

1 **PUBLIC ATTORNEYS ACT**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Greg J. Curtis**

5 Susan J. Koehn

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

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

11 AMENDS:

12 **17-18-1**, as last amended by Chapter 302, Laws of Utah 1995

13 **17-18-1.5**, as last amended by Chapter 296, Laws of Utah 1997

14 **17-18-2**, as last amended by Chapter 227, Laws of Utah 1993

15 **67-5-1**, as last amended by Chapter 198, Laws of Utah 1996

16 ENACTS:

17 **67-23-101**, Utah Code Annotated 1953

18 **67-23-102**, Utah Code Annotated 1953

19 **67-23-103**, Utah Code Annotated 1953

20 **67-23-201**, Utah Code Annotated 1953

21 **67-23-202**, Utah Code Annotated 1953

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

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

24 **17-18-1. Powers -- Duties of county attorney -- Prohibitions.**

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

27 [~~a~~] (i) conduct on behalf of the state all prosecutions for public offenses committed

28 within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928
29 and appeals from them;

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

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

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

39 (2) The county attorney:

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

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

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

47 (3) The county attorney shall:

48 (a) attend the deliberations of the grand jury;

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

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

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

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

56 (f) upon the order of the court, institute proceedings in the name of the state for recovery
57 upon the forfeiture of any appearance or other bonds running to the state and enforce the collection
58 of them; and

59 (g) perform other duties as required by law.

60 (4) The county attorney shall:

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

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

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

68 (5) The county attorney shall:

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

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

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

74 (6) The county attorney shall:

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

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

81 (7) The county attorney shall:

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

84 (b) represent the state in any proceeding pending before the juvenile court if any rights to
85 the custody of any juvenile are asserted by any third person; and

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

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

- 90 (a) defend all actions brought against the county;
- 91 (b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing
- 92 to the county;
- 93 (c) give, when required and without fee, an opinion in writing to county, district, and
- 94 precinct officers on matters relating to the duties of their respective offices;
- 95 (d) deliver receipts for money or property received in an official capacity and file
- 96 duplicates with the county treasurer; and
- 97 (e) on the first Monday of each month file with the auditor an account verified by oath of
- 98 all money received in an official capacity during the preceding month, and at the same time pay
- 99 it over to the county treasurer.

100 (9) A county attorney may not:

101 (a) in any manner consult, advise, counsel, or defend within this state any person charged

102 with any crime, misdemeanor, or breach of any penal statute or ordinance;

103 (b) be qualified to prosecute or dismiss in the name of the state any case in which the

104 county attorney has previously acted as counsel for the accused on the pending charge; or

105 (c) in any case compromise any cause or enter a nolle prosequi after the filing of an

106 indictment or information without the consent of the court.

107 (10) If at any time after investigation by the district judge involved, the judge finds and

108 recommends that the county attorney in any county is unable to satisfactorily and adequately

109 perform the duties in prosecuting a criminal case without additional legal assistance, the attorney

110 general shall provide the additional assistance.

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

112 **17-18-1.5. Powers -- Duties of county attorney within a prosecution district --**

113 **Prohibitions.**

114 (1) In each county which is within a state prosecution district, the county attorney is a

115 public prosecutor only for the purpose of prosecuting violations of county ordinances or as

116 otherwise provided by law and shall:

117 (a) conduct on behalf of the county all prosecutions for violations of county ordinances

118 committed within the county;

119 (b) have authority to grant transactional immunity for violations of county ordinances

120 committed within the county;

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

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

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

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

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

131 (3) The county attorney shall:

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

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

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

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

138 (e) perform other duties as required by law.

139 (4) The county attorney shall:

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

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

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

147 (5) The county attorney shall:

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

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

- 152 (c) file a copy of the list in the office of the state auditor and of the attorney general.
- 153 (6) [The] Subject to Title 67, Chapter 23, Public Attorney's Act, the county attorney shall:
- 154 (a) defend all actions brought against the county;
- 155 (b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing
- 156 to the county;
- 157 (c) give, when required and without fee, an opinion in writing to county, district, precinct,
- 158 and prosecution district officers on matters relating to the duties of their respective offices;
- 159 (d) deliver receipts for money or property received in an official capacity and file
- 160 duplicates with the county treasurer; and
- 161 (e) on the first Monday of each month file with the auditor an account verified by oath of
- 162 all money received in an official capacity during the preceding month, and at the same time pay
- 163 it over to the county treasurer.

164 (7) A county attorney may not:

165 (a) in any manner consult, advise, counsel, or defend within this state any person charged

166 with any crime, misdemeanor, or breach of any penal statute or ordinance;

167 (b) be qualified to prosecute or dismiss in the name of the county any case in which the

168 county attorney has previously acted as counsel for the accused on the pending charge; or

169 (c) in any case compromise any cause or enter a nolle prosequi after the filing of an

170 information without the consent of the court.

171 (8) The county attorney or his deputy may be sworn as a deputy district attorney for the

172 purpose of public convenience for a period of time and subject to limitations specified by the

173 district attorney.

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

175 **17-18-2. Legal adviser to commissioners.**

176 (1) The county attorney is the legal adviser of the county~~[-He must]~~ as provided in Title

177 67, Chapter 23, Public Attorneys Act.

178 (2) The county attorney shall attend meetings of the county legislative body when

179 required~~[-, and must oppose all claims and accounts against the county when he deems them unjust~~

180 ~~or illegal].~~

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

182 **67-5-1. General duties.**

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

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

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

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

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

197 (3) after judgment on any cause referred to in Subsection (1), direct, with approval of the
198 client, the issuance of process as necessary to execute the judgment;

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

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

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

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

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

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

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

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

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

223 (10) when the property of a judgment debtor in any judgment mentioned in Subsection (9)
224 has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking
225 precedence of the judgment in favor of the state, redeem the property, under the direction of the
226 state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money
227 necessary for the redemption, upon the order of the state Board of Examiners, out of any money
228 appropriated for these purposes;

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

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

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

242 (14) institute investigations for the recovery of all real or personal property that may have
243 escheated or should escheat to the state, and for that purpose [~~he may cite~~], subpoena any persons
244 before any of the district courts to answer inquiries and render accounts concerning any property,

245 [may] examine all books and papers of any corporations, and when any real or personal property
246 is discovered that should escheat to the state, [~~the attorney general shall~~] institute suit in the district
247 court of the county where the property is situated for its recovery, and escheat that property to the
248 state;

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

251 (16) assist the Constitutional Defense Council as provided in Section 63C-4-102.
252 Section 5. Section **67-23-101** is enacted to read:

253 **CHAPTER 23. PUBLIC ATTORNEYS ACT**

254 **Part 1. General Provisions**

255 **67-23-101. Title.**

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

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

258 **67-23-102. Definitions.**

259 As used in this chapter:

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

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

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

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

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

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

272 (a) bail bond forfeiture actions;

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

275 (c) civil actions incidental to or appropriate to supplement the public attorney's duties such

276 as injunction, habeas corpus, declaratory actions, and extraordinary writ actions, in which the
277 interests of the state or government entity in any criminal prosecution or investigation may be
278 affected.

279 (4) "Public attorney" means:

280 (a) the attorney general;

281 (b) each county and district attorney; and

282 (c) attorneys employed, supervised, or controlled by the attorney general, county attorney,
283 or district attorney.

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

285 **67-23-103. Scope of chapter.**

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

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

290 (a) a public attorney and a public officer;

291 (b) a public attorney and a county legislative body; or

292 (c) a public attorney and a public officer or employee when the public officer or employee
293 is sued in the officer's or employee's individual capacity and the public attorney represents the
294 public officer or employee.

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

296 **Part 2. Public Attorney Responsibilities**

297 **67-23-201. Public Attorneys -- Clients -- Responsibilities to clients.**

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

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

303 (ii) the county, as represented by:

304 (A) the county commission or its designee, when the public attorney is a county attorney,
305 district attorney, or an attorney employed, supervised, or controlled by the county or district
306 attorney in a county operating under the county commission form of county government;

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

313 or

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

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

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

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

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

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

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

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

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

332 **67-23-202. Public Attorneys -- Responsibilities under Code of Professional**
333 **Responsibility.**

334 Except as provided in Subsection 67-23-201(1)(c), nothing in this chapter supersedes the
335 responsibilities of a public attorney under the Rules of Professional Conduct for attorneys adopted
336 by the Utah Supreme Court.

Legislative Review Note

as of 2-15-99 10:43 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel