

Colorado Revised Statutes: Title 18: Criminal Code: **24-31-101. Powers and Duties of Attorney General.**

TITLE 24. GOVERNMENT - STATE PRINCIPAL DEPARTMENTS.
ARTICLE 31. DEPARTMENT OF LAW. PART 1. ATTORNEY GENERAL.

<http://www.lexisnexis.com/hottopics/Colorado>

(1) (a) The attorney general of the state shall be the legal counsel and advisor of each department, division, board, bureau, and agency of the state government other than the legislative branch.

The attorney general shall attend in person at the seat of government during the session of the general assembly and term of the supreme court and shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor, and he or she shall prosecute and defend for the state all causes in the appellate courts in which the state is a party or interested.

(b) It is the duty of the attorney general, at the request of the governor, the secretary of state, the state treasurer, the executive director of the department of revenue, or the commissioner of education, to prosecute and defend all suits relating to matters connected with their departments.

When requested, the attorney general shall give his or her opinion in writing upon all questions of law submitted to the attorney general by the general assembly or by either the house of representatives or the senate or by the governor, lieutenant governor, secretary of state, executive director of the department of revenue, state treasurer, state auditor, or commissioner of education.

(c) When required, the attorney general shall prepare drafts for contracts, forms, and other writings which may be required for the use of the state. The attorney general shall keep in proper books a record of all official opinions and a register of all actions prosecuted or defended by him or her and of all proceedings had in relation thereto and the status of pending matters in his or her office, which books or registers shall be delivered to his or her successor. Publication of opinions or other material circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(d) Any moneys received by the attorney general belonging to the state or received in his or her official capacity must be paid as soon as practicable to the department of the treasury and, generally, the attorney general shall have such legal duties in regard to the activities of the state and its various departments, boards, bureaus, and agencies as are imposed by law.

(e) Whenever the attorney general is unable or has failed or refused to provide legal services to an agency of state government, as determined by the governor if the agency is in the executive branch or by the chief justice if the agency is in the judicial branch, such agency may employ counsel of its own choosing to provide such legal services.

Any expense incurred by reason of the employment of counsel pursuant to this paragraph (e) shall be a lawful charge against appropriations for this purpose made by the general assembly to the department of law.

(f) The attorney general shall have concurrent original jurisdiction with the relevant district attorney over part 3 of article 25 of title 12, C.R.S.

...

(5) The general assembly hereby recognizes and reaffirms that the attorney general has all powers conferred by statute, and by common law in accordance with section 2-4-211, C.R.S., regarding all trusts established for charitable, educational, religious, or benevolent purposes.

(6) The attorney general shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

Case Notes, Annotation:

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

Cross references: For statutory provisions relating to the other principal departments of state government, see article 1 of title 8 (department of labor and employment); article 1 of title 17 (department of corrections); part 1 of article 2 of title 22 (department of education); article 1 of title 23 (department of higher education); article 21 of this title (department of state); part 1 of article 50 of this title (department of personnel); part 1 of article 1 of title 25 (department of public health and environment); article 1 of title 25.5 (department of health care policy and financing); article 1 of title 26 (department of human services); part 1 of article 1 of title 27 (department of human services); title 28 (department of military and veterans affairs); article 1 of title 35 (department of agriculture); and part 1 of article 1 of title 43 (department of transportation).

Cross references: For legal services provided by the office of the attorney general to the board of assessment appeals, see § 39-2-127 (3); for the salary of the attorney general, see § 24-9-101; for discretionary funds of the attorney general, see § 24-9-105; for the election of the attorney general, see § 3 of art. IV, Colo. Const., and § 1-4-204.

~~~~

**Law reviews. For article, "Administrative Law", see 59 Den. L.J. 173 (1982).**

Attorney general only has powers granted by the general assembly and common law unless the general assembly repeals a common law power. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976); People ex rel. Salazar v. Davidson, 79 P.3d 1221 (2003).

Although the constitution recognizes the attorney general as being part of the executive branch of government, § 1 of art. IV, Colo. Const., the attorney general does not have powers beyond those granted by the general assembly. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

No authority to prosecute criminal actions absent governor's command. In the absence of a command from the governor, the attorney general is not authorized to prosecute criminal actions. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

However, this section does not limit the power of the attorney general to petition for the impanelment of a state grand jury. People v. Valdez, 928 P.2d 1387 (Colo. App. 1996).

Powers of attorney general are not enlarged by grand jury act. The statutory powers granted to the attorney general under this section are not enlarged by the statewide grand jury act, § 13-73-101 et seq. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

Therefore, attorney general cannot prosecute all grand jury indictments. Neither by express provision nor by implication did the general assembly grant the attorney general the right to prosecute all indictments returned by a state grand jury. *People ex rel. Tooley v. District Court*, 190 Colo. 486, 549 P.2d 774 (1976).

Attorney general prosecuting case is exercising district attorney's powers. When the governor requires the attorney general to prosecute a criminal case in which the state is a party, he becomes to all intents and purposes the district attorney, and may in his own name and official capacity exercise all the powers of that officer. *People v. Gibson*, 53 Colo. 231, 125 P. 531 (1912); *People ex rel. Witcher v. District Court*, 190 Colo. 483, 549 P.2d 778 (1976).

This section and § 20-1-102 are not inconsistent. This section, permitting the governor to appoint the attorney general to prosecute cases in which the state is a party or is interested, and § 20-1-102, directing the district attorney to appear on behalf of the state or counties of his district where the state or the people thereof or any county may be a party, are not inconsistent. The specific duty imposed upon the district attorney in no way limits or excludes the general authority of the attorney general upon the same subject. *People ex rel. Witcher v. District Court*, 190 Colo. 483, 549 P.2d 778 (1976); *People v. Vickers*, 199 Colo. 305, 608 P.2d 808 (1980).

For history of statutes providing for prosecutions, see *People v. Gibson*, 53 Colo. 231, 125 P. 531 (1912).

Attorney general is authorized to sue to enjoin restraint of trade. The attorney general has jurisdiction, when ordered by the governor, to institute a suit on behalf of the people to enjoin a combination in restraint of trade. *Denver Jobbers' Ass'n v. People ex rel. Dickson*, 21 Colo. App. 326, 122 P. 404 (1912).

He is also statutory legal advisor of the legislative and executive departments. In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916) (decided under former law).

Including university board of regents. The attorney general is the legal adviser of the board of regents of the university, and it is his duty to institute, prosecute, and defend all suits in its behalf. *People ex rel. Jerome v. Regents of State Univ.*, 24 Colo. 175, 49 P. 286 (1897).

But he is not "ex officio" counsel for state treasurer and state officers; however, when requested to do so, it is his duty to appear for such officers in actions brought against them in their official capacity. *Nance v. People ex rel. Sheedy*, 25 Colo. 252, 54 P. 631 (1898).

Executive order authorizing representation of state department required. In a proceeding in the county court by the department of public welfare (now department of social services) against the estate of a pensioner, the attorney general is required to obtain an executive order from the governor authorizing and directing him to represent the department; if he fails to do so, the agency is without representation in the trial court, and is without representation to sue out a writ of error in the supreme court. *Dunbar v. County Court*, 131 Colo. 483, 283 P.2d 182 (1955) (decided under former law).

The duty of the attorney general to represent the state in civil actions extends only to situations in which the attorney general's participation is required by the governor. *Bd. of Soc. Serv. v. Dept. of Soc. Serv.*, 902 P.2d 407 (Colo. App. 1994).

Employees of county department of social services are not entitled to representation by the attorney general because such employees are not in the state personnel system. *Gilman v. State*, 932 P.2d 832 (Colo. App. 1996), rev'd on other grounds, 949 P.2d 565 (Colo. 1997).

Executive order as command. An executive order may constitute the requisite express command from the governor to authorize the attorney general to bring an action on the state's behalf. *State of Colo. v. ASAR Co., Inc.*, 616 F. Supp. 822 (D. Colo. 1985).

State did not waive sovereign immunity where record does not reveal and county does not assert that there has been a determination by the governor that there has been a failure or refusal to provide legal services. *Bd. of Soc. Serv. v. Dept. of Soc. Serv.*, 902 P.2d 407 (Colo. App. 1994).

Presumption that attorney general is authorized to appear. Where the attorney general appears for the state treasurer in an action brought against him, he is presumed to have been authorized to do so. *Nance v. People ex rel. Sheedy*, 25 Colo. 252, 54 P. 631 (1898).

Attorney general's permissive intervention under C.R.C.P. 24(b)(2) held improper. *Gillies v. Schmidt*, 38 Colo. App. 233, 556 P.2d 82 (1976); *People ex rel. Brown v. District Court*, 196 Colo. 359, 585 P.2d 593 (1978).

The attorney general has avoided violating due process and avoided the appearance of impropriety by establishing an internal system that allows the office to act as both an advocate and an advisor to the decision-making body in the same administrative case. *People ex rel. Woodard v. Brown*, 770 P.2d 1373 (Colo. App. 1989), cert. denied, 783 P.2d 1223 (Colo. 1989).