

Chapter 180

Attorney General and Department of Justice

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ATTY. GEN. OPINIONS: Duty to render legal opinions, 1958-60, p 199; employment of other counsel by the State Board of Dental Examiners, 1960-62, p 368; duty to prosecute or defend to protect interest of the state, 1964-66, p 443.

LAW REVIEW CITATIONS: 39 OLR 142.

180.010

NOTES OF DECISIONS

The common law powers of the Attorney General are by statute and the constitution vested either in that officer or the district attorneys. *Gibson v. Kay*, (1914) 68 Or 589, 137 P 864.

FURTHER CITATIONS: *State v. Millis*, (1912) 61 Or 245, 119 P 763; *Wemme v. First Church of Christ, Scientist*, (1924) 110 Or 179, 182, 219 P 618, 223 P 250.

180.040

NOTES OF DECISIONS

An appointee by the Governor holds office only until the next general election, and not for the unexpired term, under this Act as originally enacted. *Baker v. Payne*, (1892) 22 Or 335, 29 P 787.

180.060

NOTES OF DECISIONS

Where a complaint is shown to be that of a private relator, the mere signature of the Attorney General in his official capacity is not sufficient to impress it with functions of an information competent to put in motion the machinery of the courts. *State v. Lord*, (1896) 28 Or 498, 43 P 471, 31 LRA 473.

The common law powers of the Attorney General are by statute and the constitution vested either in that officer or the district attorneys. *Gibson v. Kay*, (1914) 68 Or 589, 137 P 864.

A petition simply requesting a court to give counsel to the petitioner does not call for any decision, as to give this advice would usurp the functions of the Attorney General. *Olcott v. Hoff*, (1919) 92 Or 462, 518, 181 P 466.

The Attorney General has the authority to appear in the Supreme Court in any matter in which the state is interested without any direction of the Governor. *State v. Fehl*, (1935) 152 Or 104, 52 P2d 1118.

State officers acting in good faith have the right to rely on an opinion of the Attorney General. *State v. Mott*, (1940) 163 Or 631, 97 P2d 950.

Though Attorney General is an executive officer, he acts in a quasi-judicial capacity in writing ballot title of initiative measure, so that his action may properly be subjected to judicial scrutiny. *Richardson v. Neuner*, (1948) 183 Or 558, 194 P2d 989.

The general authority of the Attorney General to act on behalf of the state, *parens patriae*, is not applicable to a class action for recovery of damages from a debt consolidating agency. *People of Oregon ex rel. Johnson v. Debt Reducers, Inc.*, (1971) 5 Or App 322, 484 P2d 869.

Counsel representing Attorney General in an action relating to a public charity was not entitled to compensation out of funds in court. *Wemme v. First Church of Christ, Scientist* (1924) 110 Or 179, 182, 219 P 618, 223 P 250.

FURTHER CITATIONS: *State v. Duniway*, (1912) 63 Or 555, 128 P 853; *State v. Turnbow*, (1921) 99 Or 270, 193 P 485, 195 P 569; *State v. Williams*, (1959) 215 Or 639, 336 P2d 68; *Thornton v. Johnson*, (1969) 253 Or 342, 453 P2d 178.

ATTY. GEN. OPINIONS: Defense of state officer prosecuted for crime or damages, 1928-30, p 51; authority of Attorney General to appear and represent Real Estate Department, 1928-30, p 340; function of Attorney General to pass upon the constitutionality of laws, 1936-38, p 8; district attorney representing persons before state boards and commissions, 1952-54, p 151; authority to express an opinion on a particular incorporation, 1952-54, p 180; authority to investigate or prosecute cases, 1952-54, p 194; power of Attorney General to take part in litigation in which the state is not a party but is interested, 1954-56, p 39; state officer acting on opinion of Attorney General that law is unconstitutional, 1954-56, p 175; authority to prosecute cases including violations of the professional engineers law, 1956-58, p 253; duty to give opinions on constitutionality to the legislature, 1956-58, p 274; duty to give legal advice, 1958-60, p 76; power to investigate violation of statutes involving boycotts, 1958-60, p 205; Attorney General responding to hypothetical questions, 1958-60, p 396; regulations for barber schools, 1962-64, p 271; duty of Attorney General to prepare charges upon complaint filed by Commissioner of the Bureau of Labor, 1964-66, p 443; employment of counsel or district attorney as counsel for sheriff, 1966-68, p 4; state control of sand removal from ocean beach, (1969) Vol 34, p 441; confidentiality of income tax returns as to the Attorney General, (1971) Vol 35, p 102.

180.070

NOTES OF DECISIONS

Local Budget Law does not apply to amounts chargeable to the county under this section. *Gleason v. Thornton*, (1957) 210 Or 666, 313 P2d 776.

The Attorney General has no power or duty to initiate an investigation of alleged violations of our criminal statutes nor to undertake any criminal prosecutions unless fortified with a gubernatorial mandate so to act. *State v. Williams*, (1959) 215 Or 639, 336 P2d 68.

County was not required to pay salaries of attorneys and their expenses. *Gleason v. Thornton*, (1957) 210 Or 666, 313 P2d 776.

ATTY. GEN. OPINIONS: Prosecution of criminal cases and investigations in a county by the Governor and Attorney

General, 1952-54, p 194; authority to investigate or prosecute cases, 1956-58, p 141; authority to prosecute cases including violations of the professional engineers law, 1956-58, p 253; power to investigate violation of statutes involving boycotts, 1958-60, p 205; employment of attorney by a state board, 1960-62, p 368.

180.080**NOTES OF DECISIONS**

The Attorney General has no power or duty to initiate an investigation of alleged violations of our criminal statutes nor to undertake any criminal prosecutions unless fortified with a gubernatorial mandate so to act. *State v. Williams*, (1959) 215 Or 639, 336 P2d 68.

ATTY. GEN. OPINIONS: Prosecution of criminal cases and investigations in a county by the Governor and Attorney General, 1952-54, p 194; authority to investigate or prosecute cases, 1956-58, p 141; authority to prosecute cases including violations of the professional engineers law, 1956-58, p 253.

180.090**NOTES OF DECISIONS**

The Attorney General has no power or duty to initiate an investigation of alleged violations of our criminal statutes nor to undertake any criminal prosecutions unless fortified with a gubernatorial mandate so to act. *State v. Williams*, (1959) 215 Or 639, 336 P2d 68.

ATTY. GEN. OPINIONS: Authority to investigate or prosecute cases, 1952-54, p 194, 1956-58, p 141; power to investigate violation of statutes involving boycotts, 1958-60, p 205.

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CASE CITATIONS: *Gleason v. Thornton*, (1957) 210 Or 666, 313 P2d 776.

ATTY. GEN. OPINIONS: Approval of fees charged by special counsel, 1948-50, p 134; determining when assistants shall be used, 1954-56, p 39; special assistant attorney general for State Land Board acting as attorney in adoption proceedings, 1960-62, p 56; employment of attorney by a state board, 1960-62, p 368; Attorney General as counsel for the State Compensation Department, 1966-68, p 449; juvenile court authority to determine personnel salaries, (1970) Vol 34, p 977; confidentiality of income tax returns as to assistant attorneys general, (1970) Vol 35, p 102.

180.150

ATTY. GEN. OPINIONS: Confidentiality of income tax returns as to clerks, (1970) Vol 35, p 102.

180.210

ATTY. GEN. OPINIONS: Determining when assistants shall be used, 1954-56, p 39; state, county or municipal corporation making contract of insurance with reciprocal insurance

exchange, 1954-56, p 151; advising peace officers on boating laws, 1958-60, p 396; conflict of interest statute applicable to special assistants, 1960-62, p 56; employment of other counsel by the State Board of Dental Examiners, 1960-62, p 368; failure of state officer to seek Attorney General's advice, 1962-64, p 270; Attorney General as counsel for the State Compensation Department, 1966-68, p 449; Attorney General as counsel for Associated Students of University of Oregon, (1969) Vol 34, p 776.

180.220

CASE CITATIONS: *State v. Kozzer*, (1928) 126 Or 641, 270 P 513; *State ex rel. Nilsen v. Dent*, (1966) 243 Or 396, 413 P2d 58.

ATTY. GEN. OPINIONS: District attorney representing client in suit against state agency, 1952-54, p 151; determining when assistants shall be used, 1954-56, p 39; state, county or municipal corporation making contract of insurance with reciprocal insurance exchange, 1954-56, p 151; private counsel employed by state agency to aid district attorney in prosecutions, 1956-58, p 253; power to investigate violation of statutes involving boycotts, 1958-60, p 205; conflict of interest statute applicable to special assistants, 1960-62, p 56; employment of attorney by a state board, 1960-62, p 368; Attorney General as counsel for the State Compensation Department, 1966-68, p 449; Attorney General as counsel for Associated Students of University of Oregon, (1969) Vol 34, p 776.

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ATTY. GEN. OPINIONS: Determining when assistants shall be used, 1954-56, p 39.

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ATTY. GEN. OPINIONS: Prosecution of criminal cases and investigations in a county by the Governor and Attorney General, 1952-54, p 194.

180.310**NOTES OF DECISIONS**

The Attorney General has no standing to maintain an appeal from a decree of divorce, but may only appear as *amicus curiae*. *Burke v. Burke*, (1959) 216 Or 691, 340 P2d 948.

ATTY. GEN. OPINIONS: Conformance with federal requirement of restricted use of records in prosecution by Welfare Recovery Division, 1960-62, p 171; responsibility for initiation of Welfare Recovery action, 1960-62, p 341.

180.320

ATTY. GEN. OPINIONS: Conformance with federal requirement of restricted use of records in prosecutions by Welfare Recovery Division, 1960-62, p 171; responsibility for initiation of Welfare Recovery action, 1960-62, p 341.