



# DIGEST OF OPINIONS



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**The Honorable Randy Brogdon  
State Senator, District 34**

**Opinion 06-1  
February 14, 2006**

1. The 2005 amendments to the Oklahoma Real Estate License Code, 59 O.S. 2001 and Supp.2005, §§ 858-101 through 858-732, amending the duties and responsibilities of real estate brokers, do not prevent the seller in a real estate transaction from receiving offers and counteroffers directly.
2. Title 59 O.S. Supp.2005, §§ 858-353(A)(2) and 858-354(B)(2) providing that a broker must “be available to” receive offers and counteroffers, do not require a listing broker, whether a transaction broker or a single-party broker, to receive written offers and counteroffers from a buyer or a buyer’s broker if the seller has instructed the listing broker the seller wants to receive offers directly and does not want to go through the listing broker.
3. Title 59 O.S. Supp.2005, § 858-353(A) allows a seller in an agreement with a transaction broker to waive the mandatory duties and responsibilities imposed by statute upon transaction brokers. This waiver does not apply to single-party brokers, 59 O.S. Supp.2005, § 858-354(B), but is not relevant to your questions as we have concluded there is no mandatory duty for a transaction broker or a single-party broker to receive offers and counteroffers.
4. As a broker has a duty pursuant to 59 O.S. Supp.2005, §§ 858-353 and 858-354 to “be available to” present written offers and counteroffers and to “exercise reasonable skill and care” a buyer’s broker is required, if requested by the buyer, to present offers directly to a seller. Additionally, a single-party broker is required to “perform all brokerage activities for the benefit of the party for whom the single-party broker is performing services unless prohibited by law” and “[t]o obey the specific directions of the party for whom the single-party broker is performing services that are not contrary to the applicable statutes and rules or contrary to the terms of a contract between the parties to the transaction[.]” *Id.* § 858-354(B)(7), (9). These statutes would require a buyer’s broker, if requested by the buyer, to present an offer directly to a seller.
5. A broker who presents an offer to an unrepresented seller on behalf of a buyer is not required to assist the unrepresented seller with any steps in a real estate transaction. 59 O.S. Supp.2005, §§ 858-353(D), 858-354(F).

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**The Honorable Jari Askins  
State Rep., District 50****Opinion 06-2  
Feb. 14, 2006**

1. When a vacancy occurs in a judicial office, the plain and unambiguous language of OKLA. CONST. art. VII-B, § 4, requires the Judicial Nominating Commission to submit to the Governor and the Chief Justice of the Oklahoma Supreme Court three nominees who have expressed a willingness to serve in that office.
2. When fewer than three qualified individuals express a willingness to serve, the Judicial Nominating Commission may not submit fewer than three names. OKLA. CONST. art. VII-B, § 4.
3. When fewer than three qualified individuals express a willingness to serve, the Judicial Nominating Commission should continue the process until the constitutional requirement of three qualified nominees is met. OKLA. CONST. art. VII-B, § 4.<sup>1</sup>

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<sup>1</sup> According to the records of the Administrative Office of the Courts for the past seven years, in only one instance have fewer than three qualified individuals expressed a willingness to serve in a judicial position. In that instance, upon readvertising the judicial vacancy and extending the deadline for applications, more than three persons submitted their names for consideration. The Judicial Nominating Commission was then able to submit the names of three qualified individuals to the Governor and the Chief Justice of the Supreme Court, and the vacancy was filled.

**The Honorable Glen Coffee  
State Senator, District 30****Opinion 06-3  
March 6, 2006**

1. When two bills arising from the same legislative session are passed into law and address the same statute, the later-enacted statute controls if the two cannot be harmonized. *Pickett v. Okla. Dep't of Human Serv.*, 932 P.2d 543, 545 (Okla. 1996).
2. Where there is an irreconcilable conflict between two statutes, the earlier provision will be repealed by the later one. *City of Sand Springs v. Dep't of Pub. Welfare*, 608 P.2d 1139, 1151 (Okla. 1980).

3. A statute with an effective date fixed by the Legislature has no effect until the date designated. *Phillips v. D. & J. Enter., Inc.*, 288 So.2d 137, 138 (Ala. 1973); *Iowa v. Allan*, 166 N.W.2d 752, 760 (Iowa 1969).
4. Senate Bill 374 and House Bill 1502, defining the term "testing facility" under the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. Supp.2005, §§ 551 through 565, are in conflict and cannot be reconciled with one another. *See* 2005 Okla. Sess. Laws ch. 134, § 1; 2005 Okla. Sess. Laws ch. 190, § 5. As House Bill 1502 was amended later, it is controlling, and the term "testing facility" does not include on-site drug or alcohol screening tests to screen out negative test results under certain conditions.

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**The Honorable Jim Reynolds  
State Senator, District 43****Opinion 06-4  
March 15, 2006**

1. Federally recognized Indian tribes do not fall within the definition of "employer," as that term is used in the Oklahoma Workers' Compensation Act, 85 O.S. 2001 & Supp.2005, §§ 1 – 211, and are thus not required to provide their employees with coverage under that Act.
2. Because of their status as sovereigns, federally recognized Indian tribes are not subject to the jurisdiction of the Workers' Compensation Court in the absence of an express waiver. Tribes may, however, purchase workers' compensation insurance to cover their employees. Insurers from whom Indian tribes purchase such insurance are subject to the jurisdiction of the Workers' Compensation Court and are estopped from denying coverage, even though the tribe itself is protected by sovereign immunity.
3. Federally recognized Indian tribes and tribal units, including subdivisions, subsidiaries and business entities that are wholly owned by a tribe, are exempt from the requirements of the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 – 3311, as long

as they participate in a state unemployment program and meet their obligations under the state system. Indian tribes or tribal units that fail to meet their obligations under Oklahoma's Employment Security Act of 1980, 40 O.S. 2001 & Supp.2005, §§ 1-101 – 9-104, are terminated from participation in the state program, and notice of that termination is forwarded to the United States Internal Revenue Service and the United States Department of Labor as required by 40 O.S. Supp.2005, § 1-108(I).

4. Under the provisions of 26 U.S.C. § 3309(d), a federally recognized Indian tribe that fails to meet its obligations under a state unemployment system loses its exemption under the federal Act and become liable for the payment of federal unemployment tax. Further, the tribe's employees remain uncovered until the tribe participates, as required, in the state system.
5. Neither the Oklahoma Workers' Compensation Act, nor the State or federal unemployment laws, provide for different treatment of employees of a federally recognized Indian tribe based upon tribal membership.
6. What remedies, if any, an employee of a federally recognized Indian tribe might have if injured on the job and not covered by workers' compensation insurance, or unemployed and not covered by unemployment insurance, involves questions of fact and tribal law which are beyond the scope of an Attorney General Opinion. 74 O.S. 2001, § 18b(A)(5).

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**The Honorable Mike Morgan      Opinion 06-5**  
**President Pro Tempore, Dist. 21    March 14, 2006**

1. The Oklahoma Commission on Consumer Credit does not have authority to enforce the federal Real Estate Settlement Procedures Act ("RESPA") (12 U.S.C. §§ 2601 – 2617 (1996)). However, the Commission and the Administrator of Consumer Credit

have the authority to enforce the Oklahoma Mortgage Broker Licensure Act ("Licensure Act") (59 O.S. 2001 & Supp.2005, §§ 2081 – 2093). Title 59 O.S. Supp.2005, § 2086(B) requires mortgage brokers to provide borrowers with a full written disclosure containing an itemization and explanation of all fees and costs associated with the loan that the borrower must pay, including, at a minimum, a specification of all fees that inure to the benefit of the broker. *Id.* § 2086(B)(1).

2. RESPA and the Licensure Act both allow a mortgage broker to charge a fee for loan origination services. 59 O.S. Supp.2005, § 2082(5). Under the Licensure Act the fee is referred to as a "loan origination fee." *Id.* Under RESPA the fee is referred to as a "settlement fee" for "loan origination services." 24 C.F.R. § 3500.2 (definitions of "settlement service" and "mortgage broker"); 24 C.F.R. § 3500, App. A (Section L of Sample HUD-1 form). RESPA distinguishes between a "loan origination fee" charged by a lender and entered at line 801 of the HUD-1 form and a fee for loan origination services charged by a mortgage broker and entered at lines 808-811 of HUD-1. *See* 24 C.F.R. § 3500, App. A (Section L of Sample HUD-1 form). Loan origination fees charged by mortgage brokers pursuant to the Licensure Act are equivalent to the mortgage broker fees for loan origination services entered at lines 808-811 of the HUD-1 form under RESPA.
3. The Oklahoma Commission on Consumer Credit has the authority to prescribe the manner in which mortgage brokers complete the HUD-1 form for the purpose of verifying compliance with the Licensure Act. The manner prescribed must be consistent with RESPA and the regulations issued by the Secretary of Housing and Urban Development at 24 C.F.R. § 3500. Requiring mortgage brokers to list their fees for loan origination services on lines 808-811 of the HUD-1 is consistent with RESPA and 24 C.F.R. § 3500. However, the Commission must promulgate administrative rules pursuant to Article I of the Oklahoma Administrative Procedures

Act (75 O.S. 2001 & Supp.2005, §§ 250 – 308.2) before it can require brokers to complete the HUD-1 form in a certain manner.

4. The Administrator of Consumer Credit may order a mortgage broker to refund a fee for loan origination services as restitution for actual damages pursuant to 59 O.S. Supp.2005, § 2088(A)(6) following an individual proceeding conducted in accordance with Article II of the Oklahoma Administrative Procedures Act (75 O.S. 2001 & Supp.2005, §§ 308a – 323).

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**The Honorable Ben Sherrer**                      **Opinion 06-6**  
**State Rep., District 8**                              **March 15, 2006**

1. A federally recognized Indian tribe with land constituting “Indian country” may issue motor vehicle licenses to its members who live and garage their vehicles in Indian country. *Okla. Tax Comm’n v. Sac and Fox Nation*, 508 U.S. 114, 128 (1993).
2. No reported case indicates the United Keetoowah Band of Cherokee Indians has land constituting “Indian country” and no reported case indicates the United Keetoowah Band of Cherokee Indians has land set apart for its use under the superintendence of the government; however, this is ultimately a question of fact, which pursuant to 74 O.S. 2001, § 18b(A)(5), cannot be answered in an Attorney General Opinion. *Buzzard v. Okla. Tax Comm’n*, 992 F.2d 1073, 1075 (10th Cir. 1993).
3. An Indian tribe without land constituting “Indian country” may not issue motor vehicle licenses to its members. *Okla. Tax Comm’n v. Sac and Fox Nation*, 508 U.S. 114, 128 (1993).

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**The Honorable Randy Terrill**                      **Opinion 06-8**  
**State Rep., District 53**                              **March 28, 2006**

1. The County Purchasing Act, 19 O.S. 2001 & Supp.2005, §§ 1501 – 1507, vests discretion in the board of county commissioners in determining whether to approve or disapprove a proposed county purchase contract. *Id.* § 1505(B)(4).
2. Such discretion must be exercised by the board of county commissioners in a manner that is not arbitrary or capricious, with the board of county commissioners taking into consideration all reasonably available materials or opinions pertinent to the decision. *Nixon v. Roberts*, 420 P.2d 898, 903 (Okla. 1966); *Heisler v. Thomas*, 651 P.2d 1330, 1331 (Okla. 1982).
3. The board of county commissioners may employ a data processing technician to assist and advise the board of county commissioners in making decisions on contracts to purchase computer equipment and computer-related services. 19 O.S. 2001, § 377. The board of county commissioners may accept recommendations from such technician and from the county purchasing agent pursuant to 19 O.S. 2001, § 376(B), but such recommendations are not binding on the board of county commissioners, which retains discretion over such purchasing decisions. 19 O.S. Supp.2005, § 1505(B)(4).
4. An Opinion of the Attorney General is binding upon the state officials affected by it, and it is their duty to follow and not disregard such Attorney General Opinion. *State ex rel. York v. Turpen*, 681 P.2d 763, 765 (Okla. 1984). This duty continues unless or until a judgment of a court of competent jurisdiction relieves the public officials of the burden of compliance. *Id.*

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**The Honorable Jari Askins  
State Rep., District 50**

**Opinion 06-9  
March 28, 2006**

Title 10 O.S. 2001, § 7005-1.4(E) deals with the public release of information, not necessarily records. The release of information pursuant to 10 O.S. 2001, § 7005-1.4(E) is permissive and there is no duty for the Department of Human Services, the Oklahoma Commission on Children and Youth or the district attorney to make any disclosure. If one of the entities decides to disclose information, there is no duty to disclose any information specified in subsection E that the entity received from any of the other entities specified in that section.

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**Mr. Oscar B. Jackson, Jr.,  
Administrator & Cabinet Secretary of  
Human Resources & Administration**

**Opinion 06-10**

**Ms. Suzanne McClain Atwood,  
Executive Coordinator**

**District Attorneys Council      March 30, 2006**

1. The statutory declaration of 19 O.S. Supp.2005, § 215.30(B) that “appointees and employees of district attorneys . . . shall be deemed to be state officers or employees for all purposes” does subject those individuals to the Oklahoma Personnel Act and Merit System Administrative Rules in the same way as unclassified employees.
2. Because district attorney offices are participating employers under the Oklahoma State Employees Benefits Act, district attorneys and their employees may participate in OK Health. OAC 530:10-7-19.
3. Each district attorney is the “Appointing Authority” for his or her office; therefore, each district attorney can decide whether to participate in the OK Health “pay incentive” program. The District Attorneys Council is the “Appointing Authority” for the District Attorneys Council and can decide whether the DAC participates in the OK Health “pay incentive” program. OAC 530:10-7-19.

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