



DIGEST OF OPINIONS



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**A. Keith Burt, Director
Alcoholic Beverage Laws Enforcement Commission**

**Opinion 06-33
October 5, 2006**

1. The Alcoholic Beverage Laws Enforcement Commission, acting under the authority of the Oklahoma Alcoholic Beverage Control Act (37 O.S. 2001 & Supp.2005, §§ 502 – 599), may not enforce any law that regulates low-point beer. Such regulation and enforcement pursuant to the Act is prohibited by the Oklahoma Constitution under Article XXVIII, Section 2.
2. Under OKLA. CONST. art. XXVIII, § 2, law enforcement officers of the Alcoholic Beverage Laws Enforcement Commission have no authority or duty to enforce laws regulating low-point beer, and therefore have no liability for not enforcing such laws.

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**The Honorable Bernest Cain, Jr.
State Senator, District 46**

**Opinion 06-34
October 17, 2006**

1. Pursuant to the express provisions of the Uniform Durable Power of Attorney Act, specifically 58 O.S. 2001, § 1072.1(B)(1)(b), a durable power of attorney may authorize an attorney-in-fact to make life-sustaining treatment decisions for the principal if the instrument complies with the requirements for appointment of a health care proxy under the Oklahoma Advance Directive Act, 63 O.S. 2001 & Supp.2006, §§ 3101 – 3102A, as set forth in the answer to your second question.
2. For a health care proxy or attorney-in-fact to make life-sustaining treatment decisions on behalf of his or her principal, including the withholding or withdrawal of artificially administered hydration and nutrition, a health care proxy appointment or durable power of attorney must: (i) be in writing; (ii) be dated and signed by an individual 18 years old or older before two witnesses who are also 18 years old or older and who are not legatees, devisees, or heirs at law of the principal; (iii) contain language specifically authorizing the attorney-in-fact to make life-sustaining treatment decisions; and (iv) contain language specifically authorizing the attorney-in-fact to consent to the withholding or withdrawal of artificially administered hydration and nutrition that is in the principal's own words or in a separate section, separate paragraph or other separate subdivision that deals only with nutrition and/or hydration and which section, paragraph or other subdivision is separately initialed, separately signed or otherwise separately marked by the principal. 63 O.S. Supp.2006, §§ 3080.4, 3101.4.
3. An attorney-in fact may consent to the withholding or withdrawal of artificially administered hydration and nutrition on his or her principal's behalf, even if the

instrument is not witnessed by a notary public but complies with the requirements for appointment of a health care proxy under Oklahoma's Advance Directive Act, 63 O.S. Supp.2006, §§ 3080.4, 3101.4, as set forth in the answer to your second question.

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The Honorable Mike Reynolds OPINION 06-35
State Representative, District 91 Nov. 9, 2006

1. The Oklahoma Ethics Commission or any other public body may not make rules, policy or procedures that conflict with the Open Records Act ("Act") or its enabling legislation. OKLA. CONST. art. XXIX; 74 O.S. Supp.2006, ch. 62, R. 257:10-1-1; 51 O.S. 2001 & Supp.2006, §§ 24A.1 – 24A.29; *Marley v. Cannon*, 618 P.2d 401, 405 (Okla. 1980).
2. The Act requires public bodies, including the Ethics Commission, to allow the public to have access to records of public bodies and public officials for inspection, copying and/or mechanical reproduction during regular business hours, except for certain materials required by law to be kept confidential. 51 O.S. 2001 & Supp.2006, §§ 24A.2, 24A.5.
3. The particular means of copying or reproducing records is not specified in the Act. A public body may establish reasonable procedures to protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions. 51 O.S. Supp.2006, § 24A.5(5). The use by a requesting person of his or her own copying equipment is not prohibited by the Act and must be permitted by the public body as long as such person's copying process does not unreasonably disrupt the essential functions of the public body or result in defacing or loss of such records. 51 O.S. Supp.2006, § 24A.5(5); *see Transp.*

Info. Serv., Inc. v. State ex rel. Okla. Dep't of Corr., 970 P.2d 166, 172 (Okla. 1998).

4. Whether the means chosen by a public body to protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions is reasonable and in compliance with the Act involves questions of fact which cannot be answered in an Attorney General's Opinion. 74 O.S. 2001, § 18b(A)(5).
5. There is no requirement that the Ethics Commission or other public body supply an original document to the person requesting such record for inspection, copying and mechanical reproduction, as long as the copy furnished is a true and correct copy of the original. 51 O.S. Supp.2006, § 24A.5(5); 12 O.S. Supp.2006, §§ 3002, 3003, 3005; 67 O.S. 2001, § 301(A)(1).
6. The Attorney General is not required to issue an opinion on a matter that is in litigation. 74 O.S. 2001, § 18b(A)(3), (A)(5); *State ex rel. York v. Turpen*, 681 P.2d 763, 767 (Okla. 1984); *Clampitt v. Johnson*, 359 P.2d 588, 592 (Okla. 1961); *Moody v. Branson*, 136 P.2d 925, 928 (Okla. 1943); OKLA. CONST. art. IV, § 1.

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Chairman Larry Shea OPINION 06-36
Construction Industries Board Nov. 20, 2006

An employment agency that assigns its employee electricians to another for the installation, repair, maintenance or renovation of electrical facilities or electrical construction work is furnishing labor for those purposes and as such constitutes an electrical contractor pursuant to the Oklahoma Electrical Licensing Act (59 O.S. 2001 & Supp.2006, §§ 1680 – 1697), specifically 59 O.S. Supp.2006, § 1682(5).

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The Honorable Ray Don Jackson OPINION 06-37
District Attorney, District 26 Nov. 20, 2006

1. Interest provided for in 68 O.S. Supp.2006, § 2844(A), when collected, is allocated to the resale property fund for the county where the property is located. *Id.* § 3137(A).
2. Only the county treasurer can correct or alter a tax roll delivered by the county assessor. Any correction or alteration can only be made on authority of a proper certificate authorized by law, or pursuant to an order or decree of court in determination of a tax protest or other proper case. 68 O.S. 2001, § 2871(A). What constitutes a proper correction or alteration of a tax roll is a question of fact and cannot be answered by an Attorney General Opinion. 74 O.S. 2001, § 18b(A)(5).

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Jean Williams, Exec. Director OPINION 06-38
Board of Governors of Licensed Architects
and Landscape Architects Nov. 21, 2006

1. In answer to your first question:
 - (a) Architects licensed pursuant to the State Architectural and Interior Designers Act, 59 O.S. 2001 & Supp.2006, §§ 46.1 – 46.41, are not required to plan, design and prepare plans and specifications for buildings to be constructed for the 2003 International Building Code Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are two (2) stories or fewer in height and designed for a code-defined occupancy of no more than fifty (50) persons. 59 O.S. Supp.2006, § 46.21b(C)(1).
 - (b) Licensed architects are required to plan, design and prepare plans and specifications for buildings to be constructed for the 2003 International Building Code Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are one (1) story in height and

designed for a code-defined occupancy of fifty-one (51) persons or more. 59 O.S. Supp.2006, § 46.21b(C)(1).

- (c) Licensed architects are required to plan, design and prepare plans and specifications for buildings to be constructed for the 2003 International Building Code Use Groups A-2 and A-3 – Assembly and E - Education, if the buildings are three (3) stories or more in height and designed for a code-defined occupancy of forty (40) persons or more. 59 O.S. Supp.2006, § 46.21b(C)(1).
2. A “basement” is to be counted as a “story” of building height when determining the need for architects licensed pursuant to the State Architectural and Interior Designers Act, when any one of three conditions are met, namely: where the finished surface of the floor above the basement is (1) more than 6 feet above grade plane, (2) more than 6 feet above the finished ground level for more than 50 percent of the total building perimeter, or (3) more than 12 feet above the finished ground level at any point. 59 O.S. Supp.2006, § 46.21b(C); 2003 INTERNATIONAL BUILDING CODE, ch. 5, § 502.1, p.73.

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Joe Miller, Administrator OPINION 06-39
Professional Boxing Commission Dec. 11, 2006

1. Under the provisions of 15 U.S.C. § 6312(b)(1), part of the federal Professional Boxing Safety Act of 1996, 15 U.S.C. §§ 6301 – 6313,¹ a federally recognized Indian tribe’s tribal organization may regulate professional boxing matches held within its jurisdiction in one of two ways:
 - (a) It may regulate professional boxing matches itself, or
 - (b) It may enter into a contract with a state boxing commission to carry out such regulation.

¹ Amended by the Muhammad Ali Boxing Reform Act, Pub. L. 106-210, May 26, 2000, 114 Stat. 321.

The provisions of 15 U.S.C. § 6312, however, do not authorize a tribal organization to enter into a contract with another Indian tribe to carry out such regulation of professional boxing.

2. The land on which 15 U.S.C. § 6312 authorizes federally recognized Indian tribes to conduct and regulate professional boxing matches is a geographical area of land over which the tribe has “governmental jurisdiction,” which the statute refers to by definition as the tribes’ “reservation.” *Id.* § 6312(a)(2). To determine the geographical area over which a federally recognized Indian tribe has jurisdiction, we look to the definition of “Indian country” at 18 U.S.C. § 1151. Lands falling within that definition are lands in which the Indian tribe has governmental jurisdiction for the purposes of the Professional Boxing Safety Act of 1996, 15 U.S.C. §§ 6301 – 6313. Whether a particular tract of land is, in fact, Indian country is a question of fact, which must be determined on a case-by-case basis and cannot be answered in an Attorney General Opinion. 74 O.S. 2001, § 18b(A)(5).
3. The Oklahoma Legislature, at 74 O.S. Supp.2006, § 1221(C)(1), has empowered and authorized the Governor or the Governor’s named designee to negotiate and enter into cooperative agreements (often referred to as compacts), addressing issues of mutual interest between the State and federally recognized Indian Tribal Governments. While some other state entities are also authorized to negotiate specified contracts between the State and federally recognized Indian tribes, no statute, including the Oklahoma Professional Boxing Licensing Act, 3A O.S. 2001 & Supp.2006, §§ 601 – 622, authorizes the Oklahoma Boxing Commission to enter into an agreement with a federally recognized Indian tribe. Accordingly, agreements between the State of Oklahoma and a federally recognized Indian tribe under which the Oklahoma Boxing Commission would regulate professional boxing matches held on tribal land over which the tribe exercises

governmental jurisdiction, must be negotiated and entered into by the Governor or the Governor’s designee under the provisions of 74 O.S. Supp.2006, § 1221.

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SENIOR ASSISTANT ATTORNEY GENERAL

The Honorable Anthony Sykes **OPINION 06-40**
State Senator, District 24 **Dec. 12, 2006**

1. The Oklahoma Constitution, Article XVIII, Section 3(b) relating to special municipal elections for the selection of freeholders to draft a proposed charter for the municipality to become a charter or “home rule” city requires such election to be held not more than thirty (30) days after the adoption of an order of the municipal governing body calling the special election. This section of the Constitution is self-executing and thus may not be abrogated by the Legislature. *State v. Scales*, 97 P. 584, 587 (Okla. 1908).
2. Title 11 O.S. 2001, § 13-103, also requiring an election to select freeholders within 30 days of the order calling the election, is consistent with the requirements of the Constitution for such elections.
3. To avoid irreconcilable conflict between 26 O.S. 2001 & Supp.2006, §§ 13-101 and 13-102 and Article XVIII, Section 3(b) of the Oklahoma Constitution, the aforementioned election statutes must be interpreted as permitting municipalities to conduct their own election for selection of freeholders, rather than county election boards. Thus, the 60-day notice to the election board provision of 26 O.S. Supp.2006, § 13-102 does not apply to such municipal freeholder elections.
4. While not required, a municipality may enter into an agreement with a county election board to act as the agent of the municipality in conducting a special municipal election

under OKLA. CONST. art. XVIII, § 3(b). *See* 74 O.S. 2001, §§ 1004(A), 1008(A).

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The Honorable Rex Duncan OPINION 06-41
State Representative, District 35 Dec. 20, 2006

1. Inmates sentenced to confinement in county jail under the provisions of the Community Service Sentencing Program, 22 O.S. 2001, § 991a-4.1, are deemed to be in the custody of the county and are not to be considered inmates of the Department of Corrections.
2. To the extent that expenses for routine medical care of an inmate confined in county jail pursuant to a Community Service Sentencing Program administered by the Department of Corrections are "necessary expenses," the Department of Corrections is responsible for reimbursing the county for such expenses, subject to the limitations and requirements of reimbursement of necessary expenses set forth in 22 O.S. 2001, § 991a-4.1(C)(8). However, whether particular medical care is actually needed or required constitutes a question of fact, which cannot be addressed in an Attorney General Opinion. 74 O.S. 2001, § 18b(A)(5).

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A. Keith Burt, Director OPINION 06-42
Alcoholic Beverage Laws Dec. 27, 2006
Enforcement Commission

1. Oklahoma law generally prohibits state employees from using state-owned vehicles for private use. 47 O.S. Supp.2006, § 156.1(A). Pursuant to 47 O.S. Supp. 2006, § 156.1(B)(2), employees of the ABLE Commission who are law enforcement officers may use a state-owned

vehicle to provide transportation between the employee's residence and the assigned place of employment, and between the residence and any location other than the assigned place of employment to which the employee travels in the performance of the employee's official duty.

2. The law enforcement exception at 47 O.S. Supp.2006, § 156.1(B)(2) is based on the rationale that government transportation to a private residence at the end of the work day fulfills a public purpose, as the employee responds to emergencies from the residence. *Ethics Comm'n v. Keating*, 958 P.2d 1250, 1258 (Okla. 1998).
3. To be a law enforcement officer of the ABLE Commission for purposes of 47 O.S. Supp.2006, § 156.1(B)(2), an employee must maintain a current CLEET certification pursuant to the provision of 70 O.S. Supp.2006, § 3311(D)(5), and must be charged by the agency with duties which require that person to engage in law enforcement activities.
4. The Director of the ABLE Commission, in his role as the principal administrator of the agency, must designate an employee's status in writing before the employee is allowed to use a state-owned vehicle to provide transportation between the employee's residence and the assigned place of employment, and between the residence and any location other than the assigned place of employment to which the employee travels in the performance of the employee's official duty. 47 O.S. Supp.2006, § 156.1(C).
5. Whether a particular employee is in a position which requires him or her to engage in law enforcement activities is a question of fact which cannot be answered in an Attorney General Opinion. 74 O.S. 2001, § 18b(A)(5). We can state, however, that those employees who are not commissioned agents and are not certified by CLEET are not considered law enforcement officers for purposes of 47 O.S. Supp.2006, § 156.1(B)(2).
6. Oklahoma's prohibition against dual office holding, 51 O.S. Supp.2006, § 6, prevents a person from holding more than one office

under the law of the State. An “office” is defined as a position that is created by law for a given period of time and in which the individual is invested with some portion of the sovereign functions of the government. *Guthrie Daily Leader v. Cameron*, 41 P. 635, 636 (Okla. 1895). Section 6 does not prevent an employee from serving in the capacity of Law Enforcement Programs Administrator, part-time hearing officer, assistant municipal attorney and commissioned ABLE agent, as the only position of those four constituting an office is that

of a commissioned agent. Although the positions of municipal attorney or assistant municipal attorney are not offices under State statutes, this Opinion does not address whether particular city ordinances or charters by their terms elevate these positions to offices.

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