

Opinion No. 2013-019

April 12, 2013

The Honorable Bruce Maloch  
State Senator  
650 Columbia Road 258  
Magnolia, Arkansas 71753

Dear Senator Maloch:

You have requested my opinion on the following questions concerning interpretation of the Arkansas Deceptive Trade Practices Act (“ADTPA”):

1. Are all insurances business activities within the State of Arkansas exempt from the ADTPA, or are activities that are expressly defined as deceptive trade practices in the Insurance Code, Ark. Code Ann. § 23-66-206, subject to the ADTPA?
2. More specifically, are activities defined as deceptive trade practices by the Insurance Code subject to a private right of action by operation of Ark. Code Ann. § 4-88-107(a)(1) and § 4-88-113(f)?
3. Attorney General Opinion 96-337 states, “If a bank’s conduct is permissible or not prohibited under applicable banking or regulations, it is not subject to action under ADTPA.” Is the corollary of this true, if conduct is prohibited under applicable insurance laws or regulations, is it subject to action under the ADTPA?

**RESPONSE**

I must decline to provide an answer to these questions in light of this office’s long-standing policy against the issuance of opinions on questions that are the subject

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of current or impending litigation. *See, e.g.*, Op. Att’y Gen. 2011-124, 2008-034, 2003-294; 99-389; 97-105; 90-114. It has come to my attention that the above questions are at issue in the pending case of *Willsey v. Shelter Mutual Insurance Company*, No. 2:12-cv-02320 (E.D. Ark. originally filed in Crawford Co. Dist. Ct. Dec. 19, 2012).

The policy of refraining from rendering opinions on matters before or likely to be before courts for determination recognizes the judiciary’s independent constitutional role. Any opinion from my office on the underlying legal issues in this instance would amount to executive comment on matters that are before a judicial body. I must therefore respectfully decline to issue an opinion on your questions.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh