

28 **17-5-301. Control and direction of litigation.**

29 (1) (a) For a county that has adopted an optional form of county government that provides
30 for an elected county executive, the control of the prosecution and defense of any civil action under
31 Subsection 17-18-6(3) to which the county is a party, or if not a party, where the county has
32 assumed the defense and indemnification of county officers, employees, or volunteers, shall vest
33 in the elected county executive.

34 (b) If a county's form of government does not provide for an elected county executive, the
35 control of the prosecution and defense of any civil action under Subsection 17-18-6(3) to which
36 the county is a party, or if not a party, where the county has assumed the defense and
37 indemnification of county officers, employees, or volunteers, shall vest in the county legislative
38 body.

39 (c) The control and direction of the prosecution of any civil action to which any elected
40 county officer in his or her official capacity is a party under Subsection 17-18-6(1) and where the
41 county is not also named as a party shall vest in the elected officer or the officer's designee.

42 (2) The representation and the relationship between the county or district attorney and the
43 client shall be subject to the limitations and requirements of Section 17-18-6 and such other
44 limitations and requirements as are imposed by the Rules of Professional Conduct or applicable
45 statute.

46 (3) The county, upon the request of the county or district attorney or as otherwise
47 authorized by law, may employ counsel to assist the county or district attorney in conducting such
48 actions and representing the county and its officers, employees, and volunteers.

49 Section 2. Section **17-18-6** is enacted to read:

50 **17-18-6. Attorney-client relationship.**

51 (1) As used in this section, "client" means:

52 (a) For a county that has adopted an optional form of county government that provides for
53 an elected county executive, the client is the elected county executive.

54 (b) If a county's form of government does not provide for an elected county executive, the
55 client is the county legislative body.

56 (2) In action brought by a constituent officer of the county in matters to which the county
57 is not a party, the county or district attorney in representing the officer shall:

58 (a) keep the officer or the officer's designee reasonably informed about the status of a

59 matter and promptly comply with reasonable requests for information;

60 (b) explain a matter to the extent reasonably necessary to enable the officer or the officer's
61 designee to make informed decisions regarding the representation;

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

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

67 (3) When the county or district attorney institutes or maintains a civil enforcement action
68 on behalf of the county that is authorized by law and which is not covered under Subsection
68a h [(1)] (2) h ,
69 the county or district attorney shall:

70 (a) fully advise the client, as the officer in whom the executive authority of the county is
71 vested, or a designee of the client, before instituting the action, entering into a settlement or
72 consent decree, or taking an appeal; and

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

75 (4) In a civil action not covered in Subsection h [(1) or (2)] (2) OR (3) h to which the county
75a is a party, or
76 in which the county is not a party but has assumed the defense and indemnification of officers,
77 employees, or volunteers of the county, the county or district attorney shall:

78 (a) keep the client and the officer, employee, or volunteer reasonably informed about the
79 status of the matter and promptly comply with reasonable requests for information;

80 (b) explain the matter to the extent reasonably necessary to enable the client to make
81 informed decisions regarding the representation and the officer, employee, or volunteer to
82 participate in the representation; and

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

85 (5) Nothing in this section supercedes, modifies, or limits any independent legal authority
86 granted specifically by statute to the county or district attorney.

87 Section 3. Section **67-5-1 (Effective 01/01/01)** is amended to read:

88 **67-5-1 (Effective 01/01/01). General duties.**

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

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

92 ~~[(1)]~~ (2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court
93 and the Court of Appeals of this state, and all courts of the United States, and~~[, as attorney,]~~
94 prosecute or defend all causes to which the state, or any officer, board, or commission of the state
95 in an official capacity is a party; and **h TAKE CHARGE h**, as attorney **h** ~~[, represent the state in]~~ **OF h**
95a all civil legal matters in
96 which the state is interested;

97 ~~[(2) with approval of the client:]~~

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

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

104 (3) after judgment on any cause referred to in Subsection (1), direct~~[, with approval of the~~
105 ~~client,]~~ the issuance of process as necessary to execute the judgment;

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (14) institute investigations for the recovery of all real or personal property that may have
150 escheated or should escheat to the state, and for that purpose, subpoena any persons before any of
151 the district courts to answer inquiries and render accounts concerning any property, examine all

152 books and papers of any corporations, and when any real or personal property is discovered that
153 should escheat to the state, institute suit in the district court of the county where the property is
154 situated for its recovery, and escheat that property to the state;

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

157 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4,
158 Constitutional Defense Council.

159 Section 4. Section **67-5-1 (Superseded 01/01/01)** is amended to read:

160 **67-5-1 (Superseded 01/01/01). General duties.**

161 The attorney general shall:

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

164 ~~[(1)]~~ (2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court
165 and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend
166 all causes to which the state, or any officer, board, or commission of the state in an official
167 capacity is a party; and take charge, as attorney, of all civil legal matters in which the state is
168 interested;

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

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

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

176 (3) after judgment on any cause referred to in Subsection (1), direct the issuance of process
177 as necessary to execute the judgment;

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

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

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

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

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

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

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

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

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

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

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

213 (12) discharge the duties of a member of all official boards of which [~~he~~] the attorney

214 general is or may be made a member by the Utah Constitution or by the laws of the state, and other
215 duties prescribed by law;

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

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

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

230 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4,
231 Constitutional Defense Council.

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

233 **67-5-17. Attorney-client relationship.**

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

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

238 (b) explain a matter to the extent reasonably necessary to enable the officer or the officer's
239 designee to make informed decisions regarding the representation;

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

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

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

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

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

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

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

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

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

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

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

264 **Section 6. Repealer.**

265 This act repeals:

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

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

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

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

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

273 **Section 7. Effective date.**

274 (1) Sections 17-5-301 and 17-18-6; Section 4, Section 67-5-1 (Superseded 01/01/01); and
275 Section 67-5-17 take effect on May 1, 2000.

276 (2) Section 3, Section 67-5-1 (Effective 01/01/01) takes effect January 1, 2001.

277 (3) The repeal of Sections 67-23-101, 67-23-102, 67-23-103, 67-23-201, and 67-23-202

278 take effect on January 1, 2001.

Legislative Review Note

as of 2-7-00 12:17 PM

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

Office of Legislative Research and General Counsel