



DIGEST OF OPINIONS



Vol. 42, No. 3

Published Quarterly

September, 2006

The Honorable Kenneth Corn
State Senator, District 4

Opinion 06-25
July 5, 2006

1. The Oklahoma Department of Public Safety has authority for enforcement of both traffic laws and the general laws of the State of Oklahoma on the turnpikes. 47 O.S. Supp.2005, § 11-1402(A). However, the Oklahoma Department of Public Safety does not have sole law enforcement jurisdiction on the turnpikes in Oklahoma. *See id.* § 11-1402(B).
2. Pursuant to 47 O.S. Supp.2005, § 11-1402(B), the Oklahoma State Bureau of Investigation has law enforcement jurisdiction on the turnpikes in Oklahoma to investigate and enforce all laws related to certain crimes listed as exceptions to the term “nonviolent offense” as provided in 57 O.S. 2001, § 571.

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

BRYAN NEAL
ASSISTANT ATTORNEY GENERAL

Suzanne McClain Atwood, Executive Coordinator
District Attorneys Council

OPINION 06-26
July 12, 2006

1. Elected district attorneys who assumed office in January 2003 may not receive a salary increase effective July 1, 2005 in conjunction with the salary increase received by the district judges pursuant to 20 O.S. Supp.2005, § 92.1A(1), because such law was enacted on June 7, 2004, which was after the election of the district attorneys in November 2002. OKLA. CONST. art. XXIII, § 10; *see* 2004 Okla. Sess. Laws ch. 499 § 8(1).
2. District attorneys appointed after July 2005 may receive the salary in effect at the time of their appointment. Therefore, they are entitled to a salary based on 98% of the salary in effect for district judges on July 1, 2005, which was authorized pursuant to 20 O.S. Supp.2005 § 92.1A(1). OKLA. CONST. art. XXIII, § 10.
3. District attorneys may not receive a salary increase effective July 1, 2006 in conjunction with the salary increase for district judges approved by the Board on Judicial Compensation unless they were elected or appointed after June 7, 2004, the date of enactment of the statute authorizing the Board of Judicial Compensation to establish salaries for judges, upon which district attorneys’ salaries are based. OKLA. CONST. art. XXIII, § 10; *see* 20 O.S. Supp.2005 § 3.4.

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

KATHRYN BASS
ASSISTANT ATTORNEY GENERAL

The Honorable Bill Nations **OPINION 06-27**
State Representative, District 44 **July 19, 2006**

1. The Individuals with Disabilities Education Act, (“IDEA”), 20 U.S.C. §§ 1400 – 1482, was implemented to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]” 20 U.S.C. § 1400(d)(1)(A) (West, WESTLAW through 2005).
2. IDEA guarantees parents the “right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities” at due process hearings held pursuant to IDEA. *Id.* § 1415(h)(1). The language of the statute recognizes the distinction between the two roles and does not provide authorization for non-attorneys to represent parents at due process hearings. *See id.*
3. Under Oklahoma law, a person must be a licensed attorney to engage in the practice of law. 5 O.S. 2001, ch. 1, app. 1, art. II, § 7(a). Generally, “the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent” constitutes the practice of law. *R.J. Edwards, Inc. v. Hert*, 504 P.2d 407, 416 (Okla. 1972). Whether any particular act constitutes the practice of law is a question of fact, which cannot be answered in an Attorney General’s Opinion. 74 O.S. 2001, §18b(A)(5).

W. A. DREW EDMONDSON
 ATTORNEY GENERAL OF OKLAHOMA

SANDRA D. RINEHART
 SENIOR ASSISTANT ATTORNEY GENERAL

The Honorable Charlie Laster **OPINION 06-28**
State Senator, District 17 **July 19, 2006**

If the president of an Oklahoma institution of higher education were made an ex-officio, nonvoting member of the board of trustees (board of directors) of the institution’s univer-

sity-related foundation, the institution, pursuant to the terms of 70 O.S. Supp.2005, § 4306(D), is prohibited from receiving funds, services or anything of value from such foundation unless the foundation makes its financial records available to auditors who are performing audits of the institution.

W.A. DREW EDMONDSON
 ATTORNEY GENERAL OF OKLAHOMA

BRINDA K. WHITE
 ASSISTANT ATTORNEY GENERAL

Terry L. Cline, Ph.D., Comm’r **OPINION 06-29**
Department of Mental Health &
Substance Abuse Services **July 20, 2006**

1. Title 43A O.S. Supp.2005, § 1-110 authorizes the Department of Mental Health and Substance Abuse Services (“DMHSAS”) to reimburse sheriffs, peace officers and law enforcement agencies for travel expenses incurred in transporting individuals for mental health evaluation, emergency detention, protective custody and other services as set forth in Section 1-110, but only to the extent authorized by the State Travel Reimbursement Act, 74 O.S. 2001 & Supp.2005, §§ 500.1 – 500.37. DMHSAS lacks authority to reimburse law enforcement personnel for travel items other than as specified in the Act. *See Marley v. Cannon*, 618 P.2d 401, 405 (Okla. 1980).
2. The State Travel Reimbursement Act authorizes state agencies, including DMHSAS, to reimburse employees and other authorized persons for travel by motor vehicle at a rate per mile traveled, not exceeding the rate permitted by the United States Internal Revenue Code of 1986, as amended, and rules and regulations promulgated thereunder. 74 O.S. 2001, § 500.4(C). In addition, the State Travel Reimbursement Act permits agencies to reimburse employees and other authorized persons for overnight lodging and meals at specified rates when in official travel status. *Id.* § 500.4(A).
3. Whether a law enforcement agency or peace officer transporting an individual for mental health evaluation or care under Section 1-110 is authorized to obtain reimbursement for meals or lodging in a given

instance involves questions of fact, which cannot be addressed in an Attorney General's opinion. 74 O.S. 2001, § 18b(A)(5).

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

LYNN C. ROGERS
ASSISTANT ATTORNEY GENERAL

**Ed Fite, Administrator
Oklahoma Scenic Rivers
Commission**

**OPINION 06-30
August 29, 2006**

Under the implied powers of the Scenic Rivers Act, 82 O.S. 2001 & Supp.2005, §§ 1451 – 1471, the Oklahoma Scenic Rivers Commission (“OSRC”) has the authority to:

- (1) ban or restrict the possession and/or consumption of alcohol and low-point beer both on the river/streams and in the public access areas under its jurisdiction,
- (2) restrict (rather than ban) the possession and/or consumption of alcohol and low-point beer on certain days and/or on certain stretches of the river/streams within its jurisdiction, and
- (3) restrict the quantity of alcohol or low-point beer possessed both on the river/streams and in the public access areas under its jurisdiction,

as long as:

- a) it properly promulgates administrative rules under the Administrative Procedures Act, 75 O.S. 2001 & Supp.2005, §§ 250 – 308.2, and the Legislature and Governor approve those rules; and
- b) the rules it promulgates bear some real or substantial relation to, or are reasonably necessary to accomplish, the purposes of the *Scenic Rivers Act*. *Gibbons v. Mo., Kan. & Tex. R.R. Co.*, 285 P. 1040, 1043 (Okla. 1930).

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

DEBRA SCHWARTZ
ASSISTANT ATTORNEY GENERAL

**The Honorable Jim Wilson
State Senator, District 3**

**OPINION 06-31
August 31, 2006**

1. A municipal ordinance approved by voters imposing a sales tax specifying that the proceeds of such tax are to be used for tourism development and further specifying that the tax be appropriated to a specific private service provider such as a chamber of commerce, under a contract, may be amended by the city council to provide for a different provider without a vote of the people where the ordinance authorizes the governing body to administer the tax and make necessary administrative and technical changes, so long as: (1) the rate of the tax and the purpose of the tax, i.e., tourism development, remains unchanged, (2) the action of the council is based on articulable standards and is not arbitrary, and (3) there is no language in the ordinance specifically excluding other service providers without a vote of the people. 68 O.S. Supp.2005, § 2701; *State ex rel. Brown v. City of Warr Acres*, 946 P.2d 1140, 1144 (Okla. 1997); *Heisler v. Thomas*, 651 P.2d 1330, 1331 (Okla. 1982).
2. Whether a particular municipal sales tax ordinance for tourism development or other specified purpose specifically requires that only one private service provider may be used to provide tourism development services and excludes the possibility of other service providers without a vote of the people involves questions of fact, which cannot be addressed in an Attorney General's Opinion. See 74 O.S. 2001, § 18b(A)(5).

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

LYNN C. ROGERS
ASSISTANT ATTORNEY GENERAL

**The Honorable Gilmer N. Capps
State Senator, District 26** **OPINION 06-32
September 11, 2006**

Oklahoma's Advance Directive Act, formerly known as Oklahoma's Rights of the Terminally Ill or Persistently Unconscious Act, which was amended by Senate Bill 1624 (2006 Okla. Sess. Laws ch. 171, §§ 3 - 15), does not render unenforceable any living will, appointment of a health care proxy or other advance directive ex-

ecuted prior to the May 17, 2006 effective date of the amendment, and that was in accordance with the law in effect at the time of execution, including advance directives executed pursuant to the now-repealed Oklahoma Natural Death Act and what was formerly known as Oklahoma's Rights of the Terminally Ill or Persistently Unconscious Act, now known as Oklahoma's Advance Directive Act.

W. A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

JANIS W. PRESLAR
ASSISTANT ATTORNEY GENERAL

This publication, printed by Central Printing, is issued by the Office of Attorney General. Seven hundred twenty-five copies have been prepared at a cost of \$191.00. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

Attorney General Drew Edmondson
Attn: Karen Bray, Opinion Coordinator
313 N. E. 21st St.
Oklahoma City, Oklahoma 73105

