

**OBSCENITY AND PORNOGRAPHY
COMPLAINTS OMBUDSMAN DUTIES**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies the Utah Municipal Code, the Counties Code, and the State Officers and Employees Code to amend the duties of the Obscenity and Pornography Complaints Ombudsman to include drafting model ordinances; assisting political subdivisions in drafting rules, regulations, and policies; and making recommendations for the enforcement of those rules, regulations, and policies. This act also requires the Obscenity and Pornography Complaints Ombudsman and the Office of the Attorney General to coordinate with the county, district, or city attorney within whose jurisdiction an investigation by the Obscenity and Pornography Complaints Ombudsman will take place. The act makes technical amendments.

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

AMENDS:

10-3-928, as last amended by Chapter 296, Laws of Utah 1997

17-18-1, as last amended by Chapter 9, Laws of Utah 2001

17-18-1.5, as last amended by Chapter 9, Laws of Utah 2001

17-18-1.7, as last amended by Chapter 302, Laws of Utah 1995

67-5-1, as last amended by Chapters 212 and 316, Laws of Utah 2000

67-5-18, as last amended by Chapter 315, Laws of Utah 2001

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

Section 1. Section **10-3-928** is amended to read:

10-3-928. Attorney duties -- Deputy public prosecutor.

(1) In cities with a city attorney, the city attorney:

(a) may prosecute violations of city ordinances~~[, and]~~;

(b) may prosecute, under state law, infractions and misdemeanors occurring within the boundaries of the municipality ~~[and]~~;

(c) has the same powers in respect to violations as are exercised by a county attorney or district attorney, except that a city attorney's authority to grant immunity shall be limited to:

(i) granting transactional immunity for violations of city ordinances[;]; and

(ii) granting transactional immunity under state law[;] for infractions[;] and misdemeanors occurring within the boundaries of the municipality[. ~~The city attorney~~];

(d) shall represent the interests of the state or the municipality in the appeal of any matter prosecuted in any trial court by the city attorney[;]; and

(e) may cooperate with the Office of the Attorney General during investigations, including those described in Subsection 67-5-18(3)(f).

Section 2. 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:

(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;

(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

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

(c) shall render assistance and cooperation as required by the attorney general in:

(i) 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; and

(ii) investigations involving the Office of the Attorney General, including those described in Subsection 67-5-18(3)(f).

(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) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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 3. 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; and

(e) cooperate with the Office of the Attorney General during investigations, including those described in Subsection 67-5-18(3)(f).

(2) 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) 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.
- (5) 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.
- (6) 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.

(7) 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 4. Section **17-18-1.7** is amended to read:

17-18-1.7. Powers -- Duties of district attorney -- Prohibitions.

(1) The district attorney is a public prosecutor and shall:

(a) prosecute in the name of the state all violations of criminal statutes of the state;

(b) be a full-time county officer;

(c) 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; and

(d) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any violation of state law 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.

(2) The district attorney shall:

(a) appear and prosecute for the state in the district court all criminal actions for violation of state law;

(b) render assistance and cooperation as required by the attorney general in:

(i) all criminal matters or matters enumerated in Subsections (5) and (8) that may be appealed to the Court of Appeals or the Supreme Court and shall prosecute the appeal from any crime charged by the district attorney as a misdemeanor in the district court; and

(ii) investigations involving the Office of the Attorney General, including those described in Subsection 67-5-18(3)(f).

(3) The district 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; and

(f) perform other duties as required by law.

(4) The district 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 his office, 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.

(5) The district attorney shall:

(a) appear and prosecute for the state in the juvenile court of the prosecution district 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.

(6) A district attorney may not:

(a) engage in private practice of law;

(b) engage in any occupation that may conflict with his duties as a district attorney;

(c) 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;

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

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

(e) 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.

(7) If at any time after investigation by the district judge involved, the judge finds and recommends that the district attorney in any prosecution district 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.

(8) The district attorney may act as counsel to any state or local government agency or entity regarding only the following matters of civil law:

(a) bail bond forfeiture actions;

(b) 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;

(c) civil actions incidental to or appropriate to supplement the district attorney's duties as state prosecuting attorney including injunction, habeas corpus, declaratory actions, and extraordinary writ actions, in which the interests of the state in any criminal prosecution or investigation may be affected; and

(d) any civil duties otherwise provided by statute.

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

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

67-5-1. General duties.

The attorney general shall:

(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 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;

(3) after judgment on any cause referred to in Subsection (2), direct 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, district, or city] 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;

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

(17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims Act,

in accordance with Section 26-20-13; and

(18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at health care facilities that receive payments under the state Medicaid program.

Section 6. Section **67-5-18** is amended to read:

67-5-18. Obscenity and Pornography Complaints Ombudsman -- Powers.

(1) As used in this section, "pornography" means material or a performance that meets the requirements of Subsection 76-10-1203(1).

(2) (a) There is created an Obscenity and Pornography Complaints Ombudsman in the Office of the Attorney General.

(b) The attorney general shall hire an attorney licensed to practice law in Utah who has knowledge of obscenity and pornography law and, if possible, who has a background or expertise in investigating and prosecuting obscenity and pornography law violations to fill the position.

(c) The person hired to fill the position is an exempt employee.

(d) The attorney general may hire clerks, interns, or other personnel to assist the pornography complaints ombudsman.

(3) The Obscenity and Pornography Complaints Ombudsman shall:

(a) develop and maintain expertise in and understanding of laws designed to control or eliminate obscenity and pornography and the legal standards governing the regulation or elimination of obscenity and pornography;

(b) advise citizens and local governments about remedies to address instances of obscenity and pornography in their communities;

(c) advise local governments about ways to strengthen local laws and ordinances addressing obscenity and pornography;

(d) advise local governments about strategies to restrict, suppress, or eliminate obscenity and pornography in their communities;

(e) at the request of the attorney general or a local government, assist a local government in investigating and prosecuting state and local laws and ordinances addressing obscenity or pornography;

(f) before beginning an investigation:

(i) contact the county, district, or city attorney within whose jurisdiction an investigation by the Obscenity and Pornography Complaints Ombudsman will take place and inform that county, district, or city attorney of the investigation; and

(ii) coordinate efforts and share records, in accordance with Section 63-2-206, with the county, district, or city's attorney referred to in Subsection (3)(f)(i) throughout the investigation;

~~[(f)]~~ (g) advise citizens about their options to address specific complaints about obscenity or pornography in their communities;

~~[(g)]~~ (h) when requested by a citizen or local government official, arbitrate between citizens and businesses to resolve complaints about obscenity or pornography;

~~[(h)]~~ (i) provide information to private citizens, civic groups, government entities, and other interested parties about the dangers of obscenity and pornography, the current laws to restrict, suppress, or eliminate pornography, and their rights and responsibilities under those laws;

(j) draft model ordinances that contain:

(i) various degrees of regulation of sexually-oriented businesses; and

(ii) options for local communities that can be used to regulate pornography and obscenity;

(k) assist political subdivisions in:

(i) drafting model rules, regulations, and policies; and

(ii) providing recommendations for enforcing those rules, regulations, and policies;

~~[(i)]~~ (l) in conjunction with Utah's county and municipal prosecuting attorneys:

(i) review Utah's and Idaho's moral nuisance law;

(ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for municipalities and counties to provide an effective mechanism to abate and discourage obscenity and pornography; and

(iii) present the draft to the Legislature's Judiciary Interim Committee before October 25, 2001; and

~~[(j)]~~ (m) establish a program to combat Internet pornography and to assist parents in protecting their children from Internet pornography.

