project. (A.C.A. § 14-317-108 and A.C.A. § 14-317-109)

The assessment shall be filed with the county clerk of the county where the land lies and the secretary of the board shall thereupon give notice of its filing by publication once a week for two (2) weeks in a newspaper published and having a bona fide circulation in the district. (A.C.A. § 14-317-120)

The commissioners may, not more often than once a year, require the appointed assessor to reassess the benefits in said district, but in the event the district shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished. Such reassessment shall be made, advertised and equalized in

the same manner as provided herein for making the original assessment. (A.C.A. § 14-317-122)

In order to meet preliminary expenses and to do the work, the board may issue the negotiable notes as bonds of the district signed by the members of the board and bearing a rate or rates of interest approved by the board and may pledge and mortgage all assessments for the payment thereof. It may also issue, to the contractors who do the work, negotiable evidence of debt bearing interest at a rate or rates provided in the resolution authorizing their issuance and secure the same in said manner. No bonds issued under this act shall run for more than thirty (30) years and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected or they may all be made payable at the same time, with proper provision for a sinking fund, such bonds shall not be sold for less than without the unanimous vote of the board. (A.C.A. § 14-317-128)

The county court is hereby authorized to turn over to any road or street improvement district organized under this act such proportions of the road tax as may be just and equitable, or any portion of the automobile gas tax, turnback fund, and the county court is further authorized to contribute such funds in money or script to the expenses of such improvement from the general revenues of said county as it may deem appropriate. (A.C.A. § 14-317-133)

**THE FOLLOWING IS A SCENARIO OF THE COUNTY JUDGES ROLE IN SECURING RIGHT OF WAY FOR STATE SECONDARY HIGHWAYS:**

1. A "windshield survey" of the road is done by the county judge and the Arkansas Highway and Transportation Department on the feasibility and cost estimate of securing the right of way for a new road or widening of an existing road. Also, cost figures should include an estimate of removing all man made obstructions.
2. If need has been established and the cost feasible, then the county judge would request a survey party from the district office of the Arkansas Highway and Transportation Department.
3. The survey team would come to the county and survey the roadway. This involves establishing a centerline and working outward to include all drainage structures needed and designating the roadway.
4. After this survey is completed then all field drainage and notes are sent to the Arkansas Highway and Transportation Department to the Design and Engineering Department. This division then drafts the final drawings of the roadway.
5. The Legal Division of the Arkansas Highway and Transportation Department then draws up various county court orders and other necessary service papers to secure the right of way.

6. County judge receives various court orders from the Arkansas Highway and Transportation Department and takes them to various landowners to get them signed. If landowner has changed his mind or does not want to sign the order, then condemnation procedures are initiated.
7. County judge returns a copy of the various court orders served to the Arkansas Highway and Transportation Department.

**PROCEDURE FOR VIEWING, REVIEWING,  
ALTERING OR VACATING ANY COUNTY ROAD**

1. Previous to any petition being presented to the county court for a county road, notice must be given by publication in some newspaper published in the county or if none, by advertisements in three public places. The notice shall state the time when the petition will be presented and the substance of it. Notice of publication shall be presented with the petition to the county court. (A.C.A. § 14-298-102)
2. All applications for laying out, viewing, reviewing, or altering or vacating any county road shall be by petition to the county court and be signed by at least ten (10) freeholders of the county. One (1) or more of the signers of the petition shall enter into bond, with sufficient security, payable to the State of Arkansas for the use of the county. Also, that person who makes application for a view or review, alteration or vacation of any road shall pay into the treasurer of the county the amount of all costs and expenses occurring on such view, review, alteration or vacation. (A.C.A. § 14-298-103)
3. The petition shall state the beginning, intermediate points, if any, and the place of termination of the road. (A.C.A. § 14-298-104)
4. On presentation of the petition and proof of notice of publication, the county court being satisfied that proper notice has been given in accordance with the law, shall appoint three (3) disinterested citizens of the county as viewers. (A.C.A. § 14-298-105)
5. These viewers shall be a jury to assess and determine the compensation to be paid in money for property sought to be appropriated, without deduction for benefits to any property of the owners. The viewers shall also assess and determine what damages each owner of the lands over which the road is to run shall suffer by the opening and construction of said road. (A.C.A. § 14-298-105)
6. The viewers may call upon a surveyor to assist them in laying out and surveying or altering the road. (A.C.A. § 14-298-106)

7. The county court shall issue its order directing said viewers to proceed, on a day to be named in said order to view, survey and lay out or alter said road, and also determine whether the public convenience requires that such road, or any part thereof, shall be established. They shall also report what width said road should be to promote public convenience. Provided, the county courts shall have the power to determine what shall be the width of each road in their respective counties. The presumed width of a public road shall be fifty feet (50'), providing a minimum of twenty-five feet (25') of right-of-way on either side of the center line. (A.C.A. § 14-298-105 and 14-298-110)
8. It shall be the duty of one (1) of the petitioners to give at least thirty (30) days' notice in writing to: The owner or his or her agents, if residing within the county, or if the owner is an incapacitated person as defined by § 28-65-104, then to the guardian of that person, if a resident of the county, through whose land the road is proposed to be laid out and established; and the viewers named in the order of the county court of the time and place of meeting as specified in the order. It is further made the duty of the principal petitioner, if the road is proposed to be laid out on or through any land owned by nonresidents of the county, to cause notice to the nonresidents of the county to be served as provided by the Arkansas Rules of Civil Procedure, and if service is not obtained, then the notice shall be published one (1) time per week for two (2) consecutive weeks in some newspaper of general circulation published in the county. If there is no newspaper published in the county, then notice shall be given to the nonresident by posting a notice of the time and place of meeting of the viewers as specified in the order of the county court. The substance of the petition for the road shall also be posted upon the door of the office of the clerk of the county court for at least two (2) weeks before the time fixed for the meeting of the viewers. (A.C.A. § 14-298-108)
9. It shall be the duty of the viewers to meet at the time and place specified in the order. After taking an oath or affirmation to faithfully and impartially discharge the duties of their appointments, respectively, they shall take to their assistance two (2) suitable persons as chain carriers and one (1) person as marker and proceed to view, survey, and lay out or alter the roads as prayed for in the petition, or as near the same as in their opinion a good road can be made with reasonable expense, taking into consideration the ground, convenience, and inconvenience and expense which will result to individuals as well as to the public if the road is established, or any part thereof, or altered as prayed for. In laying out or altering or establishing public highways, the highways shall be located as

- near as practicable on section and subdivision lines. (A.C.A. § 14-298-109)
10. The viewers shall assess and determine the damages sustained by any person through whose premises the said road is proposed. (A.C.A. § 14-298-111)
  11. The viewers shall make and sign a report in writing, stating their opinion in favor of or against the establishment, alteration or vacation of such road. Their reasons for their decisions shall be written and a description of the roadway shall be outlined. Also, the value of the property needed to build the road shall be listed as well as the amount of damages, if any, and to whom, which by them have been assessed. (A.C.A. § 14-298-112)
  12. The county court, on receiving the reports of the viewers shall cause the report to be available to all parties and shall cause a hearing to be held in which the report is read publicly. If no legal objection is made to the reports by the parties and the court is satisfied that the road, or any part thereof, will be of sufficient importance to the public to cause the damages and the compensation that have been assessed to be paid by the county, and that the amount so assessed is reasonable and just, and the report of the viewers being favorable thereto, the court shall order the damages to be paid to the persons entitled thereto from the county treasury, and thenceforth the road shall be considered a public road. If the court is of the opinion that the road is not of sufficient public utility for the county to pay the compensation and damages assessed and the petitioners refuse to pay the compensation and damages, then the road shall not be declared a public highway or road and the costs accruing by reason of the application shall be paid by the petitioners. If the report of the viewers is against the proposed road or alteration, or if the road is not of sufficient public utility, in the opinion of the court, then no further proceedings shall be had thereon and the obligors in the bond securing costs and expenses shall be liable for the full amount of the costs and expenses. (A.C.A. § 14-298-113)
  13. After any road has been established and declared a public road, the county court shall issue an order declaring the road to be opened and the order shall be filed of record with the county clerk. (A.C.A. § 14-298-114)
  14. Any citizen of the county, whose lands are affected by establishment of a road, may apply to the county court by petition for a review of the road. The petition shall state the beginning, intermediate points, if any, and the place of termination of the road. (A.C.A. § 14-298-104)
  15. After the viewers of any county road shall have made return in favor of the road and before the road has been established, any citizen of the county whose lands are affected by the road may apply by petition to the county court for a review of the road. The court, on being satisfied from the petition that a review should be granted, shall appoint three (3) disinterested freeholders of the county to review the road and issue their order to the reviewers directing them to meet at a time and place therein specified. After taking the oath required of viewers, they shall proceed to examine the route surveyed for the road by the former viewers and make a report in writing to the court stating their opinion in favor of or against the establishment of the road, or any part thereof, and their reasons therefor. The petitioners for review shall give at least thirty (30) days' notice to the principal petitioner for the road of the time and place of meeting of the reviewers. If a review is granted, then no further proceedings shall be had until the reviewers have reported their action to the court. If the report of the reviewers is in favor of the road, the road shall be established, recorded, and opened, and the persons bound for the review shall pay into the county treasury the amount of the costs of the review. If the report is against the establishment of the road, no further proceedings shall be had about the road before the court, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the views, survey, and review of the road. (A.C.A. § 14-298-115)
  16. An appeal from the final decision of the county court for a new county road, or for vacating, altering or reviewing any county road, shall be allowed in circuit court. Provided, that notice of such appeal be given within thirty (30) days from the date the order of the county court is filed of record with the county clerk. The appellant, within thirty (30) days following the decision, shall enter into bond, with good and sufficient security, to be approved by the clerk of the county court, for the payment of all costs and expenses arising from the appeal. Incapacitated persons or their guardians may appeal without giving bond. (A.C.A. § 14-298-116)
  17. The circuit court may order another view or review of such road, or make such other orders as the justice of the case demands. The county court, after notice of appeal has been given, shall not issue any order in the premises until after thirty (30) days shall have expired from the time of making the decision appealed from; if the appeal shall not have been perfected agreeably to the provisions of this act, the clerk shall issue the order for the opening of the road. The decisions of the circuit court on petitions for roads taken into said court by appeal shall be recorded in the

record of said county court appealed from. (A.C.A. § 14-298-116)

### **PROCEDURE FOR VACATING STREET, ALLEY, OR ROADWAY**

Where the owner of lands situated in a county and outside of a city of the first or second class or incorporated town has dedicated a portion of the lands as streets, alleys, or roadways by platting the lands into additions or subdivisions and causing the plat to be filed for record in the county and any street, alley, or roadway, or portion thereof shown on the plat so filed shall not have been opened or actually used as a street, alley, or roadway for a period of five (5) years, or where any strip over the platted lands, although not dedicated as a street, has been used as a roadway, the county court shall have power and authority to vacate and abandon the street, alley, or roadway, or a portion thereof. (A.C.A. § 14-18-105)

1. The owners of all lots and blocks abutting upon any street, alley, or roadway, or portion thereof, desired to be vacated shall file a petition in the county court requesting the court to vacate it. (A.C.A. § 14-18-106)
2. The petition shall clearly designate or describe the street, alley, or roadway, or portion thereof, to be vacated, give the name of the addition in which they are located and the date the plat was filed, and attach as an exhibit a certified copy of the plat. (A.C.A. § 14-18-106)
3. Upon the filing of the petition, the county clerk shall promptly give notice, by publication once a week for two (2) consecutive weeks in some newspaper published in the county and having a general circulation therein, that the petition has been filed and that on a certain day therein named the county court will hear all persons desiring to be heard on the question of whether the street, alley, or roadway, or portion thereof, shall be vacated. (A.C.A. § 14-18-106).
4. The notice shall give the names of property owners signing the petition, clearly describe the street, alley, or roadway, or portion thereof, to be vacated, and give the name of the addition in which they are located. (A.C.A. § 14-18-106)
5. At the time named in the notice, the parties signing the petition and any other parties owning lots or blocks in the platted lands not abutting on the streets, alleys, or roadways, or portions thereof, to be vacated or otherwise affected by the vacation shall be heard; and the court shall determine whether the streets, alleys, roadways, or portion thereof, should be vacated as proposed in the petition. (A.C.A. § 14-18-107)
6. No street, alley, or roadway, or portion thereof, shall be vacated if the court finds that it would be

against the interest of the public or that no means of ingress and egress would be left to any lots in the addition not abutting on them, unless the owners of the lots file their written consent to the vacation with the court. (A.C.A. § 14-18-107)

7. If the county court shall find that the petition should be granted, either in whole or in part, it shall enter an order vacating the streets, alleys, roadways, or portions thereof. (A.C.A. § 14-18-108)
8. The finding and order of the county court shall be conclusive on all parties having or claiming any rights or interest in the streets, alleys, roadways, or portions thereof, vacated. However, an appeal may be taken to the circuit court and perfected within thirty (30) days from the entry of the order, and an appeal may be taken from the circuit court to the Arkansas Supreme Court and perfected within thirty (30) days from the entry of the order of the circuit court. (A.C.A. § 14-18-108)
9. A certified copy of the order shall be filed in the office of the recorder of the county and recorded in the deed records of the county. (A.C.A. § 14-18-108)
10. The costs of the publication of the notice, the recording of the order, and the court costs shall be paid by the petitioners. The court costs shall be paid by parties who unsuccessfully contest the petition. (A.C.A. § 14-18-108)
11. The owners of all lots abutting on the streets, alleys, or roadways, or portions thereof, vacated by an order of the county court, as provided for in §14-18-108, shall have the right to have reduced to acreage such lots and the streets or alleys so vacated by petition to the county court where the property is situated. (A.C.A. § 14-18-109)
12. The county court shall promptly hear the petition and, upon proper showing that it is signed by all of the owners, shall order that the lots and streets, alleys, or roadways be reduced to acreage, and they shall thereafter be assessed as acreage for taxation of all kinds. (A.C.A. § 14-18-109)
13. The petition may be included in the petition for the vacation of the streets, alleys, or roadways, and the order may be included in the order vacating it, or the petition may be filed and the order entered separately. (A.C.A. § 14-18-109)
14. In all cases where land theretofore platted into lots and blocks has been returned to acreage under the order of the county court in which the land lies and where the return to acreage did not involve the closing of any public road or thoroughfare, the action of the court in ordering the land returned to acreage and in canceling or annulling the platting

of the lands into lots and blocks is validated and affirmed. (A.C.A. § 14-18-110)

15. The provisions of this section shall not apply to any lands lying within the corporate limits of any town or city, nor shall it affect the title to any lands but shall merely validate the conversion of the lands from lots and blocks into acreage. (A.C.A. § 14-18-110)

### **MUNICIPAL WATERWORKS – POWER TO CONDEMN**

1. If any portion of a state or county road will lie below the high-water mark of an impounding lake, the operating authority of municipal waterworks system shall have the right to flood the road. (A.C.A. § 18-15-407)
2. If the state or the county determines that a replacement road is required, the municipality shall be obligated to pay the cost of replacing the flooded road with another road of the same type and width, which road shall be the shortest reasonable distance consistent with good engineering practice. (A.C.A. § 18-15-407)
3. The county judges shall make all determinations for county roads. (A.C.A. § 18-15-407)
4. If the judge determines that a road need not be replaced, the operating authority is authorized to pay to the county a reasonable sum in lieu of relocating the road. Any sum so paid shall be used by the state or county for road purposes elsewhere in the county. (A.C.A. § 18-15-407)
5. The county may permit the municipality to construct the relocated road, and in that event the operating authority shall be entitled to condemn rights-of-way for the roads in its own name or under this subchapter or under any eminent domain act available to the county. (A.C.A. § 18-15-407)
6. After acquiring the rights-of-way, title shall be transferred to the county. (A.C.A. § 18-15-407)
7. If any part of the road replaced or paid for as authorized in this section lies upon property owned by the municipality, title to that part of the replaced road shall vest in the municipality. (A.C.A. § 18-15-407)

### **PROCEDURE FOR DESIGNATING COUNTY ROADS**

Much case law exists on prescriptive right-of-way, prescriptive easement, and eminent domain problems in Arkansas, but very little legislation (state law) exists on the subject.

Attorney General's Opinion No. 86-184 - Generally, a property owner has a right to exclude anyone and everyone from his land. However, if the public has continuously used these roads, under certain circumstances, it may have acquired a right to continue such use by "prescriptive easement." Clinton Chamber of Commerce v. Jacobs, 212 Ark. 776, 207 S.W. 2d 616 (1948).

It is well settled that where the public uses a highway for a period of more than seven (7) years, continuously and adversely, the public acquires an easement by prescription or limitation of which it cannot be dispossessed by the owner of the fee.

Clinton, supra, at page 777. See also, Fullenwinder v Kitchens, 223 Ark. 442, 226 S.W. 2d 281 (1954). More recently, In Sebastian Lake Development v. United Tel. Co., 240 Ark. 76, 398 S.W. 2d 208 (1966), at page 83, the Court set out the standard to determine when such use ripens into a right as follows:

Where there is usage of a passageway over land, whether it began by permission or otherwise, if that usage continues openly for seven (7) years after the landowner has actual knowledge that the usage is adverse to his interest or where the usage continues for seven years after the facts and circumstances of the prior usage are such that the landowner would be presumed to know the usage was adverse, then such usage ripens into an absolute right.

Whether the public has acquired a prescriptive easement is a fact question to be determined on a case-by-case basis. If the owners close these roads, it is incumbent upon their former users to timely file suit in chancery court to assert their claim of a prescriptive easement or they may abandon this right by non-use. Clinton Chamber of Commerce, supra.

Direct routes to county courthouse may be designated county roads - The county judge may, in his discretion, designate as a county road any road that is the most direct route to the county courthouse for ten (10) or more families, and which road is graded and has been used by the general public as a road for at least two (2) years. (A.C.A. § 27-66-204)

Mail routes may be designated county roads - The county judge, may in his discretion, designate a county road that is used as a mail route or a free rural mail delivery route if such road is designated as such mail route by the proper postal authorities of the United States Government. (A.C.A. § 27-66-205)

School bus routes may be designated as county roads - The county judge may, in his discretion, designate as county roads, roads used as school bus routes. (A.C.A. § 27-66-206)

Maintenance and repair of designated roads - Upon declaring a road a county road pursuant to this Act, [A.C.A. § 27-66-207], the county judge shall take charge of such

road and cause such road to be maintained and repaired the same as other county roads. (A.C.A. § 27-66-206)

Street becomes public road upon dedication - The county judge, in his or her discretion, may designate as a county road any street or road dedicated to the public as a public thoroughfare, provided that a bill of assurance making such dedication is properly recorded. Unless a plat clearly reflects that roads are private, the county recorder shall not accept any plats in the unincorporated area of the county without the county court's acceptance of: roads for perpetual maintenance; and dedication of land for public purposes. (A.C.A. § 27-66-207)

Land becomes public road upon delivery of deed to county or district - The county judge may, in his discretion, designate as a county road any strip of ground deeded by the owners to the county for a public thoroughfare. (A.C.A. § 27-66-208)

If the public obtains the right to use a road through adverse possession the municipality or county in which the road is located shall have the authority to maintain the road. (A.C.A. § 14-296-101)

The county court has jurisdiction over all public roads in the county and that means the county court also has jurisdiction over streets within a city. The streets of a municipality are public roads of the county, of which the municipality is a component part. While streets do not include roads, yet roads do include streets. Yates v. Sturgis, 311 Ark. 618 (1993).

## **E) PAUPERS**

The county court has exclusive original jurisdiction in all matters relating to paupers. (Article VII, Section 28 of the Arkansas Constitution of 1874). This jurisdiction shall include all county administrative actions affecting the conduct of public human services programs serving indigent residents of the county where such services are financed in total or in part by county funds. (A.C.A. § 14-14-1105, paragraph b[2])

The typical involvement of the county court in relation to paupers is a pauper burial or cremation. A person dies who is a pauper in the county and has no insurance, no estate, and no relatives who could pay the costs of the burial or cremation.

Friends or relatives of the deceased may request that the county pay for the burial or cremation. Before agreeing to this, the county judge should conduct a "diligent search" for the next of kin, which may involve requesting the county sheriff to conduct such serve and check into the background of the situation and decide if there are any relatives with money enough to pay for the burial or cremation. If not, then contact should be made with a church, charitable organization or fraternal society where the deceased was a member to see if they would be willing to pay the cost of the burial or cremation of the pauper.

In discussion with the funeral home or crematory, it is best to let them know that they should not make any profit on this type of burial because the funeral home has a responsibility to society to bury this person for only the actual cost.

Also, the Arkansas Code sets out a procedure to be followed in connection with unclaimed bodies and it involves a search for next of kin and the giving of notice to the Department of Anatomy at the University of Arkansas for Medical Sciences (UAMS) for possible use of such bodies in anatomical research. (See Attorney General Opinion #2006-011)

## **A) COUNTY PURCHASING PROCEDURE**

The county purchasing procedure applies to any county official, individual, board or commission or his or its lawfully designated agent, with constitutional authority to contract or make purchases in behalf of the county or purchases with county funds in excess of twenty thousand dollars (\$20,000). (A.C.A. § 14-22-101 through 14-22-102)

### **1. Bidding Required in Excess of \$20,000**

Formal bidding procedure is required in which the estimate purchase price shall equal or exceed \$20,000. No purchasing official shall parcel or split any item or 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. (A.C.A. § 14-22-104)

Open market purchases or purchases in which competitive bidding is not required, may be made of any commodities where the purchase price is less than \$20,000. (A.C.A. § 14-22-104)

### **2. Purchases Exempted from Bidding**

The following commodities may be purchased without soliciting bids:

- a. Perishable foodstuffs for immediate use.
- b. Unprocessed feed for livestock and poultry.
- c. Advanced emergency medical services provided by a nonprofit corporation; and proprietary medicines when specifically requested by a professional employee.
- d. Books, manuals, periodicals, films and copyrighted educational aids, for use in libraries and for other informational material in institutional purposes.
- e. Scientific equipment and parts therefore.
- f. Replacement parts and labor for repairs for machinery and equipment.
- g. Commodities available only from the Federal Government.
- h. 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. Provided, that no such emergency purchase shall be approved unless a statement in

- writing shall be attached to the purchase order describing the emergency necessitating the purchase of such commodity without competitive bidding.
- i. Utility services, the rates for which are subject to regulation by a state agency or a federal regulatory agency.
  - j. Sand, gravel, soil, lumber, used pipe, used steel;
  - k. Used or secondhand motor vehicles, machinery or equipment; except a used or secondhand motor vehicles that has been under lease to a county when such vehicles has fewer than 5,000 miles of use may not be purchased by the county when it has been used 5,000 miles or more except upon competitive bids as provided for in the Act.
    - o. "Used or secondhand motor vehicles, equipment, or machinery" means motor vehicles, equipment, or machinery at least one (1) year in age from the date of original manufacture or that has at least two hundred fifty (250) working hours' prior use or five thousand (5,000) miles' prior use. (A.C.A. § 14-22-101(8)(A))
  - l. Machinery, equipment, facilities or other personal property purchased or acquired for or in connection with the securing and developing of industry under or pursuant to the provisions of Amendment No. 49 to the Constitution of the State of Arkansas, (repealed) of A.C.A. § 14-164-201 et seq., or of any other provision of law pertaining to the securing and developing of industry.
  - m. Registered livestock to be used for breeding purposes.
  - n. Motor fuels, oil, asphalt, asphalt oil, and natural gas.
  - o. Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction, or through a process requiring sealed bids.
  - p. All goods and services which are regularly provided to state agencies and county governments by the Arkansas Department of Correction's various penal industries.
  - q. 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. The purchase amount for a new motor vehicle may include additional options up to six hundred dollars (\$600) over the fleet price awarded.
  - r. Renewal or an extension of the term of an existing contract.
  - s. Purchase of insurance for county employees, including without limitation health insurance, workers' compensation insurance, life insurance, risk management services, or dental insurance; and
  - t. Purchases made through programs of the National Association of Counties or the Association of Arkansas Counties.

- u. Goods or services if the quorum court has approved by resolution the purchase of goods or services through competitive bidding or procurement procedures used by:
  - 1) The federal government or one (1) of its agencies;
  - 2) Another state; or
  - 3) An association of governments or governmental agencies including associations of governments or governmental agencies below the state level; and
- v. a) Goods or services available only from a single source.  
 b) A purchase under this subdivision (22) shall be supported with:
  - 1) Documentation concerning the exclusivity of the single source; and
  - 2) A county court order filed with the county clerk that sets forth the basis for the single source procurement. (A.C.A. § 14-22-106)

### **3. Formal Bidding Process**

The formal bidding shall mean the procedure to be followed in the solicitation and receipt of sealed bids.

- a. Notice shall be given of the date, time and place of opening bids, and the names or a brief description and the specifications of the commodities for which bids are to be received. The notice shall be 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 the bids.
- b. Furnish notices and bid forms to all eligible bidders on the bid list for the class of commodities on which bids are to be received and furnished notices and bid forms to all others requesting the same. These shall be furnished not less than ten (10) days prior to the date fixed for opening the bids.
- c. Post in the courthouse at least ten (10) days in advance of the date fixed for opening bids a copy of the notice of the invitation to bid. (A.C.A. § 14-22-101)

### **4. List of Eligible Bidders**

The county purchasing official shall establish and maintain a list of eligible bidders covering all commodities and shall furnish copies of the list to all purchasing officials of the county. Any firm which desires to bid and have its name on the list of prospective bidders shall notify the purchasing official in writing of such desire setting forth the class and description of commodities on which it desires to bid, and the firm's qualification as a responsible bidder. Every effort shall be made by the purchasing official to notify all eligible bidders before purchase is made. (A.C.A. § 14-22-107)

### **5. Descriptions and Specifications**

Descriptions and specifications shall be sufficiently restricted or so 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 or any items of comparable quality and coming within reasonably close price range. (A.C.A. § 14-22-109)

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; and may require samples to be submitted and a certified analysis to accompany bids prior to awarding contracts. 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. (A.C.A. § 14-22-110)

## **6. Bidding Procedure**

All bids which shall require either formal or informal bidding shall be opened in public and read at the time and place specified in the notice. (A.C.A. § 14-22-108)

The awarding of contracts need not be upon the day of the opening of the bids, but may be at a latter date to be determined by the purchasing official. 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. (A.C.A. § 14-22-108)

## **7. Preferential Differential Allowed Local Business**

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. (A.C.A. § 14-22-111)

Any bid or bids may be rejected by the purchasing official. Where such bids are rejected and 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, provided however, that 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. (A.C.A. § 14-22-111)

All bidders shall be given equal consideration under the provisions of this act, except that of items manufactured or grown in the county or offered for sale by business establishments having their principal place of business in the county, quality being equal to articles offered by competitors outside the county, shall be allowed a differential of not to exceed three percent (3%) of the purchase price in determining the low bid; but in each instance in which such 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. (A.C.A. § 14-22-111)

In all cases where there are equal or tie bids, preference shall be given to residents or firms located or doing business in the county. (A.C.A. § 14-22-111)

## **8. Approval by County Court**

a. No contract shall be awarded or any purchase made until the same has been approved by the county court, and no contract shall be binding on any county until the county court shall have issued its order of approval. (A.C.A. § 14-22-112)

b. The order of the county court shall be properly docketed, and all documents and bids pertaining to the solicitation of bids and awarding of contracts under the purchasing procedure of this act shall be filed with the county clerk, together with the order which shall be filed by said county clerk. (A.C.A. § 14-22-112)

c. No claim filed with the county for payment of any commodity, the purchase of which is regulated by this act, shall be paid, or no warrant shall be issued by the county clerk for the payment of same, until the order of the county court approving shall have been issued and filed with the county clerk. (A.C.A. § 14-22-112)

## **9. Failure of Performance - Trade Ins.**

a. If any bidder to whom a purchase contract is awarded under the provisions of this act shall refuse or fail to perform such contract, or to make delivery when required by such 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. (A.C.A. § 14-22-114)

b. In case of 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 contract; and the purchasing official shall determine with respect to trade-ins, what procedure shall be for the best interest of the county; and if he so determines such equipment or machinery may be sold outright under the law as now provided. (A.C.A. § 14-22-113)

## **10. Purchase of Motor Fuels and Accessories**

For the purpose of this act any county within the State of Arkansas maybe considered a State Agency for the purpose of purchasing gasoline, oil and other motor fuels and/or batteries, tires and tubes for motor vehicles. Any County Purchasing Agent within this State may purchase such commodities through the State Purchasing Agent under the authority set forth in these statutes. (A.C.A. § 14-22-105)

## **11. Penalty for Violations**

Any person or official who intentionally violates the provisions of this Act shall, upon conviction, be fined in any amount not less than \$100.00 nor more than \$1,000.00, and in addition thereto be removed from his office or position of employment with the county. (A.C.A. § 14-22-103)

## **12. Purchase of Surplus Materials**

### **14-300-102. Purchase of surplus bridge material by county -- Definition.**

(a) As used in this section, "surplus bridge material" means a general contractor's excess or unused bridge steel or other scrap items remaining after completion of a contract for the construction, improvement, rehabilitation, or replacement of a bridge on a state highway or county road.

(b)(1) When a general contractor is awarded a contract for the construction, improvement, rehabilitation, or replacement of a bridge on a state highway or county road, the county judge of the county in which the bridge is located may notify the general contractor in writing no later than thirty (30) days after the contractor is issued a work order on the project that the county requests to purchase all or any portion of the surplus bridge material at the salvage value price.

(2) This section does not prevent a general contractor from retaining surplus bridge material for the general contractor's own purposes.

(3) A general contractor does not have a duty to notify the county judge of a bridge construction project the general contractor undertakes in a county.

(c)(1) If a general contractor elects to sell the surplus bridge material for salvage and the county has given notice under subsection (b) of this section, then the county has a right of first refusal to purchase all or any portion of the surplus bridge material for the salvage value price.

(2) The county judge shall tender the county's written offer to purchase all or any portion of the surplus bridge material at salvage value price.

(d)(1) The purchase by the county of surplus bridge material is "as is", and the county shall hire an engineer to inspect any surplus bridge material it acquires under this section to determine if the surplus bridge material is suitable for the county's intended use.

(2) The general contractor does not have a responsibility to inspect or otherwise render an opinion as to the condition, state, or suitability of the surplus bridge material for the county's intended use.

(e) This section does not create a cause of action, and a cause of action shall not be available, in negligence or otherwise, against a general contractor for the surplus bridge material purchased by the county under this section.

(f) The county shall retrieve and transport the surplus bridge material it acquires under this section within thirty (30) days after the election by the general contractor to sell the surplus bridge material at salvage value price under subdivision (c)(1) of this section unless otherwise agreed by the parties.

## **13. Purchases From County Government Officers and Employees.**

If the quorum court determines it is in the best interest of the county, the quorum court by ordinance upon a two-thirds (2/3) vote may permit the county to purchase goods, services, commodities, or real property directly or indirectly from a quorum court member, a county officer, or a county employee due to unusual circumstances. The ordinance shall define specifically the unusual circumstances under which the purchase is permitted and the limitations of the authority. A quorum court member having an interest in the goods, services, commodities, or real property being considered under this subdivision shall not vote upon the approval of the ordinance permitting the purchase. (A.C.A. § 14-14-1202)

### **B) PRESIDING OVER THE QUORUM COURT**

The county judge presides over the quorum court, without a vote, but with the power of veto. (A.C.A. § 14-14-1101, 14-14-904 and Amendment 55 to Arkansas Constitution)

The justices of the peace elected in each county shall assemble and organize as a county quorum court body on the first regular meeting date after the beginning of the justices' term in office, or the county judge may schedule the biennial meeting date of the quorum court on a date in January other than the first regular meeting date of the quorum court after the beginning of the justices' term. At the first regular meeting, the quorum court shall establish the date, time, and location of meetings of the quorum court. The organizational ordinance adopted at the first regular meeting of the quorum court shall be effective upon adoption. Thereafter, the justices shall assemble each calendar month at a regular time and place as established by ordinance and in their respective counties to perform the duties of a quorum court, except that more frequent meetings may be required by ordinance. By declaration of emergency or determination that an emergency exists and the safety of the general public is at risk, the county judge may change the date, place, or time of the regular meeting of the quorum court upon twenty-four-hour notice. (A.C.A. § 14-14-904)

**NOTE:** One of the first orders of business for the new quorum court at the beginning of each term of office is setting a specific meeting date and reviewing the rules of procedure that have been adopted previously by the Quorum Court. A more detailed quorum court procedure is described in Chapter VI of this manual.

### **C) ADMINISTER ORDINANCES ENACTED BY THE QUORUM COURT**

The Arkansas Constitution, Amendment 55, Section 3, establishes 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.

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, and Section 6. (A.C.A. § 14-14-1101)

Currently, A.C.A. § 21-2-701 provides that the participation in the Self-Insured Fidelity Governmental Bond Program administered through the Arkansas Insurance Department is in lieu of any otherwise applicable bonding requirements. (A.C.A. § 21-2-701 and Attorney General Opinion #2007-228)

**D) 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 now provided by law for the disposal of county property by the county court; the right to lease, assign or not to assign use of such property whether or not such county property was purchased with county funds or was acquired through donations, gifts, grants confiscation, or condemnation. Provided, however, that the county judge shall be allowed to lease or loan county property only to other political entities or nonprofit organizations and shall be prohibited from leasing or loaning county property to any other private sector interest. (A.C.A. § 14-14-1101 - 14-14-1103)

Counties are authorized to exchange or transfer properties, real or personal, with other counties, municipalities, community colleges or institutions of higher education. An exchange or transfer under A.C.A. § 14-16-116 shall be approved by ordinances of the quorum court and accomplished in accordance with procedures prescribed or confirmed by the quorum court. An agreement for service, legal tender, or other consideration may be accepted in exchange for real or personal property under A.C.A. § 14-16-116. A transfer made under this section is exempt from sections 14-16-105, 14-16-106, 14-22-101 et seq., and the Arkansas procurement law, section 19-11-201 et seq.

A.C.A. § 27-65-109. The State Highway Commission is authorized to enter into agreements to exchange or agreements to transfer highways with appropriate county and municipal authorities. County and municipal authorities

are authorized to enter into agreements with the commission to exchange or agreements to transfer highways in their respective highway systems. An exchange or transfer under this section shall include all property interests held by the transferring party. An exchange or transfer under this section does not require an exchange of money or other consideration. This section does not affect the authority of the commission under § 27-67-321 or § 27-67-322.

**E) COUNTY BOARDS**

The quorum court may, by ordinance, establish county advisory or administrative boards for the conduct of county affairs. (A.C.A. § 14-14-705)

**Advisory Boards** - An advisory board may be established to assist a county office, department or subordinate service district. Such advisory board may furnish advise, gather information, make recommendations and perform other activities as may be prescribed by ordinance. A county advisory board shall not have the power to administer programs or set policy. (A.C.A. § 14-14-705)

**Administrative Boards**

a. Administrative boards may be established to exercise administrative powers granted by county ordinance, except that such board may not be authorized to pledge the credit of the county. Such administrative board shall be a body politic and corporate, with power to contract and be contracted with and sue and be sued; provided, as to actions of tort, such board shall be considered as an agency of the county government and occupy the same status as a county; provided, further, no board member shall be liable in court individually for an act performed by him as such board member unless the damages caused thereby were the results of said board member's malicious acts.

b. No member of any administrative board shall be interested, either directly or indirectly, in any contract made with said administrative board, and a violation of this provision shall be deemed a felony.

c. An administrative board may be assigned responsibility for a county department or subordinate service district.

d. All administrative board members shall be appointed by the county judge. Such appointments shall require confirmation by a quorum court.

e. An administrative board shall contain five (5) members. Provided, a county library board created after August 1, 1997, shall consist of not less than five (5) members nor more than (7) members and shall serve until their successors are appointed and qualified.

f. The term of any administrative board member shall be for a period of five (5) years. However, the initial appointment of any administrative board shall provide for the appointment of one (1) member for a one-year term,

one (1) member for a two-year term, one (1) member for a three-year term, one (1) member for a four-year term, and the remaining member or members for a five-year term, thereby providing, except for county library boards with more than five (5) member s, for the appointment of one (1) member annually.

g. No board member, either advisory or administrative, shall be appointed for more than two (2) consecutive terms.

h. All persons appointed to an advisory or administrative board shall be a qualified elector of the county.

i. A quorum court may prescribe, by ordinance, additional qualifications for appointment to a county administrative board.

j. All board members appointed to either an advisory or administrative board shall, within ten (10) days from the date of appointment, subscribe to the oath of office. Evidence of oath of office shall be filed with the county clerk. Failure to do so shall be deemed to constitute rejection of the office and the county judge shall appoint a board member to fill the vacancy.

k. No member of a quorum court shall serve as a member of a county advisory or administrative board.

l. A person may be removed from a county board for cause by the county judge with confirmation by resolution of the quorum court; provided, however, that written notification stating the causes for removal shall be provided to such board member prior to date established for quorum court consideration of removal and such board member shall be afforded the opportunity to meet with the quorum court in their deliberation of removal.

m. Appeals from removal of a county board member shall be directed to the circuit court of the respective county within thirty (30) days after such removal is confirmed by the quorum court. (A.C.A. § 14-14-705)

The clerk of the county court shall maintain a register of county advisory and administrative board appointments as established by appointment, including:

1. The name of the board;
2. The ordinance reference number establishing such board;
3. The name of the board member;
4. The date of appointment; and
5. The expiration date of such appointments.

(A.C.A. § 14-14-706)

**Initial Meeting** - The time and place for the initial meeting of a county board shall be established by the county judge through written notification of each board member. (A.C.A. § 14-14-707)

**Meeting Dates and Notification** - All boards shall, by rule, provide for the date, time and place of regular monthly meetings or other regularly scheduled meetings. Such information shall be filed with the county court; and

notification of all meetings shall be conducted as established by law for public meetings. (A.C.A. § 14-14-707)

**Special Meetings** - Special meetings may be called by two (2) or more board members upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of such meeting. (A.C.A. § 14-14-707)

**Quorum** - A majority of board members shall constitute a quorum for purpose of conducting business and exercising powers and responsibilities. Board action may be taken by a majority vote of those present and voting unless the ordinance creating the board requires otherwise. (A.C.A. § 14-14-707)

**Organization and Voting** - Each county board shall, at its initial meeting of a quorum of members, elect one (1) of their members to serve as Chairperson of the Board for a term of one (1) year. The Chairperson shall thereafter preside over the board throughout their term as chairperson. In the absence of the Chairperson, a quorum of the board may select one (1) of their members to preside and conduct the affairs of the board. (A.C.A. § 14-14-707)

**Minutes** - All boards shall provide for the keeping of written minutes that include the final vote on all board actions indicating the vote of each individual member on the question. (A.C.A. § 14-14-707)

## ESTABLISHING IMPROVEMENT DISTRICTS

<u>DISTRICT OR AUTHORITY</u>	<u>ARKANSAS CODE ANNOTATED REFERENCE</u>
Ambulance Services Improvement District	A.C.A. § 14-282-101
County Bridge Improvement District	A.C.A. § 14-319-101
Cemetery Improvement District	A.C.A. § 20-17-1101
Drainage Improvement District	A.C.A. § 14-121-101
Emergency Medical Services	A.C.A. § 20-13-301
Fire Protection District	A.C.A. § 14-284-101
Highway Right of Way District	A.C.A. § 14-318-103
Interlocal Agreements (County Court)	A.C.A. § 14-14-910
(Quorum Court)	A.C.A. § 25-20-102
Levee Improvement District	A.C.A. § 14-123-201

<u>DISTRICT OR AUTHORITY</u>	<u>ARKANSAS CODE ANNOTATED REFERENCE</u>
Metropolitan Port Authority	A.C.A. § 14-185-101
Mosquito Abatement District	A.C.A. § 14-283-101
Regional Airport Authority	A.C.A. § 14-362-101
Regional Housing Authority	A.C.A. § 14-169-301
Regional Water Distribution District	A.C.A. § 14-116-101
Rivers, Tributaries and Steam Improvement District	A.C.A. § 14-118-101
Rural Road Improvement District	A.C.A. § 14-317-101
Rural Development Authority	A.C.A. § 14-188-101
Suburban Sewer District	A.C.A. § 14-249-101
Subordinate Service District	A.C.A. § 14-14-708
Suburban Improvement District	A.C.A. § 14-92-201
Toll Bridges, Turnpikes or Causeways	A.C.A. § 27-86-201
Viaduct Improvement District	A.C.A. § 14-321-101

The county judge, as an administrator-executive and as the county court, is very much involved in the formation of these special districts.

**G)**

**PAYING COUNTY CLAIMS**

1. Invoices are assembled and attached to the claim and assigned a claim number and entered into a journal by the county clerk.
2. At the end of the month or when the bill is due and payable, the clerk should present the claim to the county judge for his signature.
3. After it is signed, the claim is sent back to the county clerk where a warrant is written in triplicate and signed by the clerk.
4. The warrant is then presented to the county treasurer and he/she issues a check for payment of the bill. In some counties the local merchants receive the warrants and no checks are written except to out of town or county merchants. The merchants who have received a warrant redeems it at a local bank.
5. Checks are mailed to out of town or county merchants.
6. All claims are maintained by the county clerk and shall be preserved for a period of seven (7) years after audit. (A.C.A. § 14-23-101 and A.C.A. § 14-23-105)

NOTE: Some counties pay claims directly by check instead of by warrant. Other counties choose to establish an electronic warrants transfer system. These processes are described by A.C.A. § 14-24-201 through 14-24-206.

**H)**

**SUGGESTED COUNTY BUDGETING PROCEDURE**

1. An estimate of county revenues for the next year should be compiled by September 1st or as soon as possible thereafter. Estimates for state highway and general turnback will be sent to you each year by the Association of Arkansas Counties.
2. The county judge should appoint a budget committee of the quorum court to hear the budget requests of each county official and make recommendations to the entire quorum court.
3. The county judge and members of the budget committee ask all county officials to formulate and submit a budget for the operation of their office for the next year by October 1st.
4. Each county and district official should familiarize themselves with Act 122 of 1981, (A.C.A. § 14-21-101). This act is known as the Comprehensive Financial Management System. The Legislative Joint Auditing Staff developed a manual on the system and this system is mandatory by law. The intent is to standardize the budget process in county government in Arkansas.
5. The county judge and budget committee should meet with each official to review their budget requests and answer any questions.
6. The budget committee should make recommendations to the entire quorum court in November.
7. The quorum court at its regular meeting in November of each year shall levy the county, municipal, and school taxes for the current year.
8. The Director of the Assessment Coordination Department may authorize an extension of up to sixty (60) days of the date for levy of taxes upon application by the county judge and county clerk of any county for good cause shown resulting from reappraisal or rollback of taxes.
9. If the levy of taxes is repealed by referendum, the county may adopt a new ordinance levying taxes within thirty (30) days after the referendum vote is certified.
10. If a county court determines that the levy of taxes by the quorum court is incorrect due to clerical errors, scrivener's errors, or failure of a taxing entity to report the correct millage rate to the quorum court, the county court shall issue an order directing the county clerk to correct the error in order to correct the millage levy. (A.C.A. § 14-14-904)
8. The entire quorum court accepts, rejects or amends the budget committee recommendations. If the quorum court rejects or amends the recommendations, it initiates other meetings which involve the disputed budgets.
9. Before the end of each fiscal year (calendar year) the quorum court shall make appropriations for the expenses of county government for the following year. Provided that nothing in this section shall prohibit the quorum court from making appropriation amendments at, any time during the current fiscal year. (A.C.A. § 14-14-904)
10. The quorum court shall specify the amount of appropriations for each purpose in dollars and

cents, and the total amount of appropriations for all county or district purposes for any one (1) year shall not exceed ninety percent (90%) of the anticipated revenues for that year, except for federal or state grants overseen by counties which the court may appropriate up to one hundred percent (100%) of the anticipated revenues for that year. For revenues to qualify as a grant under this section the county must demonstrate that the state or federal agency characterized the revenues as a grant. In any county in which a natural disaster, including, but not limited to a flood or tornado, results in the county's being declared a disaster area by the Governor or an appropriate official of the United States Government, the quorum court of the county may appropriate in excess of ninety percent (90%) of anticipated revenues. Provided, any appropriation of funds in excess of ninety percent (90%) of anticipated revenues shall be made only for street cleanup and repair, collection, transportation and disposal of debris, repair or replacement of county facilities and equipment, and other projects or costs directly related to or resulting from the natural disaster. In any county in which sales and use tax revenues have been dedicated for a specific purpose, the quorum court of the county may appropriate up to one-hundred percent (100%) of anticipated revenues from the dedicated sales and use tax, provided that any appropriation of funds up to one-hundred percent (100%) of anticipated revenues shall be made and expended only for the dedicated specific purpose of the tax. This does not apply to dedicated revenues that have been pledged for bonds or include general sales and use tax revenues. (A.C.A. § 14-20-103)

11. An appropriation ordinance is effective immediately upon passage by two-thirds (2/3) vote of the whole number of justices comprising the quorum court and approval by the county judge, providing, however, that publication shall be initiated within two (2) calendar days, excepting holidays, after approval of such measure by the county judge. (A.C.A. § 14-14-907)

#### **I) ADMINISTRATIVE RULES AND REGULATIONS**

The county judge may promulgate reasonable and necessary administrative rules and regulations, after notice and hearing thereon, for the administration and conduct of the various laws and programs to be administered by the county judge in his capacity as the chief executive officer of the county, provided, that such administrative rules and regulations shall be consistent with the State laws relating to the administration of county affairs by the county judge and the appropriate ordinances enacted by the quorum court. Such administrative rules and regulations promulgated by the county judge in the performance of his executive functions shall not be applicable to the conduct

of county business which is within the jurisdiction of the county court. (A.C.A. § 14-14-1104)

#### **EXPENSE REIMBURSEMENTS**

##### **14-14-1203. Compensation and expense reimbursements generally.**

**(a) Appropriation Required.** All compensation, including salary, hourly compensation, expense allowances, training expenses, and other remunerations, allowed to any county officer, district officer, county officer-elect, district officer-elect, or employee is made only on specific appropriation by the quorum court of the county.

**(b) Payments on Claims Approved by the County Judge.** All compensation, including salary, hourly compensation, expense allowances, training expenses, and other remuneration, allowed to any county officer, district officer, county officer-elect, district officer-elect, or employee is made only upon claim or voucher presented to the county judge and approved by him or her in the manner prescribed by law for disbursement of county funds.

##### **(c) Expense Reimbursement.**

**(1)** Except as provided under subdivision (c)(2) of this section, all expense allowances, training expenses, and remunerations other than salary provided in this subchapter shall be made only upon voucher or claim itemizing the allowances or expenses, prepared in the manner prescribed by law, and presented to and approved by the county judge in the manner prescribed by law for the disbursement of county funds.

**(2)** County officials may make cash advances for travel-related expenses to employees, subject to rules adopted by the Legislative Joint Auditing Committee.

**(d) Decreases in Salary.** Any decrease in the annual salary or compensation of a county officer shall not become effective until January 1 following a general election held after the decrease has been fixed by the quorum court of the county.

**(e) Enterprise Accounts Prohibited.** An elected county or district officer or employee of the county or district shall not individually maintain or operate an account for financing self-supporting activities that render services on a user charge basis to the general public.

##### **14-14-1207. Reimbursement of allowable expenses.**

##### **(a) Reimbursement Authorized.**

**(1)** All county and district officials and authorized deputies or employees are entitled to receive reimbursement of expenses incurred in the conduct of official and nondiscretionary duties under an appropriation for the operating expenses of an office, function, or service. Reimbursement of expenses incurred in the performance of discretionary functions and services may be permitted when authorized by a specific appropriation of the quorum court.

**(2)** Reimbursement of expenses for discretionary functions and services may include training expenses for a county official-elect and a district official-elect if authorized by the quorum court.

**(b) Allowance for Meals, Lodging, and Other Allowable Expenses.**

(1) All reimbursements for the purchase of meals, meal tips, lodging, and other allowable expenses are based on the actual expense incurred or on a per diem basis if authorized by the quorum court.

(2) Reimbursement for meal tips under subdivision (b)(1) of this section shall not exceed fifteen percent (15%) of the purchase amount of the meal.

(3) A per diem reimbursement under subdivision (b)(1) of this section shall be made under an accountable plan as defined by Internal Revenue Service regulations as in existence on January 1, 2009.

**(c) Reimbursement of Travel Expense. (1) Privately Owned Motor Vehicles.**

(A)(i) Any elected county officer, district officer, county officer-elect, district officer-elect, or employee using a privately owned motor vehicle in the conduct of county affairs may be reimbursed at a per-mile rate established by ordinance.

(ii) Reimbursement is based only on official miles driven and legitimate automobile parking fees.

(iii) When more than one (1) traveler is transported in the same vehicle, only the owner is entitled to mileage reimbursement.

(B) A county shall not assume responsibility for any maintenance, operational costs, accidents, and fines incurred by the owner of the vehicle while on official business for the county.

(2) **Privately Owned Airplanes.** Reimbursement for travel expense using privately owned airplanes is based upon the most direct route in air miles and at the same rate as established for privately owned motor vehicles.

**14-14-1208. Professional memberships and meetings.**

(a) The quorum court of each county may provide, through specific appropriations, for a county to join, pay membership fees and service charges, and cooperate with the organizations and associations of county government of this state and other states for the advancement of good government and the protection of local government interests.

(b) Elected county officers, district officers, township officers, county officers-elect, district officers-elect, and township officers-elect of a county government may be allowed per diem and either mileage or actual transportation expenses for attendance at meetings of the appropriate association of local government officials. Reasonable expenses or charges against each local government, as a member of the association, may be paid by a county.

(c) Employees of a county government may be allowed per diem and either mileage or actual transportation expenses for attendance at meetings of professional organizations or associations, and a county government may pay membership fees and service charges to the organization.

**ADDITIONAL IMPORTANT CODE SECTIONS**

The following are some important statutes and code sections that discuss county government operations. Please refer to the most recent edition of the Arkansas County Compliance Guide for full sections of code.

**Title 5- Criminal Offenses-**

- A.C.A. § 5-4-101- Disposition of Offenders, dealing with fines, restitution, collection, sentencing, and others
- A.C.A. § 5-5-101-501- Disposition of Contraband and Seized Property
- A.C.A. § 5-73-301- Concealed Handguns

**Title 8 – Environmental Law**

- A.C.A. § 8-6-601 – Solid waste Management and Recycling Fund Act
- A.C.A. § 8-9-401 –Used Tire Recycling and Accountability Act

**Title 12- Law Enforcement, Emergency Management, and Military Affairs-**

- A.C.A. § 12-41-201- Local Correctional Facilities
- A.C.A. § 12-50-101- Corrections Cooperative Endeavors and Private Management Act
- A.C.A. § 12-75-101- Arkansas Emergency Services Act of 1973
- A.C.A. § 12-30-401- Work Release Program

**Title 14- Local Government**

A.C.A. § 14-176-101- Local Job Creation, Job Expansion, and Economic Development Act of 2017  
A.C.A. § 14-266-101 – Ambulance Licensing Act. The 2015 Ambulance Services Guidebook can be found on the Association of Arkansas Counties website at <https://www.arcounties.org/site/assets/files/3715/ambulance-services-draft-to-send.pdf>

Medical Marijuana resources including Amendment 98, Medical Marijuana Acts passed during the 2017 Legislative Session, and Rules and Regulations from the Arkansas Medical Marijuana Commission, Alcoholic Beverage Control Division, and Arkansas Department of Health can be found on the Association of Arkansas Counties website at <https://www.arcounties.org/media/press-releases/medical-marijuana-resources/>

**Title 16- Practice, Procedure, and Courts-**

A.C.A. § 16-34-103- Per Diem compensation for jurors and prospective jurors  
A.C.A. § 16-34-104- Mileage reimbursement for jurors  
A.C.A. § 16-34-106- Payment by county - Reimbursement by state

**Title 19- Public Finance-**

A.C.A. § 19-5-1017- Property Reappraisal Revolving Fund  
A.C.A. § 19-5-1207- Arkansas Real Property Reappraisal Fund  
A.C.A. § 19-5-944- County Assessors' Continuing Education Trust Fund  
A.C.A. § 19-5-946-Collectors Continuing Education Trust Fund  
A.C.A. § 19-5-947- Treasurers Continuing Education Trust Fund  
A.C.A. § 19-5-979- Landfill Post Closure Fund  
A.C.A. § 19-5-980- Waste Tire Fund  
A.C.A. § 19-11-249- Cooperative Purchasing Through OSP  
A.C.A. 19-5-1246- County Juror Reimbursement Fund

**Title 21- Public Officers and Employees-**

A.C.A. § 21-5-107- Compensation of person holding more than one elective office  
A.C.A. § 21-9-201- Liability of State and Local Governments- Liability of State  
A.C.A. § 21-9-301- Tort Liability - - Immunity Declared

**Title 22- Public Property**

A.C.A § 22-10-101- Partnership for Public Facilities and Infrastructure Act

**Title 26- Taxation-**

A.C.A. § 26-36-301- Collection of Delinquent Taxes – Setoff against State Tax Refund  
A.C.A. § 26-52-503- Discount for early payment

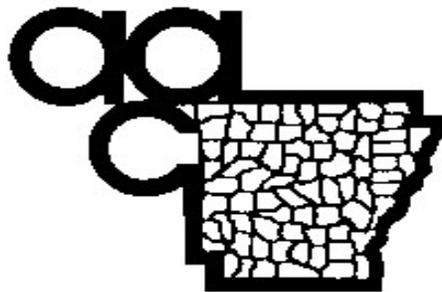
**Title 27- Transportation-**

A.C.A. § 27-49-109- Drivers of Emergency Vehicles  
A.C.A. § 27-51-201- Speed Limits and Weight Limits  
A.C.A. § 27-66-101- Establishment and Maintenance Generally  
A.C.A. § 27-70-201- Highway Trust Funding and County Funding Formulas  
A.C.A. § 27-72-101- Highway Revenues for Local Aid

**Medical Marijuana Resources**

In the November 2016 General Election, Arkansas voters approved a ballot initiative legalizing medical marijuana in the state. As a result, the 91<sup>st</sup> General Assembly passed several amendments to clarify the law relating to medical marijuana.

# PROCEDURAL GUIDE FOR COUNTY QUORUM COURT MEETINGS



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## I. OVERVIEW

Amendment 55 of the Arkansas Constitution reorganized county government. Act 742 of 1977, as amended, implements the provisions of Amendment 55 to the Arkansas Constitution, which revised county government in Arkansas. Act 742, codified at Arkansas Code Annotated (A.C.A.) Title 14, Chapter 14, constitutes the Arkansas "County Government Code." A.C.A. § 14-14-901 vests the legislative power of county government in the quorum court of each county, subject to the limitations imposed by the Arkansas Constitution and by state law.

The justices of the peace elected in each county shall assemble and organize as a county quorum court body on

the first regular meeting date after the beginning of the justices' term in office, or the county judge may schedule the biennial meeting date of the quorum court on a date in January other than the first regular meeting date of the quorum court after the beginning of the justices' term. At the first regular meeting, the quorum court shall establish the date, time, and location of meetings of the quorum court. The organizational ordinance adopted at the first regular meeting of the quorum court shall be effective upon adoption. Thereafter, the justices shall assemble each calendar month at a regular time and place as established by ordinance and in their respective counties to perform the duties of a quorum court, except that more frequent meetings may be required by ordinance. By declaration of emergency or determination that an emergency exists and

the safety of the general public is at risk, the county judge may change the date, place, or time of the regular meeting of the quorum court upon twenty-four-hour notice. (A.C.A. § 14-14-904)

At this initial meeting, the quorum court should determine its rules of procedure. A.C.A. § 14-14-904 states that, “Except as otherwise provided by law, the quorum court of each county shall determine its rules of procedure and may compel attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.”

Special meetings of the quorum court may also be called by the county judge or a majority of the elected justices upon at least twenty-four (24) hours’ notice in such manner as may be prescribed by local ordinance. In the absence of procedural rules, the county judge or a majority of the elected justices may call a special meeting of the quorum court upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of the meeting. The notice of special meeting shall specify the subjects, date, time, and designated location of the special meeting. Notice of assembly of a county grievance committee or assembly of less than a quorum of the body, referred to under this section as a “regular committee” or “special committee”, and may be provided upon oral notice to the members of at least forty-eight (48) hours unless an emergency exists. If an emergency exists, written notice of at least twenty four (24) hours stating the basis of the emergency shall be provided. (A.C.A. § 14-14-904(c)).

In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting. (A.C.A. § 25-19-106(b)(2)).

At these regular and special meetings, following the rules of procedure which have been adopted will assure orderly conduct and encourage clear, efficient discussion. *Robert’s Rules of Order* is the most widely used parliamentary procedural book and may be adopted by quorum courts subject to modification or development of their own rules. This manual is adapted from *Robert’s Rules of Order* to provide a concise summary of the more important rules sufficient to conduct business without becoming involved in technicalities. It is intended for use at the regular and special meetings of the quorum court which are legislative sessions. At public hearings of the quorum court or its committees, less structured rules may be used to encourage a free exchange of ideas between justices and the public.

## II. COUNTY JUDGE AS PRESIDING OFFICER WITH A VETO

Amendment 55, § 3, of the Arkansas Constitution explicitly provides: “The County, in addition to all other powers and duties provided for by the Constitution and laws, shall preside over the Quorum Court without a vote but with the power of veto...” A.C.A. § 14-14-1101(a) states that: Arkansas Constitution, Amendment 55, § 3, established the following executive powers of the county judges: (1) To preside over the county quorum court, without a vote but with the power of veto. A.C.A. § 14-14-1102(a) further provides: “*That the General Assembly determines that the executive powers of the county judges as enumerated in Arkansas Constitution, Amendment 55, § 3, are to be performed by him in an executive capacity and not by order of the county court*”.

In Attorney General Opinion No. 2008-045: The AG explained that after the adoption of Amendment 55 it is clear that the county judge exercises primary executive function, that A.C.A. § 14-14-703 describes the county judges as the “principal executive officer of the county”. See also: Reding v. Wagner, 350 Ark. 322 (2002) {referring to a county judge’s executive authority under Amendment 55, § 3}; and McCuen v. Jackson, 265 Ark. 818 (1979) {referring to county judge as chief executive in hiring county employees, not supervised by other constitutional executives}.

A.C.A. § 14-14-502(b) provides for separate of powers: “The powers of county governments of the State of Arkansas shall be divided into three (3) distinct departments, each of them to be confined into a separate body: Legislative, Executive; and Judicial. {The CJAA has a separate guidebook for county judge exercising judicial functions and judicial ethics}. Since the County Judge, presides over the Quorum Court as a primary Executive Function, the purpose of this guidebook is to assist the county judges of Arkansas in performing that key executive function.

**i. THE COUNTY JUDGE AS PRESIDING OFFICER:** A.C.A. § 14-14-904(d) provides” “The County Judge shall preside over the Quorum Court without a vote but with the power of veto.” “The presiding officer shall appoint all regular and special committees of a quorum court **subject to any procedural rules** which may be adopted by ordinance”.

The county judge is the chief executive official and presiding officer, but **not a member** of the quorum court. He rules on motions and guides debate according to the rules of procedure, but cannot make motions nor participate in the debate, although his views may certainly be solicited by members of the quorum court. A regular committee or special committee of the quorum court shall not consist of more than a quorum of the whole body without the consent of the county judge.

**ii. JUSTICE OF THE PEACE AS PRESIDING OFFICER:** A.C.A. § 14-14-904(d) also provides that “in

the absence of the county judge a quorum of the justices by majority vote shall elect one of their number to preside, but without the power to veto." When due to the absence of the county judge, a justice is elected to the office of presiding officer, that justice forfeits the right to propose motions and to participate in debate. However, it is important to note that while the county judge has no vote as presiding officer, when a justice presides he/she does not lose the right to vote on matters before the assembly. A regular committee or special committee of the quorum court shall not consist of more than a quorum of the whole body without the consent of the county judge.

**iii. RESPONSIBILITY OF PRESIDING OFFICER:** The presiding officer of the quorum court has both wide discretion and substantial responsibility. The person presiding must serve as leader, administrator, and catalyst in any given situation. Among the duties of the presiding officer are the following:

1. Insure that the proper order of business is carried out.
2. Guard against violations of the rules of procedure.
3. Protect the rights of all members.
4. Ensure that motions, resolutions, and ordinances are worded and phrased to carry out the intent of the assembly.
5. Maintain fairness and avoid prejudicial treatment of either motions or individuals.

A presiding officer must attempt to strike the difficult balance between patient courtesy on the one hand and firm decisiveness on the other. He/she cannot allow the time of the assembly to be wasted on worthless discussion or needless actions, but must try to preserve the rights of all members to participate in the discussion of issues and formulate decision.

#### **14-14-904. Procedures generally.**

**(a) Time and Place of Quorum Court Assembly.** (1)(A)(i) The justices of the peace elected in each county shall assemble and organize as a county quorum court body on the first regular meeting date after the beginning of the justices' term in office, or the county judge may schedule the biennial meeting date of the quorum court on a date in January other than the first regular meeting date of the quorum court after the beginning of the justices' term.

(ii) At the first regular meeting, the quorum court shall establish the date, time, and location of meetings of the quorum court.

(iii) The organizational ordinance adopted at the first regular meeting of the quorum court shall be effective upon adoption.

(B) Thereafter, the justices shall assemble each calendar month at a regular time and place as established by ordinance and in their respective counties to perform the duties of a quorum court, except that more frequent meetings may be required by ordinance.

(2) By declaration of emergency or determination that an emergency exists and the safety of the general public is at risk, the county judge may change the date, place, or time of the regular meeting of the quorum court upon twenty-four-hour notice.

#### **(b) Levy of Taxes and Making Appropriations**

(1)(A)(i) The quorum court at its regular meeting in November or December of each year shall levy the county taxes, municipal taxes, and school taxes for the current year.

(ii) Before the end of each fiscal year, the quorum court shall make appropriations for the expenses of county government for the following year.

(B) The Director of the Assessment Coordination Department may authorize an extension of up to sixty (60) days of the date for levy of taxes upon application by the county judge and county clerk of any county for good cause shown resulting from reappraisal on rollback of taxes.

(2) Nothing in this subsection shall prohibit the quorum court from making appropriation amendments at any time during the current fiscal year.

(3) If the levy of taxes is repealed by referendum, the county may adopt a new ordinance levying taxes within thirty (30) days after the referendum vote is certified.

(4) If a county court determines that the levy of taxes by the quorum court is incorrect due to clerical errors, scrivener's errors, or failure of a taxing entity to report the correct millage rate to the quorum court, the county court shall issue an order directing the county clerk to correct the error in order to correct the millage levy.

(5) If a determination is made under this section or § 26-80-101 that the taxes levied by the quorum court are out of compliance with the Arkansas Constitution, Article 14, § 3, as amended by Arkansas Constitution, Amendment 11, Amendment 40, and Amendment 74, then upon notice from the Director of the Department of Education, the county clerk shall immediately issue an order directing the county clerk to change the millage levy to bring the taxes levied into compliance with Arkansas Constitution, Article 14, § 3, as amended by Arkansas Constitution, Amendment 11, Arkansas Constitution, Amendment 40, and Arkansas Constitution, Amendment 74.

#### **(c) Special Meetings of Quorum Court**

(1) The county judge or a majority of the elected justices may call a special meeting of the quorum court upon at least twenty-four (24) hours' notice in such manner as may be prescribed by local ordinance.

(2) In the absence of procedural rules, the county judge or a majority of the elected justices may call a special meeting of the quorum court upon written notification of all members not less than two (2) calendar days prior to the calendar day fixed for the time of the meeting. The notice of

special meeting shall specify the subjects, date, time, and designated location of the special meeting.

**(3) (A)** Notice of assembly of a county grievance committee or assembly of less than a quorum of the body, referred to under this section as a “regular committee” or “special committee”, may be provided upon oral notice to the members of at least forty-eight (48) hours unless an emergency exists.

**(B)** If an emergency exists, written notice of at least twenty-four (24) hours stating the basis of the emergency shall be provided.

**(d) Presiding Officer.**

**(1)(A)** The county judge shall preside over the quorum court without a vote but with the power of veto.

**(B)** In the absence of the county judge, a quorum of the justices by majority vote shall elect (1) of their number to preside but without the power of veto.

**(2)(A)** The presiding officer shall appoint all regular and special committees of a quorum court, subject to any procedural rules that may be adopted by ordinance.

**(B)** A regular committee or special committee of the quorum court shall not consist of more than a quorum of the whole body without the consent of the county judge.

**(e) Procedural Rules and Attendance at Meetings.**

Except as otherwise provided by law, the quorum court of each county shall determine its rules of procedure and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

**(f) Quorum.** A majority of the whole number of justices composing a quorum shall constitute a quorum and is necessary to conduct any legislative affairs of the county.

**(g) Legislative Affairs.** All legislative affairs of a quorum court shall be conducted through the passage of ordinances, resolution, or motions.

**(h) Majority Vote Required.** All legislative actions of a quorum court, excluding the adoption of a motion, shall require a majority of vote of the whole number of justices composing a quorum court unless otherwise provided by the Arkansas Constitution or by law. A motion shall require a majority vote of the whole numeric justices composing a quorum for passage.

**(i) County Ordinance.**

A county resolution is defined as an enactment of compulsory law for a quorum court that defines and establishes the permanent or temporary organization and system of principles of a county government and for the control and conduct of county affairs.

**(j) County Resolution.**

A county resolution is defined as the adoption of a formal statement of policy by a quorum court, the subject matter of which would not properly constitute an ordinance. A resolution may be used whenever the quorum court merely to express an opinion as to some matter of county

affairs, and a resolution that shall not serve to compel any executive action.

**(k) Motion.**

A motion is defined as a proposal to take certain action or an expression of views held by the quorum court body. As such, motion is merely a parliamentary procedure that precedes the adoption of resolutions or ordinances. Motions shall not serve to compel any executive action unless such person is provided for by a previously adopted ordinance or state law.

**(l) Ordinances.** Ordinances may be amended and repealed only by ordinance.

**(m) Resolutions.** Resolutions may be amended and repealed only by resolutions.

**(n) Initiative and Referendum.** All ordinances shall be subject to initiative and referendum as provided for through Arkansas Constitution, Amendment 7.

**HISTORY:** Acts 1977, No. 742, § 85; 1979, No. 413, § 21; A.S.A. 1947, § 17-4002; Acts 1991, No. 406, § 1; 1997, No. 1300, § 24; 2001, No. 901, § 1; 2003 (2nd Ex. Sess.), No. 105, § 5; 2005, No. 252, § 1; 2011, No. 837, § 3; 2013, No. 127, § 2; 2013, No. 985, §§1,2.

**iv. PROCEDURAL ORDINANCES:** A.C.A. § § 14-14-904(e): PROCEDURAL RULES AND ATTENDANCE AT MEETINGS. Except as otherwise provided by law, the quorum court of each county shall determine its rules of procedure and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

Attorney General Opinion No. 2010-147: explained the purpose of the procedural rules adopted by ordinance including the purpose of affixing the dates for regular meetings of the quorum court under 14-14-904. A.C.A. § 14-14-904 was amended in 2011 to provide that by declaration or determination that an emergency exists to the safety of the public the county judge may change the date, time and place of the regular meeting of the quorum court established by the organizational ordinance. A.C.A. § 14-14-1205 also directs the per diem to be affixed by the Quorum Court for regular, special and committee meetings of the Quorum Court within the confines of the law.

Attorney General Opinion No. 2005-025: Explained that the Quorum Court is not restricted to consider only those organizational and ministerial functions of the first meeting mandated under 14-14-904(a). The Quorum Court may in the opinion of the AG designate the first meeting to be held in lieu of the regular January meeting.

**v. COMMITTEES:** Attorney General Opinion No. 2003-180: interpreted 14-14-904(d) which provides: “The presiding officer shall appoint all regular and special committees of a quorum court **subject to any procedural rules** which may be adopted by ordinance” to mean that the presiding officer, the county judge, clearly

has the sole authority to select members of the quorum court to various committees. However, the opinion further determined that (in the absence of legislative clarification) the quorum court may by ordinance by virtue of home rule or at their organizational or procedural ordinance establish committees. This opinion noted the need for legislative clarification and differed from previous opinions of the office of the attorney general (See: AG Opinion Nos: 1995-084; and 2001-117). The opinion determined the term “appoint” meant to select the members of the quorum court to serve upon the committees. The AG, noted that the quorum court cannot encroach upon the power of the county judge to appoint members to committees (see AG Opinion Nos. 2003-039; 2001-117; and 1995-084).

**vi. QUORUM:** A.C.A. § 14-14-904 states: a majority of the whole number of justices shall be necessary to constitute a quorum for the transaction of business. Also, a quorum court may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. A quorum is the number of members entitled to vote who must be present in order that business can legally be transacted. The “quorum” refers to the number of members actually present, not to the number who vote on a particular question. Whenever a quorum fails to be present the quorum court will have to adjourn.

After calling the meeting to order, the presiding officer should ask the county clerk or secretariat of the quorum court to “call the roll.” The clerk will call each justice by name and the names of those present and absent will be subsequently recorded in the Journal of Proceedings. This procedure will permanently document that the business of the meeting was carried out by a “legal” quorum (or the meeting was adjourned for lack of a “legal” quorum). Such a record may also be used to substantiate payment of per diem and travel compensation to attending justices.

### III. LEGISLATIVE AFFAIRS

A.C.A. § 14-14-904 provides that all legislative affairs of a quorum court shall be conducted through the passage of ordinances, resolutions, or motions. All legislative actions of a quorum court, excluding the adoption of a motion, shall require a majority vote of the whole number of justices composing a quorum court unless otherwise provided by the Arkansas Constitution or by law. A motion shall require a majority vote of the whole number of justices composing a quorum for passage.

**i. County Ordinance.** A county ordinance is defined as an enactment of compulsory law for a quorum court that defines and establishes the permanent or temporary organization and system of principles of a county government for the control and conduct of county affairs. Ordinances may be amended and repealed only by ordinances. Ordinances are subject to initiative and referendum as provided for through Arkansas Constitution, Amendment 7.

**ii. County Resolution.** A county resolution is defined as the adoption of a formal statement of policy by a quorum court, the subject matter of which would not properly constitute an ordinance. A resolution may be used whenever the quorum court wishes merely to express an opinion as to some matter of county affairs, and a resolution shall not serve to compel any executive action. Resolutions may be amended and repealed only by resolutions.

**iii. Motion.** A motion is defined as a proposal to take certain action or an expression of views held by the quorum court body. As such, a motion is merely a parliamentary procedure that precedes the adoption of resolutions or ordinances. Motions shall not serve to compel any executive action unless such action is provided for by a previously adopted ordinance or state law.

### IV. QUORUM COURT ADMINISTRATION

A.C.A. § 14-14-901 provides: “The Legislative power of the county government is vested in the quorum court of each county of the state, subject to the limitations imposed by the Arkansas Constitution and by state law”.

A.C.A. § 14-14-902 provides for the administration of the quorum court. The secretariat of the county quorum court shall be the clerk of the county court of each county unless otherwise provided by county ordinance. A quorum court, by ordinance, may provide for the establishment of minimum qualifications and an appropriation for the employment of a secretariat of the court. The employee so designated shall be a staff member of the county clerk or the county judge as may be specified by the ordinance. Where the separate position of secretariat is created by ordinance, all legislative duties prescribed for a county clerk shall thereafter become the duties of the secretariat.

Unless otherwise provided for by county ordinance, the clerk or the deputy clerk shall: 1) Attend all regular and special meetings of the court; 2) perform all administrative and recordkeeping duties prescribed; and 3) perform all other duties as may be required by the quorum court through county ordinance.

The prosecuting attorney or his deputy serving each county shall serve as legal counsel of the quorum court unless otherwise provided by county ordinance. A quorum court may, by ordinance, provide for the appropriation of county funds for the employment of alternative legal counsel to serve the court. The legal counsel of a quorum court shall: 1) Attend all regular and special meetings of the court; 2) Perform all duties prescribed; and 3) Perform all other duties as may be required by a quorum court.

Attorney General Opinion No. 2011-087: concluded that the county judge, not the quorum court, has the authority to hire and fire the county attorney. Amendment 55, § 3, and A.C.A. § 14-14-1002 confides the general power to hire and

fire county employees (not assigned to other county officials) to the county judge and to enter into necessary contracts. The AG said that this authority is beyond reasonable argument.

A quorum court may authorize and provide through ordinance, for the employment of any additional staff or the purchase of technical services in support of legislative affairs.

A.C.A. § 14-14-903 requires the quorum court of each county to provide for the keeping of written minutes which include the final vote on each ordinance or resolution indicating the vote of each individual member on the question.

It also requires the quorum court to maintain a county ordinance and resolution register for all ordinances, resolutions, and amendments to each, adopted and approved by the court. Entries in this register shall be sequentially numbered in the order adopted and approved and shall be further designated by the year of adoption and approval. A separate sequential numbering system shall be maintained for both ordinances and resolutions. The register number shall be the official reference number designating an enactment. The register shall be maintained as a permanent record of the court and shall contain, in addition to the sequential register number, the following items of information:

- (A) An index number which shall be the originating legislative agenda number of the enactment;
- (B) The comprehensive title of the enactment;
- (C) The type of ordinance or amendment: general, emergency, appropriation, initiative, or referendum;
- (D) The date adopted by the quorum court;
- (E) The date approved by the county judge, date of veto override, or date enacted by the electors;
- (F) The effective date of the enactment;
- (G) The expiration date of the enactment; and
- (H) A recording index number designating the location of the enactments.

A.C.A. § 14-14-903 further requires the county to maintain a permanent record of all ordinances and resolutions in which each enactment is entered in full after passage and approval, except when a code or budget is adopted by reference. When a code or budget is adopted by reference, the date and source of the code shall be entered. The permanent record shall be so indexed to provide for efficient identification, location, and retrieval of all ordinances and resolutions by subject, register number, and date enacted. The permanent record indexing may be by book and page.

**Every five (5) years all county ordinances enacted in each of the several counties must be compiled into a uniform code and published. A.C.A. § 14-14-903(d) Codification of Ordinances, states: “No later than 1980 and at five-year intervals thereafter, county ordinances of a general and**

**permanent nature enacted in each of the several counties shall be enacted into a uniform code and published”.**

## V. ORDER OF BUSINESS

Orderly discussion is facilitated by following an established pattern for the business of the assembly. The pattern usually used in parliamentary bodies is as follows:

- Call to order
- Reading, correction, and disposition of minutes
- Reports of committees
- Unfinished business
- New business
- Announcements
- Adjournment

In order that members may anticipate when particular questions will be considered, the order of business should be followed whenever possible. However, the order is not prescribed by law and may be deviated from when circumstances dictate. Deviation from the order of business is accomplished either by a motion to suspend the rules or by general consent. To secure a change in the order of business by general consent, the presiding officer states that there will be a change if no member objects.

**i. CALL TO ORDER AND ROLL CALL:** The presiding officer calls the meeting to order at the scheduled time by rapping the gavel and announcing, “The meeting will please come to order.” He then asks the clerk to call the roll.

**ii. READING AND DISPOSITION OF MINUTES:** The first business is the minutes of the previous meeting. The presiding officer directs, “The minutes will be read.” By unanimous consent a reading of the minutes may be dispensed with, as when they have been prepared and sent to each member. When the minutes have been read the presiding officer asks, “Are there any corrections or additions to the minutes?” If there are no corrections, the minutes are approved as read. When corrections are suggested, they may be approved by general consent. If consent to corrections is not unanimous, the presiding officer allows debate and takes a vote on the corrections proposed. The minutes are approved by his saying, “If there are no corrections (or “no further corrections”), the minutes stand approved as read.”

**iii. REPORTS OF COMMITTEES:** Reports from standing committees are called for by the presiding officer, asking each chairman if he/she had a report. This is followed by the reports of chairmen of any special committees that have been appointed, in the order of their creation. The reports of committees are usually filed but not voted upon. If a chairman makes a recommendation in giving a report, the chairman should not move its implementation, but a member of the quorum court may make such a motion. Recommendations are considered either immediately after the report or under new business as the quorum court chooses.

**iv. UNFINISHED BUSINESS:** The presiding officer indicates that discussion under this section is appropriate by a statement to the effect that “Unfinished business is now in order.” Unfinished business consists of all business which was pending at the conclusion of the last meeting. It is the duty of the presiding officer to present any item of unfinished business which some other member does not present. This is done by stating, “We will now consider the motion proposed at our last meeting...”

**v. NEW BUSINESS:** Upon completion of all unfinished business the presiding officer opens the floor for the presentation of new business by the statement, “New business is now in order.” New business includes any motion, proposal or other consideration that a member may wish to present to the assembly. If no new business is presented and the presiding officer knows of matters which should be considered, he informs the governing body of these matters and asks if any member wishes to propose a motion dealing with them.

**vi. ANNOUNCEMENTS:** To prevent encumbering the meeting with periodic interruptions for various announcements, it is generally thought preferable to have a regular place in the order of business for such announcements and to require that they be made only at that time. The presiding officer usually calls for announcements from the members first and concludes with any that he/she may wish to make.

**vii. ADJOURNMENT:** To adjourn means to close the meeting. A meeting can be adjourned only after a motion to adjourn has been made, seconded, carried and the presiding officer has formally announced adjournment. If no member moves to adjourn, and there is no further business, a member may move to adjourn. The presiding officer cannot adjourn the meeting without a vote unless a quorum ceases to be present.

**viii. COMMENTS OR QUESTIONS FROM THE PUBLIC:** Regular legislative sessions of the quorum court are to be distinguished from public hearings, which are held for the purpose of providing an opportunity for the public to express opinions on particular subjects. However, since public interest and attendance are to be encouraged, it may be desired to include in the order of business a time for brief comments or questions from members of the public. This would be appropriate near the end of the meeting, before or following announcements. A.C.A. § 14-14-109 provides that a meeting required to be open to the public that the rules for conducting the meeting afford citizens a reasonable opportunity to participate prior to the final decision.

**ix. AGENDA:** The specific nature of matters to be considered at quorum court meetings should be indicated in an agenda prepared and furnished members of the quorum court in advance of the meeting. By knowing explicitly what they will be called upon to decide, efficiency of the quorum court is increased, and members will come to each meeting better prepared for decision making. Since

the agenda is primarily set by the quorum court members, procedures must be established covering agenda preparation. Procedures should include: Identification of the office or individual, e.g., county clerk or secretariat of the quorum court, to whom quorum court members will submit items they wish to be included on the agenda for the next meeting; the deadline for submitting agenda items; and, the deadline for having the completed agenda in the hands of the quorum court members and the county judge.

An important consideration is giving the public due notice of matters likely to be considered at any meeting in order that they may communicate their views to their respective representatives and/or attend the meeting. Since such information is generally distributed through the mass media (newspapers, radio, and TV), the completed agenda should also be furnished them in a timely manner and also posted prominently in the Courthouse. While it is not always possible, the introduction and consideration of significant items of new business not on the agenda should be avoided since this tends to alienate citizens who may have an interest in the issue.

## VI. HOW MOTIONS ARE HANDLED

A motion is a formal statement or proposition presented to an assembly for consideration and action. It is the primary means by which the body formulates policy and carries out ideas. Presenting and disposing of a motion follows this pattern:

- Addressing the presiding officer
- Recognition by the presiding officer
- Statement of the motion by the member
- Seconding the motion
- Statement of the motion by presiding officer
- Discussing the motion
- Voting on the motion

**i. ADDRESSING THE PRESIDING OFFICER:** As long as he/she complies with the rules on precedence of motions, any member of the quorum court has the right to present a motion. To present a motion a member addresses the presiding officer as “Mr. Chairman” or “Madam Chairman” (official title is also appropriate). Addressing the presiding officer indicates that the member wishes to obtain the floor for the purpose of presenting a motion or discussing a motion already presented.

**ii. RECOGNITION BY THE PRESIDING OFFICER:** The presiding officer recognizes a member by name or by otherwise indicating that the member has the floor. Once a member has been recognized, he/she is entitled to speak or propose a motion.

**iii. STATEMENT OF THE MOTION BY THE MEMBER:** A motion proposes that the assembly take an action or agree on an expression of sentiments. It should be stated in this form:

“I move...” followed by the proposal which is to be considered.

This form for proposing a motion is most clear and correct because it establishes as a definite motion the proposal introduced. Such introductory phrases as “I suggest” or “My proposal is to...” or “I so move” are less desirable.

Discussion or debate usually is not permitted until a motion has been made, and seconded, and stated by the presiding officer, though a brief introductory comment may be made by the person making the motion. If a general discussion is desired before a motion is formulated, a member may move to consider the subject informally.

**iv. SECONDING MOTIONS:** When a motion has been offered by a member, it must be seconded by another member in order to be considered. This is done by another member saying, “I second the motion.”

If there is no second, the presiding officer should ask, “Is there a second to the motion that...” and state the motion again, to be sure that the motion has been understood by all the members. If, at this point, no second is made, the presiding officer states that, “the motion dies for lack of a second.”

To second a motion indicates that the person seconding wants to have the motion discussed and considered by the quorum court. The seconder may not necessarily intend to vote for the motion, but usually at least favors further deliberations along the lines proposed in the motion.

**v. STATEMENT OF THE MOTION BY THE PRESIDING OFFICER:** When a motion has been properly moved and seconded, it is the responsibility of the presiding officer to state the motion clearly to the assembly. Until the motion is so stated, the maker of the motion controls it and can modify or withdraw it if he wishes. Once the motion is stated to the quorum court, it is in the control of that body to do with as it chooses. If a proposed motion is vague, misleading or overly complicated in form, the presiding officer has the duty either to request that the member rephrase the motion or to rephrase it himself. If the presiding officer rephrases the motion, every effort should be made not to change its meaning and the presiding officer should ask the member whether the rephrased motion as it was stated correctly expresses the member’s proposal. If a motion proposes action which is contrary to law or to the rules of the quorum court, if its purpose is obviously dilatory (having a clear purpose of delaying business) or is unsuitable for consideration by the quorum court, the presiding officer should rule it out of order by saying, “The chair rules that your motion is out of order because...”

**vi. DISCUSSING THE MOTION:** Fundamental to both parliamentary law and to democratic society is the belief that the best decision flows from a free discussion and exchange of ideas. Parliamentary rules of debate are not designed to inhibit discussion, but rather to ensure that

each member has an equal opportunity to contribute ideas.

When the presiding officer has restated the motion of a member, discussion begins usually by the member who made the motion. After that member has had an opportunity to speak, any other member may discuss the motion after obtaining the floor. In recognizing members the presiding officer should try to alternate between proponents and opponents of a motion whenever possible by asking if there is anyone wishing to speak against the motion. The proposer of the motion is always given the opportunity to have the last word by making a closing statement.

Discussion must relate to the merits of a motion before the quorum court. A member has the floor only for the purpose of discussing the pending motion, and if he/she departs from the subject, is out of order. The presiding officer or another member may interrupt a speaker who has strayed from the matter being considered.

Speakers should address their remarks to the chair in a courteous manner. While a speaker may attack a motion for any reason, he/she should never attack the motives, character, or personality of the member who made the motion. It is the duty of the presiding officer to stop any member whose discourse drifts to the merits of any individual rather than to the merits of the motion.

**vii. VOTING ON THE MOTION:** When it appears to the presiding officer that all the members who wish to speak have done so, he/she asks, “Is there any further discussion?” This serves to notify all members that debate will cease unless some member claims the floor. If no one responds to the call of the presiding officer, the question is put to a vote by saying, “The question is on the adoption of the motion that... (repeating or clearly identifying the motion).” The vote may be taken in one of the following ways:

**viii. Roll Call Vote:** When this form of voting is used, the clerk calls the names of each member in alphabetical order. The member votes for or against the proposition when called upon, or if he/she does not wish to vote, answers, “Present” or “Abstain.”

Given the size of the body and the law, the roll call is the form of voting which will be used most, except for incidental motions. A.C.A. § 14-14-905(c)(1)(A) requires that, “On the passage of every ordinance or an amendment to an existing ordinance the yeas and nays shall be called and recorded.” Roll call votes will be required for passage of ordinances, resolutions, use of the emergency clause, and for suspension of the rules.

**ix. Voice Vote:** This form of voting allows the presiding officer to determine the results by the volume of the voices for and against the proposition. For example, the chair would say, “The question is on the motion to adjourn. All those in favor say aye (pausing for response)...Those opposed, say no.” When the vote is fairly evenly divided or

the presiding officer is uncertain of the result, he may call for the vote again or he may call for a more certain method of voting such as a show of hands.

**x. Show of Hands:** Motions which do not require a roll call vote, such as a motion to refer a matter to a committee, or clarification of an inconclusive voice vote may be made by a show of hands. The presiding officer calls first for those in favor of the motion to raise their hands, then those opposed. When a member desires a more precise count or that the vote of each member be made a matter of record, he/she may demand a roll call vote.

**xi. Vote by Unanimous Consent:** When the matter is issue is non-controversial or ministerial in nature, for example, to dispense with the reading of the minutes, the presiding officer may declare, "It has been moved and seconded that...Is there any objection?" If there is no objection, the motion passes by unanimous consent or acclamation. If any member does object, then a vote must be taken on the motion.

## VII. ADOPTION AND AMENDMENT OF ORDINANCES (EXCLUDING EMERGENCY OR APPROPRIATION ORDINANCES)

### A.C.A. § 14-14-905 governs the adoption and amendment of ordinances generally:

**i. Introduction of Ordinances and Amendments to Existing Ordinances:** A county ordinance or amendment to an ordinance may be introduced only by a justice of the peace of the county or through the provisions of initiative and referendum pursuant to Arkansas Constitution, Amendment 7.

**ii. Style Requirements:** No ordinance or amendment to an existing ordinance passed by a county quorum court shall contain more than one (1) comprehensive topic and shall be styled "Be It Enacted by the Quorum Court of the County of . . . . ., State of Arkansas; an Ordinance to be Entitled:". Each ordinance shall contain this comprehensive title, and the body of the ordinance shall be divided into articles, sequentially numbered, each expressing a single general topic related to the single comprehensive topic. No county ordinance shall be revised or amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revised, amended, extended, or conferred shall be reenacted and published at length.

**iii. Passage:** On the passage of every ordinance or amendment to an existing ordinance, the yeas and nays shall be called and recorded. A concurrence by a majority of the whole number of members elected to the quorum court shall be required to pass any ordinance or amendment.

All ordinances or amendments to existing ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days unless two-thirds (2/3) of the members composing the court shall dispense with the rule. However, this requirement shall not serve to: 1) Require a vote after each individual reading, but only a vote after the third and final reading; 2) Require the ordinance or amendment to be read in its entirety on the first, second, or third reading; or 3) Restrict the passage of emergency, appropriation, initiative, or referendum measures in a single meeting as provided by law.

Act 543 of 2005 amended A.C.A. § 14-14-905 to explicitly provides: this subsection shall not serve to: require a vote after each individual reading but only a vote after the third and final reading; require the ordinance or amendment to be read in its entirety on the first, second or third readings; or restrict the passage of emergency, appropriation, initiative or referendum measures in a single meeting as provided by law.

**iv. Approval and Publication:** Upon passage, all ordinances or amendments shall be approved by the county judge within seven (7) days unless vetoed and shall become law without his or her signature if not signed within seven (7) days. The ordinances or amendments shall then be published by the county clerk as prescribed by law. Approval by the county judge shall be demonstrated by affixing his or her signature and his or her notation of the date signed on the face of an original copy of the proposed ordinance. This approval and authentication shall apply to all ordinances or amendments to existing ordinances unless the power of veto is invoked.

**v. Effective Date:** No ordinance or amendment to an existing ordinance other than an emergency ordinance or appropriation ordinance shall be effective until thirty (30) calendar days after publication has appeared. An ordinance or amendment to an existing ordinance may provide for a delayed effective date or may provide for the ordinance or amendment to an existing ordinance to become effective upon the fulfillment of an indicated contingency.

**vi. Reference to Electors:** At the time of or within thirty (30) days of adoption and prior to the effective date of an ordinance, a quorum court may refer the ordinance to the electors for their acceptance or rejection. The referral shall be in the form of a resolution and shall require a three-fifths affirmative vote of the whole number of justices constituting a quorum court. This action by a court shall not be subject to veto and shall constitute a referendum measure.

**vii. Manner and Procedure:** Any ordinance enacted by the governing body of any county in the state may be referred to a vote of the electors of the county for approval or rejection in the manner and procedure prescribed in Arkansas Constitution, Amendment 7, and laws enacted pursuant thereto, for exercising the local initiative and referendum. The manner and procedure prescribed therein

shall be the exclusive method of exercising the initiative and referendum regarding these local measures.

**vii. Procedure to Adopt an Ordinance in Less than Three Different Days:** In order to adopt an ordinance in one meeting the procedure would be:

1. First reading.
2. Motion to suspend the rule and put the ordinance on second reading, roll call vote on suspension, approval by two-thirds of the whole number.
3. Second reading. Can be by title only.
4. Motion to suspend the rule and put the ordinance on third reading, roll call vote on suspension, approval by two-thirds of the whole number.
5. Third reading (can be by title only), roll call vote on the ordinance, approval by majority of the whole number.

To adopt an ordinance in two different meetings requires the measure to either: be placed on second reading (under suspension of the rules) at the first meeting with approval taking place at the second meeting or at the second meeting to be placed on third and final reading under suspension of the rules.

**ix. Amendments Offered on Proposed Ordinances on Second or Third Reading:** As indicated above all ordinances must be fully and distinctly read on three (3) different days. This requirement also applies to any amendment made to a proposed ordinance. In effect this means proposed ordinances can only be amended on first reading.

Occasionally a member or members may wish to amend an ordinance which is on second or third reading. To meet the requirements of the law for full and distinct readings on three separate days requires that the proposed ordinance be placed back on first reading.

The member(s) wishing to make an amendment would move to place "The proposed ordinance back on first reading for purpose of amendment." Such a motion would require a second and approval of a majority present. Before voting on the motion, the body would most likely ask the member to state his proposed amendment. If they object to the amendment, they can defeat it simply by failing to approve the motion to place the proposed ordinance back on first reading. However, if they approve placing the ordinance back on first reading for purpose of amendment, this does not constitute adoption of the amendment. The amendment would have to be adopted as a separate motion and vote.

### VIII. PENALTIES FOR VIOLATIONS OF ORDINANCES

A.C.A § 14-14-906 grants the quorum court authority to

establish penalties for violation of ordinances. A county quorum court may fix penalties for the violation of any ordinance, and these penalties may be enforced by the imposition of fines, forfeitures, and penalties on any person offending against or violating the ordinance. The fine, forfeiture, or penalty shall be prescribed in each particular ordinance or in an ordinance prescribing fines, forfeitures, and penalties in general.

A quorum court also has the power to provide, by ordinance, for the prosecution, recovery, and collection of the fines, forfeitures, and penalties.

A quorum court does not, however, have power to define an offense as a felony or to impose any fine or penalty in excess of one thousand dollars (\$1,000) for any one (1) specified offense or violation, or double that sum for each repetition of the offense or violation. If an act prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the ordinance, shall not exceed five hundred dollars (\$500) for each day that it may be unlawfully continued. All fines and penalties imposed for violation of any county ordinance shall be paid into the county general fund.

### IX. ADOPTION OF APPROPRIATION AND EMERGENCY ORDINANCES

**i. APPROPRIATION ORDINANCES:** An appropriation ordinance is a measure by which the quorum court designates a particular fund, or sets a specific portion of county revenue in the treasury to be applied to some general object of expenditure or some individual purchase or expense of the county. All appropriation ordinances or an amendment to an appropriation ordinance shall be designated "appropriation ordinance." Any quorum court may adopt, amend, or repeal an appropriation ordinance which incorporates by reference the provisions of any county budget or portion of a county budget, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the adopted budget in full. At least one (1) copy of a budget, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the county clerk and there kept available for public use, inspection, and examination.

An appropriation ordinance **may be adopted without separate readings** or publication prior to passage, provided publication shall be initiated within two (2) calendar days after approval by the county judge (A.C.A. § 14-14-907(d)). An appropriation ordinance or amendments **enacted without separate readings** shall require a two-thirds (2/3) vote of the whole number of justices comprising a quorum court. On the passage the yeas and nays shall be called and recorded. An appropriation ordinance or amendment adopted in this manner is effective immediately upon approval by the county judge.

**Once appropriated the quorum court is not authorized to micro-manage the expenditure of appropriated funds by the executive branch. See Attorney General Opinions Nos. 2005-293; 2004-302; 1998-398; 1989-365; and 1989-206.**

**ii. EMERGENCY ORDINANCES:** An emergency ordinance may be enacted only to meet public emergencies affecting life, health, safety or property of the people (A.C.A. § 14-14-908). The ordinance must contain a declaration that an emergency exists and define the emergency.

An emergency ordinance or an emergency amendment to an existing ordinance does not require separate readings or prior publication provided, however, that publication shall be initiated within seven (7) calendar days after approval by the county judge.

The passage of an emergency measure shall require two-thirds (2/3) majority of the whole number of justices comprising the quorum court. On the passage the yeas and nays shall be called and recorded. An emergency measure is effective immediately upon approval by the county judge.

## X. VETO

**i. EXERCISE OF BY COUNTY JUDGE:** A.C.A. § 14-14-911 provides that, "The County Judge of each of the several counties shall preside over the Quorum Court with the power of veto." Further,

1. Power of veto is limited to the total text of an ordinance or an amendment to an existing ordinance. Veto of a single part, section or line item is not permitted.

2. Veto must be exercised within seven (7) calendar days after passage.

3. It shall be authenticated by the county judge and demonstrated by filing a written statement of the reason of veto with the county clerk.

4. Written notification of a veto shall immediately be provided to each member of the quorum court by the county clerk and the county clerk shall provide each with a copy of the veto statement filed by the county judge.

5. The power of veto shall not apply to measures enacted through initiative or referendum.

The power of veto extends only to ordinances and amendments to existing ordinances. The power of veto shall not apply to resolutions or amendments to resolutions (A.C.A. § 14-14-913).

**ii. VETO OVERRIDE BY QUORUM COURT:** A.C.A. § 14-14-912 provides that, "The Quorum Court of each of the several counties shall have the power to override the veto

of the County Judge." Further,

1. An affirmative vote of three-fifths (3/5) of the total membership of a quorum court shall be required to override the veto. On consideration the yeas and nays shall be called and recorded.

2. The veto override power must be exercised at the next regular session of the quorum court following written notification of veto.

3. Failure to override a veto in a single vote of the quorum court shall constitute a confirmation of the veto.

## XI. ADOPTION AND AMENDMENT OF RESOLUTIONS

A.C.A. § 14-14-913 governs adoption and amendment of resolutions. A resolution is defined as the adoption of a formal statement of policy by a quorum court. A resolution may be used whenever the quorum court wishes merely to express an opinion as to some matter of county affairs. It shall not serve to compel any executive action.

Resolutions or amendments to existing resolutions may be introduced and adopted in a single meeting on a single reading. All resolutions are effective immediately unless a delayed date is specified. Resolutions or amendments to resolutions are not subject to veto (A.C.A. § 14-14-913).

## XII. MOST FREQUENTLY ASKED QUESTIONS Summer 2012 County Lines FAQs

**By: Wes Fowler, AAC Government Relations  
Director**

### **What is the time frame for publication of ordinances after passage by the quorum court and when do they become effective?**

There are three types of ordinances: general, appropriation and emergency. The timeframe for publication and their effective dates varies by type. So let us look at each one separately and the statutes that apply.

### **14-14-905. Adoption and amendment of ordinances generally:**

(d) Approval and Publication.

(1) (A) Upon passage, all ordinances or amendments shall be approved by the county judge within seven (7) days unless vetoed and shall become law without his or her signature if not signed within seven (7) days.

(B) The ordinances or amendments shall then be published by the county clerk as prescribed by law.

(2)(A) Approval by the county judge shall be demonstrated by affixing his or her signature and his or her notation of the date signed on the face of an original copy of the proposed ordinance.

(2)(B) This approval and authentication shall apply to all ordinances or amendments to existing ordinances unless the power of veto is invoked.

(e) Effective Date.

(1) No ordinance or amendment to an existing ordinance other than an emergency ordinance or appropriation ordinance shall be effective until thirty (30) calendar days after publication has appeared.

(2) An ordinance or amendment to an existing ordinance may provide for a delayed effective date or may provide for the ordinance or amendment to an existing ordinance to become effective upon the fulfillment of an indicated contingency.

#### **A.C.A. 14-14-907. Appropriation ordinances.**

(d) Readings and Publication. An appropriation ordinance may be enacted without separate readings or publication prior to passage. However, publication shall be initiated within two (2) calendar days, excepting holidays, after approval of the measure by the county judge.

(e) Voting Requirements. The passage of appropriation ordinances or amendments to existing appropriation ordinances enacted without separate readings shall require a two-thirds (2/3) vote of the whole number of justices comprising a quorum court. On the passage of every appropriations measure, the yeas and nays shall be called and recorded in the minutes of the meeting.

(f) Effective Date. An appropriation measure is effective immediately upon passage by the quorum court and approval by the county judge.

#### **14-14-908. Emergency ordinances or amendments.**

(d) Readings and Publication. An emergency measure does not require separate readings or publication prior to passage. However, publication shall be initiated within seven (7) calendar days, excepting holidays, after approval of the emergency measure by the county judge.

(e) Voting Requirements. The passage of emergency ordinances or emergency amendments to existing ordinances shall require a two-thirds (2/3) vote of the whole number of justices comprising a quorum court. On the passage of every emergency measure, the yeas and nays shall be called and recorded in the minutes of the meeting.

(f) Effective Date. An emergency ordinance or emergency amendment to an existing ordinance is effective immediately upon passage by the quorum court and approval by the county judge.

So counties have ordinances which must be published 14-14-905 (d) ( B) by the county clerk as prescribed by law. Well what is the law? It is very clear in the statute that appropriation ordinances must have the publication process started within two days (except for holidays) of approval by the county judge. It is also equally clear for emergency ordinances that the publication process must be within seven days (excepting holidays) after approval of the county judge. It is also very clear that the county judge has seven days to take action on all ordinances. The judge can either sign their approval or veto within the seven-day period or it will become law without the judge's approval. The county clerk will start the publication process depending upon the signature date or lack thereof within the proper time frame if the judge has not used their veto. Regarding ordinances of the general nature,

these are not an appropriation ordinance nor are they an emergency ordinance. The statute is not as clear with this type of ordinance; however, it has been the practice of most counties that publication start within seven days (except for holidays) after approval of the county judge. This would seem to be the correct time since they are not immediately effective and the statute is silent on these type of ordinances.

The effective date is very clear. It is immediately upon approval by the county judge for appropriation and emergency ordinances. For all other ordinances of the general nature, it is 30 days after publication unless stated otherwise in the ordinance. The otherwise stated date must however be at least 30 days after publication.

### **XIII. RESEARCH CORNER**

**By: Mark Whitmore, AAC Chief Counsel**

#### **I. DOES THE ANNUAL BUDGET FOR YOUR COUNTY STAND UP TO THE PRIORITIES MANDATED BY ARKANSAS LAW?**

A primary purpose of the quorum court is to enact a budget for the county that assures the rendering of necessary and mandated services to the citizenry. The voters are the ultimate arbiters of how well a particular county accomplishes the task of allocating finances toward priorities. However, the purpose of this article is to underscore the priorities contained in the law that may lead to properly allocating county resources. Ark. Code § 14-14-904 (b)(1)(a) requires that before the end of each fiscal year, the quorum court shall make appropriations for the expenses of county government for the following year. The law also acknowledges that nothing prohibits a quorum court from making appropriation amendments at any time during the current fiscal year. This mandate provides the deadline, but is not the roadmap.

The core of the roadmap is contained in Ark. Code § 14-14-802(a). which emits a guiding light: "(a) A county government, acting through the county quorum court, shall (emphasis added) provide, through ordinance, for the following necessary services for its citizens: 1) The administration of justice through the several courts of record of the county;(2) Law enforcement protection services and the custody of persons accused or convicted of crimes;(3) Real and personal property tax administration, including assessments, collection, and custody of tax proceeds;(4) Court and public records management, as provided by law, including registration, recording, and custody of public records; and (5) All other services prescribed by state law for performance by each of the elected county officers or departments of county government". The remainder of this provision of the Arkansas Code recites a litany of discretionary services that a quorum court may provide for its citizens; and authorizes appropriations for functions not expressly prohibited by the Constitution or laws of Arkansas.

Despite scarce resources, all counties and county officials must answer to the voters. So, one must ask does the budget for your county reflect the priorities identified by law above? What process does your county follow in making an annual budget? Are priorities budgeted first and foremost? The process in which a budget is created, the information considered and the policies of the county may greatly affect whether the budget of the county will lead to success or failure.

Under Amendment 55 the Quorum Court is confided the sole responsibility for affixing the salaries of county officials and county employees; and the task of setting the number of county employees. The importance of this task cannot be overstated. It is tantamount to the responsibilities of the Governor and the General Assembly, respectively, to submit and pass a budget for the State of Arkansas. Recently, the Governor and the General Assembly embarked on a study and a grand proposal to overhaul the state employment pay plan which has not been modified since 1989. The State engaged the services of consultants to assist. The proposal for overhaul involves two plans, a career service pay plan for mostly classified and lower paid employees. The other plan is the professional and executive pay plan. If the State is suffering an employment crisis, the counties are suffering under an "employment pandemic". Some counties have studied their employment issues and are overhauling their pay plans in a type of response demonstrated by the Governor and the General Assembly to the crisis.

While the law is relatively clear about the mandated priorities and which officials are assigned the primary responsibilities, reasonable county officials and reasonable voters may differ over what constitutes a reasonable appropriation for a legislative mandate? The courts have shed some light on the litmus test for whether a quorum court has provided a reasonable appropriation for a mandated service or not. If deemed "reasonable", then the county official and citizens must "live with it". In *Union County v. Union County Election Commission*, 274 Ark. 286 (1981) the court held counties do not have discretion to decide whether money shall be provided for elections, but the court found the appropriation of a ceiling for the election commission was in that instance reasonable. It is apparent the courts will look to see if there is assertion and proof that a mandatory service is not being provided and whether the appropriation is reasonable. See: *Haynes v. Faulkner County*, 326 Ark. 557 (1996).

In *Venhaus v. Adams*, 295 Ark. 606 (1988) the court held that while Sheriff, the Hon. Tommy Robinson, had authority to appoint the claimants as deputies, the authority to determine whether the salaries for overtime will be funded and paid is vested with the Quorum Court. There was also some comp-time available to the deputies. In *Mears v. Hall*, 263 Ark. 827 (1978) the Supreme Court in making a decision on payment of public defenders for indigents defense under prior law, explained that nothing in Amendment 55 changes the status of counties as far as one of its primary purposes and functions are concerned,

the administration of justice. The court stated that a Quorum Court cannot escape the liabilities of providing for mandated services; and a county judge cannot refuse to approve disbursement of county funds in accordance with legally proper ordinances and appropriations.

How would your county fair to the application of the legal test of the courts or the political test of the voters? Are priority matters being allocated necessary funding? Are the budget appropriations designed to provide an adequate number of employees and reasonable pay for priority matters, *before* appropriations are made for discretionary services? So look toward the guiding light, Ark. Code § 14-14-802(a), and your county may find both political success and success in the courts.

## **ii. WHAT SHOULD THE MEMBER OF THE QUORUM COURT KNOW TO PERFORM THEIR DUITES UNDER THE CONSTITUTION AND LAWS OF ARKANSAS?**

A Justice of the Peace should know Amendment 55 and part of the County Code, Title 14, Chapter 14, "Legislative Powers" (Subchapter 8); and "Legislative Procedures" (Subchapter 9). The Association of Arkansas Counties publishes on the AAC website, [arcounties.org](http://arcounties.org) under publications library: "The Arkansas Justice of the Peace Procedural Manual", "Amendment 55, Act 742 of 1977 as amended" (which serves as a guide to Amendment 55 and the implementing language known as the "County Code"); and the "Procedural Guide for Arkansas County Quorum Court Meetings" by the Cooperative Extension Service, University of Arkansas, and US Department of Agriculture.

In the Summer Edition of the County Lines Wes Fowler, AAC contact for Justices of the Peace, explained the timeframe for publication of ordinances after passage by the Quorum Court and the effective dates for: ordinances generally (A.C.A. § § 14-14-905); appropriation ordinances (A.C.A. § 14-14-907); and emergency ordinances (A.C.A. § § 14-14-908). During the Fall meeting of the CJAA, Judge Fowler, AAC Government relations director and former county judge and county clerk will conduct a presentation and panel discussion on Procedure for Quorum Court meetings. As my contribution for the presentation, I updated these materials. Below is my opinion of the crux of what a Justice of the Peace in Arkansas should know.

There are certain duties and responsibilities a Justice of the Peace and Quorum Court are mandated to perform; certain actions you may perform; and certain duties or actions you are prohibited from performing (shall, may and can't). Many successful and leaders in the General Assembly were once Justices of the Peace. They learned how county government worked. It's now been twenty-five (25) years since graduating law school and obtaining my law license; and I am about to achieve a decade of work at a place and with people I love. So, from my perspective here are some of the basics to being a JP in Arkansas.

The Quorum Court shall adopt by ordinance: an annual budget for the necessary/mandated expenses of county

government; affix the salaries of county employees and county officials; levy taxes for the county taxes, municipal taxes, and school taxes; and meet at an organizational meeting and adopt organizational/procedural rules.

A.C.A. § 14-14-901 vests the legislative power of county government in the quorum court of each county, subject to the limitations imposed by the Arkansas Constitution and by state law. A primary purpose of the quorum court is to enact a budget for the county that assures the rendering of necessary and mandated services to the citizenry. A.C.A. § 14-14-904 (b)(1)(a) (ii) states that: “*Before the end of each fiscal year the quorum court shall make appropriations for the expenses of county government for the following year*”. The core of the mandate is contained in Ark. Code § 14-14-802(a), which prescribes: “(a) A county government, acting through the county quorum court, shall (emphasis added) provide, through ordinance, for the following necessary services for its citizens:(1) The administration of justice through the several courts of record of the county;(2) Law enforcement protection services and the custody of persons accused or convicted of crimes;(3) Real and personal property tax administration, including assessments, collection, and custody of tax proceeds;(4) Court and public records management, as provided by law, including registration, recording, and custody of public records; and (5) All other services prescribed by state law for performance by each of the elected county officers or departments of county government”. The remainder of this provision of the Arkansas Code recites a litany of discretionary services that a quorum court may provide for its citizens; and authorizes appropriations for functions not expressly prohibited by the Constitution or laws of Arkansas.

Despite the clear mandate, from time to time a county quorum court will breach their clear duty under the law to adopt an annual and adequate budget for mandated/necessary services. In *Union County v. Union County Election Commission*, 274 Ark. 286 (1981) the court held counties do not have discretion to decide whether money shall be provided for elections. It is apparent the courts will look to see if there is assertion and proof that a mandatory service is not being provided and whether the appropriation is reasonable. See also: *Haynes v. Faulkner County*, 326 Ark. 557 (1996). In *Mears v. Hall*, 263 Ark. 827 (1978) the Supreme Court explained that a Quorum Court cannot escape the liabilities of providing for mandated services; and a county judge cannot refuse to approve disbursement of county funds in accordance with legally proper ordinances and appropriations.

Under Amendment 55, §§ 4 and 5 the Quorum Court is confided the Constitutional responsibility for affixing the number and salaries of county employees and salaries of county officials. The AAC publishes annually on the AAC website a salary survey of salaries for county employees, officials, and the number of positions for the various seventy-five (75) counties. A.C.A. § 14-14-2504 prescribes the floor and ceiling of salaries for county officials based upon class of county. Comparison of salaries

and benefits to those of city and state employees or officials performing comparable tasks frequently demonstrate the salaries for county employees and officials are substantially lower and not commensurate with their duties. However, in some counties tough economic times have some counties are laying people off work or eliminating health insurance.

A.C.A. § 14-14-904(b)(i)(A)(i) absolutely mandates: “*The quorum court at its regular meeting in November of each year shall levy the county taxes, municipal taxes, and school taxes for the current year*”. The law allows for an extension by the Director of the Assessment Coordination Department for up to sixty (60) days of the date for the levy of taxes for good cause shown by the county judge and county clerk from reappraisal or rollback. See: Attorney General Opinion Nos: 2010-157; 1997-421; and 1997-393. Attorney General 2007-301: held that the road tax levied under Amendment 61 is to be levied at the regular time taxes are levied as A.C.A. § 26-79-101 (at the regular November meeting of the Quorum Court). Subsection 904(b)(i)(A)(iv) allows the county court to order a correction to the levy ordinance due to clerical error, scrivener error, or failure of the tax entity to report the correct millage to the Quorum Court. See also: Attorney General Opinion Nos: 2004-021 and 2003-031. Some counties have sought refuge by recessing the regular November meeting (rather than adjourning) or by obtaining ACD extension or issuance of a county court order when appropriate under the law. From time to time, however, a few counties have had to do without county general or county road taxes for failure to comply with the law. They adjourned the regular meeting in November without having adopted the levy ordinance or to have available the extensions provided for the specific circumstances required by law.

A.C.A. § 14-14-904 (a), (d), (e) direct and envision the Quorum Court at its initial organizational meeting adopting organizational/procedural rules. These rules affix the date, time and location of regular meetings of the Quorum Court; and may along with budget appropriations affix the per diem compensation for attending regular, special and committee meetings of the quorum court subject to the limitations prescribed by the General Assembly under A.C.A. § 14-14-1205. Since justices of the peace are district officials, not county officials, their compensation may be reduced during their term, Attorney General Opinion No. 2003-059. A.C.A. § 14-14-904(e) further provides: “*Except as otherwise provided by law, the quorum court of each county shall determine its rules of procedure and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance*”.

A.C.A. § 14-14-502(b) provides for separate of powers: “*The powers of county governments of the State of Arkansas shall be divided into three (3) distinct departments, each of them to be confined into a separate body: Legislative, Executive; and Judicial. A.C.A. § 14-14-904(d) provides*” “*The County Judge shall preside over the Quorum Court without a vote but with the power of veto.*”

*“The presiding officer shall appoint all regular and special committees of a quorum court subject to any procedural rules which may be adopted by ordinance. A regular committee or special committee of the quorum court shall not consist of more than a quorum of the whole body without the consent of the county judge”.* The county judge is the chief executive official and presiding officer, but not a member of the quorum court. He rules on motions and guides debate according to the rules of procedure

The various other county officials are likewise members of the executive branch. A Justice of the Peace would be well served by spending some time with their local Assessor, Circuit Clerk, County Clerk, Collector, Coroner, County Judge, Sheriff, and Treasurer. Learn the substantial duties of their offices and the assignments of their staff. However, it is clear from separation of powers once funds are appropriated the quorum court is not authorized to micro-manage the expenditure of appropriated funds by the executive branch. See Attorney General Opinions Nos. 2005-293; 2004-302; 1998-398; 1989-365; and 1989-206. In Attorney General Opinion No. 2011-087: The authority of the county judge, not the quorum court, to hire or fire the county attorney, or enter necessary contracts is beyond reasonable argument. Justice of the Peace is an official elected by the Constitution of Arkansas. The law and duties above should be well-known to all JPs in Arkansas and dutifully performed.

#### **XIV. GLOSSARY OF MOTIONS MOST OFTEN USED**

*Robert’s Rules of Order* lists and defines some 82 separate and distinct motions. The text devotes the better part of five hundred pages to the explanation of procedural technicalities. While *Robert’s* treatise is probably the foremost in the field of parliamentary law, it is not necessary to attempt to master its entire contents. More useful is a basic understanding of the principle motions which can be made and their effect on the deliberations of the quorum court.

**i. THE MAIN MOTION:** A main motion is the means by which meetings are conducted. It is the vehicle for the transaction of business. Understandably then, a main motion should be as clear and concise as possible. It should be as brief as its substance permits. The presiding officer may request that the motion be rephrased if it is ambiguous or too long. Generally, main motions should be drafted to avoid the inclusion of negative statements. Thus, it is preferable to draft a motion stating, “We oppose...” rather than a motion phrased in terms of, “We do not support”. This prevents confusion and increases clarity of what the member is proposing. The procedure for discussion and disposition of a main motion has been discussed previously.

**ii. PRIVILEGED MOTIONS:** These motions are considered so important that they are given priority over other motions. They are questions which must be decided before the pending question. They relate to the members

and to the deliberative body rather than to the main motions. There are three privileged motions essential to conducting business:

**1. Motion to Adjourn** – As is obvious from its title, this motion is used to terminate a meeting. Under Act 742, the Quorum Court is to meet at least once a month at a regular time and place established by ordinance. Therefore, there is no need for a justice to qualify his motion to adjourn by stipulating a time for the next meeting. When a motion to adjourn is passed before all business is completed, the matters which are left pending are brought up at the next meeting under the subject of unfinished business.

**2. Motion to Recess** – This motion is used to effect a short intermission in the proceedings of the assembly. It does not close the meeting and after the time for recess has expired, the meeting reconvenes and proceeds to consider business at the same point at which it recessed. A motion to recess is generally used to allow short conferences between members, to acquire information, or accomplish other ministerial acts.

**3. Question of Privilege** – During the course of a meeting a situation may arise which involves the comfort, convenience, rights or privileges of an individual member or of the assembly at large. In such a situation a member may, without waiting for recognition by the presiding officer, declare, “I raise a question of privilege affecting the assembly” (if the matter concerns the group as a whole) or “I raise a question of personal privilege” (if only the individual member is concerned). Questions of privilege relating to the assembly usually involve such things as heating, lighting, noise and seating of members. Questions of personal privilege usually pertain to rights, convenience, reputation or conduct of an individual member.

**iii. SUBSIDIARY MOTIONS:** The seven subsidiary motions are alternative methods of changing or disposing of the main motion. Because their purpose is to expedite deliberation of a main motion, they can be proposed only when a main motion is before the quorum court. When the main motion is pending, there are several alternatives to voting on it directly in order to dispose of the motion.

**1. Postpone Temporarily** – The effect of this motion is to temporarily set aside a pending main motion so that it can be considered at any time during the same meeting by a motion to resume consideration. This motion is generally used to postpone consideration of a question until some more urgent business which has arisen has been considered.

**2. Vote Immediately (Previous Question)** – For one reason or another, debate may continue even after everything of relevance has been said. The motion to vote immediately serves to expedite the business of the quorum court by shutting off further debate and bringing the issue in question to a vote. A motion to vote immediately is not a privileged motion. The practice of calling, “Question,

Question!" is not correct and should be ignored by the presiding officer.

3. **Limit Debate** – When the assembly has several matters to consider or when extended discussion would serve no valid purpose, a member may wish to move to limit debate. Debate may be limited in several ways. The motion may intend to restrict the number of speakers who can participate on each side of the question, or it may attempt to limit the time allotted to each speaker, or it may specify the total time allotted for discussion.

4. **Postpone Definitely** – This motion, like the motion to postpone temporarily, delays consideration of a pending main motion. The distinction between the two is that a motion to postpone definitely fixes a further specified time for the motion to be considered, while a motion to postpone temporarily does not.

5. **Refer to a Committee** – Referral of a pending motion to a committee may serve several useful functions. If the proposal is a complicated one or one that requires further investigation, reference to a committee for study and recommendation may be desirable. Committee may also be used to provide a public hearing on a particular proposal, to conserve the time of the quorum court by allowing a smaller group to recommend decisions or act on a proposal, or to postpone consideration of the issue until a more favorable time.

6. **Amend** – The major purpose of a motion to amend is to modify or change a pending motion so that it is better suited for what is needed. Amendment may be accomplished by inserting additional terms, by striking out inappropriate terms, or by substituting entirely new language for that used in the original motion. An amendment, however accomplished, must be germane to the pending question. It must be relevant to or have a direct bearing on the proposal in issue.

A series of rules dealing with priority of amendments to a question and of amendments to amendments has been developed. Discussion of those rules is beyond the scope of this guide and usually beyond the scope of most meetings. Should the necessity for their consideration arise, *Robert's Rules* should be consulted. However, basic to parliamentary procedure is that once an amendment has been proposed it must be disposed of prior to action on the main motion.

7. **Postpone Indefinitely** – Actually the title of this motion is misleading. Its effect is not to postpone consideration of a pending motion at all. Rather it serves to indirectly defeat or kill the main motion. This motion is often used by opponents of a proposal to learn who favors and who opposes it, without running the risk of having the motion adopted by calling it to a vote.

**iv. INCIDENTAL MOTIONS:** These motions arise out of the business pending before the quorum court. They have been developed to handle procedural problems which have come up in consideration of other questions, or

concerning rights and privileges of members. To settle these problems so that the main business may proceed, incidental motions are used. Incidental motions may be proposed at any time and must be decided at the time they arise. They are not, therefore, included in the list of precedence. The most frequently used incidental motions are:

1. **Appeal** – An appeal from a decision of the chair allows a member who believes that the presiding officer has erred in making a particular ruling to have question decided by the whole quorum court. Any decision by the presiding officer involving his/her judgment is subject to appeal. However, the mere statement of a fact, such as the absence of certain members or the result of a vote, is not appealable. When a ruling is appealed to the assembly, the presiding officer must state the motion in a fair manner.

2. **Point of Order** – The primary purpose of parliamentary procedure is to ensure order in the discussion of issues and the formulation of policy. Without a means of calling attention to a violation of procedural rules, the parliamentary scheme would be of little value. When a member raises a point of order, the member is bringing what is believed to be an error in procedure to attention so that business can be conducted correctly. As soon as a member raises a point, the presiding officer must rule that it is either "well taken" or "not well taken."

3. **Parliamentary Inquiry** – As with the point of order, this motion is designed to give members an opportunity to ensure the correctness of proceedings. A member who is uncertain as to the appropriateness of a particular action always has the right to inquire. A parliamentary inquiry is usually directed to the presiding officer. However, it may be directed to the proposer of a motion if it concerns the parliamentary development or effect of that motion.

4. **Withdraw a Motion** – It may occur that a motion has been proposed without thorough consideration of its possible ramifications or that more urgent business than what is under consideration arises. In such a situation, a motion to withdraw may be appropriate. A member has a right to withdraw a motion before it has been seconded and restated to the assembly by the presiding officer. However, once it has been stated by the presiding officer to the assembly, the member must secure the consent of that assembly before being allowed to withdraw the motion. Withdrawal of a motion also withdraws all motions adhering to it.

5. **Suspend Rules** – In rare instances, circumstances may command a deviation from the set rules of the quorum court. This is the function of the motion to suspend. It is important to remember that a motion to suspend can only be applied to procedural rules. Where substantive rights are involved, the motion to suspend is improper. Thus, the rules cannot be suspended regarding the presence of a quorum, the number of votes required to pass an ordinance, etc. Furthermore, rules may be

suspended only for a particular purpose and for the length of time necessary to accomplish that purpose. A motion “to suspend the rules for the next five meetings” would obviously be improper.

**6. Objection to Consideration** – This motion should seldom be used. However, in those instances where the proposed motion is beyond the scope of the authority of the quorum court, devoid of reason, proposed for the purpose of harassment or delay or is otherwise obviously improper, an objection to the consideration of the motion may be made. By its nature the motion to object to consideration applies only to main motions.

**7. Division of the Question** – A motion to divide the question may be proper when the motion before the quorum court presents two or more separate and distinct ideas or when a member realizes that the motion cannot pass in its entirety, but a divisible portion of it might succeed. A motion to divide the question must state clearly how the question is to be divided.

Other motions may arise incidentally during deliberations on another motion. As an example, if the quorum court were considering an appointment as a main motion, one member might move that it be voted on by ballot. This would be incidental to the main motion and would be voted on immediately. At another time without a main motion pending, a motion that all future appointments be voted on by ballot would not be an incidental motion but a main motion. The classification of motions may vary with the situation in which they arise. Further examples of motions which may arise incidentally are to consider an ordinance paragraph by paragraph; to excuse a member from voting; to close nominations.

## XV. PRECEDENCE OF MOTIONS

Since there may be more than one motion pending (a main motion and secondary motions), motions are given rank or precedence based on the degree of their urgency. Precedence assures that each motion is attended to in its proper turn. The more important motions are arranged in the order of their precedence in this list:

1. Adjourn
2. Recess
3. Question of privilege
4. Postpone temporarily (“lay on the table”)
  5. Vote immediately (“previous question”)
6. Limit debate
7. Postpone definitely
8. Refer to committee
9. Amend
10. Postpone indefinitely
11. The main motion

There are two important rules of precedence:

1. When a motion is pending, any motion of a higher

rank may be proposed, but no motion of lower rank is in order. The motion to adjourn (No. 1) has the highest rank, and a main motion (No. 11) has the lowest. If a main motion (No. 11) is pending, any motion of higher rank (No. 10 to 1) can be proposed. If No. 8 is pending, No. 7 to 1 can all be proposed, but No. 9 or No. 10 cannot.

2. Motions are considered and voted upon in reverse order to the order of their proposal, the last one proposed being considered and disposed of first. For example, if motions No. 11, 10, 7, and 2 were proposed in that order, they would be considered and voted upon in the following order: No. 2, 7, 10, and 11.

### 3. TABLE OF RULES GOVERNING MOTIONS

Order of precedence	Can interrupt speaker?	Requires a second?	Debatable?	Amendable?	Vote required?
<b>I. Privileged Motions</b>					
1. Adjourn	no	yes	no	no	majority
2. Recess	no	yes	no	yes	majority
3. Question of Privilege	yes	no	no	no	no vote
<b>II. Subsidiary Motions</b>					
4. Postpone Temporarily	no	yes	no	no	majority
5. Vote Immediately	no	yes	no	no	two-thirds
6. Limit Debate	no	yes	no	yes	two-thirds
7. Postpone Definitely	no	yes	yes	yes	majority
8. Refer to Committee	no	yes	yes	yes	majority
9. Amend	no	yes	yes	yes	majority
10. Postpone Indefinitely	no	yes	yes	no	majority
<b>III. Main Motions</b>					
11. General Main Motion	no	yes	yes	no	majority
<b>IV. Incidental Motions</b>					
12. Appeal	yes	yes	yes	no	tie or majority
13. Point of Order	yes	no	no	no	no vote
14. Parliamentary Inquiry	yes	no	no	no	no vote
15. Withdraw a Motion	no	no	no	no	no vote
16. Suspend Rules	no	yes	no	no	two-thirds
17. Object to Consideration	yes	no	no	no	two-thirds neg.
18. Division of a Question	no	no	no	no	no vote
19. Division of Assembly	yes	no	no	no	no vote

### XVI. DEFINITIONS OF TERMS

**A.C.A. §** – Arkansas Code of 1987 Annotated.

**Adjourn** – To end a meeting officially.

**Adopt** – To approve, to put into effect.

**Adopt a Report** – The formal acceptance of a report. Adoption commits the assembly to everything included in the report.

**Affirmative Vote** – A “yes” vote to a question being considered by an assembly.

**Agenda** – The official list of business to be considered at a meeting.

**Amend** – To change, by adding, deleting, or substituting words or provisions.

**Amendment to an Amendment** – Also called a secondary amendment. Only one primary and one secondary amendment are permitted at a time.

**Annul** – To void or cancel an action previously taken.

**Appeal** – To request that a decision of the presiding officer be referred to the assembly for its determination.

**Bill of Attainder** – A legislative act that declares the guilt of the accused and metes out punishment without judicial trial. Forbidden by the constitution.

**Code** – A compilation of laws in force, classified according to subject matter. Formally known as the Arkansas Code Annotated (A.C.A. §).

**Debatable** – Capable of being discussed.

**Division of Question** – Separation of main motion into two or more independent parts each of which is capable of standing alone.

**General Consent** – An informal method of disposing of routine and generally favored proposals. Consent is assumed unless objection is raised. Also called unanimous consent.

**Incidental Motions** – Motions relating to questions which arise incidentally out of the business being considered by the assembly.

**Journal of Proceedings** – A bound book maintained by the county clerk, in which the proceedings of the meetings of the quorum court and recorded votes are kept.

**Lay on the Table** – To postpone a motion until a later but as yet undetermined time.

**Limit Debate** – To place restrictions of the time to be devoted to debate on a question or the number of speakers or the time allotted each.

**Main Motion** – A motion presenting a subject to an assembly for discussion and decision. Also see substitute motion.

**Ministerial Duty** – An act prescribed by law, done without exercise of discretionary judgment.

**New Business** – Any business other than unfinished or “Old Business” which may properly be brought before an assembly.

**Object to Consideration** – To oppose discussion and decision on a main motion.

**Order of Business** – The formal program of sequence of different items or classes of business arranged in the order in which they are to be considered.

**Ordinance** – Law made by legislative body of a county.

**Pending Question** – A question, or motion, before the assembly which has not yet been voted upon.

**Postpone Definitely** – To deter consideration of a motion or report until a specific time.

**Postpone Indefinitely** – To kill a motion or report by deferring consideration of it indefinitely.

**Postpone Temporarily** – To defer consideration of a report or motion until the assembly chooses to take it up again.

**Precedence** – The right of prior proposal and consideration of one motion over another.

**Privileged Motions** – The class of motions being the highest priority.

**Question of Privilege** – Request or motion affecting the comfort or convenience of the assembly or one of its members.

**Reconsider** – Motion to cancel the effect of a vote so that the question may be reviewed and decided.

**Referendum** – Referral of an ordinance or resolution to a vote for approval or rejection by the electorate.

**Refer to Committee** – Motion to delegate work to a small group of members for study, decision, or action.

**Resolution** – A formal expression of a legislative body of a county.

**Resume Consideration** – To take up for consideration a

motion which has been postponed temporarily. The old form of the motion was “taken from the table.”

**Special Committee** – A committee appointed to accomplish a particular task and to submit a special report. It ceases to exist when its task is completed.

**Special Meeting** – One called for a time other than that regularly scheduled.

**Standing Committee** – A committee to handle all business on a certain subject which may be referred to it, and usually having a term of service corresponding to the term of office of the officers of the organization.

**Substitute Motion** – An amendment which puts an entire new text of the main motion in place of the pending version.

**Unfinished Business** – Any business deferred by a motion to postpone to a definite time, or any business which was incomplete when the previous meeting adjourned. Unfinished business has a preferred status at the following meeting.

**Vote Immediately** – Motion to close debate, shut off subsidiary motion, and take a vote at once.

**Withdraw** – Motion by a member to remove his motion from consideration by the assembly.

Produced in cooperation with University of Arkansas Cooperative Extension Service Printing Services. Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture, Director, Cooperative Extension Service, University of Arkansas.

## **XVII. PROCEDURAL/ORGANIZATIONAL ORDINANCES: (SAMPLE ORDINANCES FROM COUNTIES)**

The following is a sample of organizational ordinances from three different counties. The first is quite comprehensive the second is short and to the point the third is a blend. These are for reference and to use in building an organizational ordinance that will work in your county.

### **§ 200.02 ORGANIZATION, MANAGEMENT AND RULES OF PROCEDURE FOR THE AFFAIRS OF THE BOONE COUNTY QUORUM COURT.**

1) PROCEDURAL RULES. In the absence of specific rules of procedure, as set in this Procedural Ordinance, the rules of procedure for transacting business at all regular and special sessions of the Quorum Court shall be *Robert's Rules of Order, Newly Revised*, except the Clerk shall commence a roll call vote with a different member of the Quorum Court on a rotating basis or use a paper ballot with

the Clerk reading off the votes cast without objection, and except any citizen attending a meeting of the Boone County Quorum Court shall be given a reasonable opportunity to participate prior to a final decision on an issue before the Quorum Court, and except for comments from the public at the end of the meeting which shall be restricted to subjects either under discussion by the Quorum Court or those subjects where the Quorum Court has responsibly and authority and except where they are in conflict with the general laws of the State.

2) The County Clerk shall serve as secretariat to the Quorum Court and shall perform all administrative and record keeping duties of the secretariat of the Quorum Court.

The secretariat of the Quorum Court shall keep written minutes that include the final vote on each Ordinance or Resolution indicating the vote of each individual member.

3) RECORDATION OF ORDINANCES AND RESOLUTIONS. (a) Register. There shall be maintained in the office of the secretariat of the Quorum Court a "County Ordinance and Resolution" Register for all ordinances, resolutions, and amendments to each, adopted and approved by the Court. Entries in such Register shall be sequentially numbered in the order adopted and approved; provided however, that a separate sequential numbering system shall be maintained for both Ordinances and Resolutions. The Register shall be maintained by the secretariat as a permanent record of the Court; and shall contain that minimum information needed for indexing as required in A.C.A. § 14-14-903.

(b) Permanent Record. There shall be maintained in the courthouse a permanent record of all Ordinances and Resolutions, in the form of a uniform bound county code, in which each enactment is entered in full after passage and approval, except when a code or budget is adopted by reference. Such permanent record shall be so indexed to provide for efficient identification, location, and retrieval of all Ordinances and Resolutions by subject, register number and date enacted. Such permanent record may be by book and page.

4) AGENDA. (a) It shall be the responsibility of the County Judge to prepare the Agenda and the County Clerk shall distribute the Agenda of the Quorum Court to its members and other interested citizens. Any items submitted to the County Judge for submission on the Agenda must be submitted in writing no later than seven (7) days prior to the regularly scheduled meeting. The name of the sponsor of each Agenda item shall be attached to the Ordinance or Resolution before it is placed on the Agenda. A member of the Quorum Court must sponsor any Ordinances that are submitted. A packet containing items that have been placed on the Agenda shall be delivered to the Quorum Court members and other interested individuals no later than Wednesday prior to the regularly scheduled meeting and also posted prominently in the courthouse no later than the Friday prior to the regularly scheduled meeting.

b) Three (3) members of the Quorum Court and the County Judge may jointly submit items after the Agenda closes, if it is considered to be in the best interest of the county.

5) REGULAR MEETINGS. The regular monthly meeting of the Quorum Court will be held on the second Monday of each month at 400 East Prospect in Harrison. When a regular meeting of the Quorum Court falls on a recognized county holiday, the meeting shall be held at the same time and place on the next day for which county government offices are open for business. All regular meetings of the Quorum Court shall conform to the Arkansas Freedom of Information Act and all other State laws.

6) SPECIAL MEETINGS. (a) The County Judge or a majority of the elected Justices of the Peace may call special meetings upon at least a twenty-four (24) hour notice. The notice of special meetings shall specify the subjects, date, time, and designated location of the special meeting. Only such business as was included in the notice may be considered.

(b) Notice of a special meeting given at any regular or special meeting of the Quorum Court shall constitute due notice to the members given. The County Clerk shall be responsible for giving timely notice to absent members, as well as giving public notice, containing the information specified in subsection (a) of this section.

(c) Notice of a special meeting of the Quorum Court called by the County Judge at other than a meeting of the Quorum Court shall be accomplished by the County Judge notifying the County Clerk, in writing, if time permits, who shall be responsible for notifying each Justice of the Peace individually, in writing, if time permits, and giving due public notice, containing information specified in subsection (a) of this section.

(d) Notice of a special meeting of the Quorum Court called by a majority of the Justices of the Peace shall be accomplished by one (1) member of the majority notifying the County Clerk, in writing, if time permits. In addition to the information specified in subsection (a), the notice shall also include the name of each Justice of the Peace making up the majority calling the meeting. The County Clerk shall be responsible for notifying the County Judge and each Justice of the Peace individually, not included in the majority calling the special meeting, in writing, if time permits, and giving due public notice.

(e) In order to protect the rights and interests of all county officials concerned and the general public, it is the intent of this body that notice of a call for a special meeting shall be given as far in advance as possible, consistent with the nature and immediacy of the purpose of the special meeting. The minimum twenty-four (24) hours' notice should therefore be resorted to only under extreme and unusual circumstances.

(f) All special meetings of the Quorum Court or any of its committees shall be in conformance with the Arkansas Freedom of Information Act and all other State laws.

7) PUBLIC NOTIFICATION OF MEETINGS; NOTIFICATION OF MEETINGS OF COMMITTEES. In addition to all other duties required by law, the County Clerk shall be responsible for giving the public notification required by the Arkansas Freedom of Information Act of regular and special meetings of the Quorum Court and committees thereof. Committee chairpersons shall give the County Clerk notice of meetings of their committees in sufficient time for compliance with public notification of such meetings as required by law.

8) ATTENDANCE AT MEETINGS BY COUNTY TREASURER.

a) In addition to all other duties required by law, the County Treasurer shall attend all regular meetings of the Quorum Court for the purpose of responding to any questions which may arise concerning the financial statement required to be submitted monthly to the Quorum Court by the County Treasurer.

b) In addition to all other duties required by law, the County Treasurer shall attend all special meetings of the Quorum Court where members of the Quorum Court or the County Judge deem such attendance necessary. Timely notice of such need for the attendance shall be furnished the County Treasurer giving the purpose for which attendance is required.

9) COMMITTEES.

a) DEFINITIONS:

i) Wherever the term "**STANDING COMMITTEE**" is used in this section, it shall mean a committee of the Quorum Court, constituted to perform in a continuing function, and intended to remain in existence.

ii) Wherever the term "**SPECIAL COMMITTEE**" is used, it shall mean a committee of the Quorum Court constituted to complete a specified assignment to be dismissed upon completion of the task.

iii) Wherever the term "**COMMITTEE**" or "**COMMITTEES**" is used, it shall mean both standing and special committees of the Quorum Court.

b) STANDING COMMITTEES ENUMERATED. There are hereby established the following Standing Committees of the Quorum Court:

Budget and Finance

Buildings and Grounds

Law Enforcement

Roads and Bridges

Solid Waste Management

c) COMPOSITION. Each committee shall consist of not less than three (3) nor more than five (5) members.

d) APPOINTMENTS. In accordance with A.C.A. § 14-14-703 or other State law, the County Judge shall appoint all standing and special committees of the Quorum Court. The County Judge may appoint non-Quorum Court members to any committee, except the Budget and Finance Committee, as a non-voting member.

e) TERMS OF MEMBERS. The length of membership for each committee member shall coincide with the Justice's term of office. The County Judge or his/her designated agent shall be an ex-officio member of each standing or special committee. The Treasurer or his/her designated agent shall be an ex-officio member of the Budget and Finance committee.

f) ELECTION OF CHAIRPERSONS. Committee chairpersons shall be elected by each individual committee, provided that no Justice may serve as the chairperson of more than one (1) standing committee. The term of office of chairperson shall be one (1) year, but a chairperson may be selected to serve successive terms.

g) CALLING OF MEETINGS. Committees shall meet at the call of the chairperson or any two (2) committee members.

h) NATURE OF MEETINGS; NOTICE. All committee meetings shall be open and public. Representatives of the media shall be given at least two (2) hours' notice of all meetings.

i) REPORTS. Each committee shall periodically report its progress, findings and recommendations to the Quorum Court during regular or special meetings. The formal committee report in the regular or special session of the Quorum Court shall provide opportunity for both a majority and a minority report, if and an when such situation exists.

j) MINUTES. Each committee shall require written minutes of the actions taken in such meeting. Copies of committee meeting minutes shall be sent to the County Judge and included in Quorum Court meeting packets.

k) APPOINTMENT OF ADDITIONAL COMMITTEES. The County Judge, in accordance with A.C.A. § 14-14-703 or other State law, may appoint other standing and special committees, which shall function in accordance with procedures as set forth in this section.

10) SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

11) REPEALER. All Ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

12) EMERGENCY CLAUSE. An emergency is hereby declared to exist or Boone County to be in compliance with Act 742 of 1977, and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval

**§ 200.02 TIME AND PLACE OF THE REGULAR MONTHLY MEETING OF THE QUORUM COURT.**

1) Pursuant to A.C.A. §14-14-904, the County Quorum Court is to meet monthly at a time and place specified by ordinance. Therefore, in order to comply with the general laws of the state, the Quorum Court must immediately proceed to establish by Ordinance the time and place of the regular monthly meetings of the Quorum Court.

2) The regular monthly meeting of the Conway County Quorum Court shall be held on the fourth Monday of each month at 6:00 p.m. at the Conway County Courthouse, Morrilton, Arkansas.

3) EMERGENCY CLAUSE. This Ordinance being necessary for the immediate preservation of the public's peace, health and welfare, an emergency is hereby declared to exist and that this Ordinance should be in full force and effect from and after its passage and approval.

**§ 200.01 RULES OF PROCEDURE FOR TRANSACTION OF BUSINESS OF THE QUORUM COURT.**

1) An agenda shall be prepared by the Office of the County Clerk for every regular and special session of the Quorum Court.

2) The agenda shall contain any item of business that any member of the Quorum Court presents to the Office of the County Clerk for every regular and special session of the Quorum Court.

3) The agenda shall contain any item of business that any member of the Quorum Court presents to the Office of the County Court for inclusion on the agenda subject to the following requirements:

a) Any such item of business must be furnished to the office of the County Clerk at least eight (8) days prior to the meeting that the Quorum Court member wants the item of business to be placed on the agenda for such meeting. Any item of business that is not presented by this time limit shall not be placed on the agenda for that meeting and shall be placed on the agenda for the next scheduled meeting unless the Quorum Court member requests that it not be so included.

b) The office of the County Clerk shall mail or otherwise deliver a copy of the agenda, together with any ordinance or resolution or other written material that is to be presented in accordance with the agenda at the meeting to every Quorum Court member, to the County Judge, and the legal advisor of the Quorum Court in a manner, that in the ordinary course of events, would ensure the receipt by those persons of such agenda, and accompanying resolutions, ordinances or other written material at least five (5) days prior to such meeting. In the event this subsection is not complied with, the Quorum Court shall not consider any matter which has not been presented to the Quorum Court at an earlier meeting.

4) Notwithstanding the foregoing sections of this Ordinance, the Quorum Court may, by a majority vote of the members present, elect to place any matter before the Quorum Court for consideration at that meeting.

5) The agenda shall be prepared by the office of the County Court Clerk according to the following format:

- a) Order of Business.
  - i. Call to order and roll call.
  - ii. Reading, correction, and disposition of minutes.
  - iii. Report of committees.
  - iv. Report of Constitutional Officers.
  - v. Comments from the public.
  - vi. Unfinished business.
  - vii. New business.
  - viii. Announcements.
  - ix. Adjournment.

The office of the County Court Clerk shall place any item of business presented by a Quorum Court member, for inclusion on the agenda under the appropriate category listed herein.

b) No matter may be placed on the agenda for presentation to the Quorum Court by anyone other than a Quorum Court member.

6) The County Judge shall preside over the meetings of the Quorum Court and shall conduct the meeting in strict accordance with the agenda. In the absence of the County Judge, a quorum of the Quorum Court members, by a majority vote, shall elect one of their number to preside.

7) *Robert's Rules of Order* is hereby adopted as the Procedural Rules to be followed in the transaction of business at all Quorum Court meetings, except where they

are in conflict with the general laws of the State or any other duly enacted ordinances or resolutions.

8) REPEALER. All ordinances and resolutions, or parts thereof, which are in conflict herewith, are hereby repealed

# Chapter Six - Procurement

## CUSTODY OF COUNTY PROPERTY

**AMENDMENT 55, § 3:** The County Judge, in addition, to all other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court; have custody of county property; hire county employees, except those persons employed by other elected officials of the county.

### **ACA 14-14-1102(b). 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.

**NOTE: THERE ARE SOME SPECIFIC SECTIONS OF CODE ON LEASE OF COUNTY PROPERTY: ACA 14-16-108: SALE OR LEASE OF COUNTY**

**HOSPITAL TO MUNICIPALITY; ACA 14-16-109: LEASE OF COUNTY LANDS TO MUNICIPALITY; AND ACA 14-16-110: LEASE OF COUNTY PROPERTY TO EDUCATIONAL INSTITUTIONS.**

### **16 – Property exchange by counties.**

(a). Counties are authorized to exchange or transfer properties, real or personal, with other counties, municipalities, community colleges or institutions of higher education. An exchange or transfer under this section shall be approved by ordinances of the quorum court and accomplished in accordance with procedures prescribed or confirmed by the quorum court. **{As amended by Act 98 of 2015}. 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.

**LEASING COUNTY PROPERTY TO OTHERS**  
**THE COUNTY JUDGE IS AUTHORIZED TO LEASE COUNTY PROPERTY**

**GUIDELINES FOR LEASING COUNTY  
PROPERTY TO EDUCATIONAL INSTITUTIONS.**

**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.

**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

## 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.**

#### **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.

#### **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.

# CONSTRUCTION LAW & CONTRACTS

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 alms-houses, 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 \$35,000 BE BID AND ADVERTISED IN A NEWSPAPER OF A GENERAL CIRCULATION IN THE COUNTY OR IN A TRADE JOURNAL REACHING THE CONSTRUCTION INDUSTRY. {ACA 22-9-203}
- FIVE PERCENT (5%) BID BOND OR CASHIER'S CHECK IS A PRUDENT INDUSTRY PRACTICE {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}
- SURETY PAYMENT BONDS {ACA 22-9-401 THROUGH 404}
- RETAINAGE EXCEPTIONS TO WITHHOLDING FIVE PERCENT (5%) RETAINAGE OF PROGRESS PAYMENTS.

**Civil ENGINEER FOR PUBLIC WORKS PROJECTS IN EXCESS OF \$25,000; ARCHITECT FOR**

## **PUBLIC WORKS PROJECTS IN EXCESS OF \$100,000**

**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 planning 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.)** 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 **fifty thousand dollars (\$50,000) 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 Contractors 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)(i) 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.

(ii) 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)(A) 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.

(B) 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.

(C) 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. Acts of 1965, Act 150, § 14; Acts of 1985, Act 180, § 4; Acts of 1987, Act 495, § 3; Acts of 1989, Act 795, § 2; Acts of 1999, Act 43, § 1, eff. July 30, 1999; Acts of 2007, Act 275, § 2, eff. July 31, 2007; Acts of 2015, Act 1048, § 2, eff. July 22, 2015.

## **BIDDING PROCEDURE FOR PERMANENT IMPROVEMENTS OVER \$35,000.00**

**22-9-201. Applicability of §§ 22-9-202 – 22-9-204.** (a) (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, sanitation 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, including without limitation acquisitions funded in whole or in part with insurance proceeds, that are in accordance with the minimum standards and criteria of the Building Authority Division of the Department of Finance and Administration.

(4) Emergency contracting procedures may include sole sourcing or competitive quote bids.

(5) The Director of the Department of Finance and Administration 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 minimum standards and criteria of the division.

(d) To the extent that federal purchasing laws or bidding preferences conflict, this subchapter does not apply to projects related to supplying water or wastewater utility services, operations, or maintenance to a federal military installation by a municipality of the state. Acts of 1949, Act 159, § 5; Acts of 1977, Act 370, § 2; Acts of 1999, Act 776, § 2, eff. July 30, 1999; Acts of 2001, Act 162, § 1, eff. Aug. 13, 2001; Acts of 2007, Act 471, § 2, eff. July 31, 2007; Acts of 2011, Act 782, § 1, eff. July 27, 2011; Acts of 2015, Act 147, § 3, eff. Feb. 23, 2015.

## **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 that a taxing unit shall follow when work is 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 a contractor 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.; or

(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 **thirty-five thousand dollars (\$35,000)**.

(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 within the scope of the contract is more than **thirty-five thousand dollars (\$35,000)**. Acts of 1949, Act 159, § 4; Acts of 2011, Act 618, § 1, eff. July 27, 2011; Acts of 2013, Act 494, § 1, eff. Aug. 16, 2013; Acts of 2017, Act 725, §§ 1, 2, eff. Aug. 1, 2017.

**ACA 22-9-203. Public improvements generally - Award procedure.**

(a) Except as provided under § 14-58-105, a 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 not be entered into by the state or an agency of the state or by a county, municipality, school district, or other local taxing unit with any contractor in instances in which all estimated costs of the work **exceed the sum of thirty-five thousand dollars (\$35,000)** 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 minimum standards and criteria of the Building Authority Division of the Department of Finance and Administration, 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 is 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 is 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 **thirty-five thousand dollars (\$35,000)**.

(iii) A bid bond is not required for public construction contracts for the state or any agency or department of the state under or equal to **thirty-five thousand dollars (\$35,000)**.

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

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

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

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

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

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

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

(A) Be deductive; and

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

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

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

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

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

(i) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state, any agency of the state, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs

of the work shall exceed the sum of seventy-five thousand dollars (\$75,000) unless the bid documents contain statements which encourage the participation of small, minority, and women's business enterprises.

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

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

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

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

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

(6) The award of a contract under this section shall be made to the responsible and responsive entity whose proposal is determined in writing to be the most advantageous to the governmental authority, taking into consideration the evaluation factors set forth in the request for proposals.

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

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

(A) Acceptable processes and structural alternatives; and

(B) Cost estimates for the acceptable alternatives.

(k)(1) The state, an agency of the state, a county, a municipality, a school district, or other local taxing

unit shall not require in plans or specifications that a bidder or supplier:

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

(B) 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, or similar organizations.

(2) However, plans and specifications may include or reference standards adopted by professional or industry associations, societies, trade groups, or similar organizations. Acts of 1949, Act 159, §§ 1, 2; Acts of 1977, Act 370, § 1; Acts of 1981, Act 266, § 1; Acts of 1987, Act 758, § 4; [Acts of 1995, Act 1319, § 2](#); [Acts of 1997, Act 1193, § 1](#); [Acts of 1999, Act 219, § 3, eff. July 30, 1999](#); [Acts of 1999, Act 675, §§ 1, 2, eff. July 30, 1999](#); [Acts of 1999, Act 1309, § 1, eff. July 30, 1999](#); [Acts of 1999, Act 1310, § 1, eff. July 30, 1999](#); [Acts of 2001, Act 921, § 1, eff. Aug. 13, 2001](#); [Acts of 2001, Act 1051, § 1, eff. Aug. 13, 2001](#); [Acts of 2003, Act 1297, § 1, eff. July 16, 2003](#); [Acts of 2005, Act 859, § 4, eff. March 15, 2005](#); [Acts of 2009, Act 813, § 1, eff. July 31, 2009](#); [Acts of 2015, Act 1059, § 2, eff. July 22, 2015](#); [Acts of 2017, Act 725, §§ 3, 4, eff. Aug. 1, 2017](#).

#### **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 fifty thousand dollars (\$50,000) 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 Building Authority Division of the Department of Finance and Administration for capital improvement projects under its jurisdiction.

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

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

(f)(1) It shall be a violation of this section for any prime contractor to submit a bid listing unlicensed contractors or to use unlicensed contractors on a public works project if the listed work of the unlicensed contractors or portion of the unlicensed contractors' work is fifty thousand dollars (\$50,000) or more.

(2) It shall be a violation of this section for any subcontractor who is not licensed by the board to contract to perform work on a public works project if the listed work of the subcontractor or portion of the subcontractor's work is fifty thousand dollars (\$50,000) or more.

(3) The board has jurisdiction over violations of this subsection under [§ 17-25-103](#). Acts of 1949, Act 159, § 3; Acts of 1957, Act 183, § 1; Acts of 1961, Act 477, § 1; Acts of 1983, Act 871, § 1; Acts of 1987, Act 759, § 1; Acts of 1989, Act 936, § 1; [Acts of 1991, Act 728, § 1](#); [Acts of 1993, Act 645, § 1](#); [Acts of 1999, Act 1250, § 1, eff. July 30, 1999](#); [Acts of 1999, Act 1496, § 1, eff. July 30, 1999](#); [Acts of 2001, Act 989, § 1, eff. Aug. 13, 2001](#); [Acts of 2003, Act 364, § 18, eff. July 16, 2003](#); [Acts of 2009, Act 193, § 9, eff. July 31, 2009](#); [Acts of 2011, Act 782, § 2, eff. July 27, 2011](#); [Acts of 2015 \(1st Ex. Sess.\), Act 7, § 55, eff. July 1, 2015](#); [Acts of 2015 \(1st Ex. Sess.\), Act 8, § 55, eff. July 1, 2015](#); [Acts of 2015, Act 1048, § 7, eff. July 22, 2015](#).

#### **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 would conserve state revenues by giving agencies charged with restoring or maintaining historic properties authority to select the contractors on the basis of the lowest responsible bid price, the bidder's experience in like work, and the techniques he or she proposes to employ, and by giving the agencies authority to reimburse contractors on an actual cost basis for those cost components which cannot be accurately predetermined before undertaking the project; and (3) The procedures provided in subdivision (a)(2) of this section should be applicable for specific projects only after review and approval by the Chief

Fiscal Officer of the State, the Building Authority Division of the Department of Finance and Administration, and the Legislative Council. Provided, however, projects undertaken by public institutions of higher education exempt from review and approval of the division shall not require review and approval by the Director of the Department of Finance and Administration.

(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. Acts of 1977, Act 869, § 1, 5; Acts of 1999, Act 776, § 4, eff. July 30, 1999; Acts of 2001, Act 961, § 10, eff. Aug. 13, 2001; Acts of 2015 (1st Ex. Sess.), Act 7, § 56, eff. July 1, 2015; Acts of 2015 (1st Ex. Sess.), Act 8, § 56, eff. July 1, 2015; Acts of 2016 (3rd Ex. Sess.), Act 2, § 81, eff. May 23, 2016; Acts of 2016 (3rd Ex. Sess.), Act 3, § 81, eff. May 23, 2016.

**22-9-209. Renovation of historic sites — Advertising of contracts.** (a) A contract for the altering, repairing, or renovation of a recognized historic site or structure owned by the state or with title vested in the name of a state agency or of another taxing authority in which the estimated cost of the work equals or exceeds the sum of **thirty-five thousand dollars (\$35,000)** shall not be entered into between the state agency or taxing authority and any contractor unless the state agency or taxing authority has 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 this section and §§ 22-9-208, 22-9-210, and 22-9-211.

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

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

(2) Provided further, nothing in this section shall prevent an institution of higher education exempt from review and approval of the Building Authority Division of the Department of Finance and Administration from entering into an agreement with the division to provide such advice. Acts of 1977, Act 869, § 2; Acts of 2001, Act 961, § 11, eff. Aug. 13, 2001; Acts of 2013, Act 494, § 2, eff. Aug. 16, 2013; Acts of 2016 (3rd Ex. Sess.), Act 2, § 82, eff. May 23, 2016; Acts of 2016 (3rd Ex. Sess.), Act 3, § 82, eff. May 23, 2016; Acts of 2017, Act 725, § 5, eff. Aug. 1, 2017.

**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 (future amendment?). Cost, proposed method, and experience in similar work shall be considered by the agency or taxing unit (future amendment?) 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 the Building Authority Division of the Department of Finance and Administration or other state agencies are exempt from permit fees or inspection

requirements of county or municipal ordinances. [Acts of 1995, Act 1229, § 1, eff. April 12, 1995](#); [Acts of 2015 \(1st Ex. Sess.\), Act 7, § 57, eff. July 1, 2015](#); [Acts of 2015 \(1st Ex. Sess.\), Act 8, § 57, eff. July 1, 2015](#).

**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, or to construct a permanent improvement to a building, building site, or structure, including site work:

- (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 provision in a public construction agreement or public construction contract is void and

unenforceable as against public policy if it requires an entity or that entity's insurer to indemnify, insure, defend, or hold harmless another entity against liability for damage arising out of the death of or bodily injury to a person or persons or damage to property, which arises out of negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers.

(c) A provision, covenant, clause, or understanding in a public construction agreement or public construction contract that conflicts with the provisions and intent of this section or attempts to circumvent this section by making the public construction agreement or public construction contract subject to the laws of another state, or that requires any litigation, arbitration, or other dispute resolution proceeding arising from the construction agreement or construction contract to be conducted in another state, is void and 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 provisions of this section do not affect any provision in a public construction contract or public construction agreement that requires an entity or that entity's insurer to indemnify another entity against liability for damage arising out of the death of or bodily injury to persons or damage to property, but such indemnification shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitors, its agents, representatives, subcontractors, or suppliers. [Acts of 2007, Act 874, § 1, eff. July 31, 2007](#); [Acts of 2009, Act 540, § 1, eff. July 31, 2009](#); [Acts of 2011, Act 1123, § 1, eff. July 27, 2011](#); [Acts of 2015, Act 1110, § 5, 6, eff. July 22, 2015](#); [Acts of 2015, Act 1120, §§ 5, 6, eff. July 22, 2015](#).

ACT 1068  
S.B. 601

PUBLIC IMPROVEMENTS AND PUBLIC WORKS—  
PREVAILING WAGE LAW—REPEAL  
AN ACT TO REPEAL THE ARKANSAS PREVAILING  
WAGE LAW; TO PROVIDE FLEXIBILITY TO CITIES  
AND COUNTIES FOR CAPITAL CONSTRUCTION  
PROJECTS; TO DECLARE AN EMERGENCY; AND  
FOR OTHER PURPOSES.

**Subtitle**

TO REPEAL THE ARKANSAS PREVAILING WAGE  
LAW; AND TO PROVIDE FLEXIBILITY TO CITIES AND  
COUNTIES FOR CAPITAL CONSTRUCTION  
PROJECTS; AND TO DECLARE AN EMERGENCY.  
BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
THE STATE OF ARKANSAS:

**SECTION 1. Arkansas Code §§ 22-9-301  
— 22-9-315 are repealed.**

**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 that have qualified and are authorized to do business in the State of Arkansas and are listed on the current United States Department of the Treasury's Listing of Approved Sureties.

(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.

Acts of 1929, Act 368, § 2; Acts of 1935, Act 82, § 2; Acts of 1991, Act 1086, § 1; Acts of 2001, Act 980, § 1, eff. Sept. 1, 2001; Acts of 2005, Act 236, § 1, eff. Aug. 12, 2005; Acts of 2013, Act 1015, § 1, eff. Aug. 16, 2013.

**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.

3, eff. July 31, 2007; Acts of 2009, Act 193, § 10, eff. July 31, 2009; Acts of 2015, Act 866, § 1, eff. July 22, 2015.

**22-9-604. retainage.** (a)(1)(A) In the case of a construction contract entered into between a public agency and a contractor who is required to furnish a performance and payment bond, the contractor shall be entitled to payment of ninety-five percent (95%) of the earned progress payments when due, with the public agency retaining five percent (5%) to assure faithful performance of the construction contract.

(B)(i) A public agency may forego withholding retainage of the progress payments if:

(a) The construction contract is fifty-percent (50%) complete;

(b) The contractor has provided the work in a satisfactory manner; and

(c) The design professional and public agency agree with and approve of subdivisions (a)(1)(B)(i)(a) and (b) of this section.

(ii) This subdivision (a)(1)(B) does not prohibit a public agency from withholding retainage throughout the project.

(2) If the construction contract allows for phased work in which completion may occur on a partial occupancy, any retention proceeds withheld and retained under this section shall be partially released within thirty (30) days under the same conditions under this section in direct proportion to the value of the part of the capital improvement completed.

(b)(1) In the case of a construction subcontract entered into between a contractor for a public agency and a subcontractor who is required by the contractor to furnish a performance and payment bond, the subcontractor shall be entitled to payment of ninety-five percent (95%) of the earned progress payments when due, with the contractor retaining five percent (5%) to assure faithful performance of the construction subcontract.

(2) Upon the approval of the contractor, if the subcontractor completes fifty percent (50%) of the construction subcontract the contractor shall not retain any further moneys.

(c) All sums withheld by the public agency shall be paid to the contractor within thirty (30) days after the construction contract has been completed.

(d) In the event the construction contract requires the contractor to purchase and furnish materials or equipment that will be stored on the job site or in a bonded warehouse by the contractor and used in the job as required by the construction contract, no retainage shall be withheld on that amount of the submitted progress payment pertaining to the cost of these stored materials or equipment. Acts of 1977, Act 235, §§ 2, 3; Acts of 2007, Act 471, §

## ATTORNEY GENERAL OPINIONS & CASES ON CONSTRUCTION LAW

**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. 2009-033; AG Opinion 2009-038 [Clarified by AG Opinion 2012-005]:** Counties are generally prohibited from contracting 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). 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”.

In building the Garland County Jail, an attorney general opinion was sought that which used a defined 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; and that acquisition by law is as a professional service under “comparative bidding, 19-11-804, 805. Counties are by law required to low bid the construction work on public works projects, the actual work performed and under the contractor for the bid bond and performance bond by competitive bidding. The 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”.

Other sections of ACA 19-8-801(d) affirmatively 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 actual construction work must be awarded to the 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. **Attorney General Opinion No. 2013-051:** The AG reiterated the opinions rendered in AG OP 2012-05 and 2009-003}.

## COUNTY PROCUREMENT OF PROFESSIONAL SERVICES

**AMENDMENT 55, § 3:** The County Judge is authorized to approve disbursement of appropriated county funds...

### **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...

### **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 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 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 (now \$35,000 threshold). Act 494 of 2103 also made consistent the bid threshold of \$20,000 (now \$35,000 threshold) for construction including public works or renovation of historic sites under ACA 22-9-209.

# 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.

## Chapter Seven – Arkansas Emergency Services Act of 1973

**12-75-101. Title.**

This chapter may be cited as the Arkansas Emergency Services Act of 1973.

**12-75-102. Policy and purposes.**

(a) Because of the existing and increasing possibility of the occurrence of a major emergency or a disaster of unprecedented size and destructiveness resulting from enemy attack, natural or human-caused catastrophes, or riots and civil disturbances and in order to ensure that this state will be prepared to deal with such contingencies in a

timely, coordinated, and efficient manner and generally to provide for the common defense and protect the public peace, health, safety and preserve the lives and property of the state, it is found and declared to be necessary to:

(1) Create from the present Office of Emergency Services and current adjunct offices the Arkansas Department of Emergency Management and authorize and direct the creation of comparable local organizations within the political subdivisions of the state;

(2) Confer upon the Governor and upon the executive heads of the political subdivisions of the state the emergency powers provided herein;

(3) Provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to carrying out emergency management functions;

(4) Direct the establishment of emergency management liaison offices within each state department and agency with an emergency management role or responsibility; and

(5) Provide for workers' compensation benefits for emergency management workers performing emergency management operations.

(b) It is further declared to be the purpose of this chapter and the policy of the state to authorize and provide for a disaster management system embodying all aspects of predisaster preparedness and post-disaster response by requiring all:

(1) State and local government offices to coordinate emergency management activities through the department in order to coordinate personnel, equipment, and resources for the most effective and economical use; and

(2) Emergency management-related functions of this state be coordinated to the maximum extent with comparable functions of the federal government, including its various departments and agencies, with other states and localities, and with private agencies of every type, to the end that the most effective preparation and use may be made of the state and national personnel, resources, and facilities for dealing with any disaster that may occur.

(c)

(1) The protection of lives and property is the responsibility of all levels of government.

(2) Except as noted in this chapter, county and municipal governments bear primary responsibility for initial actions and activities related to disaster preparedness, response, and recovery for the county and the municipalities in the county through their local offices of emergency management, with support from the department.

(d)(1)(A) When events have exceeded, or will exceed, local government's ability to respond or recover without state assistance, the chief executive officer shall declare a local state of disaster or emergency as prescribed in this chapter to signify his or her intent to request resources of the state or federal government, or both.

(B) Where time constraints are critical to the saving of lives and property, the local chief executive officer may verbally declare a local state of disaster or emergency to the Director of the Arkansas Department of Emergency Management, to be followed by a written declaration as soon as practicable.

(2)

(A) Only upon such declaration may the resources of the state be provided, and then may the state request that the assistance and resources of the federal government be provided, unless and except where the magnitude of the disaster is of such severity that the functions of local government have ceased or the chief executive officer of the municipal or county government, or both, and his or her designated successor have become incapacitated.

(B) Under such conditions the Governor may declare a state of disaster or emergency on behalf of the specified local jurisdiction and direct emergency functions until such time as local government is restored.

### **12-75-103. Definitions.**

As used in this chapter:

(1) "Chief executive" means a head of government, the Governor, a county judge, and a mayor or city manager of incorporated places, dependent on the form and level of government;

(2) "Disaster" means any tornado, storm, flood, high water, earthquake, drought, fire, radiological incident, air or surface-borne toxic or other hazardous material contamination, or other catastrophe, whether caused by natural forces, enemy attack, or any other means which:

(A) In the determination of the Governor or the Director of the Arkansas Department of Emergency Management or his or her designee is or threatens to be of sufficient severity and magnitude to warrant state action or to require assistance by the state to supplement the efforts and available resources of local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the chief executive of any political subdivision in which the disaster occurs or threatens to occur certifies the need for state assistance and gives assurance of the local government for alleviating the damage, loss, hardship, or suffering resulting from such disaster; or

(B) (i) Results in an interruption in the delivery of utility services when emergency declarations are required and when delays in obtaining an emergency declaration from the Governor or the director or his or her designee would hamper and delay restoration of utility service.

(ii) In those instances, the Governor or the director or his or her designee may make such emergency determination subsequent to the initiation of the restoration work;

(3) "Emergency jurisdiction" means any one (1) of the seventy-five (75) counties or specified local offices of emergency management or interjurisdictional offices of emergency management in the state;

(4)(A) "Emergency management" means disaster or emergency preparedness, mitigation, response, recovery, and prevention by state and local governments other than functions for which military forces are primarily responsible to prevent, minimize, and repair injury and damage resulting from major emergencies or from disasters caused by enemy attack, domestic or foreign terrorist attacks, natural causes, human-made catastrophes, or civil disturbances.

(B) These functions include, without limitation:

(i) Fire fighting;

(ii) Law and order;

(iii) Medical and health;

(iv) Rescue;

(v) Engineering;

(vi) Warning;

(vii) Communications;

(viii) Radiological, chemical, biological, or other special material identification, measurement, and decontamination;

(ix) Evacuation or relocation of persons from stricken areas;

(x) Emergency social services such as housing, feeding, and locator services;

(xi) Emergency transportations;

(xii) Plant protection;

(xiii) Damage assessment and evaluation;

(xiv) Temporary restoration of public facilities;

(xv) Emergency restoration of publicly owned utilities, or privately owned utilities serving the public good;

(xvi) Debris clearance;

(xvii) Hazard vulnerability and capability analysis; and

(xviii) Other functions related to the protection of the people and property of the state, together with all other activities necessary or incidental to the preparedness, mitigation, response, recovery, and prevention for all the functions in this subdivision (4)(B);

(5) "Emergency management requirements" means specific actions, activities, and accomplishments required for funding of state offices of emergency management or established local offices of emergency management, or both, under applicable state and federal emergency management program guidance and regulations;

(6) "Emergency management standards" means standards of training, education, and performance established by the director for employees of the state offices of emergency management and established local offices of emergency management designed to ensure competency and professionalism and to determine minimum qualifications for the receipt of federal or state emergency management funding, or both;

(7) (A) "Emergency responder" means any paid or volunteer person or entity:

(i) With special skills, qualifications, training, knowledge, or experience in the public or private sectors that would be beneficial to an emergency jurisdiction in an emergency declared under § 12-75-108 or training exercises authorized by the United States Department of Homeland Security, the Arkansas Department of Emergency Management, or an emergency jurisdiction; and

(ii) Who is:

(a) Requested by a participating emergency jurisdiction to respond or assist with a declared emergency or with authorized training exercises;

(b) Authorized to respond or assist a participating emergency jurisdiction with a declared emergency or with authorized training exercises; or

(c) Both requested and authorized to respond or assist a participating emergency jurisdiction with a declared emergency or with authorized training exercises.

(B) An emergency responder may include, without limitation, the following types of personnel:

(i) Law enforcement officers;

(ii) Firefighters;

(iii) Hazardous material response personnel;

(iv) Decontamination response personnel;

(v) Certified bomb technicians;

(vi) Emergency medical services personnel;

(vii) Physicians;

(viii) Nurses;

(ix) Public health personnel;

(x) Emergency management personnel;

(xi) Public works personnel;

(xii) Members of community emergency response teams;

(xiii) Emergency personnel of nongovernmental organizations; and

(xiv) Persons with specialized equipment operations skills or training or any other skills valuable to responding or assisting a participating emergency jurisdiction with a declared emergency or with authorized training exercises.

(C) "Emergency responder" includes any full-time or part-time paid, volunteer, or auxiliary employee of the state, another state, a territory, a possession, the District of Columbia, the federal government, any neighboring country, or any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this state subject to the order or control of, or pursuant to, a request of the state government or any political subdivision;

(8) "Governing body" means a county quorum court, a city council, and a city board of directors;

(9)(A) "Hazard mitigation assistance" means funds and programs to correct, alleviate, or eliminate a condition or situation which poses a threat to life, property, or public safety from the effects of a disaster.

(B) Hazard mitigation assistance may include, but is not limited to, raising, replacing, removing, rerouting, or reconstructing existing public facilities such as roads, bridges, buildings, equipment, drainage systems, or other public or private nonprofit property, as defined in the Disaster Relief Act of 1974, 38 U.S.C. § 3720 and 42 U.S.C. § 5121 et seq.;

(10) "Individual assistance" means funds and programs to provide for the immediate needs, including, but not limited to, food, clothing, and shelter for individuals and families;

(11) (A) "Interjurisdictional agreement" means a mutual agreement between two (2) or more established local offices of emergency management that is approved by executive order of the Governor in accordance with this chapter to merge, integrate, or otherwise combine the functions of the respective established local offices of emergency management for more effective, economical, and efficient use of available personnel and resources.

(B) An interjurisdictional agreement shall include specific provisions addressing the appointment, funding, administration, and operational control of the emergency management coordinator and staff of the interjurisdictional office of emergency management;

(12) "Interjurisdictional office of emergency management" means an office of emergency management formed by two (2) or more local offices of emergency management under an interjurisdictional agreement;

(13) "Local office of emergency management" means a county or municipal office of emergency management created and established in accordance with the provisions of this chapter to perform local emergency management functions within the existing political subdivisions of the state;

(14) "Major emergency" means a condition which requires the activation of emergency response at the state or local levels, either in anticipation of a severe disaster such as an imminent enemy attack, potential civil disturbance,

forecast major natural or human-caused disaster, or actual onset of conditions requiring the use of such forces which exceed the day-to-day response and activities of such forces and requires the coordinating of a complement of local, state, federal, or volunteer organizations;

**(15)(A)(i)** "Operational control" means the assigning of missions and the exercising of immediate command and overall management of all resources committed by state or local government to a disaster operation or major emergency.

**(ii)** Unless otherwise delegated by executive order, the chief executive of the state or local governments, the director, or head of the local office of emergency management as the chief executive's direct representative will exercise operational control of the occurrence and assign missions.

**(B)** Each agency, department, or organization will exercise control and authority over its personnel and resources to accomplish the assigned mission.

**(C)(i)** Each agency, department, or organization will coordinate activities through the Arkansas Department of Emergency Management or local office of emergency management exercising operational control of the occurrence.

**(ii)** Operational control does not imply, nor is it intended to include, administrative management, which will remain with the parent organization;

**(16)** "Participating emergency jurisdiction" means an emergency jurisdiction participating in the statewide mutual aid system established in § 12-75-119;

**(17)** "Political subdivision" means all duly formed and constituted governing bodies created and established under the authority of the Arkansas Constitution and laws of this state;

**(18)** "Public assistance" means funds and programs to make emergency repairs or restoration of public facilities, to include, but not be limited to, publicly owned or maintained facilities such as roads, streets, bridges, utilities, schools, and other structures and facilities;

**(19)(A)** "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides firefighting and rescue, natural or human-caused disaster or major emergency response, law enforcement, and ambulance or emergency medical services.

**(B)** State offices of emergency management and local offices of emergency management are considered in the context and definition of public safety agencies for performance or coordination of functions defined as emergency management to the extent necessary for mitigation of, planning for, response to, and recovery from disasters or major emergencies;

**(20)** "Public safety officer" means those positions of state offices of emergency management and local offices of emergency management approved by the director in state and local staffing patterns and authorized by him or her to perform or coordinate emergency management functions to the extent necessary for mitigation of, planning for, response to, recovery from, or prevention of disasters or major emergencies within limitations of this chapter;

**(21)** "Response assistance" means funds to defray the costs of response to an emergency that does not necessarily result in a disaster of the magnitude and scope described in this section, but which requires the deployment and utilization of state and local government and private emergency personnel, equipment, and resources to protect and preserve lives and property and for the welfare of the citizens of Arkansas; and

**(22)** "Utility services" means the transmission of communications or the transmission, distribution, or delivery of electricity, water, or natural gas for public use.

#### **12-75-104. Scope of chapter -- Limitations.**

Nothing in this chapter shall be construed to:

**(1)** Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health and safety;

**(2)(A)** Interfere with dissemination of news or comment on public affairs.

**(B)** However, any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

**(3)(A)** Affect the jurisdiction or responsibilities of units of the United States Armed Forces or of any personnel thereof, when on active duty, or the day-to-day operations of law enforcement agencies or firefighting forces.

**(B)** However, state, local, and interjurisdictional disaster or emergency operations plans shall place emphasis upon maximum utilization of forces available for performance of functions related to disaster and major emergency occurrences; or

**(4)** Limit, modify, or abridge the authority of the Governor to proclaim martial law or of the Governor or chief executive of a political subdivision to exercise any other powers vested in him or her under the Arkansas Constitution or statutes or common law of this state independent of, or in conjunction with, any provision of this chapter.

#### **12-75-106. Enforcement.**

**(a)** Each state office of emergency management and local office of emergency management and the officers of each state office of emergency management and local office of emergency management shall execute and enforce such orders, rules, and regulations as may be made by the Governor under authority of this chapter.

**(b)** Each state office of emergency management and local office of emergency management shall make available for inspection at its office all orders, rules, and regulations made by the Governor or made under his or her authority.

#### **12-75-107. Declaration of disaster emergencies.**

**(a)(1)** A disaster emergency shall be declared by executive order or proclamation of the Governor if he or she finds a disaster has occurred or that the occurrence or the threat of disaster is imminent.

(2) When time is critical because of rapidly occurring disaster emergency events, the Governor may verbally declare for immediate response and recovery purposes until the formalities of a written executive order or proclamation can be completed in the prescribed manner.

(b) (1) The state of disaster emergency shall continue until:

(A) The Governor finds that the threat or danger has passed and terminates the state of disaster emergency by executive order or proclamation; or

(B) The disaster has been dealt with to the extent that emergency conditions no longer exist and the employees engaged in the restoration of utility services have returned to the point of origin.

(2) No state of disaster emergency may continue for longer than sixty (60) days unless renewed by the Governor.

(c)(1) The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time.

(2) Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency.

(d)(1) All executive orders or proclamations issued under this section shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency.

(2) In the case of a disaster, each provider of utility services whose services were interrupted shall prepare a report describing:

(A) The type of disaster emergency;

(B) The duration of the disaster emergency, which includes the time the utility personnel is dispensed to the work site and returns to the personnel's point of origin; and

(C) The personnel utilized in responding to the disaster emergency.

(e) An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, filed promptly with the Secretary of State.

(f) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to disaster emergencies.

### **12-75-108. Local disaster emergencies -- Declaration.**

(a)(1) A local disaster emergency may be declared only by the chief executive or his or her designee of a political subdivision.

(2) If time is critical because of a rapidly occurring disaster emergency event, the chief executive verbally may declare a local disaster emergency for immediate response and recovery purposes until the formalities of a written declaration can be completed in the prescribed manner.

(3) A declaration of a local disaster emergency shall not be continued or renewed for a period in excess of one hundred twenty (120) days except by or with the consent of the governing body of the political subdivision.

(4) Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the city or county clerk, as applicable.

(b)(1) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans, to authorize the furnishing of aid and assistance thereunder, and to initiate emergency management functions under this chapter.

(2)(A) In addition to other powers conferred on the chief executive declaring a local disaster emergency, the chief executive may suspend the provisions of any local regulatory ordinances or regulations for up to thirty (30) days if strict compliance with the ordinance provisions would prevent, hinder, or delay necessary actions to cope with the disaster emergency.

(B) Local regulatory ordinances include, but are not limited to:

(i) Zoning ordinances;

(ii) Subdivision regulations;

(iii) Regulations controlling the development of land;

(iv) Building codes;

(v) Fire prevention codes;

(vi) Sanitation codes;

(vii) Sewer ordinances;

(viii) Historic district ordinances; and

(ix) Any other regulatory type ordinances.

(c)(1) An interjurisdictional office of emergency management or official of an interjurisdictional office of emergency management shall not declare a local disaster emergency unless expressly authorized by the interjurisdictional agreement under which the interjurisdictional office of emergency management functions.

(2) However, an interjurisdictional office of emergency management shall provide aid and services in accordance with the interjurisdictional agreement under which it functions.

(d) If a county judge uses county labor and equipment on private property to provide services that are required as a result of the natural disaster, the county judge shall notify the owner of the private property by any possible method as soon as practicable of:

(1) The amount of private property necessary to provide services;

(2) The nature of labor and equipment to be used on the private property;

(3) The estimated amount of time the private property will be used to provide services; and

(4)(A) The estimated amount of compensation the county will provide to the owner of the private property as a result of damage to the private property caused by the county.

(B) Within sixty (60) days from the removal of county labor and equipment from the private property, the county shall compensate the owner of the private property for reasonable damage to the property.

**12-75-109. Arkansas Department of Emergency Management -- Establishment -- Personnel.**

(a) The Arkansas Department of Emergency Management is established as a public safety agency of the State of Arkansas.

(b) The Arkansas Department of Emergency Management shall have a director appointed by the Governor, with the advice and consent of the Senate, who shall serve at the pleasure of the Governor.

(c)(1) The Arkansas Department of Emergency Management shall have such professional, technical, secretarial, and clerical employees and may make such expenditures within its appropriations or from any federal or other funds made available to it from any source whatsoever for the purpose of emergency services, as may be necessary to carry out the purposes of this chapter.

(2) All such employees shall be in job positions as approved by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(d)(1) There is created within the Arkansas Department of Emergency Management an emergency reserve cadre to be composed of trained and available specialists to assist regular employees during declared disaster response and recovery operations.

(2) The Director of the Arkansas Department of Emergency Management shall establish training and professional standards required to supplement state personnel based on state and federal disaster recovery program needs and shall establish a list of persons with those qualifications and make available to emergency reserve cadre personnel such additional training and education opportunities as may be needed to maintain currency and proficiency in the needed skills.

(3)(A) Emergency reserve cadre personnel shall be reimbursed at the current state classified entry level salary rate for the position they are temporarily employed to fill and meet such additional training, experience, and qualifications as established by the director for the grade level of the position for which they are employed.

(B) Emergency reserve cadre personnel shall:

(i) Be paid from disaster management funds or administrative funds, or both;

(ii) Be limited to salary, logistical, and travel expenses only; and

(iii) Not accrue ordinary leave, sick leave, or other employee benefits except for workers' compensation eligibility for injuries or death suffered in the line of duty.

(4)(A) Emergency reserve cadre personnel may be called to active duty upon declaration of a disaster emergency as stipulated in this chapter or the Disaster Relief Act of 1974, Pub. L. No. 93-288, or both, or by executive order of the Governor upon recommendation by the director for due cause or pending emergency needs or for disaster-related assistance to the Arkansas Department of Emergency Management as determined by the director and shall remain on active duty no longer than the maximum allowed by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration for part-time employment status.

(B) Based on the size, impact, and magnitude of the disaster event, the director shall determine the minimum number of emergency reserve cadre personnel required to effectively supplement regular state emergency management personnel.

(5) While in service described in subdivision (d)(4)(A) of this section, the emergency reserve cadre personnel have the same immunities as regular state employees for good faith performance of their designated and assigned official duties under state sovereignty laws and practices.

**12-75-110. Arkansas Department of Emergency Management -- State emergency operations plan.**

(a) The Arkansas Department of Emergency Management shall coordinate and maintain a state emergency operations plan and keep it current, which plan may include:

(1) Prevention and minimization of injury and damage caused by disaster;

(2) Measures for prompt and effective response to disasters;

(3) Emergency relief;

(4) Identification of areas particularly vulnerable to disasters;

(5) Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) Assistance to local officials in designing local emergency action plans;

(7) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disasters;

(8) Preparation and distribution to appropriate state and local officials of state catalogues of federal, state, and private assistance programs;

(9) Organization of personnel and the establishment of chains of command;

(10) Coordination of federal, state, and local disaster activities;

(11) Coordination of the state emergency operations plan with the operations plans of the federal government, including without limitation, the National Response Framework;

(12) Establishment of the criteria and definitions for determining catastrophic losses suffered by both individuals and public entities and the enhanced levels of assistance to be provided upon the declaration of a catastrophic loss disaster; and

(13) Other necessary matters.

(b)(1) In preparing and revising the state emergency operations plan, the department shall seek the advice and assistance of state agencies, local government, business, labor, industry, agriculture, civic, and volunteer organizations, and community leaders.

(2) In advising local and jurisdictional agencies, the department shall encourage them also to seek advice from the entities listed in subdivision (b)(1) of this section.

(c) The state emergency operations plan or any part of the state emergency operations plan may be incorporated in rules of the department or executive orders that have the force and effect of law.

**12-75-111. Arkansas Department of Emergency Management -- Other powers and duties.**

(a) The Arkansas Department of Emergency Management shall, with the assistance and cooperation of other state and local government agencies:

- (1) Determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency;
- (2) Procure and pre-position supplies, medicines, materials, and equipment;
- (3) Promulgate standards and requirements for local and interjurisdictional emergency operations plans;
- (4) Periodically review local and interjurisdictional emergency operations plans;
- (5) Provide for mobile support units;
- (6) Establish and operate or assist political subdivisions, their local offices of emergency management, and interjurisdictional offices of emergency management to establish and operate training programs and programs of public information;
- (7) Make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of this chapter;
- (8) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;
- (9) Establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;
- (10) Establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;
- (11) Prepare for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate in coping with disasters;
- (12) Cooperate with the federal government and any public or private agency or entity in achieving the purpose of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and
- (13) Do other things necessary, incidental, or appropriate for the implementation of this chapter.

(b)(1) The department shall take an integral part in the development and revision of local and interjurisdictional emergency operations plans prepared under § 12-75-118.

(2)(A) To meet the requirements of subdivision (b)(1) of this section, the department shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their local offices of emergency management, interjurisdictional planning, and interjurisdictional offices of emergency management.

(B) Personnel described in subdivision (b)(2)(A) of this section shall consult with political subdivisions, local offices of emergency management, and interjurisdictional offices of emergency management on a regularly scheduled basis

and shall make field examinations of the area, circumstances, and conditions to which particular local and interjurisdictional emergency operations plans are intended to apply and may suggest or require revisions.

**12-75-112. Communications networks.**

(a) The Arkansas Department of Emergency Management shall operate and maintain information systems which will make available both voice and data links with federal agencies, other states, and state agencies as are assigned an emergency management role in the state emergency operations plan and local offices of emergency management.

(b) In addition to the minimum requirements of subsection (a) of this section, additional information systems networks may be established as deemed necessary by the Director of the Arkansas Department of Emergency Management.

**12-75-113. Emergency response vehicles.**

(a) Due to the time-critical nature of response to the scene of a disaster or major emergency occurrence, the Director of the Arkansas Department of Emergency Management may designate appropriate vehicles as requested in the staffing patterns of the state offices of emergency management and local offices of emergency management and designate other state agency vehicles with an emergency management response requirement as emergency response vehicles.

(b) Designated state and local government emergency response vehicles under this chapter shall share the same privileges and immunities regarding traffic laws and ordinances as other emergency vehicles as defined by state law.

(c) Emergency vehicles authorized by this chapter shall be identified by a flashing light or rotating beacon which will be green in color.

(d) When responding to an emergency, the designated emergency vehicle shall have flashing lights or rotating beacon activated and must be equipped with and operating a siren device.

**12-75-114. Governor -- Disaster emergency responsibilities.**

(a) The Governor is responsible for meeting and mitigating, to the maximum extent possible, dangers to the people and property of the state presented or threatened by disasters.

(b)(1) Under this chapter, the Governor may issue executive orders, proclamations, and regulations and amend or rescind them.

(2) Executive orders, proclamations, and regulations have the force and effect of law.

(c)(1) There is created within the office of the Governor a disaster response fund, a disaster recovery fund, a catastrophic loss fund, and a hazard mitigation fund, which shall be separate and apart from the Governor's standard emergency fund.

(2) The initial amount of the disaster response fund shall be in the amount of two million dollars (\$2,000,000), solely for use to defray the cost of immediate emergency response.

(3) The disaster recovery fund shall be in the amount of five million dollars (\$5,000,000), with:

(A) The sum of two million dollars (\$2,000,000) from the disaster recovery fund solely for use in individual assistance; and

(B) The sum of three million dollars (\$3,000,000) from the disaster recovery fund solely for use in public assistance.

(4) The hazard mitigation fund shall be in the amount of three million dollars (\$3,000,000), solely for use in hazard mitigation assistance.

(5) The sum of three million two hundred fifty thousand dollars (\$3,250,000) from the catastrophic loss fund solely for use in catastrophic losses suffered by both individuals and public entities.

(6) The Governor's disaster fund may be increased from time to time at the discretion of the Governor.

(7) Expenditures from the individual assistance and public assistance funds may only be made in the event of a disaster as defined in § 12-75-103 and only upon proclamation by the Governor.

(8) Expenditures from the emergency response fund shall be made by executive order of the Governor, upon recommendation and verification by the Director of the Arkansas Department of Emergency Management, and may only be made to defray immediate costs associated with response activities by emergency forces of state and local governments and private nonprofit forces duly registered in accordance with § 12-75-129.

(9)(A) Expenditures from the hazard mitigation fund shall be made by executive order of the Governor.

(B) The director shall establish and maintain a current hazard vulnerability analysis of key critical public facilities eligible for assistance under the Governor's hazard mitigation fund.

(10)(A) Expenditures from the catastrophic loss fund may only be made in the event of a federally declared disaster, as well as a disaster as defined in § 12-75-103, and only upon a separate proclamation by the Governor that a disaster has occurred in which catastrophic losses have been suffered by individuals or public entities in the state, or both.

(B) The director shall establish and maintain such criteria as are necessary to administer the funds authorized for catastrophic loss.

(d)(1) During the continuance of any state of disaster emergency, the Governor is Commander-in-Chief of all forces available for emergency duty.

(2) To the greatest extent practicable, the Governor shall delegate or assign operational control by prior arrangement embodied in appropriate executive orders or regulations, but nothing in this section restricts the Governor's authority to do so by orders issued at the time of the disaster emergency.

(e) In addition to any other powers conferred upon the Governor by law, the Governor may:

(1) Suspend the provisions of any regulatory statutes prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units of state departments and agencies for the purpose of performing or facilitating emergency management;

(4) Subject to any applicable requirements for compensation under § 12-75-124, commandeer or utilize any private property if he or she finds this necessary to cope with the disaster emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the Governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles; and

(9) Make provision for the availability and use of temporary emergency housing.

#### **12-75-115. Disaster prevention generally.**

(a)(1) In addition to disaster prevention measures as included in the state, local, and interjurisdictional emergency operations plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters.

(2) At the Governor's direction, and pursuant to any other authority and competence state agencies have, including, but not limited to, those charged with responsibilities in flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards shall make studies of disaster prevention-related matters.

(3) Studies under subdivision (a)(2) of this section shall be furnished to the Governor and the Arkansas Department of Emergency Management as soon as possible after completion and shall concentrate on means of reducing or avoiding damage caused by possible disasters or the consequences of possible disasters.

(4) The Governor, from time to time, shall make recommendations to the General Assembly, local government, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b)(1) If the department believes, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land use control in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor.

(2) If the Governor, upon review of the recommendation, finds after public hearing that the changes are essential, he or she shall so recommend to the agencies or local governments with jurisdiction over the area and subject matter.

(3) If no action or insufficient action pursuant to the Governor's recommendations is taken within the time specified by the Governor, he or she shall so inform the General Assembly and request legislative action appropriate to mitigate the impact of disaster.

(c)(1) At the same time that the Governor makes his or her recommendations pursuant to subsection (b) of this section, the Governor may suspend the standard or control which he or she finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect.

(2) The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the General Assembly or amended by the Governor.

(3) During the time it is in effect, the standard or control contained in the Governor's regulation shall be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies.

(4) The Governor's action is subject to judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., but shall not be subject to temporary stay pending litigation.

#### **12-75-116. State and local governmental entities -- Liaison officers.**

(a)(1) It is the policy of this chapter that each department, commission, agency, or institution of state and local government actively and aggressively support the state offices of emergency management and local offices of emergency management to the end of providing the best possible preparation for response to or recovery from any emergency situation that may occur.

(2) In furtherance of the policy described in subdivision (a)(1) of this section, the head of each state department, commission, agency, or institution with an emergency management role or responsibility shall appoint a member or members of his or her staff as agency emergency management liaison officer or officers to act on his or her behalf in ensuring the agency's capability to fulfill its role in emergency management activities and shall ensure that the Arkansas Department of Emergency Management is notified of any change in the appointment.

(b) The agency emergency management liaison officer shall:

(1) Maintain close and continuous liaison with the department, as applicable;

(2) Prepare agency annexes to the state and, as applicable, local emergency operations plans which are compatible with this chapter and with guidance provided by the department;

(3) Report to the State Emergency Operations Center as required for any disaster training or exercises or emergency training or exercises;

(4) Maintain files of agency resources to include personnel, facilities, and equipment available for disaster operation;

(5) Ensure that the agency can respond promptly and cooperatively with other agencies in any disaster or major emergency situation under the overall management of the department;

(6) Advise, assist, and evaluate the capabilities of counterpart local or federal government agencies in preparing for and carrying out disaster operations;

(7) Designate personnel available for assignment to mobile support units and train such personnel in the tasks to be performed; and

(8) Perform other related functions necessary to carry out the purpose of this chapter.

(c) As conditions or situations may require or dictate, the Director of the Arkansas Department of Emergency Management may request a state department, agency, or institution not currently participating in the emergency management liaison officer program to appoint an officer in accordance with this section.

(d) Nothing in subsections (a)-(c) of this section shall be interpreted as relieving or otherwise abridging the responsibility and authority of agency directors in carrying out disaster operations for which their agencies are solely responsible.

#### **12-75-117. Interjurisdictional disaster planning and service areas.**

(a) (1) (A) By executive order, the Governor may combine two (2) or more established local offices of emergency management as an interjurisdictional office of emergency management.

(B)(i) Before a combination under subdivision (a)(1)(A) of this section, the jurisdictions involved shall prepare for the Governor's approval a written mutual interjurisdictional agreement that specifies how and by whom the emergency management coordinator shall be appointed.

(ii) The interjurisdictional agreement shall also include specific provisions addressing the funding, administration, staff, and operational control of the interjurisdictional office of emergency management.

(C) The interjurisdictional office of emergency management shall meet the same minimum standards and requirements as a single-jurisdiction local office of emergency management in order to maintain eligibility for state and federal emergency management funding and program assistance.

(2) A finding of the Governor pursuant to this subsection shall be based on an assessment conducted by the Director of the Arkansas Department of Emergency Management using one (1) or more factors related to the difficulty of maintaining an efficient, effective, and economical system for disaster and emergency preparedness, mitigation, response, and recovery such as:

(A) Small or sparse population;

(B) Limitations on public financial resources severe enough to make maintenance of a separate established local office of emergency management unreasonably burdensome;

(C) Unusual vulnerability to disasters and emergencies based on geographical, geological, hydrological, meteorological, or technological disaster potential; and  
(D) Other relevant conditions or circumstances.

(b)(1) If the Governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states and that it would be desirable to establish an interstate relationship, mutual aid, or an area organization for disaster, he or she shall take steps toward that end as may be desirable.

(2) If this action is taken with jurisdictions having enacted the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., any resulting agreement or agreements may be considered supplemental agreements pursuant to Article VI of that compact.

(3)(A) If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate pursuant to subdivisions (b)(1) and (2) of this section have not enacted that compact, then he or she may negotiate a special agreement with the jurisdiction or jurisdictions.

(B) Any agreement, if sufficient authority for the making thereof does not otherwise exist, becomes effective only after its text has been communicated to the General Assembly and neither house of the General Assembly has disapproved it by adjournment of the next ensuing session competent to consider it or within thirty (30) days of its submission, whichever is longer.

### **12-75-118. Local and interjurisdictional offices of emergency management and services.**

(a)(1) Each political subdivision within this state shall be within the jurisdiction of and served by the Arkansas Department of Emergency Management and by a local office of emergency management or interjurisdictional office of emergency management.

(2) A local office of emergency management or interjurisdictional office of emergency management shall be established as a public safety agency of its respective political subdivision or political subdivisions and shall be under the direction and control of the appropriate chief executive for the purposes of mitigation of, planning for, response to, and recovery from disaster and major emergency occurrences and for operation of public safety information networks.

(b)(1) Each county within the state and those municipalities specifically designated by the Governor shall establish, fund, and maintain an established local office of emergency management or, as necessary, make arrangements through an interjurisdictional agreement to receive emergency management.

(2) Unless a municipality has been specifically designated as a local office of emergency management, it shall receive emergency management support from the county or counties where its corporate limits are situated.

(c)(1) The Governor shall determine if additional municipal local offices of emergency management or interjurisdictional offices of emergency management are required based on an assessment conducted by the Director of the Arkansas Department of Emergency Management using one (1) or more of the factors enumerated in § 12-75-117(a).

(2) The department shall publish and keep current a list of municipalities required to have local offices of emergency management or interjurisdictional offices of emergency management under this subsection.

(d) The Governor may require a political subdivision to establish and maintain a local office of emergency management or an interjurisdictional office of emergency management jointly with one (1) or more contiguous political subdivisions if he or she finds that the establishment and maintenance of any agency or participation in an agency is made necessary by circumstances or conditions that make it unusually difficult to provide disaster or major emergency prevention, preparedness, response, or recovery services under other provisions of this chapter.

(e) Each political subdivision that does not have a local office of emergency management and has not made arrangements to secure or participate in the emergency management of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that political subdivision in the work of disaster and major emergency prevention, preparedness, response, and recovery.

(f)(1) The chief executive of each political subdivision shall exercise comparable authority within his or her political subdivision, and within the limits of the Arkansas Constitution and laws of the state, as the Governor exercises over the state government during disasters and major emergencies. The chief executive shall ensure to the maximum extent possible, that his or her jurisdiction meets the minimum expected capability for disaster and emergency mitigation, planning, response, and recovery.

(2) The chief executive of a political subdivision shall notify the department of the manner in which the political subdivision is providing or securing disaster planning and emergency management, provide a staffing pattern for the local office of emergency management, identify the person who heads the local office of emergency management, and furnish additional information relating thereto as the department requires.

(g) (1) Each local office of emergency management and interjurisdictional office of emergency management shall prepare and keep current an emergency operations plan for its area.

(2)(A) The emergency operations plan and all annexes must be approved by the local office of emergency management of the political subdivision and receive concurrence of the chief executive of the political subdivision.

(B) The emergency operations plan shall then be submitted to the department for approval prior to implementation.

(h) The local office of emergency management or interjurisdictional office of emergency management, as the case may be, shall prepare a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster and major emergency chain of command. This statement shall be distributed to all appropriate officials in written form.

(i) (1) (A) The county judge of each county and the chief executive of those municipal jurisdictions specifically

designated as established local offices of emergency management shall appoint an emergency management coordinator for their respective local offices of emergency management.

**(B)** The written mutual interjurisdictional agreement between the participating jurisdictions in an interjurisdictional office of emergency management, executed under § 12-75-117(a), shall govern the appointment of the emergency management coordinator of the interjurisdictional office of emergency management.

**(C)** The emergency management coordinator shall act for and on behalf of the appropriate chief executive to manage and coordinate the functions, duties, and activities of the established local office of emergency management.

**(2)** The emergency management coordinator and such supporting staff of an established local office of emergency management as may be employed in part, or in whole, by state and federal emergency management program funds, shall be responsible for meeting all standards and requirements stipulated for funding under the programs.

**(3)(A)** The director shall establish and periodically review criteria necessary to ensure compliance with minimum standards and requirements.

**(B)** Failure to meet or maintain minimum standards and requirements or noncompliance with any part of this chapter by an established local office of emergency management may result in a decision by the director to reduce, withhold, or terminate partial or full funding for any or all local offices of emergency management programs in which the political subdivision participates or for which it may be otherwise eligible.

**(j)(1)** Local offices of emergency management shall operate and maintain as a minimum an information systems link with the department.

**(2)(A)** When authorized by the chief executive of the political subdivision and properly staffed, the local office of emergency management may operate a public safety communications center for the purposes of coordination, dispatch, and information services for local government public safety agencies and private or volunteer agencies with an emergency management mission.

**(B)** The public safety communications center must be staffed by paid local office of emergency management public safety officers of the political subdivision and operate on a continuous basis if it is to serve as a law enforcement or fire dispatch and service center.

#### **12-75-119. Statewide mutual aid system.**

**(a)(1)** All emergency jurisdictions shall participate in the statewide mutual aid system, except as provided in subdivision (a)(2) of this section.

**(2)(A)** An emergency jurisdiction may elect not to participate in the statewide mutual aid system.

**(B)** In order to make the election, the governing body of the emergency jurisdiction shall enact a resolution declaring that the emergency jurisdiction elects not to participate in the statewide mutual aid system.

**(C)** The chief executive officer of the governing body shall provide a copy of the resolution to the Arkansas Department of Emergency Management within ten (10) days of the enactment of the resolution.

**(b)** Within its own emergency jurisdiction, a participating emergency jurisdiction shall:

**(1)** Identify potential problems and hazards that could affect the emergency jurisdiction using an identification system common to all participating emergency jurisdictions;

**(2)** Conduct joint planning, intelligence sharing, and threat assessment development with contiguous participating emergency jurisdictions;

**(3)** Conduct joint training exercises with contiguous participating emergency jurisdictions at least one (1) time every other year;

**(4)** Identify and inventory, at least annually, current services, equipment, supplies, personnel, and other resources related to planning, prevention, mitigation, and response and recovery activities of the participating emergency jurisdiction; and

**(5)** Adopt and implement an incident management system consistent with Homeland Security Presidential Directive-5, as it existed on January 1, 2005.

**(c) (1)** The chief executive officer of the governing body of a participating emergency jurisdiction or his or her designee may request assistance from another participating emergency jurisdiction:

**(A)** To prevent, mitigate, or respond and recover from a local emergency declared under § 12-75-108; or

**(B)** To conduct joint training exercises.

**(2)(A)** A request for assistance may be made verbally or in writing.

**(B)** Verbal requests shall be followed with written confirmation as soon as practical.

**(3)(A)** A request for assistance is not required to be reported to the department in advance of or concurrent with the request.

**(B)** However, a request for assistance shall be reported to the department in writing as soon as practical.

**(d)** A participating emergency jurisdiction's obligation to provide assistance to another participating emergency jurisdiction with the prevention, mitigation, and response and recovery activities related to a declared emergency or training exercises is subject to the following conditions:

**(1)** There must be a local emergency declared under § 12-75-108 or a plan to conduct training exercises;

**(2)** A responding participating emergency jurisdiction may withhold its resources to the extent necessary to provide reasonable protection and services for its own emergency jurisdiction;

**(3)(A)** An emergency responder from a participating emergency jurisdiction responding to a request for assistance from another participating emergency jurisdiction shall remain under the command control of his or her home jurisdiction, including use of medical protocols, standard operating procedures, and other protocols and procedures identified by the department.

**(B)** However, for the duration of the assistance, the emergency responder shall be under the operational control of the participating emergency jurisdiction requesting assistance in accordance with the incident management system of that participating emergency jurisdiction; and

**(4) (A) (i)** Equipment and supplies belonging to a participating emergency jurisdiction responding to a

request for assistance from another participating emergency jurisdiction shall remain under the command control of the responding participating emergency jurisdiction.

(ii) However, for the duration of the assistance, the equipment and supplies shall be under the operational control of the participating emergency jurisdiction requesting assistance in accordance with the incident management system of that participating emergency jurisdiction.

(B) A participating emergency jurisdiction providing assistance may donate equipment, supplies, or any other kind of asset to another participating emergency jurisdiction.

(e) If an emergency responder holds a license, certificate, or other permit issued by a participating emergency jurisdiction or the state evidencing qualification in a professional, mechanical, or other skill and the assistance of the emergency responder is requested by a participating emergency jurisdiction, the emergency responder shall be deemed to be licensed, certified, or permitted in the participating emergency jurisdiction requesting assistance for the duration of the declared emergency or training exercises, subject to any limitations and conditions imposed by the chief executive officer of the governing body of the participating emergency jurisdiction receiving the assistance.

(f) (1) (A) A participating emergency jurisdiction receiving assistance under the statewide mutual aid system shall reimburse a participating emergency jurisdiction responding to a request for assistance for all expenses associated with providing the assistance other than regular salaries and benefits.

(B) A request for reimbursement shall be made in accordance with procedures developed by the Arkansas Homeland Security Advisory Group and adopted by the department as a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(C) The department shall not provide reimbursement for expenses associated with training exercises except in accordance with applicable rules.

(2) (A) (i) If a participating emergency jurisdiction disagrees with another participating emergency jurisdiction regarding reimbursement, the participating emergency jurisdiction asserting the dispute shall notify in writing the chief executive officer of the governing body of the participating emergency jurisdiction with which the dispute exists.

(ii) The notification shall be sent by certified mail, return receipt requested.

(B)(i) The participating emergency jurisdictions involved in the dispute shall make every effort to resolve the dispute within thirty (30) days of receipt of the written notice by the noncomplaining participating emergency jurisdiction.

(ii) In the event that the dispute is not resolved within ninety (90) days of receipt of written notice of the dispute, either participating emergency jurisdiction may request binding arbitration.

(iii) Arbitration conducted under this subdivision (f)(2)(B) shall be conducted under the commercial arbitration rules

of the American Arbitration Association, as in effect on January 1, 2005.

(g)(1) An emergency responder who assists a participating emergency jurisdiction that is not the emergency responder's home emergency jurisdiction and who sustains injury or death in the course of, and arising out of, the emergency responder's employment is entitled to all applicable benefits normally available from the emergency responder's home emergency jurisdiction.

(2) An emergency responder may receive additional state benefits as provided by law for death in the line of duty.

(h)(1) All activities performed under this section are deemed to be governmental functions.

(2)(A) For the purposes of liability, an emergency responder acting under the operational control of a participating emergency jurisdiction requesting assistance is deemed to be an employee of the participating emergency jurisdiction requesting assistance and exercising operational control.

(B) Except in cases of willful misconduct, gross negligence, or bad faith, neither the participating emergency jurisdiction providing assistance nor its employees shall be liable for the death of or injury to persons or for damage to property when complying or attempting to comply with the request of a participating emergency jurisdiction for assistance under the statewide mutual aid system.

(i) This section shall not be construed to prohibit a participating emergency jurisdiction from entering into interjurisdictional agreements with one (1) or more other emergency jurisdictions or emergency services entities and shall not affect any other agreement to which an emergency jurisdiction may be a party.

#### **12-75-121. Utilization of existing services and facilities.**

(a) In carrying out the provisions of this chapter, the Governor and the chief executives or designees of the political subdivisions of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable.

(b) The officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the emergency management organization of the state upon request.

#### **12-75-122. Political activity prohibited.**

An emergency management organization established under the authority of this chapter shall not:

(1) Participate in any form of political activity; or

(2) Be employed directly or indirectly for political purposes.

#### **12-75-123. Appropriations and authority to accept services, gifts, grants, and loans.**

(a) Each political subdivision may make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local office of emergency management.

**(b)(1)** If the federal government or any agency or officer of the federal government offers to the state, or through the state to any political subdivision, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management or disaster relief, the state, acting through the Governor, or the political subdivision, acting with the consent of the Governor and through its chief executive or governing body, may accept the offer.

**(2)** Upon such acceptance, the Governor of the state or chief executive or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

**(c)(1)** Whenever any person, firm, or corporation shall offer to the state, or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency management, the state, acting through the Governor, or such political subdivision, acting through its chief executive or governing body, may accept such offer.

**(2)** Upon such acceptance, the Governor of the state, or chief executive or governing body of such political subdivision may authorize any officer of the state, or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state, or such political subdivision and subject to the terms of the offer.

#### **12-75-124. Compensation for services and property.**

**(a)(1)** Each person within this state shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to successfully meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency.

**(2)** This chapter neither increases nor decreases these obligations but recognizes their existence under the Arkansas Constitution and statutes of this state and the common law.

**(3)** Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this chapter are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his or her services or property without compensation.

**(b)** The state, any agency of the state, and any political subdivision shall not compensate any personal services except pursuant to statute or local law or ordinance.

**(c)** Compensation for property shall be only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the Governor or a member of the disaster emergency forces of this state.

**(d)** Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a claim therefor with the Arkansas State Claims Commission in the form and manner the commission provides.

**(e)** Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the commission, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

**(f)** Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

#### **12-75-125. Donation of property or equipment -- Immunity.**

**(a)** Any person owning or controlling real estate or other premises who voluntarily and with or without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice attack shall, together with his or her successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises for loss of or damage to the property of such person.

**(b)** The immunity in subsection (a) of this section shall extend to those persons who have voluntarily and with or without compensation granted the use of automotive vehicles, boats or similar equipment, or aircraft for use under the circumstances described in subsection (a) of this section.

#### **12-75-126. Public safety officers.**

**(a)** No person shall be employed or associated in any capacity in any emergency management organization established under this chapter who:

**(1)** Advocates or has advocated a change by force or violence in the constitutional form of the United States Government or of this state or the overthrow of any government in the United States by force or violence; or

**(2)** Has pleaded guilty or nolo contendere to or been found guilty of any subversive act against the United States or is under indictment or information charging any subversive act against the United States.

**(b)** The Director of the Arkansas Department of Emergency Management and persons he or she may designate from the state and local offices of emergency management staffing patterns shall be sworn public safety officers as defined and limited by this chapter.

**(c)(1)** Before entering upon his or her duties, each person who is selected to serve as a public safety officer in an organization of emergency management shall take an oath in writing before a person authorized to administer oaths in this state.

(2) The oath required in subdivision (c)(1) of this section shall be substantially as follows:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of Public Safety Officer, upon which I am now about to enter."

(d)(1)(A) The director may determine what constitutes an Arkansas Department of Emergency Management uniform for department personnel.

(B) The chief executive of a local office of emergency management may determine what constitutes a uniform for his or her jurisdiction.

(2) The uniform may include a badge or identification card, or both, of appropriate design and dimensions to identify local office of emergency management personnel as bona fide emergency management workers within their jurisdiction and department personnel as bona fide emergency workers for the state.

(e) Any person issued or provided a badge, identification, or uniform described in subsection (d) of this section shall wear, carry, or display it at such times and places as shall be designated or required by the chief executive of the local jurisdiction for local office of emergency management personnel and by the director for department personnel.

#### **12-75-128. Emergency responders -- Immunities and exemptions.**

(a) All functions under this chapter and all other activities relating to emergency management are declared to be governmental functions.

(b) No emergency responder, except in cases of willful misconduct, gross negligence, or bad faith, when complying with or reasonably attempting to comply with this chapter, or any other rule or regulation promulgated pursuant to the provisions of this section or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

(c) The immunity in subsection (b) of this section shall extend to both emergency responders who are employees and to qualified emergency responders who are volunteers.

(d) The provisions of this section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled to under this chapter, under the Workers' Compensation Law, § 11-9-101 et seq., or under the retirement system laws of Arkansas nor the right of any such person to receive any benefits or compensation under any act of the United States Congress.

(e)(1) Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who in the course of performing his or her duties as an emergency management worker practices the professional, mechanical, or other skill during an emergency.

(2)(A) Subdivision (e)(1) of this section does not apply to a license issued to a health practitioner, as defined in § 12-87-102.

(B) However, a health practitioner license issued by another state is recognized in this state to the extent

provided under this chapter, the Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq., the Uniform Emergency Volunteer Health Practitioners Act, § 12-87-101 et seq., and other laws of this state.

(f) Any emergency responder performing emergency preparedness services at any place in this state pursuant to agreements, compacts, or arrangements for mutual aid and assistance, to which the state or a political subdivision of the state is a party, shall possess the same powers, duties, immunities, and privileges he or she would ordinarily possess if performing his or her duties in the state, province, or political subdivision of the state or province in which normally employed or rendering services.

(g)(1) An emergency responder is not required by this chapter to possess a license, certificate, permit, or other official recognition for his or her expertise in a particular field or area of knowledge.

(2) However, to the extent that an emergency responder engages in a professional activity that by law requires a license, certificate, permit, or other official recognition in order to engage in the professional activity, the emergency responder shall possess the appropriate professional license, certificate, permit, or other official recognition.

#### **12-75-129. Emergency responders -- Workers' compensation benefits.**

(a) (1) A person appointed and regularly enrolled in an accredited emergency management organization and covered by this chapter is limited to the Workers' Compensation Law, § 11-9-101 et seq., for benefits payable for an injury to or death of the person, if:

(A) The person is regularly employed by a local government or the state; and

(B) The injury or death occurs while the person is:

(i) Actually engaged in emergency management duties either during training or during a period of emergency; and

(ii) Subject to the order or control of or pursuant to a request of and under the supervision and instruction of the:

(a) Governor;

(b) Arkansas Department of Emergency Management; or

(c) Chief executive or the designated director of a department, county, or an accredited local government unit making use of emergency management volunteer workers.

(2) If a person described in subdivision (a)(1) of this section is a qualified emergency responder of the state or a local office of emergency management, then recovery is limited as provided in this section.

(b) The remedy provided in this section shall be the exclusive remedy as against the state and political subdivisions thereof.

(c)(1) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, all duly qualified emergency responders shall be deemed local government or state employees and shall receive compensation, and their survivors shall receive death benefits in like manner as regular local government or state employees for injury or death arising out of and in the course of their activities as emergency responders.

(2) If an emergency responder is injured or killed while subject to the order or control of a local government, compensation and benefits shall be charged against the

applicable local government's experience rate and paid from the appropriate state workers' compensation fund.

(3) If the emergency responder was under the order or control of a state agency when injured or killed, compensation and benefits shall be charged against the experience rate of the state agency who exercised order or control at the time of injury or death and paid from the appropriate state workers' compensation fund.

(d)(1) For the purpose of subsection (c) of this section, the weekly compensation benefits for such emergency responders who receive no monetary compensation for services rendered as such workers shall be calculated based upon the wages received from their regular or usual employments, the same as a regular local or state employee, with respect to injury, disability, or death.

(2) The reimbursement per day for approved out-of-pocket expenses incurred in response to an emergency situation, such as gasoline, oil, uniforms, required equipment, and other items is not considered monetary compensation for the volunteer emergency responder.

(e)(1) In the event that any person who is entitled to receive benefits through the application of subsection (c) of this section receives, in connection with the injury, disability, or death giving rise to such entitlement, benefits under an act of the United States Congress or federal program providing benefits for emergency responders or their survivors, then the benefits payable under this section shall be reduced to the extent of the benefits received under such other act or program.

(2) Any person who performs the duties of a member or trainee as an adjunct to his or her regular employment and who otherwise would be entitled to receive workers' compensation benefits for his or her injury, disability, or death, if injured in the performance of such duties, shall be deemed to have been injured, disabled, or killed in the course of his or her regular employment.

(f) An emergency responder shall be deemed duly registered and qualified when he or she is a member of and has on file in either a local office of emergency management or in the Arkansas Department of Emergency Management the following information:

(1) Name and address;

(2) Date enrolled; and

(3) Class of service assigned.

(g) Payments and death and disability benefits as provided in this section shall be made from the Workers' Compensation Revolving Fund for state employees.

#### **12-75-130. Call-up of retired law enforcement officers.**

(a) In emergency situations the Governor, county sheriff, or municipal police chief may authorize and request retired law enforcement officers, including game wardens, to perform law enforcement functions.

(b) In such instances, the retirement benefits of such retired law enforcement officers shall not be interrupted, reduced, or otherwise adversely affected.

#### **12-75-131. Disaster relief pay.**

(a)(1) The Arkansas Department of Emergency Management is authorized to provide special compensation to certain employees for each full pay period of eighty (80) hours worked in a job which requires the provision of on-site emergency disaster relief services in cases of wartime, human-made, or natural disasters.

(2) This disaster relief pay covers employees who may be exposed to hazardous or disastrous conditions during the performance of their job duties.

(3)(A) The rate of pay will be five and one-half percent (5.5%) above the regular authorized pay or rate of pay.

(B) Payment will be controlled through personnel actions by the Director of the Arkansas Department of Emergency Management.

(b) The rate of pay for individuals who work less than a full pay period of eighty (80) hours or transfer to other work areas not defined in this section, or both, will not receive any enhanced rate of pay for that or subsequent pay periods.

(c) A monthly report shall be made to the Legislative Council describing all payments made to employees under the provisions of this section.

#### **12-75-132. Arkansas Homeland Security Advisory Group -- Created.**

(a) There is created an advisory body to the Arkansas Department of Emergency Management, to be known as the "Arkansas Homeland Security Advisory Group".

(b) The advisory group shall consist of representatives of federal, state, and local agencies and professional associations as determined by the Director of the Arkansas Department of Emergency Management. The advisory group shall include, at a minimum, representatives of the following:

(1) Arkansas Department of Emergency Management;

(2) Arkansas Ambulance Association;

(3) Arkansas Association of Chiefs of Police;

(4) Arkansas Association of Fire Chiefs;

(5) Arkansas Citizen Corps Point of Contact;

(6) Arkansas Department of Environmental Quality;

(7) Department of Health;

(8) Arkansas Emergency Management Association;

(9) Arkansas Highway Police Division of the Arkansas Department of Transportation;

(10) Arkansas Livestock and Poultry Commission;

(11) Arkansas Municipal League;

(12) National Guard;

(13) 61st Civil Support Team of the National Guard;

(14) Arkansas Sheriffs' Association;

(15) Department of Arkansas State Police;

(16) State Plant Board;

(17) County Judges' Association of Arkansas;

(18) Centers for Disease Control and Prevention;

(19) Department of Information Systems;

(20) Federal Bureau of Investigation;

(21) Health Resources and Services Administration of the United States Department of Health and Human Services;

(22) United States Secret Service;

(23) United States Attorney for the Eastern District of Arkansas; and

(24) United States Attorney for the Western District of Arkansas.

(c) A representative of the Arkansas Department of Emergency Management shall serve as chair of the advisory group.

(d) The advisory group shall develop and maintain comprehensive guidelines and procedures that address requirements for the following:

(1) Requesting and providing assistance through the statewide mutual aid system;

(2) Recordkeeping for all participating emergency jurisdictions;

(3) Reimbursement for assistance provided through the statewide mutual aid system; and

(4) Any other process necessary to implement the statewide mutual aid system.

(e) The advisory group shall meet as often as required to:

(1) Review the progress and status of statewide emergency programs;

(2) Assist in developing methods to track and evaluate activation of the statewide mutual aid system; and

(3) Examine issues facing emergency jurisdictions regarding the implementation and management of the statewide mutual aid system.

(f)(1) The advisory group shall prepare at least annually a report on the condition and effectiveness of the statewide mutual aid system and other emergency programs in the state.

(2) The report shall include recommendations with regard to correcting any deficiencies identified by the advisory group in the statewide mutual aid system.

(3) The advisory group shall submit the report annually to the Director of the Arkansas Department of Emergency Management and to the House Committee on State

Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs.

### **12-75-133. Position transfer.**

Upon approval of the Chief Fiscal Officer of the State, the Arkansas Department of Emergency Management may transfer positions between appropriations as may be required:

(1) If a disaster occurs that results in a presidential disaster proclamation; or

(2) When an employee occupies one (1) position that is to be paid from two (2) or more appropriations during a single fiscal year.

### **Additional Emergency Code Sections**

A.C.A. § 8-4-16 – Open burning may be used by county governments to dispose of vegetative storm debris in counties that have been declared disaster areas by a county, by the state, or federal authorities.

## **Chapter Eight – ATTORNEY GENERAL OPINIONS AND COUNTY LINES ARTICLES**

### **Personnel Records:**

The Attorney General's Office has created a body of opinions concerning the Freedom of Information Act ("FOIA") in application to county offices and public records of county officials. The subject of the request and the published opinion by number are provided below. These opinions may greatly assist the office in your county in making decisions concerning the FOIA. You may review and retrieve the entire opinion identified by going to the Attorney General's website: <http://www.arkansasag.gov/opinions/>. Additionally, this section provides other helpful Attorney General opinions regarding the elected position discussed in this manual.

### **FOIA Generally**

See Ops. Att'y Gen. 2003-006 (Application of ACA 25-19-108 to counties)  
See Ops. Att'y Gen. 2005-298 (Response to absence of records)  
See Ops. Att'y Gen. 2008-162 (Digital pictures of records)  
See Ops. Att'y Gen. 99-134 (Records on county web site/fees)  
See Ops. Att'y Gen. 2000-096 (Discussion of "meetings" under FOIA)  
See Ops. Att'y Gen. 2001-382 (Location/ Access to meetings)  
See Ops. Att'y Gen. 2002-092 (Meetings)

### **FOIA – Personnel Records Generally**

See Ops. Att'y Gen. 1999-398 (Job applications and resumes)  
See Ops. Att'y Gen. 2000-058 (Harassment complaints)  
See Ops. Att'y Gen. 2000-201 (Internal affairs investigatory files)  
See Ops. Att'y Gen. 2000-242 (Suspension letters)  
See Ops. Att'y Gen. 2001-130 (Access)  
See Ops. Att'y Gen. 2001-368 (Employee objections to release)  
See Ops. Att'y Gen. 2002-043 (Payroll, status change, benefits package information)  
See Ops. Att'y Gen. 2003-055 (Privacy interests)  
See Ops. Att'y Gen. 2003-352 (Time cards)  
See Ops. Att'y Gen. 99-168 (Notification to subject of records)

### **County Economic Corporations**

See Ops. Att'y Gen. 2000-260 (Executive sessions)

## **County Rural Development Authority Records**

See Ops. Att'y Gen. 2002-068 (Personnel records)

## **911 Dispatch Centers Records**

See Ops. Att'y Gen. 2002-064 (Law Enforcement records)

See Ops. Att'y Gen. 2005-259 (Cassette tapes)

Attorney General Opinion No. 2015-020: Section 3 of Amendment 55 to the Arkansas Constitution provides that the county judge will, “authorize and approve disbursement of appropriated county funds.” Because the county judge has been granted authority and responsibility to enter into contracts and approve expenditures, it would constitute a violation of the principle of separation of powers for the quorum court to dictate to the county judge the details of such authority and responsibility. The power to appropriate rests exclusively with the quorum court, and the authority and responsibility to enter into contracts and approve expenditures subject to such appropriations lies with the county judge. Once a quorum court has made a proper appropriation, it normally cannot regulate an executive official’s expenditure of the appropriated amount. The quorum court may not direct the county executive to purchase vehicles only from state contract. State law governing county purchasing requires county officials to use formal bidding procedures for any purchase costing \$20,000 or more, but the law also provides a list of exempt purchases that county officials are free to make without soliciting bids. An effort by the quorum court to limit the county executive to making vehicle purchases only from the limited vendors awarded the state contract would be both an improper breach of the separation of powers doctrine and contrary to A.C.A. § 14-22-106.

Attorney General Opinion No. 2016-071: A.C.A. § 14-22-101(4) provides that a “purchase” is defined as “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...” True leases are not included in the definition of purchase. Therefore, a simple equipment rental or lease (whereby the county does not acquire an ownership interest) does not require a bid.

Attorney General Opinion No. 2013-096: A prosecuting attorney may, at his election, prosecute city misdemeanors but he is not obligated to do so. A prosecuting attorney is not authorized to prosecute violations of municipal ordinances or traffic laws not defined by the Criminal Code. Prosecuting attorneys have never had authority to prosecute violations of city ordinances. ACA 16-21-103 provides that prosecuting attorneys’ jurisdiction encompasses only state and county matters; and explicitly provides: “Each prosecuting attorney shall commence and prosecute all criminal actions in which the state or any county in his district may be concerned”. In respect to misdemeanor violations of state laws ACA 16-21-150 provides that “no prosecuting attorney shall prosecute city misdemeanor cases or appeals to circuit court unless the prosecuting attorney consents to do so”. A city attorney is charged with responsibility to commence and prosecute: misdemeanor violations of state statutes; traffic violations not defined by the Criminal Code; and violations of ordinances enacted by the city. So, a city attorney is obligated to prosecute state law misdemeanors that occur inside the city unless the prosecuting attorney elects to do so. The city attorney is obligated to commence and prosecute traffic violations not defined by the Criminal Code and violations of municipal ordinances.

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” a construction manager to perform a professional consultant on professional services. The 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.

Attorney General Opinion No. 2011-126: The Attorney General explained the authorities and limitations of Regional Mobility Authorities and the “Regional Mobility Act” (ACA 27-76-101 to -713). In essence the law allows for multiple member counties to make the approval of a county sales tax in their county subject to the approval of an identical sales tax by other member counties. The tax should reference proceeds the portion of the proceeds to be directed for the benefit of the RMA. Also, the funds may be combined for general use by the regional mobility authority to provide a public benefit to the RMA as a whole. The AG determined that a county or city may enter into an agreement with an RMA to construct a regional transportation project and may finance the project costs by the sales tax provisions referenced. However, the project must be located within the boundaries of, or near, the county or city. The AG concluded that a RMA has no direct authority under the RMA or otherwise to refer a sales tax or motor vehicle tax listed under ACA 27-76-601 et seq to the voters. RMA’s are authorized by law to impose tolls and allocate the proceeds of the tolls to the RMA.

Attorney General Opinion No. 2012-117: A custodian or requesting party seeking to ascertain whether a custodian’s decision is consistent with the FOIA under ACA 25-19-105(c) must supply the AG with: (a) a copy of the request or what records specifically are being requested; (b) what records, if any, the custodian intends to release; and (c) what factual determinations went into both the custodian analysis or the requesting party’s position. Frequently, the AG is not provided any of the foregoing necessary information and is unable to determine whether the decision of the custodian is consistent with the FOIA. Similarly, under Attorney General Opinion No. 2012-113 the AG was unable to determine if the custodian was acting consistent with the FOIA because no party supplied the documents or information required as explained by Attorney General Opinion No. 2012-117, above. There was apparently blanket request to the former employer for the release of the entire employment file of a former employee. There was apparently a blanket response by the employee that the request was an unwarranted invasion of privacy. Parties seeking rulings by the AG under must supply the necessary information. Under Attorney General Opinion No. 2012-115 the custodian supplied the proper documents and information and was deemed

correct in releasing the interview questions submitted to applicants. However, the public has an interests in knowing the most qualified applicant was hired and therefore the scores of the person hired to the interview questions should be released and not redacted. Attorney General Opinion No. 2012-123 the AG determined from submission of the necessary information that the custodian's decision to not release an employee evaluation that did not according to the custodian play a part in the subject termination. Under Attorney General Opinion No. 2012-144 the AG agreed with the custodian's decision to release a transcription of two emails by a former employee, one to department heads and one to the employees generally, tendering his resignation. However, the Ag found that the redactions made by the custodian were inconsistent with the FOIA. Resignation letters are generally subject to release under the FOIA, however, the custodian may be able redact certain information as an unwarranted invasion of privacy. Because the two resignation letters were not provided and the release of information to the requesting party was a transcription of the two emails, the AG could not determine that the custodian acted inconsistent with the FOIA. At a minimum the amount of information deleted shall be indicated on the released portion of the record, and if feasible at the place the redaction was made. The use of a transcription was inconsistent with these methods of disclosure and redaction under the FIOA.

Attorney General Opinion No. 2012-120: The Attorney General concluded that a county may direct county administrative staff to assist a solid waste district, solid waste board or rural development authority of the subject county. Both solid waste districts and rural development authorities are governmental entities performing county functions with public purposes and using public funds. Directing county staff to assist these public entities on their governmental purposes does not constitute prohibited appropriation of public funds for a private purpose nor prohibited appropriation to a private entity. However, the AG found under Attorney General Opinion No. 2012-094 that appropriation of Drug Control Funds or federal forfeiture funds under ACA 5-64-505 by a prosecuting attorney for health club membership as training may constitute an illegal exaction prohibited by the Arkansas Constitution, Article 16, Section 13 and Article 12, Section 5.

Attorney General Opinion No. 2012-052: The Attorney General concluded that the Arkansas State Highway Commission has a duty to maintain all roads that are properly designated as state highways under ACA 27-67-2079(b) and that duty includes maintaining the ditches and drainage on city streets. ACA 14-301-101 declaring that the city council shall have the care and supervision and control of all public highways, bridges, streets, etc. within the city and cause these public ways to be kept open, in repair and free from nuisances does not relieve the ASHC from their more specific and more recently imposed duty by the General Assembly to maintain state highways. The Attorney General noted that further legislative clarification may be warranted. {Likewise, apparently counties do not under the law have statutory duties to maintain, repair, or conduct drainage work on state highways, US highways or interstate highways. The Attorney General further explained that the responsibility for enforcing any regulations adopted by the ASHC would generally be upon the issuing agency, the ASHC. For example a state regulations to prohibit discarding of debris or leaves unto the ditches of a state highway would be the responsibility of the agency issuing the regulations.

Attorney General Opinion No. 2012-112: Upon request, it is the duty of the Attorney General to determine if a decision of a custodian is consistent with the FOIA. The AG says that records generated as part of an investigation may be considered employee evaluations or job performance records and may be exempt from release under the FOIA and may constitute an unwarranted invasion of privacy. The Attorney General's office and commentators have typically classified that personnel files typically include: employment applications, school transcripts, payroll-related documents such as re-classifications, promotions, demotions, transfer records, health and life insurance forms, performance evaluations, recommendation letters, etc. However, notwithstanding the exemption, ACA 25-19-

105(c)(1) provides that employee evaluations may be subject to release upon final administrative resolution of any suspension or termination at which the records form a basis for the decision to suspend or terminate the employee and there is a compelling public interest. Compelling public interests involve violations of public trust or gross incompetence; the existence of a public controversy; and the employees position within the agency. Custodians may consistent with the FOIA clearly withhold employee evaluations of low level employees not suspended or terminated. However, in the context of law enforcement officers, the level or ranking of the employee has less weight and the public interest is greater. Whether or not an employee was directly or indirectly involved in an incident is relevant and may turn on whether there are allegations of a single event or multiple events. See also: Attorney General Opinions 2012-105.

Attorney General Opinions: 2012-111, 2012-110, 2011-156 and 2011-058: Reflect disclosure of the names of county employees or list of county employees is generally not protected. The AG has explained that the General Assembly has refrained from establishing a protection from releasing an employee's name on the basis of "harassment exception" or "increased risk of harm exception".

Attorney General Opinion No. 2012-143: The Workers Compensation Commission determines whether an employer qualifies as an "extra-hazardous" employer. ACA 11-10-314 provides an exemption for disclosure of the confidential data filed with the Workforce Services Commission concerning "extra-hazardous" employer status. This exception is located under a separate section of the Arkansas Code from the FOIA, Freedom of Information Act, ACA 25-19-101 et seq. The AG noted that in 2009 the General Assembly attempted to mandate that creation of any new record or public meeting exceptions to the FOIA after July 1, 2009 must explicitly state that the record or meeting is exempt from the FOIA, ACA 25-19-10 et seq. The exception to the FOIA under ACA 11-10-314 is clearly valid since it was adopted prior to July 1, 2009. However, the AG noted that attempts by the legislature to bind subsequent legislatures are called "entrenchment rules"; and that the validity of the 2009 entrenchment rule on the FOIA is questionable.

During the 2013 regular session Act 411 of 2013 explicitly amended the FOIA, Freedom of Information Act, ACA § 25-19-105(b)(13), concerning examination and copying of public records to protect the personal contact information of nonelected government employees. The amendment specifically exempts from disclosure home or mobile telephone numbers, personal email addresses, and home addresses of nonelected county or government employees. Act 411 seeks to protect privacy of nonelected employees and is effective August 16<sup>th</sup> as per ATTORNEY GENERAL OPINION NO. 2013-049.

Attorney General Opinion No. 2013-018: The Arkansas Self-insured Fidelity Bond Program was established in 1987 to provide a blanket bond for losses incurred by the State, cities, counties and school districts due to fraudulent or dishonest acts by the officials or employees of participating agencies. Coverage is determined by the Governmental Bonding Board of the Arkansas Self-insured Fidelity Bond Program. Losses by a county or municipal hospital or nursing home, conservation district or improvement district are explicitly exempt from coverage by the bond as per law. In ascertaining whether a loss covered the board must consider that the primary aim of the program was to effectuate substantial savings in the costs of otherwise required fidelity bonds for state, school, county and city employees. A strict interpretation by the board would limit coverage to only acts by employees working directly for and paid directly by a participating government employee (rather than employees working for a segment or creature of a participating government entity). Legislative clarification may be warranted.

Attorney General Opinion No. 2013-032: Under A.C.A. § 16-17-115 and a long line of consistent opinions of the Attorney General, the county's obligation for district courts under the law is limited by law to one half the salaries of the district judge and chief or appointed district clerk. "Salaries" is limited to salaries only exclusive of fringe benefits such as APERS, health insurance, etc. The AG concluded that the law does not prohibit one party paying the entire salary as the employer and the other party reimbursing half of the salary.

Observation of law and related Attorney General Opinions: Counties have no other funding obligation for district court each year other half of the district judge's salary and district clerk's salary (not including health insurance or APERS) and the city in which the court is held to pay the other half. Attorney General Opinion Nos: 2005-191; 2006-055; 2001-145; 1999-207; 1993-001; 1988-011; and 1984-098. Under ACA 16-17-108 each biennium the General Assembly sets forth the minimum and maximum salary for district court judges and chief district court clerks. The amount the city and county governing bodies agree to for the salary of the district court judge should be in accordance with ACA 16-17-108 adopted by virtue of ordinances. Amendment 55 of the Arkansas Constitution prescribes that the Quorum Court shall affix the salaries of county officials and number and salaries of county employees. Some counties enter into interlocal agreements in accordance with ACA 14-14-910 so that in the event the county is paying more than obligated by law (by say paying part of the maintenance and operations), then the interlocal agreement can help the cities shoulder other obligations of the justice system used by cities in some counties such as dispatching, the county or common jail, the prosecutor's office expenses, the circuit court expenses, courthouse security, or the maintenance or upkeep of the courthouse.

Attorney General Opinion No. 2012-140: The Attorney General decided whether a county public library may lawfully use available surplus funds from library Maintenance and Operation budget for capital improvements and construction account (so to match a federal or other funds necessary for expansion or improvements). It is the means of funding the Maintenance and Operation budget that is called in to question. The subject county library Maintenance and Operations account is funded by a levied county millage under Amendment 38. Therefore such a transfer of fund is prohibited by Arkansas constitution as an "express proscription against diverting state funds from an authorized use approved by the voters to another use not so authorized." The AG concluded that ACA 13-2-405 violated the Arkansas Constitution.

Attorney General Opinion No. 2012-055: The Fair Labor Standards Act applies to counties but does not require an employee to be paid overtime compensation unless the employee actually works in excess of forty hours in the work week. The Arkansas Minimum Wage Act also imposes minimum requirements. The AG says however that a county may have a general personnel policy of paying workers leave time that is based on the same rate or schedule that would apply as if they had worked those days (say a pay schedule that includes (5) five days a week at (9) nine hours a day which equals (5) five hours at the overtime rate of time-and-a-half). Neither the FLSA or the Arkansas Minimum Wage Act presents an impediment to a general county pay policy. The quorum court of the county as per Amendment 55 of the Arkansas Constitution is required by ordinance fix the number and compensation of deputies and county employees; and ACA 14-14-805 assigns to the Quorum Court general authority to adopt a personal policy of a general nature. The AG said counties have some flexibility to set a lower threshold for overtime than the Federal or State laws so long as the threshold is the same for employees under a general personnel policy. {Please note that each constitutional officer is responsible for documenting overtime of their employees. Also, commissioned law enforcement officers are allowed to work a 28 day, 171 hour schedule for overtime or a 7 day, 43 hour schedule. As per the FLSA commissioned law enforcement officers may not accumulate more than 480 compensatory hours}.

VOLUNTARY TAXES Attorney General Opinion Nos: 1991-015; 1991-077;1991-082; 1994-003; 19996-069; AND 1999-231: The Attorney General has stated in numerous opinions that the collection of a voluntary tax paid by the county to a private non-profit corporation violates the Arkansas Constitution, Article 12, § 5, which prescribes: “No county, city, town or municipality shall become a stockholder in any company, association or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual”.

A quorum court may appropriate funds from a voluntary tax for a grant to a public entity such as a conservation district. See: AG Opinions Nos. 1992-083 and 1994-003. In some instances the specific facts may allow for voluntary tax proceeds to be turned over to a public entity or a private entity that is performing a community service grant. In Gordon v. Woodruff, 217 Ark. 653 (1950) the Supreme Court upheld an appropriation for a grant to a county fair association was made to aid the construction of buildings on county property. Likewise, a grant to a community college foundation spent to aid a public community college may be considered legal. See AG Opinion No. 1991-082.

Appropriations to a private non-profit corporation for charitable and laudable purposes such as operating shelters, such as shelters for animals or shelters juveniles, are considered illegal. See: AG Opinion No. 1991-015. Appropriations for a non-profit private corporation to a learning center with contracts with the state are not governmental functions of city or county government. See: AG Opinion No. 1992-019. The county collection of money for the benefit of private corporations is a violation of the Arkansas Constitution, Article 12, § 5. See AG Opinion No. 1996-069. Attorney General Opinion No. 1999-231 explains that a quorum court may repeal voluntary taxes; and that taxes voluntarily paid under the common law doctrine of voluntariness precludes refunds of voluntary taxes voluntarily paid.

Attorney General Opinion No. 2011-087: Under the Arkansas Constitution and laws of Arkansas, the County Judge, not the Quorum Court, has the authority to hire and fire the county attorney. The Arkansas Constitution, Amendment 55, § 3, vests the county judge with the authority to hire and fire county employees, except those persons employed by other elected officials of the county. Likewise, ACA 14-14-1102 vests the power to hire independent contractors, employ necessary personnel or purchase labor or services for the county with the county judge. The Quorum Court has the authority to make appropriations for employee positions or contract services but is prohibited by separation of powers from making employee hiring decisions or designating specific vendors or contract awards.

Attorney General Opinion No. 2011-073: Solid Waste Boards must comply with ACA 25-15-201 et seq., the Administrative Procedures Act (the “APA”), in promulgating regulations. ACA 25-15-201 sets forth the notice and publication requirements for rule making by state agencies. ACA 8-6-704 provides that Solid Waste Boards have the power to adopt: (1) rules in assuring public notice and participation in any rulings and findings of the board and (2) rules that address board administration. The Attorney General determined that in adopting rules Solid Waste Boards in Arkansas must comply with the ADA, ACA 25-15-201 et seq.

Attorney General Opinion Nos. 2011-075 and 2011-079: Act 558 of 2011 amended ACA 24-4-402, effective January 1, 2012, to provide that an APERS employers will be responsible for employer contributions to APERS for retired employees that have returned to work and members on the Deferred Retirement Option plan (“DROP”). The Attorney General determined that the act applies prospectively to all employees that returned to work and employees on the DROP Plan as of the effective date of the act or thereafter. Employers will not owe employer contributions retroactively. Employees that have retired and returned to work or that have joined the DROP will not owe employee contributions to APERS.

Attorney General Opinion No. 2010-169: The Attorney General made clear that under the Freedom of Information Act a county assessor or public official may not charge citizens of Arkansas for access and copies to public records on a website maintained by the assessor and not charge county residents. The plan of the custodian to eliminate the fee based solely on whether the persons making the request are in-county residents is inconsistent with the Freedom of Information Act.

Attorney General Opinion No. 2013-031: The Attorney General explained the process and legal analysis for use of cooperative purchasing to piggy-back from the public bid process of political subdivisions of other states under a cooperative purchasing agreement in accordance with ACA 19-11-201 et seq. The AG explained that under the law a city or county in Arkansas may enter into a cooperative agreement and take advantage of the bids and bid processes of another appropriate procurement unit. The law requires the State Procurement Director to determine in writing that the procurement system and procedures of the procuring entity substantially meet the requirements of the Arkansas cooperative purchasing law. Use of this procedure is one way for a county or city in Arkansas to make use of the bids of other proper purchasing entities in Arkansas and other states and to eliminate the redundancy and costs of procurement procedures such as soliciting bids and advertising. {Also, ACA 14-22-106 has been explicitly amended to exempt purchase made through programs of the National Association of Counties (“Naco”) and the Association of Arkansas Counties (“AAC”); and goods or services if the quorum court has by resolution approved the purchase of goods or services through competitive bidding by: the federal government or its agencies, another state, or associations of governments below state level.}

Attorney General Opinion No. 2007-193: The Arkansas Constitution and Arkansas Code provide that county judges have exclusive authority to lease county lands. However, can a county lease lands donated to the county to for-profit business?

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.

Attorney General Opinion No. 2008-062: Does the County Judge have absolute discretion to deny an easement by necessity pursuant to A.C.A. §§ 27-66-401; 27-66-404?

The Attorney General advises: “No”, the question of necessity is one for the county court to decide, *after* applying the appropriate analysis set out by the Arkansas Supreme Court. The applicable statutory subchapter, A.C.A. §§ 27-66-401—to 404 was first adopted in 1871 and 27-66-401, assuming the petitioner has met the requisite requirements it shall be the duty of the county court to appoint viewers to lay off the road, provided the owner:

- (1) Gives notice to such person twenty (20) days before application to the court;
- (2) Petitions the court;
- (3) Shows necessity for the private road;
- (4) Shows that the person refuses to allow the road; and

(5) Deposits with the clerk of the court sufficient money to pay all costs and expenses accruing on account of the petition, notice, view, and survey of the private road.

The statute above not only gives the county court the authority to make an order establishing the road, it also implicitly gives authority to deny any such petition. The applicable standard to be applied in making such determinations has been discussed in several cases, the seminal case apparently being *Pippin v. May*, 78 Ark. 18, 93 S.W. 64 (1906); *Armstrong v. Harrell*, 279 Ark. 24, 648 S.W.2d 450 (1983) and *Burton v. Hankins*, 98 Ark. App. 51 (2007). An appeal is afforded to either party in such actions. See A.C.A. § 27-66-403(b) (Repl. 1994). Any person aggrieved at the county court's denial in this regard may pursue his judicial remedies. The county court's discretion is judicial and is not "absolute."

Attorney General Opinion No. 2006-050: The Attorney General opined that the authority to set road standards for the unincorporated areas of a county under Ark. Code Ann. § 14-17-208 is exclusively with the county. A road built by a county within the limits of a city must comply with the road standards for roads within the city established by ordinance, unless granted a waiver by the city.

Also, cities may exercise exclusive authority to adopt city road standards and a master street plan within the territorial jurisdiction of the city. Ark. Code Ann. § 14-56-413. What would occur if a conflict exists in regard to the unincorporated areas of the county between the Master Road Plan of a city and a the authority of a county judge to operate the system of county roads? Previous Attorney General Opinions have said that the constitutional authority of county judges to administer and operate the system of county roads cannot be ignored. See AG Opinion No. 2001-197. The Attorney General noted that in the event of a conflict a court may find the authority of the county judges is constitutional and should prevail on county roads in the unincorporated areas of a county.

What are the powers of metropolitan planning organizations? The plans devised by metropolitan planning organizations serve as the basis for federal funding. Failure of cities or counties to comply with the plans of metropolitan planning organizations and federal guidelines may jeopardize federal funding.

## **County Lines Articles:**

### **State 911 Funding**

*By: Josh Curtis*

*Governmental Affairs Director*

Act 1171 of 2013 created the Blue Ribbon Committee on Local 911 Systems. This committee studied 911 for more than a year and in December of 2014 provided recommendations to then Governor Beebe and the legislature. The committee stated, "The state's 911 system can no longer be funded through wired lines as 911 calls in Arkansas are overwhelmingly wireless". Think about this, before cell phones there may be one or two 911 calls for a car wreck, someone would run into the closest business and dial 911. Now every motorist that passes by dials 911 and each call has to be answered and taken as serious as the next. A 911 operator has to be present to answer all these calls. This means staffing has been increased to accommodate the use of cell phones.

The state levies a \$0.65 user fee on cell phones per month, each person with a cell phone pays \$7.80 a year for 911 services. In 2015 this fee generated \$18,957,120.76, and this amount was split between over 130 Public Safety Answering Points (PSAP's) across the state. The national average for the 911 user fee is approximately \$0.95 so most Americans pay around \$11.40 for 911 services per year.

Another source for 911 dedicated revenue is from wireline tariffs. In 2015 this revenue generated from wireline phones totaled \$7,390,852.52. Wireline revenues have decreased significantly over the past years but should plateau since most people have already tossed out their landline. Most of the landlines exist from businesses.

The last source of dedicated revenue for Arkansas' 911 system comes in the form of legislation passed in 2013. Act 442 of 2013 known as the "Telecommunications Regulatory Reform Act of 2013" provides additional funding for county operated PSAP's. This act directed \$2,000,000 to counties using a formula that provided more funding to the smaller counties. This is a flat amount that does not grow from year to year.

The Tax Foundation released a study in October that said Arkansas is the ninth highest taxed state for wireless services. If you look at your cell phone bill you will find out that you also pay sales tax to your provider. The state sales tax collected on cell phone service is treated no differently than the regular sales tax. The state sales tax collections of 6.5% are distributed as follows: 4.5% General Revenue, 0.875% Educational, Adequacy Fund, 0.5% Property Tax Relief Trust Fund, 0.5% Highway Fund, 0.125% Conservation Fund. As you can see none of this revenue is dedicated to 911 services. The lower taxed states have more dedicated revenue directed to 911 services. For instance Tennessee and Mississippi 911 user fee is set at \$1.00, \$.35 higher than Arkansas. Should a portion of this sales tax be diverted to 911 services?

In 2015 there were approximately 2,345,304 911 calls to 911 centers in Arkansas. 90% of these calls were made using a cell phone. 67% of the dedicated revenue comes from the wireless user fee. The other 10% of the calls were from landlines which accounts for 26% of the dedicated revenue. The number that the counties focus on is \$20,821,055.76, this is the amount that the counties and cities are supplementing for 911 operations.

The "Criminal Justice Reform Act of 2015" allowed the Governor and the Legislature to appoint the Legislative Criminal Justice Oversight Task Force. This task force and Governor Hutchinson brought in The Council of State Government (CSG) to perform an outside non bias study of Arkansas' criminal justice system. CSG worked with all the stakeholders in the criminal justice system and has delivered recommendations to the task force. The majority of these recommendations are supported by the majority of the stakeholders. Most legislators believe these recommendations will be supported in the upcoming session and be enacted into law. A subcommittee of the 911 Blue Ribbon committee has recommended a study such as this for Arkansas's 911 system. For something to change an outside group should come in and bring all the stakeholders together to talk about reforming the system.

One subject that should be studied and reviewed is how many Public Safety Answering Points (PSAP) are adequate for Arkansas. There are 132 PSAP's in Arkansas, is that too many? The County Judges Association of Arkansas voted earlier this year to support a bill that places a moratorium on new PSAP's. This is a bill the Judges will propose in the upcoming session to coincide with a study of our 911 system.

Another issue is technology, the Governor and the Legislature are always looking for ways to increase technology to improve inefficiencies and possibly save money. I can get on my phone right now, push a button and have an Uber car pick me up within a few minutes. I wouldn't have to give my location and the driver would know exactly where I was from the technology on my smart phone. Someone said if Uber can find you that easy why cant 911. People can argue that Uber is only in the highly populated areas of the state and there isn't a demand for it statewide. That's a fair argument but there is a high demand for 911 services statewide. If Uber can use this technology in downtown Little Rock why can't 911 use something like this to better serve Arkansans all across the state.

Next Generation 911 (NG911) is an Internet Protocol (IP)-based system that allows digital information (e.g., voice, photos, videos, text messages) to flow seamlessly from the public, through the 911 network, and on to emergency responders. This is technology that will improve communication and save lives because of faster response times. Is Arkansas ready for this technology? Another topic the outside consultant should look at is training for dispatchers. The turnover rate for 911 dispatchers is normally one of the highest for a county. What can we do to minimize the turnover rate?

The news normally opens the show with "good evening" and then tells you everything wrong with the world. This day and time law enforcement has to be perfect with every decision they make. The media likes to point out when one law enforcement officer makes one mistake and it's magnified. 911 is far from perfect but there are places in the state that comes very close and the rest of the state can learn from them. Citizens in Calhoun County deserves the same service as citizens in Benton County. Now we all know the response time cannot be the same for all Arkansans because not everyone is the same distance from a fire station or a hospital. One thing that should be consistent is the reaction time. When you pick up the phone and dial 911 the fire truck or the ambulance should leave their post around the same time whether you make the call from Benton or Calhoun County.

Going into the 91<sup>st</sup> General Assembly, every legislator has heard many wants and or needs from multiple constituencies. So how does the legislature maneuver these needs and how important is 911? Many people believe public safety is the number one job incumbent on our government. This legislature supports our men and women in uniform and the job they do to keep us safe each day. If you ask an officer what their most important tool they use is, just about all of them say communication. That starts as soon as someone dials those three digits.

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## **What County Officials need to know about Emergency Management Preparedness**

***By: Blake Gary  
AAC Law Clerk***

Within the last decade, from January 1, 2008 – July 31, 2017, Arkansas has had twenty-one Major Disaster Declarations. From these twenty-one disasters, Arkansas has received a combined total of \$55,542,952.67 for Individual Assistance and \$440,770,920.39 for Public Assistance. Disasters come in all shapes and sizes, they do not have political ties, and they can affect any county at any time. Over the last decade, Arkansas has witnessed extensive flooding, devastating tornadoes, ice storms, an oil spill, and we are patiently waiting on the ever-looming threat of the tectonic plates shifting at the New Madrid fault. As the elected officials of your county government, it is up to you to help your county weather the storm. Fortunately, many have come before you and many lessons have been learned along the way. As the executive officer of county government, it is primarily the duty of the county judge to deal with disasters; however, disasters can impact the day to day functions of any county official. This article is dedicated to providing county officials with information needed to prepare for and get through the next disaster that strikes their county. Being unprepared is not an option.

### **All County Officials Continuity of Operations Plan**

The single most important plan all county officials should be familiar with is their Continuity of Operations plan, also known as a disaster recovery plan. During a disaster, the county government cannot afford to shut down and cease working; therefore, knowing the Continuity of Operations plan is vital to getting county government up and running again quickly and efficiently after a disaster or emergency. A Continuity of Operations (COOP) plan is the effort within individual counties to ensure they can continue to perform their mission essential functions during a wide range of emergencies. It is the initiative that ensures governments, departments, businesses, and agencies are able to continue their essential daily functions. This is not an initial response type plan, but rather a detailed, long term plan that requires planning for any event – natural, man-made, technological threats, and national security emergency – causing a county to relocate its operations to an alternate or secondary site to assure continuance of its essential functions. A valuable plan addresses orders of succession, delegations of authority, continuity facilities, continuity communications, essential records management, human resources, testing, training, exercising, devolution, and reconstitution. The Arkansas Continuity of Operations Program provides a methodology, hardware, software, training, and user assistance for the development, maintenance, and testing of disaster recovery plans for Arkansas agencies, boards, commissions, school districts, counties, and cities. These plans are intended to ensure that essential services will continue to be provided after any disruptive event. Information regarding training and planning from the Arkansas Continuity of Operations Program can be found at <http://www.dis.arkansas.gov/security/Pages/ContinuityofOperationsProgram.aspx>.

One of the most important aspects of a Continuity of Operations plan is having a backup facility that you can relocate to and recover data if your primary facility is damaged or destroyed. There are three types of backup sites: cold sites, warm sites, and hot sites. Cold sites are typically empty operational spaces with basic facilities like air conditioning, power, and communication lines. A hot site is a duplicate of the primary facility, with full computer systems and backups of data and it can often be brought up to full production immediately. Warm sites fall in between hot and cold sites. These are not your bare-bone facilities, but recovery may be delayed while you retrieve data from your remote backup site. These backup sites can be rented, obtained through mutual aid agreements, or might already be owned by the county, but they should be 15+ miles away from your primary site to lessen the chance of a disaster affecting your primary and backup facility. Regardless of what type of backup site your county uses, it is crucial to always keep an updated backup of all records and data. Records and data should be backed up every day and you should be able to recover them from a remote location to ensure the county government will continue to run smoothly through disastrous times.

Disaster recovery plans are so important that [Ark. Code Ann. § 10-4-424](#) authorizes the Arkansas Legislative Audit to conduct audits of all or any part of the information systems or operations of any entity of the state or political subdivision of the state. Information systems audits evaluate an entity's information processing systems including the entity's disaster recovery plan. Ark. Code Ann. § 10-4-424 also requires all contracts between counties and vendors for information systems or other computer services to contain a provision permitting Arkansas Legislative Audit access and authority to audit computer applications supplied by vendors. For more information on how to keep your Continuity of Operations plan up to par with the Arkansas Legislative Audit, see the Arkansas Legislative Audit Information Systems Best Practices at <http://www.arklegaudit.gov/userfiles/editor/docs/Resources/IS%20Best%20Practices.pdf>.

### **National Incident Management System**

Another way to be prepared for a disaster is being familiar with the National Incident Management System (NIMS) and the Incident Command System (ICS). The National Incident Management System is a comprehensive, national approach to incident management that is applicable to all jurisdictional levels across functional disciplines and is intended to: (1) be applicable across a full spectrum of potential incidents, hazards, and impacts, regardless of size, location or complexity; (2) improve coordination and cooperation between public and private entities in a variety of incident management activities; and (3) provide a common standard for overall incident management.

While you may receive a crash course on the National Incident Management System after being elected, it is up to you to stay on top of your training. Since county officials are elected, the Federal Emergency Management Agency (FEMA) does not mandate a training standard for them to adhere to, but FEMA and the Arkansas Department of Emergency Management (ADEM) strongly recommends the following training agenda depending on your level of incident management:

1. Anyone with a Response or Emergency of Operations Plan
  - i. IS-700 – an Introduction to NIMS (3 hour course)
  - ii. IS-100 – an Introduction to the Incident Command System (3 hour course)
2. First Line Supervisors
  - i. All of the above plus
  - ii. IS-200 – NIMS for Single Resources (3 hour course)
3. Middle Management / Emergency Operation Center Staff
  - i. All of the above plus
  - ii. ICS-300 – Intermediate ICS
  - iii. IS-702 – Public Information Systems (3 hour course)
  - iv. IS-703 – Resource Management (3.5 hour course)
  - v. IS-800 – an Introduction to the National Response Framework (3 hour course)
4. Command and General Staff (Jurisdiction/Department Heads)
  - i. All of the above plus
  - ii. ICS-400 – Advanced ICS

All of the courses listed above with the exception of ICS-300 and ICS-400 can be found on FEMA's website at <https://training.fema.gov/nims/>. ICS-300 and ICS-400 are available from ADEM as classroom activities only. It may be difficult to carve out time, especially during the first few months in office. However, you can get a head start on your learning by use of [Ark. Code Ann. § 14-14-1207](#) which authorizes reimbursement of expenses for discretionary functions and services including training expenses for a county official-elect if authorized by the quorum court.

### **County Judges**

#### **Authority**

The first step in being prepared as a county judge is to understand your legal authority and the extent of that authority. County judges must have a clear understanding of their roles and responsibilities for successful emergency management and incident response. One path to understanding is becoming familiar with the laws governing disasters. There may be ordinances that are specific to the city or the county, but there are also state laws that must be followed. Each county judge should be familiar with the Arkansas Emergency Services Act of 1973 codified as [Ark. Code Ann. §§ 12-75-101 – 12-75-133](#). The Arkansas Emergency Services Act of 1973 is vital to understanding the process of declaring a local disaster emergency, the requirement for local emergency management, the process of requesting mutual aid between jurisdictions, and much more.

Your responsibilities and duties will vary depending on whether the disaster is declared at the state level or federal level so it is vital to understand your role in both. However, you are not alone in this endeavor; your local emergency manager will always be there to help guide you down the right path. The local emergency managers and the area coordinators are great assets during any emergency and they can assist newly elected or seasoned county judges through the entire disaster process.

#### **Exercising**

Maybe the most crucial step in being prepared is to exercise as often as possible. The Arkansas Department of Emergency Management offers various different training exercises including natural disasters, disease outbreaks, social disruption, and technological disasters. By September 21, 2017, ADEM will have conducted 82 exercises within the period of one year (October 5, 2016 – September 21, 2017) throughout the state of Arkansas. Former Faulkner County Judge Allen Dodson knows first-hand how beneficial these exercises are. Dodson was appointed to the position in January of 2013. Just over a year after being appointed, an EF4 tornado would tear through Faulkner County flattening a subdivision, crippling a community and causing multiple deaths. However, the county was prepared for this disaster. Just a couple of months prior to the tornado hitting, the county participated in a tornado exercise very similar to the scenario that occurred in late April of 2014. You can view the current schedule of upcoming training exercises through September 21, 2017 on ADEM's website at <http://www.adem.arkansas.gov/Websites/ardem/images/EXSchedule.pdf>. There are three more exercises occurring before the

end of September involving flooding, earthquake, and activation of the State's Emergency Operations Center (SEOC). Just like any good basketball, football, or baseball team that practices and exercises endlessly to become the best team they can be, so you and your county can practice, exercise, and be prepared to overcome any disaster that comes your way.

### ***Documenting***

As crucial as preparedness is, it is only half the battle and will not prevent disasters from occurring. First and foremost, the most important thing to do once a disaster strikes is to document, document, and document. Documentation is the process of establishing and maintaining accurate records of events and expenditures related to your disaster recovery work. The information required for documentation describes the "who, what, when, where, why and how much" for each item of disaster recovery work. A picture is worth a thousand words or dollars in this case so it is vital to take pictures and record everything. All documentation pertaining to a project should be filed together with the corresponding Project Worksheet. You should be as specific as possible when describing damage. For example, if you have two buildings with water damage you would want to describe the damage as, "Floodwater inundated two buildings that serve x number of people, to a depth of x number of feet, damaging drywall, tile flooring, and books in all x number of rooms." Detail is the critical factor when documenting damage. So much so, Judge Hart of Conway County recommends purchasing cameras that show the time the picture was taken and show the exact GPS coordinates the picture was taken at. You can even go as far as putting emergency kits in the glove compartments of vehicles likely to be called out to do emergency repairs. These kits could include disposable cameras and forms where staff can list who was at what location, how much time was spent there, and what equipment was used.

Unfortunately, the documentation process does not end with damages. The uniform rules require counties to maintain records sufficient to detail the history of procurement. Every contract that gets signed needs documentation of: (1) the rationale for selecting the contract type used and for contractor selection; (2) the basis for the contract price; (3) acquisition planning information and other pre-solicitation documents; (4) list of sources solicited; (5) copies of published notices of proposed contract action; (6) independent cost estimate; (7) notice of award; and (8) notice to unsuccessful bidders or offerors and record of any debriefing ([44 C.F.R § 13.36](#)). These records become the basis for verifying your final project costs and should be retained for at least three years from the date the State closes your grant. Accurate documentation will help recover all eligible costs, have the information necessary to develop project worksheets, have the information available for the state and FEMA to validate the accuracy of smaller projects, and be ready for any state or federal audits or other program financial reviews.

### ***Procurement***

Once the initial documentation of the damage has been completed it will be time to start the restoration process and there may arise a time when it is necessary to contract work out to third parties to hasten the relief effort. Always remember when federal money is involved, you not only have to comply with your local procurement guidelines, but you must comply with the federal guidelines in [44 C.F.R § 13.36](#) and [2 C.F.R. §§ 200.318 to 326](#). One potential disaster to look out for when contracting is "storm chasers." Storm chasers are contractors who chase storms to try to get contracts from counties affected by disasters. Always, always, always, research the contractor before entering a contract. Look for contractors who: (1) have the ability to perform successfully under the terms and conditions of a proposed requirement; (2) have a satisfactory record of integrity and business ethics (contractors that are debarred or suspended must be rejected and cannot receive contract awards); (3) complied with the public policies of the federal government and state and local government; (4) have the financial and technical resources to perform the work under the contract.

### **County Sheriffs** ***Civil Unrest***

During the two year opposition period of the Dakota Access Pipeline, Sioux County, North Dakota saw its population nearly double. People poured into the county by the thousands and set up camp to protest the Dakota Access Pipeline. Whether these movements stay as peaceful protest or escalate into riots, counties usually do not have the staff or resources to deal with a sudden increased fluctuation of people. The Arkansas Sheriff's Association Task Force was created to render emergency assistance and provide addition personnel to sheriffs with regard to but not limited to the security of homeland, disaster relief, civil defense, and law enforcement assistance with crowd and riot control. The primary mission of the Arkansas Sheriff's Association Task Force is to act as an ever-ready reactionary force prepared to respond to emergencies and calls for assistance anywhere in the state of Arkansas. Looking back at North Dakota, if the same situation were to occur in Arkansas and the county's sheriff department did not have the resources to combat it, then the sheriff could activate the Task Force and request assistance from surrounding jurisdictions. [Ark. Code Ann. § 16-81-106](#) authorizes certified law enforcement officers to have police power and to make arrest in other jurisdictions at the request of or with the permission of the municipal or county law enforcement agency that has jurisdiction.

The Task Force is to be used for smaller incidents as opposed to federally declared disasters. For larger incidents, such as federally declared disasters, you will be coordinating with your local emergency manager and the Arkansas Department of Emergency Management to get the resources you need. The Arkansas Department of Emergency Management will always be there to help you receive the resources you need whether they come from neighboring jurisdictions, the Arkansas State Police, or the Arkansas National Guard. The definition of "emergency management" under [Ark. Code Ann. § 12-75-103](#) includes law and order, rescue, and evacuation as functions essential to disaster or emergency preparedness, mitigation, response, recovery, and prevention by state and local governments. [Ark. Code Ann. § 12-75-130](#) allows county sheriffs to authorize and

request retired law enforcement officers, including game wardens, to perform law enforcement functions during emergency situations.

Disasters do not care whether you are the county judge or county clerk, republican or democrat, or if it's your first day on the job or your last, they can and will occur without notice. Every county benefits when their elected leaders are prepared to handle any disaster. Whether it is fine tuning your Continuity of Operations plan, updating your knowledge on the National Incident Management System, or learning the federal guidelines for procurement, the more prepared and ready you are to deal with a disaster, the quicker you can overcome it.

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## Smooth, Effective Meetings

*They don't just happen!*

*By: Eddie A. Jones*

*County Government Consultant*

Most likely you've sat in dismay – maybe you've even been appalled or, depending on your position, embarrassed while a meeting tumbled off into nowhere. You know what happened: stories, side issues, chit chat and “stuff” overran the good intentions of those who were trying to accomplish something.

It may be that the Chair and/or the participants were not properly prepared for the meeting. However, the meeting may have started with a clear goal with a real agenda and with at least a majority of the participants prepared. But somehow it ended up a failure. Why? The reason is that a meeting can be led or misled from any chair in the room. Individual contributions, or the lack thereof, determine the net result produced in a public meeting – or a meeting of any kind.

During my thirty-plus years in county government work I have attended literally hundreds of quorum court meetings and I have chaired dozens of meetings in various capacities. I have seen the good, the bad and the ugly. Let's take a look at what it takes to have smooth effective meetings. We are talking in particular about quorum court meetings or other county government public meetings. But, most of what we say will be applicable to almost any kind of meeting where business is being conducted. We are going to be looking from both sides of the table. It takes not only a competent and prepared Chair – but participants that are prepared and ready to take care of business in a professional manner.

One of the most difficult tasks for an elected official is being called upon to run a public meeting, be it a County Quorum Court meeting, a Committee thereof, or some other type of county government public meeting or hearing. In Arkansas you must understand not only the Open Meetings Law (Freedom of Information Laws ACA 25-19-101, et seq), but also your own rules of order. Many people are under the misconception that Roberts Rules of Order are the mandatory rules of order in Arkansas county government – but that is not so. Every quorum court in Arkansas is authorized under ACA 14-14-801(b)(12) and ACA 14-14-904(e) to provide for their own organization and management and to determine their own rules of procedure, except as otherwise provided by law. Most counties do find that Roberts Rules of Order is a good starting point and an adequate default in the event that its own adopted rules of procedure do not address an issue. In that case it is imperative that the county actually have a copy of Roberts Rules or Order on hand to serve as a reference and guide.

According to Arkansas law, specifically ACA 14-14-904(d), the county judge is the presiding officer, or Chair, of the quorum court without a vote but with the power of veto. However, in the absence of the county judge, a quorum of the justices by majority vote shall elect one of their number to preside or chair the meeting but without the power of veto. A justice retains the right to vote on a measure even though he or she is serving as Chair. So, it behooves the county judge and each member of the quorum court to be prepared and ready to conduct a great meeting – smooth and effective.

The legalities of the Open Meetings Law and your own rules of procedure are not everything you need to know. There is a part of presiding over a meeting that is not in a law or rule. For lack of a better term it amounts to *style*. American Poet, Robert Frost defined style as *“the mind skating circles around itself as it moves forward”*. Even the most competent elected official armed with a complete knowledge of the Open Meetings Law (FOIA) and Roberts Rules or Order can find themselves on the verge of panic while trying to chair a meeting. One word of advice can aid in avoiding this public calamity – RESPECT. Let me further expand on the term “respect” by using an acoustic.

- R** – Responsibility – The Chair is Responsible for implementing the rules that have been established. Responsibility lies with the Chair to clarify roles and rules, to follow the agenda, to be fair but firm and to keep the meeting moving.
- E** – Ethics – Rightly or wrongly the Chair is always held to a higher standard than the other members of the body, and projecting the air of a higher Ethical standard is crucial to a cooperative environment.
- S** – Succinct – Often less is more and making comments and rulings in a direct and Succinct manner helps avoid the sin of sermonizing to members of the body.

- P** – Predictability Principal – Prior Proper Planning Prevents Poor Performance – A successful meeting does not just happen, but rather requires, above all, that the Chair be prepared for what is to come.
- E** – Engage – The Chair is responsible for Engaging ALL of the stakeholders in any public meeting. Leaving any of the stakeholders out of the process is a recipe for discord and disaster.
- C** – Coordinate not Control – The proper goal of the Chair is to Coordinate the rules with the competing interest, not to Control the outcome of the meeting. A controlling Chair will invite stern and vocal opposition and impair the ability of the meeting to accomplish any of its goals.
- T** – Time – In short, starting a meeting late and wasting time during a meeting are both rude. It's rude to your colleagues, citizens and staff. The Chair has the primary responsibility to call the meeting to order on time and to make sure that the meeting moves forward in a timely manner. Don't wait on the perpetual tardy. Suggest a new motto: **5 minutes early is the new on-time.** Start every meeting promptly and people will soon realize that you mean what you say.

Following these suggestions will foster respect both for the Chair and for the body as a whole. Ralph Waldo Emerson said, "Men are respectable only as they respect."

What if you're a participant and not the Chair – in this case a quorum court member not acting as Chair? Here's how to make sure that your participation contributes to an effective meeting.

**1) Focus on the issue.**

Avoid stories, jokes, and unrelated topics. These waste time, distract the attendees, and sometimes mislead. Save the fun and trivia for social events when it's more appropriate and will be appreciated.

**2) Take a moment to organize your thoughts before speaking.**

Then express your idea simply, logically and concisely. People are more receptive to ideas they understand – plus long complex explanations bore people.

**3) Use positive comments in the meeting.**

Negative comments create defensive reactions or even retaliations that take people away from solutions. Negative comments also make you appear mean, uncooperative, weak, or even incompetent.

**4) Test your comments.**

Before speaking, ask yourself, "Does this contribute to an effective meeting?" If you sense it subtracts, keep your mouth shut.

**5) Respect others.**

Different views force us to think. After all, if we were all the same, they would need only one of us. So, accept what others say as being valid from their viewpoint. Work to understand why others are expressing ideas that you find disagreeable.

**6) Take a rest.**

If you notice that you are speaking more than anyone else in a meeting, stop and let others talk. You're either dominating the meeting with monologues or conducting a conversation with a minority of the participants. In either case, you're preventing the other attendees from participating.

These are but a few of the things you can do as a quorum court member to contribute to a productive meeting.

I want to discuss a few other things that I have not yet touched on. These tips are primarily for the Chair of the meeting. But, remember that could be a member of the Quorum Court in the absence of the County Judge.

- **Summarize** – After each agenda point, summarize the key decisions, opinions and actions. It's your job to make sure those decisions and actions are clearly understood and that they are moving in the right direction to accomplish the meeting's objectives. It is also a good idea, especially when there has been lengthy discussion on a complicated issue, for the Chair to summarize with clarity the question being voted on.
- **Don't be afraid to say you don't know** – Hopefully, you'll have done your research before the meeting starts but there's always a chance that someone will hit you with an issue you know nothing about. If this happens, remain calm. Use the old trick of repeating the question or using a phrase such as "that's a very interesting point". This gives you a few seconds to get your answer straight in your mind, reducing the possibility of stuttering or sounding unsure. If you don't know the answer, admit it. Say, "I wasn't aware of that particular issue, does anyone else here have any knowledge about it?" If nobody else speaks up, ask the questioner to see you after the meeting to give you some background. It could well be something important and even if it's not, you'll look good in front of your audience.
- **Thank your audience** – Always thank attendees once the meeting is finished. It is common courtesy and people appreciate it.

Here is something else that is very important – keeping a good and accurate record of the meeting. We call it "taking minutes". It's a boring job but someone's got to do it. Under Arkansas law the secretary of the Quorum Court is the County

Clerk unless the court, through ordinance, decides to hire someone else from the staff of either the County Clerk or the County Judge [ACA 14-14-902(a)(1)(2)(3)(A)(B)(C)].

Taking minutes may not be the most glamorous job in the world but it's absolutely necessary to avoid conflict and mixed messages later on. Here's how to produce a good set of minutes.

Minutes need to be:

- Accurate. They must be a true record of what occurred. That means no drifting off during finer points of discussion.
- Clear and unambiguous. Minutes cannot be open to interpretation or discussion. Otherwise, they're pointless.
- Consistently structured. Decide on a structure (bullet points or numbers are the most common) and stick to it. Your minutes will be a lot easier to read and they will look a lot more professional.
- Brief. You should summarize discussions and decisions rather than attempt to get them down verbatim.

It's also vital that whoever takes the minutes understands the subject. A confused note taker will produce confused minutes. If something is not clear, ask for clarification from the speaker or the Chair. It could save a lot of time, confusion or disagreement later on.

The Association of Arkansas Counties has a Justice of the Peace Procedural Manual on their web site under "publications" that contains a Procedural Guide for Arkansas County Quorum Court Meetings. This guide is found in Chapter 6 of the manual and is recommended reading and study for every Quorum Court Justice and every County Judge.

I leave you with this last thought for a smooth and effective public meeting. The "attitude" and "temper" should be checked at the door. Arthur Gordon relates this personal story, "At a turbulent meeting once I lost my temper and said some harsh and sarcastic things. The proposal I was supporting was promptly defeated. My father who was there, said nothing, but that night, on my pillow I found a marked passage from Aristotle: Anybody can become angry – that is easy, but to be angry with the right person and to the right degree and at the right time and for the right purpose, and in the right way – that is not within everybody's power and is not easy."

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## ***Fraud and Ethical Lapses – There's No Place for It***

***By: Eddie A. Jones***

***County Government Consultant***

### **Working for the People is a Public Trust**

Government fraud, in essence, refers to illegal acts that intentionally divest the government of funds through deception or scams. When the government gets swindled, taxpayers pay the price.

In my opinion, government fraud is a serious crime and should be pursued to the fullest extent of the law. In many government fraud cases, both criminal and civil charges are brought against the defendant. As Thomas Jefferson said, "When man assumes a public trust he should consider himself a public property."

In the past couple of years ethics violations, criminal investigations and criminal charges have become more common in Arkansas government – both at the state and local levels. This should not be! As elected officials and employees of government you are keepers of the public trust – a public trust created by a strict code of conduct that is a part of law.

Since I have a county government background, most of what I say in this article is directed toward county officials and employees – but, in many cases would be applicable to other levels of government.

Arkansas Code Annotated 14-14-1202 establishes in law "ethics for county government officers and employees." The initial sentence of that law simply says, "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." So, not only are county officials bound by an ethics code – but employees are, too.

This law goes on to set forth the "Rules of Conduct" and establishes the procedure for removal from office or employment. In my opinion, the breach of this "public trust" by an elected official should cause an immediate rendering of a resignation.

There is no place in government, at any level, for anything but the highest ethical standards, a strong work ethic, and a heart for service.

### **Fraud Increases during an Economic Downturn**

One of the most recent reports released by the Association of Certified Fraud Examiners (ACFE) estimated that U.S. organizations lose 5% of their annual revenues to fraud. Workplace fraud schemes occur across all types of organizations including corporations, small businesses, not-for-profit organizations and government.

I do not believe internal fraud or employee theft is widespread in Arkansas county government – because I believe that for the most part county elected officials and county employees are people of integrity. However, sadly it is not uncommon anymore to read the morning paper or hear a news report concerning an elected official or employee who has been charged with some type of fraud crime.

As a county constitutional officer, the last thing you want to have happen under your watch is theft of county funds. Some think, “It would not happen in our community.” Unfortunately, *it* happens. And, when it does occur, it can be traumatic for the community where it occurs. Therefore, to be proactive and prevent theft and fraud, it is important to have sound internal controls in place.

In an economic downturn, studies show that there is an increase in fraud. County officials play an important role in ensuring that proper internal control policies and procedures are developed and consistently implemented to protect tax dollars. You want to implement procedures that reduce the risk of theft and increase the chance of early detection. A county official that has no desire or sees no need in implementing proper internal control policies will bear watching.

It is bad enough when an employee commits fraud – but when an elected official commits fraud it is the epitome of hypocrisy. A person who runs for office has actually asked the public to vote for them – to put their trust in them. You have both a moral and legal obligation to serve with integrity. Your constituents deserve officials they can trust and depend on to always do the right thing.

### **Types of Theft and What to Watch For**

The most commonly reported offenses in the government and public administration sector, according to ACFE, were billing schemes, skimming, theft of non-cash assets, theft of cash on hand, procurement fraud, payroll fraud and expense reimbursement fraud. Sound familiar?

- In billing schemes, the person causes the government to issue a payment by submitting invoices for fictitious goods or services, inflated invoices, or invoices for personal purchases. An example would include “phantom vendors” – where a person creates a shell company and bills the employer for nonexistent services.
- “Skimming” involves taking cash before it is recorded on the books and records. An example would be an official or employee accepting payment from a customer but not recording the payment and keeping the cash.
- “Theft of cash on hand” cases refer to taking cash kept at the government office.
- “Theft of non-cash assets” include the taking or use of county property for personal use. This would include taking office supplies, janitorial supplies, equipment, postage, and the list goes on. If it is county property it is not the property of an official or employee for personal use or personal gain.
- An example of “procurement fraud” is a company using bribes to win a contract even when it did not make the lowest or best bid. Or it could include billing the county for incomplete work, inflating the cost of labor or supplies, and issuing kickbacks. [These schemes can get rather elaborate and do not seem to be as prevalent as they were in years past.]
- “Payroll fraud” includes claims of overtime or comp time for hours not actually worked, or the addition of “ghost employees” to the payroll. Payroll fraud can get very complicated and creative. There are counties that can vouch for the creativeness of payroll fraud.
- Expense reimbursement cases include filing false expense reports, claiming nonexistent meals, mileage, etc.

Theft and fraud may take several forms. It may be as simple as an official or employee writing a check to himself/herself, but recording in the county records that the check was written to a vendor. It may involve a failure to deposit all county funds into county accounts. It may involve submitting personal expenses as employee expenses, or altering invoices presented to the county for payment. The most common fraud for small organizations involves check tampering. This occurs when only one individual has access to the checkbook and also the responsibility for recording payments and/or reconciling the bank statements. Small office operations, where a limited staff can make it difficult to segregate duties, can be particularly susceptible to this type of fraud.

You may think these types of things don’t really happen – but they do! Sometimes they happen because – frankly some people are not honest. Others are in dire straits financially and they think they’ll just “borrow” a little for a while. Of course, even these normally trustworthy people have a lapse in “honesty” or they would not steal. As George Knight said, “Dishonesty is never impulsive.”

It has been said many times that we almost force our local and state officials to be dishonest because we pay them so little for what we expect from them. While this may be true anecdotally and low pay in many areas should be addressed – this situation should never be the reason for doing wrong.

### **How Fraud Happens**

An ACFE study confirmed that in fraud, the more authority a person has, the greater the loss. This makes sense because a person with more authority has greater access to resources and the greater ability to override controls in order to conceal the fraud.

The study also found a direct correlation between the length of time an employee has been employed and the size of the loss. An employee’s tenure is likely related both to trust and to opportunity. The more trust placed in an employee, the greater the person’s opportunity to commit fraud. Long-term employees may also be the most familiar with gaps in the office operations and controls, which may help them avoid detection more easily.

Of course, every organization wants to have some long-time, trusted employees – but when the public trust is at stake everyone must be accountable.

### **Procedures to Reduce the Risk of Theft**

To reduce the risk of theft, every county should implement basic safeguards. *An environment of accountability should be created.*

**Segregation of Duties.** Simply put, no official or employee should be in a position to commit an irregularity and then conceal it. To help prevent that from happening, responsibilities in financial transactions should be divided amongst more than one person, or segregated. An example of segregation of duties taken from everyday life is a movie theater, where one person sells tickets and another person collects the tickets. This separation of duties helps prevent the person selling the tickets [the one handling the money] from: (1) collecting the price of the ticket, but allowing entry without a ticket – allowing the ticket seller to pocket the ticket payment without being detected; or (2) allowing entrance without the purchase of a ticket.

Examples of incompatible duties that should be performed by separate individuals are:

- Receipting collections, posting collections and making bank deposits;
- Signing checks and reconciling the bank accounts.

Even with personnel cuts, financial duties should remain segregated. Counties may need to be creative and segregate duties by involving employees who have not previously played a role in financial transactions. For those offices with only two employees – the official and one employee – regularly switch office duties and look over each other's work. With offices with only one person – well, just remember you have been entrusted to do what is right. Don't mess it up!

**Internal Control Procedures.** Many internal control procedures are common-sense methods used to track county funds. Here are a few procedures that may help prevent thefts or allow earlier detection of thefts:

- Have checks written to the county;
- Endorse checks for deposit as they are received;
- Make daily deposits;
- Reconcile receipts with deposits;
- Contact your bank or banks to: prohibit cash withdrawals and check cashing from the county account, and be sure authorized signatures are up-to-date;
- Do not pre-sign any checks;
- Reconcile bank statements regularly. With on-line banking you can do it daily in a matter of minutes; and
- Require detailed original receipts for the reimbursement of employee expenses.

And remember, under Arkansas law, financial institutions must provide government entities either the cancelled checks or optical images of both the front and back of the checks. By comparing the cancelled checks with your financial records, discrepancies may be detected.

Internal control procedures help reduce the opportunity for fraud to be committed.

### **Red Flags in Detecting Theft and Fraud**

Theft can result from poor segregation of duties. Possible indicators of theft, or “red flags”, include instances when an employee:

- Takes records home;
- Takes on duties that should be segregated;
- Works hours when others are absent;
- Refuses to take vacations or time off.

Theft can also result from noncompliance with internal control procedures. Some red flags to watch out for:

- Submitting copies, rather than original invoices for payment, may indicate that an altered document is being submitted;
- Deposits are late;
- Receipts are not reconciling with deposits;
- Checks are written out of sequence.

Most fraudsters in government are first time offenders with clean employment histories. The vast majority of fraudsters in county government had never before been charged or convicted of a fraud-related offense and had never been punished or terminated by an employer for fraud-related conduct. It is noteworthy that most who are charged with some type of theft or fraud displayed one or more behavioral red flags that are often associated with fraudulent conduct. The most commonly observed behavioral warning signs are these:

- Living beyond means;
- Financial difficulties;
- Unusually close association with vendors or customers; and
- Excessive control issues.

Situations involving cash transactions present special risks and require extra diligence. Even small offices or departments must implement basic safeguards to reduce theft.

### **Exposing Fraud**

Frauds are generally ongoing crimes that can continue for months or even years before they are detected. According to the report issued by the ACFE frauds reported lasted a median of 18 months before being detected. Some of you may remember an incident in Arkansas county government that happened a number of years ago. A county official took a large amount of money on a year-end transaction for ten years in a row before being detected by the Division of Legislative Audit. An audit procedure was put in place after that which keeps that type of fraud from going undetected.

The most common method of detecting fraud is by a tip or complaint – when another person becomes suspicious of fraudulent activity and notifies someone. Frauds are also detected by internal and external audit, internal controls, and even by accident. While external audits, such as the ones Arkansas counties are subject to by the Division of Legislative Audit, serve an important purpose and can have a strong preventive effect on potential fraud, their usefulness as a means of uncovering fraud is somewhat limited. In other words, don't rely on the audit as your primary fraud detection method. Among the most effective internal controls a workplace can employ are *job rotation* and *mandatory vacation*.

The study and report also showed that over half of the tips were from fellow employees. This reinforces the need for county government to maintain open channels of communication so employees are comfortable bringing forward their concerns. I do understand, however, that when the fraud is being perpetrated by the county official the willingness of the employee to come forward is somewhat dampened – but it is still the right thing to do.

Fraud is preventable and can be stopped through strong internal controls and internal and external audits. Fostering an atmosphere of open communication with county staff can also be a strong measure to prevent and detect fraud. I have always heard “honesty pays” – but, according to Kin Hubbard, “it doesn't pay enough to suit some people.” And because of that it behooves us all in government to spend the extra time and make the special effort to guard the public treasury in order to preserve the public trust.

### **A Special Note to County Officials**

I served as an elected county official for many years, so I understand the gargantuan responsibility – the load you must bear. Many times without proper compensation for the job and too many times without a sufficient appropriation to properly carry out the functions of your office. But you have sworn to carry out the duties of your office and to uphold the laws of this country, this state and your county. To do that you must know what the laws are.

The laws governing Arkansas county government are expansive and to know the law it takes relentless study. Learning the law and applying the law are two different things. Learning the law is attained knowledge – but it takes wisdom to apply it correctly and efficiently and impartially. It takes effort, but seek wisdom – search for it. Wisdom is simply the proper application of knowledge. Knowing the law that governs you and the laws that you are to administer in the operation of your office will keep you from making ethical missteps and be a reminder of the public trust reposed in you. As Davis Starr Jordan, founding president of Stanford University said, “Wisdom is knowing what to do next; virtue is doing it.”

Serving as an elected county official is a sacred responsibility and your personal and professional integrity should be paramount. Even if you don't get caught doing wrong – you have still done wrong and broken the trust the people have placed in you. And, as the old saying goes, “Men are not punished for their sins, but by them.” No truer words have ever been spoken than the words of Martin Luther King, Jr. when he said, “The time is always right to do what is right.”

*“Every job is a self-portrait of the person who does it. Autograph your work with excellence.*

## Chapter Nine – FAQs

This section presents the FAQs (Frequently asked questions) in general and specifically for each elected position. Please refer to the Association of Arkansas Counties website for the complete answers to the questions presented. (<http://www.arcounties.org/faq/general-faqs>)

### **General FAQs:**

Do county elected officials and county employees receive retirement credit for a bonus or lump sum payment?

Who in county government is responsible for maintaining custody of the titles to county owned vehicles and equipment?

Is county government exempt from paying sales taxes?

Is a county liable for paying the normal fees to a county employee for serving as a juror or a prospective juror? If so, is the county allowed to deduct those fees from the regular salary of the county employee? Does the county have to bear all of the cost?

May a retiring county official or employee keep county health care insurance coverage upon and during retirement? Can they keep dependent coverage and is it mandatory for the county to allow retirees continued health care insurance coverage?

### **County Judge FAQs:**

Why do counties of Arkansas pay workers compensation premiums for volunteer firefighters since they are not employees of the county?

Is it correct that a county can only appropriate 90% of the anticipated revenues of the county each year and, if so, why? What happens to the 10% of the revenue that is not appropriated?

Can 911 revenues be used for anything other than equipment and salaries?

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

Who in county government is responsible for maintaining custody of the titles to county owned vehicles and equipment?

What does Arkansas law say about the establishment and use of the County Clerks Cost Fund?

What is the proper procedure for the establishment and use of the County Collectors Automation Fund?

Is it a requirement of law for a county to fund a county jail operation and what are some of the main sources of revenue for county jail operations?

Real property reappraisals are required to be conducted on a cyclical basis by county governments in Arkansas. What is the history of these reappraisals and how are the reappraisals paid for under current law?

What sources of revenue are produced by the Sheriff and identify any Special Revenue Funds that are used for the Sheriffs operation and how the revenue is generated for these special revenue funds?

How many years can a county legally go back to make a refund of property taxes paid in error?

How many years can a county legally go back to make a refund of property taxes paid in error?

Counties are sometimes told they cannot pay late charges or a penalty on overdue bills. Is it true that counties cannot pay penalties on bills that are past due?

The District Court system is one for which both counties and municipalities have financial responsibilities. What is the financial responsibility of county government as it concerns District Court?

What is a county's financial responsibility in the cost of the operation of a public defender's office?

Since County General funds are transferred to other county funds to supplement the operations of particular county funds, such as the Road and Bridge Fund is it legal to transfer Road and Bridge funds or money from other county funds to County General to supplement general operations?

Does the Quorum Court have any authority to add extra duties to the established duties of county constitutional officers and if so is there any limitation on that authority?

Can a quorum court set salaries of elected county officials as long as the salary is between the minimum and maximum set by the legislature even they choose to decrease the salaries?

#### **County Clerk FAQs:**

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Is it a requirement of state law that the County Clerk and County Treasurer jointly reconcile the expenditures of the county each month?

**Circuit Clerk FAQs:**

Is a county liable for paying the normal fees to a county employee for serving as a juror or a prospective juror? If so, is the county allowed to deduct those fees from the regular salary of the county employee? Does the county have to bear all the cost?

What is the proper method for the establishment and operation of the County Recorders Cost Fund?

**Treasurers FAQs:**

What is excess commission and is the term actually found in Arkansas code? If so, what is the basis for calculating and distributing excess commission and who is responsible for seeing that the task is performed?

When a county receives unclaimed property proceeds from the Auditor of States office, which county fund should it be receipted to, how can the money be used, and does the county have any future liability for the unclaimed proceeds?

What funds are devoted to the Treasurers Automation Fund and what are considered legal expenditures from this fund?

What is the proper method for the establishment and operation of the County Recorders Cost Fund?

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#### **Assessor FAQs:**

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

Assessors in Arkansas receive funding from the end-of-the-year certified excess funds in the State Property Tax Relief Fund. How should these funds be handled at the county level? If the county level fund has a balance at the end of the year does it carry over?

Real property reappraisals are required to be conducted on a cyclical basis by county governments in Arkansas. What is the history of these reappraisals and how are the reappraisals paid for under current law?

#### **Sheriff FAQs:**

Can 911 revenues be used for anything other than equipment and salaries?

Is it a requirement of law for a county to fund a county jail operation and what are some of the main sources of revenue for county jail operations?

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#### **County Lines FAQs:**

How do I subscribe to County Lines Magazine?

How do I submit news and story ideas for County Lines, the AAC's quarterly magazine?

#### **Justice of the Peace FAQs:**

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

Is it correct that a county can only appropriate 90% of the anticipated revenues of the county each year and, if so, why? What happens to the 10% of the revenue that is not appropriated?

Can a Justice of the Peace be paid a monthly salary for serving the county as a district official? In addition to serving as Justice of the Peace, can a Justice be paid for serving as an employee of the county or for any other service performed for the position?

What does Arkansas law say about the establishment and use of the County Clerks Cost Fund?

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Can a quorum court set salaries of elected county officials as long as the salary is between the minimum and maximum set by the legislature even if they choose to decrease the salaries?

#### **County Collectors FAQs:**

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

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How many years can a county legally go back to make a refund of property taxes paid in error?

Do personal property taxes have to be collected at the same time that real estate taxes are collected? If so, are there any exceptions?

May a newspaper charge for other parts of the required publication of delinquent taxes, such as headers and etc., in addition to the legal fees of \$1.50 per tract per insertion for delinquent real estate and \$1.25 per name per insertion for delinquent personal?

## Chapter Ten - GLOSSARY OF TERMS

These definitions are everyday terms that are used in the operation of the county judges' office. These terms are defined and referenced to the various statutes that describe them.

**BRIDGE** - All structures erected over a river, creek, ditch, or obstruction in a public roadway. (A.C.A. § 27-86-101 through A.C.A. § 27-86-306)

**COMMODITIES** - 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)

**COUNTY COURT** - The County Court shall be a court of record and shall keep just and faithful records of its proceedings. County Court has exclusive original jurisdiction in all matters relating to county taxes, paupers, apprenticeship of minors, and jurisdiction in each other case that may be necessary to the internal improvement and local concern of the county. The county court, in fact, is the county judge sitting in a judicial role. (A.C.A. § 14-14-1001)

**COUNTY EQUALIZATION BOARD** - A board composed of qualified electors of the county who are real estate owners for at least one year. The board is responsible for equalization of assessments in the county. (A.C.A. § 26-27-301 through 26-27-305)

**COUNTY OR SUBDIVISION THEREOF** - A county is a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs and is defined as a body politic and corporate operating within specified geographic limitations established by law. All departments, except departments administratively assigned to other elected officials of the county, boards and subordinate service districts created by county ordinance. (A.C.A. § 14-14-102)

**FISCAL YEAR** - Every level of government has a different fiscal year. They are as follows:

County fiscal year - January 1 - December 31

State fiscal year - July 1 - June 30

Federal fiscal year - October 1 - September 30

**FORMAL BIDDING** - The procedure to be followed in the solicitation and receipt of sealed bids, wherein: 1) notice shall be given of the date, time, and place of opening 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; 2) the furnishing, not less than ten (10) days in advance of the date fixed for opening the bids, of notice and bid forms to all eligible bidders on the bid list for the class of commodities on which bids are to be received, and the furnishing of notices and bid forms to all others requesting the same; and 3) by posting in a conspicuous place in the county courthouse, at least ten (10) days in advance of the date fixed for opening bids, a copy of the notice of invitation to bid. (A.C.A. § 14-22-101)

**HOSPITAL BOARD OF GOVERNORS** - The board charged with the responsibility of the management, control and operation of the county hospital. (A.C.A. § 14-263-103)

**OPEN MARKET PURCHASES** - Those purchases of commodities by a purchasing official in which competitive bidding is not required. (A.C.A. § 14-22-101)

**PURCHASE** - Shall include not only the outright purchase of commodity but also the question of commodities under rental-purchase agreements or lease-purchase agreements or any other type of agreements whereby the county has an option to buy the commodity and to apply the rental payment on the purchase price thereof. (A.C.A. § 14-22-101)

**PURCHASING OFFICIAL** - Any county official, individual, board of commission, or his or its' lawfully designated

agent, with constitutional authority to contact or make purchases in behalf of the county. (A.C.A. § 14-22-101)

**PURCHASE PRICE** - The full sale or bid price of any commodity, without any allowance for trade-in. (A.C.A. § 14-22-101)

**RURAL DEVELOPMENT AUTHORITY** - Public corporations created for the improvement of the designated rural area under the order of the county court. (A.C.A. § 14-188-103)

**PUBLIC SAFETY ANSWERING POINT**- A secondary public safety answering point is the location at which 911 calls are transferred to from a primary public safety answering point. (A.C.A. § 12-10-303). Duties of the Arkansas Emergency Telephone Services Board can be found at A.C.A. § 12-10-318(c). Training standards can be found at A.C.A. § 12-10-325. Restriction on creation and data maintenance of public safety answering points can be found at A.C.A. § 12-10-327. A new public safety answering point shall not be established until July 1, 2020, unless the new public safety answering point is established as a result of: (1) consolidation with an existing public safety answering point; or (2) Replacement of an existing public safety answering point. A chief executive shall designate a 911 addressing authority that shall create and maintain street centerline and address point data in a geographic information system format. (A.C.A. § 12-10-327)

**STATE AID ROADS** - The classification of county roads composing the major collector and minor collector routes feeding into local trade areas or into the state highway system, which are not designated as state highways, and particularly those essential to the conservation and development of natural resources of economic and social value, and encouraging desirable land utilization, having in addition one or more of the following characteristics:

- Roads (including bridges and ferries) which;
- (a) extend to the larger communities including all incorporate towns,
  - (b) connect with road of major importance in adjoining counties.
  - (c) connect with the state highways to form a complete network of main feeder roads.
  - (d) carry heavy volumes of traffic serving major business and agricultural interest of the county, and

- (e) collect traffic at reasonable intervals from several local roads. (A.C.A. § 27-72-301)

**TRADE IN PURCHASES** - All purchases where offers must be included with the bids of each bidder for trade-in allowance for used commodities. (A.C.A. § 14-22-101)

**USED OR SECONDHAND EQUIPMENT OR MACHINERY** - Motor vehicles, equipment or machinery that is at least one year in age from the date of original manufacture or that has had at least 250 working hours prior use or 5,000 miles prior use. A purchase of a used motor vehicles, equipment or machinery shall be accompanied by a statement in writing from the vendor on the bill of sale or other document that the motor vehicle, equipment, or machinery is at least 1 year in age from the date of original manufacture or has been used a minimum of 250 hours or driven a minimum of 5000 miles. The statement shall be filed with the county clerk at the time of purchase. (A.C.A. § 14-22-101)

