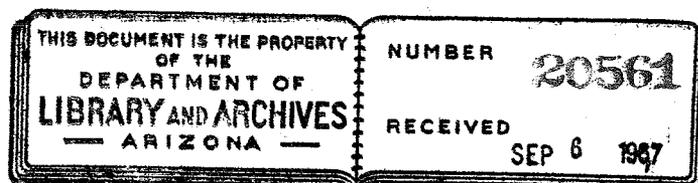


DELEGATED DUTIES AND POWERS

ARIZONA ATTORNEY GENERAL  
(Department of Law)

July, 1963



## DELEGATED POWERS OF THE ATTORNEY GENERAL

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What are the powers and duties of the Attorney General? This question is constantly asked of this office by legislators, state citizens and out-of-state officials. In an attempt to provide a special report of legislative interest answering this question, we respectfully submit this report setting forth the duties and powers of the Attorney General of Arizona as of July 2, 1963.

The Attorney General of Arizona is a constitutionally created, elective office. Qualifications for the office and provisions for assistants as contained in A. R. S. Sec. 41-191 are:

"A. The attorney general shall have been for not less than five years immediately preceding the date of taking office a practicing attorney before the supreme court of the state. He shall receive an annual salary of sixteen thousand eight hundred dollars.

B. The attorney general and his assistants shall devote full time to the duties of the office, and shall not directly or indirectly engage in private practice of law or in an occupation conflicting with such duties, but such prohibition shall not apply to special assistants except that in no instance shall special assistants engage in any private litigation in which the state or an officer thereof in his official capacity is a party.

C. The attorney general may also, within the limits of appropriations made therefor, employ attorneys for particular cases upon a fixed fee basis who shall be exempt from the restrictions imposed by this section upon regular or special assistants. "

The powers and duties of the Attorney General and the Department of Law are contained in A. R. S. Sec. 41-192 and Sec. 41-193, as follows:

"Sec. 41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions

A. The attorney general shall have charge of and direct the department of law, and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of the state and render such legal services as the departments require.
2. Establish administrative and operational policies and procedures within his department.
3. Approve long range plans for developing departmental programs therein, and coordinate the legal services required by other departments of the state or other state agencies.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions, or units as he deems most efficient and economical, and consolidate or abolish them.
2. Adopt and promulgate rules for the orderly conduct of the business of the department.
3. Employ and assign assistants and other employees necessary to perform the functions of the department.

C. Assistants and employees in any legal division subject to a merit system prior to March 6, 1953, shall remain subject thereto.

D. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

E. Notwithstanding any other provision of law to the contrary, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the interstate stream commission and the industrial commission shall be exempt from the provisions of this article.

F. Any department or agency of the state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue, or special or trust fund into the general fund of the state, to the extent such funds are available and upon a reimbursable basis for warrants drawn upon the state treasurer, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

G. Appropriations made pursuant to subsection F shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F are applicable shall be performed by special assistants to the attorney general."

"Sec. 41-193. Department of law; composition; powers and duties

A. The department of law shall be composed of the attorney general and the subdivisions of the department created as provided in this article. Unless otherwise provided by law the department shall:

1. Prosecute and defend in the supreme court all proceedings in which the state or an officer thereof in his official capacity is a party.
2. At the direction of the governor or when deemed necessary by the attorney general, prosecute and defend any proceeding in a state court other than the supreme court in which the state or an officer thereof is a party or has an interest.
3. Represent the state in any action in a federal court, the cost thereof and the expenses of the attorney general incurred therein to be a charge against the state.
4. Exercise supervisory powers over county attorneys of the several counties in matters pertaining to that office and require reports relating to the public business thereof.

5. At the direction of the governor, or when deemed necessary, assist the county attorney of any county in the discharge of his duties.

6. Maintain a docket of all proceedings in which the attorney general is required to appear, showing the condition thereof, the proceedings therein, the proceedings subsequent to judgment and the reasons for any delay of execution.

7. Upon demand by the legislature or either house thereof, any public officer of the state or a county attorney, render a written opinion upon any question of law relating to their offices.

8. Perform other duties prescribed by law.

B. The department of law, in the name of the state and under the direction of the governor, shall purchase property offered for sale under execution issued upon a judgment in favor of or for the use of the state, and shall enter satisfaction, wholly or in part, of such judgment as consideration for the purchase. If the property of the judgment debtor has been sold under a prior judgment or is subject to a prior judgment, lien or encumbrance, the department of law, under direction of the governor, shall redeem the property from the prior judgment, lien or encumbrance. All money necessary for the redemption shall, upon the order of the governor, be paid from money appropriated for such purpose.

C. The department of law shall institute investigations for discovery of property which may have escheated or would escheat to the state, and for such purpose may require any person before the superior court to answer investigations, produce books and render accounts relating to the property. The department may institute action in the superior court of the county in which the property is located for recovery of escheats, or may require the county attorney to conduct such proceedings. "

In addition to these general provisions, the Attorney General has many specified powers and duties which have herein been classified and reported.

## 1. Duty to Defend and Prosecute

The specific actions which the Attorney General must undertake to prosecute or defend are actions which:

- A. Answer a copy of a complaint in which a person appears and claims property which escheated to the state and has been served on the attorney general. (A. R. S. Sec. 12-886).
- B. Name the state a garnishee. (A. R. S. Sec. 12-1602).
- C. Seek to enforce the statutes concerning the sale or transfer of citrus fruits. (A. R. S. Sec. 3-554).
- D. Institute civil and criminal suits to enforce provisions of statutes concerning restraint of trade. (A. R. S. Sec. 44-1402).
- E. Defend the Board of Naturopathy in any action brought against it. (A. R. S. Sec. 32-1554).
- F. Prosecute violations of statutes and regulations concerning picketing and secondary boycotting. (A. R. S. Sec. 23-657).
- G. Upon notice of violation by the Insurance Director, prosecute all penal violations of insurance statutes. (A. R. S. Sec. 20-152).
- H. Upon notice by the Commissioner of Public Building Safety of violations of fire menace regulations, prosecute to correct the violation and punish the violator. (A. R. S. Sec. 20-1707).
- I. Prosecute and defend all actions brought by or against the Industrial Commission or a member in his official capacity. (A. R. S. Sec. 23-1124).

## 2. Duty to Act on Request

Many statutes provide that the Attorney General must perform specific acts at the request of other state officials. The following is a compilation of those officials and the acts which they may request:

A. Governor:

- (1) Investigation and report on circumstances of a demand for extradition. (A. R. S. Sec. 13-1304).
- (2) Appearance in any proceeding which affects state property or a claim against the state. (A. R. S. Sec. 41-101 (A)(5)).
- (3) Inquire into the affairs of any corporation doing business in the state. (A. R. S. Sec. 41-101 (A)(6) ).

B. Employment Security Commission:

The prosecution of the Employment Security statutes. (A. R. S. Sec. 23-656).

C. Highway Department:

Act as legal advisor to the Department and give such legal services as the Commission and State Engineer require, including the prosecution and defense of all cases brought on behalf of the Commission. (A. R. S. Sec. 18-114).

D. Industrial Commission:

- (1) Institute and prosecute actions for enforcement of occupational disease statutes. (A. R. S. Sec. 23-1124).
- (2) Institute and prosecute actions arising under Workmen's Compensation Statutes. (A. R. S. Sec. 23-929).

E. Military Officer:

Defend him if he is made a party defendant in an action arising from acts or omissions while on military duty. (A. R. S. Sec. 26-159).

F. Dental Board:

Aid on all matters requiring legal assistance. (A. R. S. Sec. 32-1266).

G. County Attorney:

Aid in prosecuting persons charged by the Naturopathic Board of Examiners. (A. R. S. Sec. 32-1556).

H. State Registrar of Vital Statistics:

Assist in enforcing statutes pertaining to vital statistics. (A. R. S. Sec. 36-303).

I. State Land Department:

Defend and prosecute all actions to protect the interest of state lands. (A. R. S. Sec. 37-102).

J. State Land Commissioner:

Act as attorney. (A. R. S. Sec. 27-521).

K. Corporation Commission:

- (1) Represent in any legal action, commence and prosecute actions, advise. (A. R. S. Sec. 40-106).
- (2) Investigate and prosecute violations of the public utilities and carriers statutes. (A. R. S. Sec. 40-421).
- (3) Commence actions to have violations or threatened violations by a public service corporation enjoined. (A. R. S. Sec. 40-422).

L. State Examiner:

Aid in any investigation or matter in which legal services are required and prosecute offenders. (A. R. S. Sec. 41-334).

M. Estate Tax Commissioner:

- (1) Commence actions to permit examination of records and property of a person relating to property reported pursuant to the unclaimed property statutes. (A. R. S. Sec. 44-372).
- (2) Commence an action on the refusal of a person to deliver property as provided in unclaimed property statutes. (A. R. S. Sec. 44-373).

N. Insurance Commissioner:

Prosecute and defend all proceedings brought pursuant to or resulting from enforcement of insurance statutes. (A. R. S. Sec. 20-152).

O. Tax Commission:

Institute and prosecute an action to recover cost of abatement work done on a dam not owned or controlled by an irrigation or electrical district. (A. R. S. Sec. 45-757).

3. Enforcement and Collection of Taxes

The Attorney General, when directed by the Tax Commission, is under the duty to commence and prosecute all actions and proceedings and to represent the tax commission in litigation to enforce the laws. (A. R. S. Sec. 42-123). Several statutes give even greater emphasis to this duty by directing him to act in particular cases of specific violations. They are:

- A. Enforcement of Transaction Privilege Tax statutes. (A. R. S. Secs. 42-1303, 42-1331, 42-1334).
- B. Prosecute an action to collect delinquent Motor Vehicle Fuel and Use Fuel Taxes or penalties. (A. R. S. Secs. 28-1507, 28-1569).
- C. Institute actions to collect Use Taxes. (A. R. S. Sec. 42-1418).

- D. Enforce, maintain civil or criminal actions, and recover for violation of Estate Tax Statutes. (A. R. S. Secs. 42-1533, 42-1534, 42-1535).
- E. Recover taxes and penalties due by failure of a private car company or express company to pay required taxes. (A. R. S. Secs. 42-725, 42-748).

The Attorney General has the right to inspect the reports or return of any taxpayer when required to institute actions pursuant to tax statutes. (A. R. S. Sec. 43-145 (b) ).

#### 4. Recovery of Money and Penalties

"The Attorney General under appropriate circumstances shall bring an action in the name of the state to enjoin the illegal payment of state money, or if the money has been paid, plus 20% of such amount and interests and costs..." (A. R. S. Sec. 35-212). In addition to this general provision, he has the power to recover, under proper circumstances, money illegally or mistakenly paid for general assistance welfare, (A. R. S. Sec. 46-236) or as assistance to dependent children. (A. R. S. Sec. 46-295).

In conjunction with the duty to recover money illegally paid, the Attorney General also must bring actions for specific violations of regulations and statutes arising from state police powers. They include actions to recover:

- A. Products and penalties for violation of gas and oil regulations. (A. R. S. Secs. 27-551, 27-527).
- B. Penalties for failure to comply with safety regulations for railroads. (A. R. S. Secs. 40-842, 40-845, 40-846, 40-847).
- C. Penalties for refusal to obey a subpoena or citation of the corporation commission concerning the sale of securities. (A. R. S. Sec. 44-1825).
- D. Penalty for violation of picket and secondary boycott statutes. (A. R. S. Sec. 23-1324).
- E. Penalty from telegraph and telephone companies for failure to file required statements. (A. R. S. Sec. 42-795).

## 5. Discretionary Powers

The Attorney General may perform the following functions, but is under no obligation or requirement to do so:

- A. Bring actions of quo warranto against any person who he has reason to believe usurps, intrudes or unlawfully holds or exercises any public office or any franchise within this state. (A. R. S. Sec. 12-2041).
- B. Under proper circumstances, bring an action to secure judicial dissolution of a corporation. (A. R. S. Sec. 10-381).
- C. Bring an action to enjoin any person from engaging in a violation of or continuing to violate small loan statutes. (A. R. S. Sec. 6-606).
- D. Be heard in any action alleging the unconstitutionality of a municipal ordinance, franchise or statute providing therefor. (A. R. S. Sec. 12-1841).
- E. File a petition to claim rights in cases involving a charitable trust in which no trustee is designated or there is not escheat to the state. (A. R. S. Sec. 14-642).
- F. Intervene in the contest of the election of a person declared elected to a state office or an initiated or referred measure, constitutional amendment, or other question which has been declared carried and demand the change of the place of the trial to Maricopa County. (A. R. S. Sec. 16-1201).
- G. "When an action praying for a preliminary injunction is begun in federal district court to restrain an official or officials of this state from enforcing or administering a statute or administrative order of this state, or to set aside or enjoin such statute or administrative order, . . . the attorney general of the state may bring an action to enforce the statute or order in the superior court. . . at any time before final hearing on the application for an injunction. . . ." (A. R. S. Sec. 12-932).

- H. Bring an action or direct that it be brought by the county attorney against one who commits an act deemed a misuse of a state highway. (A. R. S. Sec. 18-160).
- I. Commence an action to enjoin a person from engaging in chiropractic services without a license. (A. R. S. Sec. 32-928).
- J. Enjoin a person who engages in the practice of medicine or surgery without first obtaining a license. (A. R. S. Sec. 32-1455).
- K. Bring an action to vacate an order or decision of the corporation commission after a rehearing is granted or denied. (A. R. S. Sec. 40-254).
- L. Request that the county attorney prosecute a violation of the real estate statute charged by the Real Estate Commissioner. (A. R. S. Sec. 32-2160).
- M. Bring an action in the name of the Superintendent of Banks for correction of irregularities or for insolvency of a bank or financial institution which has been reported to him as practicing irregularities. (A. R. S. Sec. 6-481).
- N. Upon receipt of evidence of illegal sale or pending illegal sale of securities, petition to have a conservator appointed to reorganize, or a receiver appointed to wind up the affairs of defendant corporation. (A. R. S. Sec. 44-2032).
- O. Direct the county attorney of a county other than Maricopa to file pleadings in a foreclosure to which the state is a party. (A. R. S. Sec. 33-724).
- P. Have persons subpoenaed as witnesses in cases involving violation of Restraint of Trade statutes. (A. R. S. Sec. 44-1407).
- Q. Request the State Land Department, in cases of emergency or in special cases, to retain additional counsel and he may expend available funds therefor. (A. R. S. Sec. 27-521).

## 6. Approval and Recommendations

The Attorney General's approval or recommendation must be obtained before other state agencies and officials may legally perform certain acts. They include:

- A. The approval of title of land which the land department desires to acquire. (A. R. S. Sec. 37-373).
- B. Prior approval of the contract for a private audit of state compensation funds. (A. R. S. Sec. 23-982).
- C. Approval of form and title of lands to be purchased by the Employment Security Commission. (A. R. S. Sec. 23-649).
- D. Recommendation as the initial step in making lawful the construction of a bridge, dam, dike or causeway over a navigable river or other navigable waterway within the jurisdiction of the state. (A. R. S. Sec. 18-302).

## 7. Bonds and Contracts

Many state agencies may submit bonds on which proceedings for issuance have been completed to the Attorney General so that he may pass on their validity and on the regularity of the proceeding under which they were issued. The Attorney General may also be asked by any district, as defined in A. R. S. Sec. 45-2111, to pass on the validity and regularity of any contract or agreements or bonds issued in conjunction therewith. (A. R. S. Sec. 45-2168). Those agencies which may submit bonds and/or contracts to the Attorney General for examination and certification are:

- A. Any city, town or county-bonds issued for public housing or slum clearance. (A. R. S. Secs. 36-1414, 36-1484).
- B. Any junior college district board-bonds. (A. R. S. Sec. 15-696.08).
- C. The Arizona Power Authority-bonds. (A. R. S. Sec. 30-227).

- D. Municipalities-bonds for financing utilities. (A. R. S. Sec. 9-534).
- E. Any "district" -bonds and/or contracts. (A. R. S. Sec. 45-2168).

The Attorney General's certification cannot make the legality of the bonds conclusive, nor does the Attorney General have any discretion in determining whether or not to certify the bonds if they were properly issued. (Maricopa County Municipal Water Conservation District No. 1 vs. LaPrade, 45 Ariz. 61, 40 P 2d. 94).

### 8. Advice and Opinions

In addition to rendering a written opinion to state officers or legislators upon any question of law relating to his offices, the Attorney General must, upon request of the Adjutant General, or the staff Judge Advocate of the National Guard, give opinions on legal questions pertaining to military affairs of the state. (A. R. S. Sec. 26-177).

The Attorney General may review opinions of a county attorney concerning school matters, and may either concur or revise them. (A. R. S. Sec. 15-122).

The Attorney General, as hereinbefore stated, is legal advisor to departments of the state. (A. R. S. Sec. 41-192 (A(1) ). In addition to the general duty, the attorney general must give legal advice and services to the following:

- A. Real Estate Commission. (A. R. S. Sec. 32-2111).
- B. State Egg Inspector. (A. R. S. Sec. 3-734).
- C. State Highway Department. (A. R. S. Sec. 18-144).
- D. Board of Reservoir Control and Supervision. (A. R. S. Sec. 45-752).
- E. Department of Public Welfare. (A. R. S. Sec. 46-133).

- F. State Dairy Commissioner and Department of Health. (A. R. S. Sec. 3-633).
- G. State Banking Department and Superintendent of Banks, as ex-officio receiver of an insolvent estate which by law is to be liquidated by the Superintendent. (A. R. S. Sec. 6-361).
- H. Estate Tax Commissioner. (A. R. S. Sec. 42-1532).
- I. State Land Commissioner. (A. R. S. Sec. 27-521).

#### 9. Membership

The Attorney General is a member by law of the following boards and commissions:

- A. State Certification Board. (A. R. S. Sec. 45-2101).
- B. Colorado River Boundary Commission. (A. R. S. Sec. 41-521).
- C. Board of History and Archives. (A. R. S. Sec. 41-721).
- D. Arizona Commission of Indian Affairs. (A. R. S. Sec. 41-511).
- E. Board of Pardons and Paroles. (A. R. S. Sec. 31-401).
- F. Selection Board. (A. R. S. Sec. 37-202).

#### 10. Miscellaneous Duties

The Attorney General's miscellaneous duties include:

- A. Duty to be present at execution of all death sentences. (A. R. S. Sec. 13-1655).

- B. Duty to prepare and deliver an annual written report to the governor and deliver copies to all legislators and the Department of Library and Archives. (A. R. S. Sec. 41-194).
- C. Duty to be the state information agency and as such has the duty:
  - "1. To compile a list of the courts and their addresses in this state having jurisdiction under this article and transmit the same to the state information agency of every other state which has adopted this or a substantially similar act.
  - 2. To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this article." (A. R. S. Sec. 12-1666).

The foregoing paragraphs are not intended to be an exhaustive study of the powers and duties of this office, but are intended to illustrate the vast panorama of laws, both special and general, that have grown up with this office throughout the years.

The wisdom of the Legislature in passing the Department of Law Act, as a special law, is amply demonstrated by these illustrations. It is sufficient to say that we take the legal position that we have ample laws available to authorize this office to represent all State agencies requesting legal assistance.

ROBERT W. PICKRELL  
The Attorney General