

PUBLIC ATTORNEYS ACT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

Susan J. Koehn

AN ACT RELATING TO STATE AND LOCAL ATTORNEYS; OUTLINING THE DUTIES OF PUBLIC ATTORNEYS; CLARIFYING THE COUNTY ATTORNEY'S ROLE; CLARIFYING THE ATTORNEY-CLIENT RELATIONSHIP IN CIVIL AND CRIMINAL MATTERS; MAKING TECHNICAL CORRECTIONS AND CONFORMING CHANGES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

17-18-1, as last amended by Chapter 302, Laws of Utah 1995

17-18-1.5, as last amended by Chapter 296, Laws of Utah 1997

17-18-2, as last amended by Chapter 227, Laws of Utah 1993

67-5-1, as last amended by Chapter 198, Laws of Utah 1996

ENACTS:

67-23-101, Utah Code Annotated 1953

67-23-102, Utah Code Annotated 1953

67-23-103, Utah Code Annotated 1953

67-23-201, Utah Code Annotated 1953

67-23-202, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **17-18-1** is amended to read:

17-18-1. Powers -- Duties of county attorney -- Prohibitions.

(1) (a) In each county which is not within a prosecution district, the county attorney is a public prosecutor and shall:

~~[(a)]~~ (i) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928

and appeals from them;

~~[(b)]~~ (ii) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any public offense when in possession of information that the offense has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

~~[(c)]~~ (iii) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(b) All the duties and powers of public prosecutor shall be assumed and discharged by the county attorney.

(2) The county attorney:

(a) shall appear and prosecute for the state in the district court of the county in all criminal prosecutions;

(b) may, subject to Title 67, Chapter 23, Public Attorneys Act, appear and prosecute in all civil cases in which the state may be interested; and

(c) shall render assistance as required by the attorney general in all cases that may be appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the county attorney as a misdemeanor in the district court.

(3) The county attorney shall:

(a) attend the deliberations of the grand jury;

(b) draw all indictments and informations for offenses against the laws of this state within the county;

(c) cause all persons indicted or informed against to be speedily arraigned;

(d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;

(e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county;

(f) upon the order of the court, institute proceedings in the name of the state for recovery

upon the forfeiture of any appearance or other bonds running to the state and enforce the collection of them; and

(g) perform other duties as required by law.

(4) The county attorney shall:

(a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and forfeitures and take action to collect the past-due amounts;

(b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and

(c) proceed against any officer and sureties under this subsection for any neglect of duty.

(5) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(6) The county attorney shall:

(a) each year on the first business day of August file a report with the attorney general covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed, and the amount collected; and

(b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(7) The county attorney shall:

(a) appear and prosecute for the state in the juvenile court of the county in any proceeding involving delinquency;

(b) represent the state in any proceeding pending before the juvenile court if any rights to

the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with abuse, neglect, or contributing to the delinquency or dependency of a juvenile.

(8) [The] Subject to the requirements of Title 67, Chapter 23, Public Attorneys Act, the county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(9) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the state any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(10) If at any time after investigation by the district judge involved, the judge finds and recommends that the county attorney in any county is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance.

Section 2. Section **17-18-1.5** is amended to read:

17-18-1.5. Powers -- Duties of county attorney within a prosecution district –

Prohibitions.

(1) In each county which is within a state prosecution district, the county attorney is a public prosecutor only for the purpose of prosecuting violations of county ordinances or as otherwise provided by law and shall:

(a) conduct on behalf of the county all prosecutions for violations of county ordinances committed within the county;

(b) have authority to grant transactional immunity for violations of county ordinances committed within the county;

(c) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of violations of county ordinances when in possession of information that the violation has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(d) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(2) ~~[The]~~ Subject to Title 67, Chapter 23, Public Attorneys Act, the county attorney:

(a) may appear and prosecute in all civil cases in which the state may be interested; and

(b) shall render assistance as required by the attorney general in all civil cases that may be appealed to the Supreme Court and prosecute the appeal from any violation of a county ordinance.

(3) The county attorney shall:

(a) draw all informations for violations of a county ordinance;

(b) cause all persons informed against to be speedily arraigned;

(c) cause all witnesses for the county to be subpoenaed to appear before the court;

(d) upon the order of the court, institute proceedings in the name of the county for recovery upon the forfeiture of any appearance or other bonds running to the county and enforce the collection of them; and

(e) perform other duties as required by law.

(4) The county attorney shall:

(a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and

forfeitures and take action to collect the past due amounts;

(b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and

(c) proceed against any officer and sureties under this subsection for any neglect of duty.

(5) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(6) [The] Subject to Title 67, Chapter 23, Public Attorneys Act, the county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, precinct, and prosecution district officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(7) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the county any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an information without the consent of the court.

(8) The county attorney or his deputy may be sworn as a deputy district attorney for the purpose of public convenience for a period of time and subject to limitations specified by the district attorney.

Section 3. Section **17-18-2** is amended to read:

17-18-2. Legal adviser to commissioners.

(1) The county attorney is the legal adviser of the county~~[-He must]~~ as provided in Title 67, Chapter 23, Public Attorneys Act.

(2) The county attorney shall attend meetings of the county legislative body when required~~[-~~ and must oppose all claims and accounts against the county when he deems them unjust or illegal].

Section 4. Section **67-5-1** is amended to read:

67-5-1. General duties.

The attorney general shall, subject to Title 67, Chapter 23, Public Attorneys Act:

(1) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and, as attorney, prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and ~~[take charge]~~, as attorney, ~~[of]~~ represent the state in all civil legal matters in which the state is interested;

(2) ~~[when jointly agreed by the governor and the attorney general]~~ with approval of the client:

(a) initiate legal proceedings in a court of competent jurisdiction on behalf of the state, or any officer, board, commission, agency, or instrumentality of the state for the purpose of opposing or challenging federal laws, regulations, or court orders and their impact on or applicability to the state; and

(b) as the budget permits, retain outside legal counsel with appropriate expertise to represent the state in the legal proceedings;

(3) after judgment on any cause referred to in Subsection (1), direct, with approval of the

client, the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all moneys [which] that come into [his] the attorney general's possession[;] that belong to the state;

(5) keep a file of all cases in which [he] the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not satisfied, the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, if not executed, of the reason of the delay or prevention; and

(c) deliver this information to [his] the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give [his] the attorney general's opinion in writing and without fee to the Legislature or either house, and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any district or county attorney in the discharge of his duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state

Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in his opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which [~~he~~] the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose [~~he may cite~~], subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, [~~may~~] examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, [~~the attorney general shall~~] institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107; and

(16) assist the Constitutional Defense Council as provided in Section 63C-4-102.

Section 5. Section **67-23-101** is enacted to read:

CHAPTER 23. PUBLIC ATTORNEYS ACT

Part 1. General Provisions

67-23-101. Title.

This chapter is known as the "Public Attorneys Act."

Section 6. Section **67-23-102** is enacted to read:

67-23-102. Definitions.

As used in this chapter:

(1) (a) "Civil function" means a public attorney's responsibility to advise the client about legal matters, to represent the client when the client is a party in a civil proceeding, and to negotiate disputes, whether the subject of a civil proceeding or not, under the direction of the client.

(b) "Civil function" includes decisions about whether or not to file an amicus brief and decisions about the settlement, including the disposition of settlement proceeds.

(c) "Civil function" does not include prosecutorial functions.

(2) (a) "Civil proceeding" means noncriminal judicial or administrative adjudications.

(b) "Civil proceeding" includes arbitration and mediation.

(3) (a) "Prosecutorial function" means a public attorney's responsibility to investigate and prosecute violations of criminal statutes in the name of the government and the following matters of civil law incident to that responsibility:

(i) bail bond forfeiture actions;

(ii) actions for the forfeiture of property or contraband because of misuse of the property or possession of the contraband in violation of criminal statutes of the state; and

(iii) civil actions incidental to or appropriate to supplement the public attorney's duties such as injunction, habeas corpus, declaratory actions, and extraordinary writ actions, in which the interests of the state or government entity in any criminal prosecution or investigation may be affected.

(b) "Prosecutorial function" includes:

(i) delinquency adjudications and adjudication of status offenses, including truancy, curfew, alcohol, and smoking, brought in juvenile court; and

(ii) the powers granted by Title 77, Chapter 6, Removal by Judicial Proceedings.

(4) "Public attorney" means:

- (a) the attorney general;
- (b) each county and district attorney; and
- (c) attorneys employed, supervised, or controlled by the attorney general, county attorney, or district attorney.

Section 7. Section **67-23-103** is enacted to read:

67-23-103. Scope of chapter.

(1) This chapter is intended to deal specifically with the attorney-client relationship when the client of the public attorney is a government entity.

(2) Nothing in this chapter is intended to interfere with any attorney-client relationships that may exist between:

- (a) a public attorney and a public officer;
- (b) a public attorney and a county legislative body; or
- (c) a public attorney and a public officer or employee when the public officer or employee is sued in the officer's or employee's individual capacity and the public attorney represents the public officer or employee.

(3) Nothing in this chapter modifies or supersedes any independent legal authority granted specifically by statute to the attorney general or to a county or district attorney.

Section 8. Section **67-23-201** is enacted to read:

Part 2. Public Attorney Responsibilities

67-23-201. Public attorneys -- Clients -- Responsibilities to clients.

(1) (a) When performing civil functions, the client of the public attorney is, unless another statute specifically directs that another person or entity is the client:

(i) the state, as represented by the governor or the governor's designee, when the public attorney is the attorney general, an attorney employed, supervised, or controlled by the attorney general;

(ii) the county, as represented by:

(A) the county commission or its designee, when the public attorney is a county attorney, district attorney, or an attorney employed, supervised, or controlled by the county or district attorney

in a county operating under the county commission form of county government;

(B) the county executive or the county executive's designee for general county matters falling under the county executive's responsibility and by the county legislative body for general county matters falling under the county legislative body's responsibility, when the public attorney is a county attorney, district attorney, or an attorney employed, supervised, or controlled by a county or district attorney in a county operating under the county executive-council form of county government or the county executive and chief administrative officer-council form of government;
or

(C) the county council or its designee, when the public attorney is a county attorney, district attorney, or an attorney employed, supervised, or controlled by the county or district attorney in any other alternative form of county government.

(b) As authorized by Rule 1.13(f) of the Rules of Professional Conduct, this section specifically meets the requirements of that rule by affirmatively designating the specific individual or group of individuals vested with the authority to make legal decisions on behalf of a government entity that is the client of a public attorney.

(c) Unless otherwise prohibited by law, the person or entity representing the client may:

(i) establish the type and scope of matters about which the public attorney should inform the representative; and

(ii) affirmatively and specifically delegate certain responsibilities and decisions to the public attorney.

(2) When exercising a prosecutorial function, the client of the public attorney is:

(a) the state, as represented by the attorney general, the district attorney, or the county attorney if there is no district attorney, brought in the name of the state; or

(b) the county, as represented by the district attorney or county attorney, for matters brought in the name of the county.

Section 9. Section **67-23-202** is enacted to read:

67-23-202. Public attorneys -- Responsibilities under Rules of Professional Conduct.

Except as provided in Subsection 67-23-201(1)(c), nothing in this chapter supersedes the

responsibilities of a public attorney under the Rules of Professional Conduct for attorneys adopted by the Utah Supreme Court.

Section 10. **Effective date.**

This act takes effect on January 1, 2001.