STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-099

January 21, 2016

The Honorable Karilyn Brown
State Representative
P. O. Box 6677
Sherwood, AR 72124-6677

Dear Representative Brown:

You have requested my opinion on the following question concerning Act 1078 of 2015, which amended several statutes that address the carrying of firearms:

> Is it permissible for a school employee who possesses a concealed carry license to keep a handgun in his or her locked vehicle while the vehicle is parked in a designated parking lot on the school's property, even over the objections of the school district superintendent?

Because you have asked specifically about people with concealed-carry licenses, I confine my answer to those individuals.

RESPONSE

Your question requires a close analysis of Act 1078 and several provisions of law amended by that Act. I have undertaken such an analysis and explain my opinion below. However, at the threshold, I wish to make clear that I do not write the laws and I am not empowered to re-write them. My duty related to Attorney General Opinions is confined to offering an accurate and dispassionate legal interpretation of the laws passed by the General Assembly. Candor and transparency require me to concede that there are ambiguities in the relevant statutory text that make interpretation difficult here. I believe that additional legislative clarification is warranted to remove the ambiguities in the relevant statutory text and make clearer

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the meaning of Act 1078 in this context. All Arkansans, including law enforcement, would benefit from such legislative clarification.

In general, a person may not bring a firearm onto public or private school property.[1] However, under Act 1078 and the statutes amended by the Act, a person with a concealed-carry license who is on school grounds for a legitimate reason—for example, a father picking up his son from school—may leave his concealed handgun in his *locked and unattended* car in a designated parking lot of a public school (so long as the parking lot is not being used for a school event and the handgun is hidden from public view).[2] I do not encourage this practice. And I want to emphasize that schools have the power to prohibit any person (or vehicle) from entering or remaining on school property if the person or vehicle does not have a legitimate reason for being there.

I have not been provided enough information to answer your question as it relates to a school employee. The phrase "objections of the school district superintendent" is too vague to serve as the basis for an extended analysis of whether and how a school district might properly prohibit, limit, or regulate conduct of its employees in ways that would violate Act 1078 if applied to non-employees—for example, a parent of a child attending the school. Assuming that all applicable procedures have been followed, it is *conceivable* that a school's personnel policies may address the permissibility of an employee leaving a licensed concealed handgun in a locked car in a designated school parking lot. But I have no information to suggest that is the case with regard to the district at issue under your question; and I cannot, absent more specific information, analyze whether such policy would be consistent with the law.

ANALYSIS OF ACT 1078

In addressing the relevant statutory provisions, I am guided by the following standard, reasonable rules of statutory interpretation:

> The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning

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[1] *See* Ark. Code Ann. § 5-73-119(b)(1) (Supp. 2015). There are certain limited exceptions to this prohibition. *See id.* at § 5-73-119(e). The exceptions include a provision for private K-12 schools, in cases where the schools themselves allow concealed-carry licensees to carry the concealed handgun on school property. *Id.* at § 5-73-119(e)(11)(A) and (B).

[2] Ark. Code Ann. § 5-73-301(2) (Supp. 2015) (defining "concealed" as "to cover from observation so as to prevent public view.").

> and usually accepted meaning in common language. We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.[3]

The language under discussion must be read in light of its context.[4] When construing a statute, each section is to be read in light of every other section.[5] In addition, the courts will not interpret a statute in a way that yields an absurd result.[6]

1. Act 1078 and Ark. Code Ann. § 5-73-119

Act 1078 of 2015 amended several criminal statutes relating to the possession of weapons and several statutes that are part of the concealed handgun licensing law to address concealed handguns in motor vehicles. One of the amended criminal statutes—Ark. Code Ann. § 5-73-119—makes it a crime to possess a firearm "[u]pon the developed property of a public or private school, K-12."[7] Section 5-73-119 identifies a number of circumstances, however, under which it is "permissible to carry a handgun under this section."[8] Act 1078 amended the list of exceptions to include the following:

> The person has a license to carry a concealed handgun under § 5-73-301 *et seq.* and is carrying a concealed handgun in his or her motor

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[3] *MacSteel Div. v. Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878, 882-83 (2005) (internal citations omitted).

[4] *See Drennen v. Bennett*, 230 Ark. 330, 331, 322 S.W.2d 585, 587 (1959).

[5] *Chism v. Phelps*, 228 Ark. 936, 939, 311 S.W.2d 297, 299 (1938).

[6] *State v. Owens*, 370 Ark. 421, 260 S.W.3d 288 (2007).

[7] Ark. Code Ann. § 5-73-119(b)(1)(A) (Supp. 2015). A person who violates this subsection commits a Class D felony. *Id.* at § 5-73-119(b)(2)(A).

[8] *Id.* at § 5-73-119(e).

> vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in a publicly owned and maintained parking lot.[9]

"Parking lot" for this purpose means "a designated area or structure or part of a structure intended for the parking of motor vehicles or a designated drop-off zone for children at a school."[10]

The plain language of Act 1078's amendment to section 5-73-119(e)(12)(a) clearly decriminalized the act of a person with a concealed-carry license keeping a handgun concealed in his locked and unattended vehicle in a designated parking lot on the school's property.[11] Moreover, by cross-referencing the concealed handgun law (section 5-73-301 *et seq.*), which was simultaneously amended by Act 1078, section 5-73-119(e)(12)(A) also affirmatively expressed the General Assembly's understanding that the concealed handgun law, as amended, allows a concealed-carry licensee to leave a concealed handgun in his locked and unattended motor vehicle (hidden from public view) in a designated parking lot on the school's property.

2. Act 1078 and Ark Code Ann. § 5-73-306

The concealed handgun law (section 5-73-301 et seq.) creates a licensing regime for persons who desire to carry a concealed handgun.[12] One section of the law—Ark. Code Ann. § 5-73-306—specifies certain locations where concealed-carry licensees cannot carry their handguns ("prohibited places").[13] If a licensee

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[9] *Id.* at § 5-73-119(e)(12)(A); Acts 2015, No. 1078, § 1.

[10] Ark. Code Ann. § 5-73-119(e)(12)(B)(i); Acts 2015, No. 1078, § 1.

[11] Because your question refers to a "school district superintendent," I take it that the school in question is a public school district. I also take it that the parking lot is publicly owned and maintained, and that it otherwise meets the controlling definition of "parking lot" under sections 5-73-119 and 5-73-301, noted above, *i.e.*, it is either an area or a structure designated by the school district for parking, or it is a designated drop-off zone for children at the school.

[12] Ark Code Ann. § 5-73-302.

[13] The concealed-handgun licensing law is codified at Ark. Code Ann. § 5-73-301 *et seq.* (Repl. 2005 and Supp. 2015). "Concealed" means "to cover from observation so as to prevent public view." *Id.* at § 5-73-301(2) (Supp. 2015). Concealed handgun licenses are issued by the Department of Arkansas State Police.

violates the concealed handgun law by bringing a concealed handgun into a prohibited place, his concealed-carry license will be immediately subject to revocation for failure to comply with the concealed-carry licensing rules.[14]

As relevant here, section 5-73-306 states:

> No license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun into:
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> ***
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> (14)(A) A school, college, community college, or university campus building or event.[15]

There are several places specified by statute to which the prohibitions do not apply.[16] Act 1078 amended the list of non-prohibited places to include the following:

> [S]ubdivision (14)(A) of this section does not apply to:
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> (iv) A publicly owned and maintained parking lot of a college, community college, or university if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle.[17]

"Parking lot" for this purpose is defined (basically) the same as the definition under the criminal statute (section 5-73-119) noted above: "an area, structure, or

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[14] *See* Department of Arkansas State Police Arkansas Concealed Handgun Carry License Rules, Rule 7.0 (November, 2013) (regarding failure to comply with license restrictions, providing that "[f]ailure to comply with these Rules is a ground(s) for suspension and/or revocation of the Arkansas concealed handgun carry license.").

[15] Ark. Code Ann. § 5-73-306(14)(A) (Supp. 2015).

[16] *Id.* at section 5-73-306(14)(B).

[17] *Id.* at section 5-73-306(14)(B)(v); Acts 2015, No. 1078, § 5.

part of a structure designated for the parking of motor vehicles or a designated drop-off zone for children at a school."[18]

The operative question is whether the concealed handgun law prohibits a person with a concealed-carry license from keeping a handgun concealed in his locked and unattended vehicle in a designated parking lot on the school's property. If the concealed handgun law prohibits this conduct, then of course a school employee could not do it. If the concealed handgun law allows it, a separate analysis will be required to determine whether the superintendent can prohibit a school employee from performing conduct which a general member of the public would be allowed to do.

Section 5-73-306(14)(A) prohibits a person with a concealed-carry license from carrying a concealed handgun "into . . . [a] school, college, community college, or university campus building or event." The statutory language of the parking lot exception in this statute (which would negate the prohibition) omits the word "school." *See* Ark. Code Ann. § 5-73-306(14)(B)(iv) ("[S]ubdivision (14)(A) of this section does not apply to ... [a] publicly owned and maintained parking lot ***of a college, community college, or university*** if. . . .") (emphasis added).

The concealed handgun law, as written, states only that "[n]o license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun ***into*** . . . [a] school, college, community college, or university campus ***building or event***." Ark. Code Ann. § 5-72-306(14)(A) (emphasis added). In my opinion, the word "building or event" modifies each of the listed educational institutions. That understanding is the best way to make sense of the prohibition's use of the word "into" as opposed to "onto." In short, this is a prohibition concerning bringing a concealed weapon into a school building or into a school event, not a general prohibition against bringing a concealed handgun onto school grounds.[19] The General Assembly knows how to

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[18] Ark. Code Ann. § 5-73-301(6) (Supp. 2015); Acts 2015, No. 1078, § 3 (amending the definitional section of the concealed handgun law).

[19] It is important to understand that this limitation in the language of the concealed handgun law does ***not*** make it permissible to carry a firearm (concealed or otherwise) on public school grounds generally. As already noted in this Opinion, Ark. Code Ann. § 5-73-119 makes it a crime to possess a firearm "upon the developed property of a public or private school, K-12." While that statute contains a parking lot exception that clearly applies to K-12 public schools, it would still be a crime to possess any gun on any ***other*** part of developed public school property.

include public grounds in a prohibition if it wants to do so. Indeed, the General Assembly did so in the very same statute. *See* Ark. Code Ann. § 5-72-306(3)(A) ("No license to carry a handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun ***into*** . . . [a]ny building of the Arkansas State Highway and Transportation Department ***or onto the grounds adjacent to any building*** of the Arkansas State Highway and Transportation Department.") (emphasis added).[20] Accordingly, the concealed handgun law does not prohibit a concealed-carry licensee from leaving a concealed handgun in his locked and unattended car on school property. This lack of prohibition under the concealed handgun law means the concealed-carry licensee is permitted to engage in such conduct unless prohibited by some other statute. And, given what I have already said about the relevant criminal laws above in section 1, it is clear that this conduct is permitted.

Even assuming *arguendo*, the prohibition in Ark. Code Ann. § 5-72-306(14)(A) applied as a general prohibition to all school, college, community college, and university grounds, the scope of the parking lot exception in Ark. Code Ann. § 5-73-306(14)(B)(iv) is ambiguous.[21] That is because, while the parking lot exception omits the word "school," the applicable definition of parking lot in the concealed handgun law clearly includes and anticipates a K-12 school. *See* Ark. Code Ann. § 5-73-301(6) ("As used in this subchapter[,] . . . '[parking lot]' means an area, structure, or part of a structure designated for the parking of motor vehicles ***or a designated drop-off zone for children at a school.***") (emphasis added). Given this ambiguity, it is appropriate to use legislative intent – specifically the purpose and objective of the Act – to guide our interpretation of the statute.

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[20] It is quite reasonable to ask why the General Assembly would have written in a parking lot exception if the prohibition in § 5-72-306(14)(A) is limited to carrying a concealed handgun into a building or event. The best answer is that an event – for example, a fair, a volunteer car-wash, or a race – might take place in whole or part in the parking lot of the school, college, community, college, or university campus. In such cases, a concealed-carry licensee would not be able to leave his concealed handgun in a locked and unattended car absent the parking lot exception. While I defer to the General Assembly on the wisdom of the exception, this provides a reasonable explanation for why the exception exists even if the prohibition itself is not generally applicable to school parking lots.

[21] A statute is ambiguous only where it is "open to two or more constructions," or is "of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning." *Talbert v. U.S. Bank, N.A.*, 372 Ark. 148, 155, 271 S.W.3d 486, 491 (2008).

In my opinion, one intended purpose and objective of Act 1078 was to allow a concealed-carry licensee to leave his concealed handgun in his locked and unattended car in a publicly owned parking lot (whether at a school, college, university, or elsewhere) without fear of either prosecution or license revocation. My opinion is bolstered by the fact that Act 1078 simultaneously amended both the concealed handgun law and the general criminal prohibition on possessing a firearm on school grounds, and Act 1078's amendment to the criminal statutes specifically and expressly cross-referenced the concealed handgun law. As explained above, the only logical way to read section 5-73-119(e)(12)(A)'s cross reference of the concealed handgun law is that the General Assembly believed the amendments it made to the concealed handgun law allows a concealed-carry licensee to leave a concealed handgun in his locked and unattended motor vehicle in a designated parking lot on school property. Statutes on the same subject matter are to be read consistently and in harmony with each other, if possible.[22] This rule of statutory construction is particularly applicable where, as here, the exact same act amends both statutes simultaneously and specifically cross-references one statute in the amended section of the other.[23]

Illogical results could flow from interpreting the concealed handgun law to prohibit the conduct that the criminal statute allows. For example, while a person who has a concealed-carry license will not violate the criminal statute (section 5-73-119) if he leaves the concealed handgun in the vehicle in a school district parking lot, his concealed-carry license will be immediately subject to revocation for failure to comply with the concealed-carry licensing rules.[24] And the next time he left his concealed handgun in a locked vehicle in a school parking lot he would be subject to criminal penalties (since he would no longer have a concealed-carry license). In short, it seems to be an illogical result to decriminalize the act of leaving the licensed concealed handgun in a school parking lot, and at the same time subject the licensee to revocation of his or her concealed-handgun license for this same conduct.

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[22] *Minnesota Mining & Mfg.*, 337 Ark. 94, 989 S.W.2d 151 (1999); *City of Ft. Smith v. Tate*, 311 Ark. 405, 844 S.W.2d 356 (1993).

[23] *See Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980).

[24] *See* Department of Arkansas State Police Arkansas Concealed Handgun Carry License Rules, Rule 7.0 (November, 2013) (regarding failure to comply with license restrictions, providing that "[f]ailure to comply with these Rules is a ground(s) for suspension and/or revocation of the Arkansas concealed handgun carry license.").

A reading of Act 1078 as a whole suggests that the General Assembly intended to avoid such results by amending the criminal statutes and the concealed handgun law coextensively so that a concealed-carry licensee could carry his concealed handgun into what would otherwise be a prohibited location without fear of ***either*** prosecution or license revocation. For example, Section 2 of Act 1078 amended Ark. Code Ann. § 5-73-122—which makes it a crime to possess firearms in publicly-owned buildings (and other certain other places)—to include the same parking lot exception for concealed-carry licensees as the one added to Ark. Code Ann. § 5-73-119 (criminalizing possession of firearms on school property). And Section 4 of Act 1078 amended Ark. Code Ann. § 5-73-306(3)—part the concealed-carry statute on prohibited places covering the buildings and grounds of the State Highway and Transportation Department—to include a parking lot exception that essentially mirrors the exception under section 5-73-122. Section 6 of Act 1078 amended Ark. Code Ann. § 5-73-306(19) to include essentially the same exception. These amendments are co-extensive and work in concert to allow a concealed-carry licensee to leave his concealed handgun in a public parking lot at the State Highway and Transportation Department without fear of ***either*** prosecution or license revocation. Accordingly, even if the prohibition in section 5-72-306(14)(A) applies to all school grounds, as opposed to just school buildings and events, I read the parking lot exception to include school parking lots such that the exception in the criminal law and the concealed handgun law would be co-extensive.[25]

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[25] The question remains, however, why the Legislature omitted the word school from the parking lot exception in Ark. Code Ann. § 5-73-306(14)(B)(iv). The most likely answer is that the omission of the word "school" was a drafting error. Drafting errors can be disregarded in order to carry out the legislative intent. *See Neely v. State*, 317 Ark. 312, 318, 877 S.W.2d 589, 592 (1994) ("We are very hesitant to interpret a legislative act in a manner contrary to its express language; however, we must do so when it is clear that a drafting error or omission circumvents legislative intent."). The "drafting error" exception, however, is extremely limited and rarely used. Usually, the courts will not "add, and mend, and by construction make up, deficiencies...." *Hodges v. Dawdy*, 104 Ark. 583, 596-97, 149 S.W. 656, 661 (1912). My research indicates that the only instance in which a court will supply words is where the omission is obvious based on the language used and supplying the word(s) is necessary to carry out the legislative intent. *See, e.g., Snowden v. Thompson*, 106 Ark. 517, 522, 153 S.W. 823, 824 (1913) ("We cannot arbitrarily supply words merely to give the effect which we think the lawmakers might have intended; but it is fairly within the limits of the rules for construction that courts can supply obvious omissions, in order to carry out the legislative intent."). The legislative intent must be "manifest," and will not be inferred. *Hazelrigg v. Board of Penitentiary Commissioners*, 184 Ark. 154, 156, 40 S.W.2d 998, 999 (1931) (citation omitted)) ("'[W]hile the courts cannot add to, take from or change the language of a statute to give effect to any supposed intention of the Legislature, words and phrases may be altered and supplied when that is necessary to obviate repugnancy and

It is therefore my opinion that Act 1078 of 2015 and the statutes amended by the Act allow a person with a concealed-carry license to leave his concealed handgun in a locked, unattended car in a designated parking lot of a public school (so long as the parking lot is not being used for a school event and the handgun is hidden from public view).[26] It is my further opinion that the Act and the statutes amended by the Act prevent a school, a school board, or a superintendent from prohibiting this conduct by a member of the general public, such as parents of school attendees, who are otherwise properly on school grounds.[27] As the school district's chief executive officer,[28] a school superintendent is charged only with the authority to implement board policy, not to pronounce it. And while a school board has broad authority with regard to policy matters,[29] it cannot enact a policy that is contrary to law.[30] A policy that purported to prohibit parents of school children or other members of the public legitimately on school grounds from engaging in conduct allowed by Act 1078 and the statutes amended thereby would, in my opinion, be contrary to law and unenforceable. Indeed, Act 1078 went to great lengths to make sure owners and others in control of property could not find a way around the parking lot exception. For example, while the concealed-handgun law generally allows owners and controllers of property to post signs prohibiting concealed-carry licensees from carrying on their property,[31] Act 1078 specifically disallowed such posting in publicly owned and maintained parking lots, which include school parking lots.[32]

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inconsistency and to give effect to the manifest intention of the Legislature.'"). I cannot predict with certainty whether the Court would say the absence of the word "school" in section 5-73-306(14)(B)(iv) constitutes one of these instances of an obvious omission. That is what makes the proper interpretation of the parking lot exception in section 5-73-306(14)(B)(iv) an exceedingly difficult and close call.

[26] *See* note 2, *supra*.

[27] A school may order a person off the school grounds if his conduct is disturbing the school, and the person will be subject to a $100.00 fine if he "shall continue to trespass on or go upon the grounds." Ark. Code Ann. § 6-21-606 (Repl. 2013).

[28] *See* Ark. Code Ann. § 6-13-109(b) (Repl. 2013).

[29] *See Fortman v. Texarkana Sch. Dist. No. 7*, 257 Ark. 130, 132, 514 S.W.2d 720, 722 (1974).

[30] *See Springdale Board of Education v. Bowman*, 294 Ark. 66, 72, 740 S.W.2d 909, 912 (1987).

[31] Ark. Code Ann. § 5-73-306(19)(A).

[32] *Id.* at § 5-73-306(19)(B)(ii); Ark. Code Ann. § 5-73-301(6) (defining "parking lot").

I lack sufficient information, however, to answer your question as it relates to a school employee. The phrase "objections of the school district superintendent" is too vague to serve as the basis for an extended analysis of whether and how a school district might properly prohibit, limit, or regulate conduct of its employees in ways that would violate Act 1078 if applied to the general public. Generally, a school superintendent is charged with overseeing the day-to-day operations of the district,[33] and has no authority, independent of the school board, to regulate the terms and conditions of a teacher's employment. As noted above, the superintendent is charged only with the authority to implement board policy, not to pronounce it.

With regard to personnel matters in particular, the superintendent may recommend to the board a proposal to change or enact a personnel policy.[34] However, the board has the final authority and duty to act on any personnel proposal.[35] Thus, only the board can ultimately approve the terms of personnel policy.[36] Assuming that all applicable procedures have been followed, it is *conceivable* that a school's personnel policies may address the permissibility of an employee leaving a licensed concealed handgun in a locked car in a designated school parking lot. But I have no information to suggest that is the case with regard to the district at

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[33] Ark. Code Ann. § 6-13-620(5)(A)(i)(*a*) (Repl. 2013).

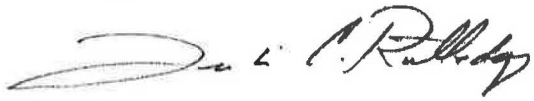
[34] *See* Ark. Code Ann. § 6-17-205(b)(3) (Repl. 2013). The term "personnel policies" is defined at Ark. Code Ann. § 6-17-201(b) (Repl. 2013) as meaning "all school district policies, guidelines, regulations, and procedures that pertain to the terms and conditions of a teacher's employment." Personnel policies are incorporated as terms of the contracts of licensed personnel. Ark. Code Ann. § 6-17-204(a) (Supp. 2015).

[35] Ark. Code Ann. § 6-17-205(e). Section 6-17-205 assigns to the board of directors the authority to set personnel policy, subject only to the qualification that a personnel policies committee must be afforded an opportunity to review a proposal for at least ten days before the board of directors' vote on the proposal. *Id.* at 6-17-205(b)(2). This assumes, of course, that the school district in question has a personnel policies committee. A district may "choose[ ] to officially recognize in its policies an organization representing the majority of the teachers of the district for the purpose of negotiating personnel policies, salaries, and educational matters of mutual concern under a written policy agreement." Ark. Code Ann. § 6-17-202(a) (Repl. 2013).

[36] This allocation of authority accords with the statutory provision that the board is ultimately responsible for the employment of staff by written contract. Ark. Code Ann. § 6-13-620(5)(A)(ii)(*a*).

issue under your question; and I cannot, absent more specific information, analyze whether such policy would be consistent with the law.

Sincerely,



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