

PUBLIC ATTORNEYS ACT AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

AN ACT RELATING TO STATE AFFAIRS; REVISING THE GENERAL DUTIES OF THE ATTORNEY GENERAL; OUTLINING THE RELATIONSHIP OF THE PUBLIC CLIENT AND THE ATTORNEY GENERAL; OUTLINING PROVISIONS FOR THE GOVERNOR TO APPEAR IN A CIVIL LEGAL ACTION; REPEALING THE PUBLIC ATTORNEYS ACT; AND PROVIDING EFFECTIVE DATES.

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

AMENDS:

67-5-1 (Effective 01/01/01), as last amended by Chapters 371 and 372, Laws of Utah 1999

67-5-1 (Superseded 01/01/01), as last amended by Chapter 371, Laws of Utah 1999

ENACTS:

67-5-17, Utah Code Annotated 1953

REPEALS:

67-23-101 (Effective 01/01/01), as enacted by Chapter 372, Laws of Utah 1999

67-23-102 (Effective 01/01/01), as enacted by Chapter 372, Laws of Utah 1999

67-23-103 (Effective 01/01/01), as enacted by Chapter 372, Laws of Utah 1999

67-23-201 (Effective 01/01/01), as enacted by Chapter 372, Laws of Utah 1999

67-23-202 (Effective 01/01/01), as enacted by Chapter 372, Laws of Utah 1999

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

Section 1. Section **67-5-1 (Effective 01/01/01)** is amended to read:

67-5-1 (Effective 01/01/01). General duties.

The attorney general shall~~[-, subject to Title 67, Chapter 23, Public Attorneys Act]:~~

(1) perform all duties in a manner consistent with the attorney-client relationship under

Section 67-5-17;

~~[(+)]~~ (2) 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, [~~represent the state in~~] of all civil legal matters in which the state is interested;

~~[(2) 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)]~~ (2), 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 that come into the attorney general's possession that belong to the state;

(5) keep a file of all cases in which 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 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 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 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, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books

and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, 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 Title 63C, Chapter 4, Constitutional Defense Council.

Section 2. Section **67-5-1 (Superseded 01/01/01)** is amended to read:

67-5-1 (Superseded 01/01/01). General duties.

The attorney general shall:

(1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

~~[(1)]~~ (2) 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 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 all civil legal matters in which the state is interested;

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

~~[(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)]~~ (2), direct 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 Title 63C, Chapter 4, Constitutional Defense Council.

Section 3. Section **67-5-17** is enacted to read:

67-5-17. Attorney-client relationship.

(1) When representing the governor, lieutenant governor, auditor, or treasurer, or when representing an agency under the supervision of any of those officers, the attorney general shall:

(a) keep the officer or the officer's designee reasonably informed about the status of a matter and promptly comply with reasonable requests for information;

(b) explain a matter to the extent reasonably necessary to enable the officer or the officer's

designee to make informed decisions regarding the representation;

(c) abide by the officer's or designee's decisions concerning the objectives of the representation and consult with the officer or designee as to the means by which they are to be pursued; and

(d) jointly by agreement, establish protocols with the officer to facilitate communications and working relationships with the officer or agencies under the officer's supervision.

(2) Nothing in Subsection (1) modifies or supercedes any independent legal authority granted specifically by statute to the attorney general.

(3) When the attorney general institutes or maintains a civil enforcement action on behalf of the state of Utah that is not covered under Subsection (1), the attorney general shall:

(a) fully advise the governor, as the officer in whom the executive authority of the state is vested, before instituting the action, entering into a settlement or consent decree, or taking an appeal; and

(b) keep the governor reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

(4) In a civil action not covered under Subsection (1) or (3), the attorney general shall:

(a) keep the governor reasonably informed about the status of the matter and promptly comply with reasonable requests for information;

(b) explain the matter to the extent reasonably necessary to enable the governor to make informed decisions regarding the representation; and

(c) abide by the governor's decisions concerning the objectives of the representation and consult with the governor as to the means by which they are to be pursued.

(5) The governor may appear in any civil legal action involving the state and appoint legal counsel to advise or appear on behalf of the governor. The court shall allow the governor's appearance.

Section 4. Repealer.

This act repeals:

Section **67-23-101 (Effective 01/01/01), Title.**

Section **67-23-102** (Effective 01/01/01), **Definitions.**

Section **67-23-103** (Effective 01/01/01), **Scope of chapter.**

Section **67-23-201** (Effective 01/01/01), **Public attorneys -- Clients -- Responsibilities to clients.**

Section **67-23-202** (Effective 01/01/01), **Public attorneys -- Responsibilities under Rules of Professional Conduct.**

Section 5. **Effective date.**

(1) Section 2, Section 67-5-1 (Superseded 01/01/01); and Section 67-5-17 take effect on May 1, 2000.

(2) Section 1, Section 67-5-1 (Effective 01/01/01) takes effect January 1, 2001.

(3) The repeal of Sections 67-23-101, 67-23-102, 67-23-103, 67-23-201, and 67-23-202 takes effect on January 1, 2001.