

OPINIONS
OF THE
ATTORNEY GENERAL
OF OHIO
1964

1964 OPINIONS 759 to 1612

WILLIAM B. SAXBE
Attorney General

Opinions published quarterly
with tables and index

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PREFACE

This volume inaugurates a new service whereby formal Opinions of the Attorney General of Ohio will be published promptly, in a form for ready access. The initial publication covers formal opinions written during the calendar year 1964. Commencing January 1, 1965, an Advance Sheets Service will be furnished quarterly and will keep the file of opinions, tables of Ohio Constitution and Revised Code provisions construed, and the index up to date.

Opinions of the Attorney General of Ohio are of greatest value during the period before the courts have had the time and the opportunity to clarify new legislation or to make changes in the common law of Ohio. It is at this point in time that problems regarding new statutes and points of the common law usually arise. A major function of the Opinions of the Attorney General of Ohio is to acquaint public officials and other interested parties with the interpretation of new statutes and the application of common law doctrines to new situations which arise from time to time. This function will be carried out more expediently by the prompt publication of Opinions of the Attorney General of Ohio.

Because the Opinions were not heretofore published nearly contemporaneously with their issue, inquiries are received again and again regarding questions which have been the subject of recent opinions. As the Opinions of the Attorney General of Ohio are now published on a quarterly basis, confusion and delay, as well as the time of public officers and other interested persons will be saved.

The loose-leaf service, commencing with this volume, is the cooperative project of the Publisher and the Office of the Attorney General. Both parties invite constructive criticism of this service to the end that it may be improved in quality and workability. Purposely the Publisher has utilized a low cost photo-offset method of printing which, in our estimation, speeds publication and holds publication costs at a minimum without sacrificing the legibility or utility of the Service.

I hope that this system of prompt dissemination of the Opinions of the Attorney General of Ohio will receive the support of the legislature, the bench and the bar, as well as those officials for whose use it is designed. Such support is essential to the continued publication of the Opinions in this form.

WILLIAM B. SAXBE
Attorney General of Ohio

December 21, 1964

ATTORNEYS GENERAL
of the
STATE OF OHIO

Note: The office of Attorney General was established as an elective office by the Constitution of 1851, and the term of office was two years. By an amendment made in 1954 the term of office is now four years.

Henry Stanberry	1846-1851
Joseph McCormick	1851-1852
George E. Pugh	1852-1854
George W. McCook	1854-1856
Francis D. Kimball	1856-
C.P. Wolcott (a)	1856-1861
James Murray	1861-1863
Lyman R. Critchfield	1863-1865
William P. Richardson	1865-
Chauncey N. Olds (b)	1865-1866
William H. West	1866-1868
Francis B. Pond	1868-1872
John Little	1872-1878
Isaiah Pillars	1878-1880
George K. Nash	1880-1883
D.A. Hollingsworth (c)	1883-1884
James Lawrence	1884-1886
Jacob A. Kohler	1886-1888
David K. Watson	1888-1892
John K. Richards	1892-1896
Frank S. Monnett	1896-1900
John W. Sheets	1900-1904
Wade H. Ellis (e)	1904-Nov., 1908(d)
Ulysses G. Denman (f)	Nov., 1908- 1911
Timothy S. Hogan	1911-1915
Edward C. Turner	1915-1917
Joseph McGee	1917-1919
John G. Price	1919-1923
C. C. Crabbe	1923-1927
Edward C. Turner	1927-1929
Gilbert Bettman	1929-1933
John W. Bricker	1933-1937
Herbert S. Duffy	1937-1939
Thomas J. Herbert	1939-1945
Hugh S. Jenkins	1945-1949
Herbert S. Duffy	1949-1951
C. William O'Neill	1951-1957
William B. Saxbe	1957-1959
Mark McElroy	1959-1963
William B. Saxbe	1963-

Note:

(a) Appointed vice Francis D. Kimball, who resigned September, 1856.

(b) Appointed February 20, 1865, vice William P. Richardson, who was elected while a Colonel in command of Camp Chase, Columbus, Ohio, and resigned as Attorney

General in February, 1865, and remained in the service.

(c) Appointed April 21, 1883, vice George K. Nash, who resigned to become a member of the Supreme Court Commission.

(d) Term extended to 1909 by constitutional amendment.

(e) Resigned November, 1908, to become Assistant United States Attorney General.

(f) Appointed November, 1908, for unexpired term ending January, 1909, vice Wade H. Ellis, resigned; then served the full term commencing January 11, 1909.

ATTORNEY GENERAL OF OHIO
Personnel of Office
December 8, 1964

William B. Saxbe, Attorney General
 Gerald A. Donahue, First Assistant Attorney General
 Larry Snyder, Chief Counsel

Assistant Attorneys General

Acerno, Joseph A.	Hampton, Kenneth S.
Baird, William C.	Hansen, Alfred F.
Barnard, Dale E.	Hayes, William T.
Bartunek, Allen J.	Heffernan, Bernard L.
Berkley, Leonard	Hess, Thomas
Bodoh, William T.	High, Theodore K.
Bowers, H. William	Howdyshell, Walter J.
Brake, Larry G.	Hynes, Bart R.
Brown, William W.	Jackson, F. Sewall
Brownlee, Wyant C.	Jewett, Reed P.
Burke, Lillian W.	Johnson, C. Howard
Burwell, Lloyd W.	Jones, Donald L.
Busch, Thomas H.	Kandel, Harry N.
Carpenter, George L.	Kessler, David L.
Celusta, John O.	Kidd, Athony R.
Cherrill, E. Donna	Kilcoyne, J. Daniel
Cianflona, John	Knapp, Charles F.
Clark, William A.	Knouff, Harold A.
Colasurd, Donald M.	Lang, Bruno
Cole, John R.	Lantz, Duane F.
Collins, William M.	Lanza, Louis R.
Conway, Leo J.	Lee, Andrew Jr.
Cunningham, Pierce E.	Leonard, William L.
Curtice, William L. Jr.	Lewis, Harry
DeCessna, Donald A.	Lindley, Edgar L.
DeJute, Anthony M.	Lindsey, John R.
Dobnicker, Allan D.	Lumpe, J. Richard
Douthett, Marshall B.	Manos, Eli
Duncan, Robert M.	Marchbank, Ray L. Jr.
Dunn, Eagleton F.	Marshall, Paul
Dunphy, James M.	Masters, Joseph M.
Dunton, Winifred A.	Mastics, George E.
Dutro, Hubert C. Jr.	Miller, David E.
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Ebeling, Harry G.	Morgan, David E.
Eisenberg, Richard D.	Moulton, Thomas S.
England, John O.	Moyer, Thomas J.
Everhart, Eugene P.	Newcomer, James D.
Fanelly, Angelo A.	Noble, Ford L.
Flowers, Jay C.	Ostrander, James L.
Foley, K. Michael	Paulino, Harry R.
Galbraith, John A.	Peck, John E.
Gallas, James S.	Perry, Robert J.
Galownia, Frank J.	Petzold, John P.
Gill, James F.	Pisarro, Joseph J.
Godwin, Ralph C.	Pohl, David H.
Greenspun, A. L.	Poorman, Joseph J.
Greiner, Ted R.	Rattan, James E.

Assistants - continued

Redick, Clark G.	Stehle, William L.
Redick, John P.	Sullivan, Noel E.
Reid, Arthur J. Jr.	Talbot, Harold B.
Reiners, Fred G.	Tate, Daronne R.
Rhoads, I. Charles	Tekulve, Charles J.
Rickman, James W.	Underwood, Mell G. Jr.
Riseling, Jerry L.	Valentine, John D.
Roberts, Shearl J.	Van Buren, Stanley K.
Rogers, William A. Jr.	Waldeck, John J.
Ruben, Donald E.	Walsh, John M.
Savasten, Harry N.	Wertz, Neva H.
Scherrer, Terrence M.	Wharton, Joanne
Sentz, John A. Jr.	Whitker, Frederick E.
Sepessy, Edward L.	Widican, George L.
Sharpe, Clarence	Williams, Glen A.
Sheeter, Franklin	Wistner, Robert
Smith, George C.	Zellers, Paul T.
Sokolsky, Morris M.	Ziegler, Jon A.
Stark, Leo P.	

OHIO REVISED CODE

CHAPTER 109

ATTORNEY GENERAL

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ORGANIZATION, POWERS AND DUTIES

109.01 (331). Election; term.

The attorney general shall be elected quadrennially, and shall hold his office for a term of four years. The term of office of the attorney general shall commence on the second Monday of January next after his election. (129 v 582. Eff. 1-10-61)

Compensation of state officials, 141.01 et seq.

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OJur 2d: 6, Attorney General § 1

109.02 (333). Duties.

The attorney general is the chief law officer for the state and all its departments and shall have an office in the statehouse. No state officer, board, or the head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested. When required by the governor or the general assembly, he shall appear for the state in any court or tribunal in a cause in which the state is a party, or in which the state is directly interested. Upon the written request of the governor, he shall prosecute any person indicted for a crime.

See Townsend Corporation Manual, Form 55.45

See Baldwin's School Laws Text § 2.

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OJur 2d: 6, Attorney General § 1, 4, 9; 26, Governor § 4

109.03 (334). Appointment of assistant attorney general and chief counsel; duties.

The attorney general may appoint a first assistant attorney general, a chief counsel, and assistant attorneys general, each of whom shall be an attorney at law, to serve for the term for which the attorney general is elected, unless sooner discharged by him, and each shall perform such duties, not otherwise provided by law, as are assigned him by the attorney general.

OJur 2d: 6, Attorney General § 3

109.04 (335). Powers and duties of first assistant attorney general.

During the absence or disability of the attorney general, or when so directed by the attorney general, including all the rights, privileges, and powers conferred upon the attorney general by sections 2939.10, 2939.11, and 2939.17 of the Revised Code, the first

assistant attorney general shall perform the duties of the attorney general.

OJur 2d: 6, Attorney General § 3

109.05 (337). Employees.

The attorney general may appoint such employees as are necessary.

OJur 2d: 6, Attorney General § 3

109.06 (332). Bond.

Before entering upon the discharge of the duties of his office, the attorney general shall give a bond to the state in the sum of five thousand dollars, with two or more sureties approved by the governor, conditioned for the faithful discharge of the duties of his office. Such bond, with the approval of the governor and the oath of office indorsed thereon, shall be deposited with the secretary of state and kept in his office.¹

The first assistant attorney general shall give a bond to the state in the sum of five thousand dollars, and such other employees as are designated by the attorney general shall give a bond to the state in such amounts as the attorney general determines. Such bonds shall be approved by the attorney general, conditioned for the faithful discharge of the duties of their offices, and shall be deposited with the secretary of state and kept in his office.²

Source: ¹GC § 332, ²§ 335.

OJur 2d: 6, Attorney General § 1, 3; 26, Governor § 6

109.07 (336). Special counsel.

The attorney general may appoint special counsel to represent the state in civil actions, criminal prosecutions, or other proceedings in which the state is a party or directly interested. Such special counsel shall be paid for their services from funds appropriated by the general assembly for that purpose.

OJur 2d: 6, Attorney General § 3

109.08 (336-1). Special counsel to collect claims.

The attorney general may appoint special counsel to represent the state in connection with all claims of whatsoever nature which are certified to the attorney general for collection under any law or which the attorney general is authorized to collect.

Such special counsel shall be paid for their services from funds collected by them in an amount approved by the attorney general.

OJur 2d: 6, Attorney General § 3

109.09 (338). Action on official bonds.

When so directed, the attorney general shall bring an action on the official bond of a delinquent officer, and shall also prosecute any officer for an offense against the revenue laws of the state that come to his knowledge. Such action may be brought by him in the court of common pleas of Franklin county, or of any county in which one or more of the defendants reside, or can be summoned.

OJur 2d: 44, Public Officers § 99, 125, 127

109.10 (339). Proceedings in quo warranto.

The attorney general may prosecute a proceeding in quo warranto in the supreme court of the state, the court of appeals of Franklin county, or the court of appeals of any county wherein a defendant company has a place of business, or the officers or persons made defendants reside or may be found.

Quo warranto, 1331.11, 1331.12, 2733.03.

OJur 2d: 6, Attorney General § 13; 45, Quo Warranto § 3, 25

109.11 Canal land disputes; title.

The attorney general shall be the legal advisor of the department of public works and all other departments of the state in disputes concerning canals, canal basins, and canal lands; and shall examine and perfect title to all state canals, canal basins, and canal lands.

The attorney general may designate one or more of his assistant attorneys general or other personnel to perform such duties and, where necessary, may contract with surveyors, survey companies, title examiners, and title companies in furtherance of such duties. Such assistant attorneys general or other personnel shall receive such remuneration as may be fixed by the attorney general.

The attorney general shall submit quarterly reports to the natural resources commission, and the legislative service commission summarizing the activities of the office of the attorney general in connection herewith. (128 v 317. Eff. 9-17-59.)

Note: Former 109.11 (GC 340) was repealed by 125 v 351, eff. 10-14-53.

109.12 (341). Legal advice to state officers and board.

The attorney general, when so requested, shall give legal advice to a state officer, board, commission, the warden of the penitentiary, the superintendent, trustees, or directors of a benevolent or reformatory institution of the state, and the trustees of the Ohio state university, in all matters relating to their official duties.

Pardon and parole commission, 2905.06.

Printing and distribution of opinions, 125.69.

OJur 2d: 6, Attorney General § 4; 43, Prisons and Prisons § 11; 54, Universities, etc § 40

109.13 (342). General assembly may require written opinions.

When so required by resolution, the attorney general shall give his written opinion on questions of law to either house of the general assembly.

OJur 2d: 6, Attorney General § 4

109.14 (343). Attorney general shall advise prosecuting attorneys.

When requested by them, the attorney general shall advise the prosecuting attorneys of the several counties respecting their duties in all complaints, suits, and controversies in which the state is, or may be a party.

See Baldwin's School Laws Text § 2.

OJur 2d: 6, Attorney General § 4

109.15 (344). Forms of contracts.

The attorney general shall prepare suitable forms of contracts, obligations, and other like instruments of writing for the use of state officers, when requested by the governor, secretary of state, auditor of state, or treasurer of state.

OJur 2d: 6, Attorney General § 7; 26, Governor § 4; 45, Public Works and Contracts § 19

109.16 (345). Suits may be brought in Franklin county.

The attorney general may prosecute an action, information, or other proceeding in behalf of the state, or in which the state is interested, except prosecutions by indictment, in the proper court of Franklin county, or of any other county in which one or more of the defendants reside or may be found. No civil action, unless elsewhere specially provided, shall be commenced in Franklin county, if one or more of the defendants do not reside or cannot be found therein, unless the attorney general certifies on the writ that he believes the amount in controversy exceeds five hundred dollars.

See Baldwin's Civil Manual, Text 9(4)

Water pollution control, forfeiture for failure to obey or-

ders; prima-facie evidence, 6111.30.

OJur 2d: 6, Attorney General § 10; 51, Taxation § 450; 55, Venue § 13, 18

109.17 (346). Writs in other counties.

In all cases instituted by the attorney general under sections 109.01 to 109.22, inclusive, of the Revised Code, the writ may be sent by mail to the sheriff of any county, and returned by him in like manner. For such service, the sheriff shall be allowed the same mileage and fees as if the writ had been issued from the court of common pleas or the court of appeals of his county, and made returnable thereto.

OJur 2d: 6, Attorney General § 11; 44, Process § 31; 49, Sheriff's, etc § 16

109.18 (347). Service by publication.

If a writ or mesne process in proceedings in quo warranto is returned "not found" by the sheriff of the county in which the company is authorized by law to have its place of business, the clerk of the court in which the information or other proceeding is filed shall issue a notice of the filing and substance thereof, and cause it to be published once a week for six consecutive weeks in a newspaper printed and of general circulation in the county wherein such company is authorized to have its place of business. An affidavit of the publication together with a copy of the notice shall be filed in the office of the clerk. If the defendant company fails to answer or plead to such information or proceeding within thirty days from the filing of the affidavit and copy, judgment shall be given upon the default as if the writ or mesne process had been served and returned.

OJur 2d: 45, Quo Warranto § 39, 40, 54

109.19 (348). Security for costs and verification of pleadings.

No undertaking or security is required on behalf of the state or an officer thereof, in the prosecution or defense of any action, writ, or proceeding. In an action, writ, or proceeding it is not necessary to verify the pleadings on the part of the state or any officer thereof.

See Baldwin's Civil Manual, Text 13 (21)

OJur 2d: 3, Appellate Review §§ 334, 628; 6, Attorney General § 11; 14, Costs § 58, 90; 38, Municipal and County Courts § 77, 300; 43, Pleading § 43; 45, Quo Warranto § 40

109.20 (349). Actions to be taken out of their order.

Upon motion of the attorney general, embodying a statement that the public interests require it, a civil action, brought or prosecuted by him on behalf of the state, or an officer, board, or commission thereof, or an action in which the state is a party, shall be taken out of its order upon the docket and assigned for trial at as early a day as practicable.

OJur 2d: 6, Attorney General § 11

109.21 (350). Annual report.

The attorney general shall pay all moneys collected or received by him on behalf of the state into the state treasury to the credit of the general revenue fund. Each year he shall make a report to the governor of the moneys so received and the business of his office, together with an abstract of the statistics of crime returned to him by the prosecuting attorneys of the several counties.

Reports of state officers, 149.01.

OJur 2d: 6, Attorney General § 8; 26, Governor § 15

109.22 (351). Registers shall be kept.

The attorney general shall keep a register of all

actions, demands, complaints, writs, informations, and other proceedings, prosecuted or defended by him, noting therein the proceedings under each, and a register of all official opinions in writing given by him. He shall deliver to his successor the registers, papers, documents, books, and other property belonging to his office.

OJur 2d: 6, Attorney General § 4, 9

CHARITABLE TRUSTS

109.23. Definition of charitable trust; application.

As used in sections 109.23 to 109.33, inclusive, of the Revised Code, "charitable trust" means any fiduciary relationship with respect to property arising as a result of a manifestation of intention to create it, and subjecting the partnership, corporation, person, or association of persons by whom the property is held to equitable duties to deal with the property for any charitable, religious or educational purpose. There are excluded from this definition and from the operation of such sections, trusts until such time as the charitable, religious or educational purpose expressed in such trust becomes vested in use or enjoyment. Such sections do not apply to charitable, religious and educational institutions holding funds in trust or otherwise exclusively for their own purposes nor to institutions created and operated as agencies of the state government or any political subdivision thereof. (125 v 351. Eff. 10-14-53.)

Note: In addition to those types of charitable trusts with registration requirements previously recognized, registration will be required of all charitable corporations operating in this state which have been or will be filing Forms 990A with the Internal Revenue Service. Interpretation of Att General, March 30, 1960, reported at 33 Ohio Bar 502.

See Merrick-Rippner Probate Manual, Text 3, 63(14)

OJur 2d: 6, Attorney General § 21

109.24. Enforcement.

The attorney general shall institute and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse thereof whenever he deems such action advisable or if directed to do so by the Governor, the supreme court, the general assembly, or either house thereof. Such action may be brought in his own name, on behalf of the state, or in the name of a beneficiary of the trust, in any court having jurisdiction in any county wherein the trust property or any part thereof is situated or invested, or where the trustee resides. No such action shall abate or discontinue by virtue of the discontinuance in office of the attorney general in whose name such actions may be brought but shall be prosecuted to final judgement * or mandate as if no change had occurred. (125 v 351. Eff. 10-14-53.)

* So in original.

OJur 2d: 6, Attorney General § 21; 9, Charities § 35

109.25 Service of process on charitable trust.

The attorney general is a necessary party to and shall be served with process or with summons by registered mail in all proceedings, the object of which is to:

(A) Terminate a charitable trust or distribute its assets to other than charitable donees;

(B) Depart from the objects or purposes of a charitable trust as the same are set forth in the instrument creating the trust, including any proceeding for the application of the doctrine of cy pres;

(C) Construe the provisions of an instrument with respect to a charitable trust.

A judgment rendered in such proceedings without service of process upon the attorney general is void, unenforceable, and shall be set aside upon the attorney general's motion seeking such relief. The attorney general shall intervene in any proceeding affecting a char-

itable trust when requested to do so by the court having jurisdiction of the proceeding, and may intervene in any proceeding affecting a charitable trust when he determines that the public interest should be protected in such proceeding. No compromise, settlement agreement, contract, or judgment agreed to by any or all parties having or claiming to have an interest in any charitable trust is valid if the compromise, settlement agreement, contract, or judgment modifies or terminates a charitable trust unless the attorney general was made a party to all such proceedings and joined in said compromise settlement agreement, contract, or judgment; provided, that the attorney general is expressly authorized to enter into such compromise, settlement agreements, contracts, or judgments as may be in the best interests of the public. (129 v 582. Eff. 1-10-61. 125 v 351)

See Merrick-Rippner Probate Manual, Text 3

OJur 2d: 6, Attorney General § 21; 9, Charities § 35

109.26. Register of charitable trusts; duty of trustees.

In addition to all his common law and statutory powers, the attorney general shall prepare and maintain a register of all charitable trusts established or active in this state, and the trustees of said trusts shall register said trusts with the attorney general on forms prescribed by the attorney general for that purpose.

No trustee of a charitable trust shall willfully fail to register such charitable trust as required by this section. (129 v 582. Eff. 1-10-61. 125 v 351)

Note: In addition to those types of charitable trusts with registration requirements previously recognized, registration will be required of all charitable corporations operating in this state which have been or will be filing Forms 990A with the Internal Revenue Service. Interpretation of Att General, March 30, 1960, reported at 33 Ohio Bar 502.

Penalty, 109.99 (A).

OJur 2d: 6, Attorney General § 21; 9, Charities § 37

109.27. Rules and regulations concerning information for register.

The attorney general shall make such rules and regulations subject to the provisions of sections 119.01 to 119.13, inclusive, of the Revised Code, as he may deem necessary to secure records and other information for the operation of the register of charitable trusts. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21

109.28. Register open for inspection, when.

The register established by section 109.26 shall be open to the inspection of any person at such reasonable times and for such legitimate purposes as the attorney general may determine; provided, however, that any investigation of a charitable trust shall not be open to public inspection. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21

109.29. Probate and common pleas papers relating to charitable trusts.

Each probate and common pleas judge shall furnish copies of papers and such information as to the records and files of his office relating to charitable trusts as the attorney general may require. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21; 9, Charities § 33; 31, Judges § 41

109.30. Notice of will creating charitable trust.

Immediately after the probate of any will containing clauses creating or purporting to create a charitable

trust as defined in section 109.23, the probate judge shall notify the attorney general thereof. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21; 9, Charities § 33; 55, Wills § 262

109.31. Biennial report by trustees.

Any trustee of a charitable trust shall biennially, unless otherwise directed by the attorney general, make to him a written report for the two preceding fiscal years of such trust showing the property so held and administered, the receipts and expenditures in connection therewith, and such other information as the attorney general may require; provided however, that if such trustee is required by law or court order to file with any court an account or report, the attorney general shall accept a certified copy thereof in lieu of the written report herein required. Refusal to file such a report shall constitute a breach of trust and the attorney general shall take such action as may be appropriate to compel compliance herewith. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21; 9, Charities § 37

109.32. Investigations and audits.

The auditor of state shall make any investigations and audits which the attorney general may request in enforcing sections 109.23 to 109.33, inclusive, of the Revised Code. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21; 9, Charities § 33

109.33. Assistants, employees, experts; compensation.

The attorney general may appoint such assistants and may employ such stenographers and clerks and fix the compensation of such assistants, stenographers and clerks as may be necessary to carry out sections 109.23 to 109.33, inclusive, of the Revised Code. The attorney general may also employ experts for assistance in any specific matter at a reasonable rate of compensation. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General §§ 3, 21

OBSCENITY LAWS

109.40. Compilation and distribution of statutes relative to obscenity laws.

The attorney general shall compile all statutes relative to obscenity in a convenient pamphlet or paper and may distribute this compilation, without charge, to such sheriffs, police chiefs, county prosecutors, city prosecutors, mayors, constables, judges of the courts of common pleas, county court judges, municipal judges, and other interested parties, as may request such distribution, and make available a reasonable number of such compilations to fill such requests.

The attorney general shall, from time to time, supplement and keep the compilation current and he may, upon request, distribute such supplemental material in the manner provided in this section. (128 v 554. Eff. 11-5-59.)

AGENT IN ESCHEAT

109.41. Agent in certain escheat matters.

Whenever any state begins procedure to escheat property of any person who is an Ohio citizen, corporation, firm, or resident, or whose last known address was in Ohio, on the ground that such property has been abandoned, or on any other grounds, the attorney general may, after making diligent effort to notify the owner of such property and failing in the same, act as attorney

in fact for such Ohio owner to claim such property. Upon taking custody of such property, the attorney general shall deposit same in the general fund of Ohio, or if such property be in kind, the attorney general shall cause the same to be sold pursuant to section 2113.40 of the Revised Code, and deposit the proceeds of such sale in said general fund. Claims to such property shall thereafter be made in the manner provided for in section 127.11 of the Revised Code. (129 v 497. Eff. 10-12-61)

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

109.51 Creation of bureau of criminal identification and investigation.

There is hereby created in the office of the attorney general, a bureau of criminal identification and investigation to be located at the site of the London correctional institution. The attorney general shall appoint a superintendent of said bureau. The superintendent shall appoint, with the approval of the attorney general, such assistants as are necessary to carry out the functions and duties of the bureau as contained in sections 109.51 to 109.63, inclusive, of the Revised Code. (130 v H 263. Eff. 9-24-63)

Note: 130 v H 263, § 2, provides: On or before July 1, 1963, the director of the department of mental hygiene and correction shall order in writing the transfer forthwith of all buildings, facilities, and equipment of the bureau of criminal identification and investigation, located at the London correctional institution in Madison county, to the attorney general. The department of mental hygiene and correction shall continue to furnish utilities, maintenance and protection to the building so located.

All employees of the department of mental hygiene and correction in the classified civil service whose duties are transferred by this act to the office of the attorney general as determined by the department of state personnel shall be automatically transferred to the office of the attorney general with the same civil service rights, seniority, length of service, and compensation in effect at the time of such transfer.

OJur 2d: 15, Criminal Law § 50

109.52 Criminal analysis laboratory; investigators and technicians.

The bureau of criminal identification and investigation may operate and maintain a criminal analysis laboratory and mobile units thereof, create a staff of investigators and technicians skilled in the solution and control of crimes and criminal activity, keep statistics and other necessary data, assist in the prevention of crime, and engage in such other activities as will aid law enforcement officers in solving crimes and controlling criminal activity. (130 v H 263. Eff. 9-24-63)

109.53 Equipment and furnishings of the bureau.

The bureau of criminal identification and investigation shall be supplied with furniture, fixtures, apparatus, vehicles, and materials necessary to carry out the functions and duties of the bureau as contained in sections 109.51 to 109.63, inclusive, of the Revised Code. (130 v H 263. Eff. 9-24-63)

109.54 Intergovernmental cooperation.

The bureau of criminal identification and investigation may investigate any criminal activity in this state which is of statewide or intercounty concern when requested by local authorities and may aid federal authorities, when requested, in their investigation of any criminal activity in this state.

The bureau may provide such trained investigative personnel and specialized equipment as may be requested by any sheriff, chief of police, or other law officer to aid and assist such officer in the investigation and solution

of any crime or the control of any criminal activity occurring within his jurisdiction. This assistance shall be furnished by the bureau without disturbing or impairing any of the existing law enforcement authority or the prerogatives of local law enforcement authorities or officers. (130 v H 263. Eff. 9-24-63)

109.55 Coordination of law enforcement activities.

The superintendent of the bureau of criminal identification and investigation shall recommend cooperative policies for the coordination of the law enforcement work and crime prevention activities of all state and local agencies and officials having law enforcement duties to promote cooperation between such agencies and officials, to secure effective and efficient law enforcement, to eliminate duplication of work, and to promote economy of operation in such agencies. (130 v H 263. Eff. 9-24-63)

109.56 Training local law enforcement authorities.

The bureau of criminal identification and investigation shall, where practicable, assist in training local law enforcement officers in crime prevention, detection, and solution when requested by local authorities, and, where practicable, furnish instruction to sheriffs, chiefs of police, and other law officers in the establishment of efficient local bureaus of identification in their districts. (130 v H 263. Eff. 9-24-63)

109.57 Filing of photographs, fingerprints, descriptions of persons convicted of felony and habitual criminals.

The superintendent of the bureau of criminal identification and investigation shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent, of all persons who have been convicted of felony within the state, and of all well known and habitual criminals, from wherever procurable. The person in charge of any state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony shall furnish such material to the superintendent of the bureau upon request. The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on charge of felony. He shall also file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions.

The superintendent shall carry out sections 2950.01 to 2950.08, inclusive, of the Revised Code, in regard to the registration of habitual sex offenders. (130 v S 160. Eff. 10-4-63. 130 v H 263. Eff. 9-24-63)

109.58 Superintendent shall prepare a standard fingerprint impression sheet.

The superintendent of the bureau of criminal identification and investigation shall prepare standard impression sheets on which fingerprints may be made in accordance with the fingerprint system of identification. Such sheets may provide for other descriptive matter which the superintendent may prescribe. Such sheets shall be furnished to each sheriff, chief of police, and person in charge of every workhouse, reformatory, or penitentiary within the state. (130 v H 263. Eff. 9-24-63)

109.59 Fingerprint impression and descriptive measurement records.

The sheriff, chief of police, or other person in charge of each prison, workhouse, reformatory, or penitentiary shall send to the bureau of criminal identification and investigation, on forms furnished by the superintendent of such bureau, such fingerprint impressions and other descriptive measurements which the superintendent may require. Such information shall be filed, classified, and preserved by the bureau. (130 v H 263. Eff. 9-24-63)

109.60 Duty of sheriffs and chiefs of police to take fingerprints; report.

The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused be found not guilty of the offense charged, then said fingerprints and description shall be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance or a person arrested for a misdemeanor, unless the officers have reason to believe that such person is a past offender, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age, except as provided in section 2151.31 of the Revised Code. (130 v H 263. Eff. 9-24-63)

109.61 Descriptions, fingerprints, and photographs sent to bureau by sheriffs and chiefs of police.

Each sheriff or chief of police shall furnish the bureau of criminal identification and investigation with descriptions, fingerprints, photographs, and measurements of:

(A) Persons arrested who in such police official's

judgment are wanted for serious offenses, are fugitives from justice, or in whose possession at the time of arrest are found goods or property reasonably believed to have been stolen;

(B) All persons in whose possession are found burglar outfits, burglar tools, or burglar keys, or who have in their possession high power explosives reasonably believed to be intended to be used for unlawful purposes;

(C) Persons who are in possession of infernal machines or other contrivances in whole or in part and reasonably believed by said sheriffs or chiefs of police to be intended to be used for unlawful purposes;

(D) All persons carrying concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes;

(E) All persons who have in their possession inks, dies, paper, or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes, or dies, molds, or other articles necessary in the making of counterfeit money and reasonably believed to be intended to be used by them for such unlawful purposes. (130 v H 263. Eff. 9-24-63)

109.62 Interstate, national, and international cooperation.

The superintendent of the bureau of criminal identification and investigation shall cooperate with bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate, national, and international system of criminal identification and investigation. (130 v H 263. Eff. 9-24-63)

109.63 Superintendent and assistants may testify in court.

The superintendent of the bureau of criminal identification and investigation and his assistants employed in accordance with section 109.51 of the Revised Code may testify in any court in this state to the same extent as any law enforcement officer in this state. (130 v H 263. Eff. 9-24-63)

109.99. Penalty.

(A) Whoever violates section 109.26 of the Revised Code shall be fined not less than five hundred nor more than ten thousand dollars or be imprisoned not less than one month nor more than one year, or both. (125 v 351. Eff. 10-14-53.)

OJur 2d: 6, Attorney General § 21; 9, Charities § 37

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TABLE 2 - Ohio Revised Code Sections Interpreted

TABLE 3 - Prior Ohio Attorney General Opinions Affected

TABLE 4 - Compatible and Incompatible Offices

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339.04	1209	1901.023	1339
Chapter 343	978	1901.10	1017
343.01	978	1901.11	1491
505.48	1255	1901.31(F)	1410
505.49	1255	1901.32	1011
505.50	1255	1907.101	1516
505.54	1255	2151.10	1296
511.18 et seq.	1187	2505.09 to 2505.12	1290
	1297	2901.25	1410
511.27	1187	2907.15	1410
513.07 et seq.	1109	2937.36	1410
517.11	1151	2941.51	997
Chapter 519	1178	2947.16	1410
	1500	3311.06	1300
Chapter 705	850	3311.21	1523
709.17	1184	3311.22	961
711.131	1044	3311.231	904
713.01	959	3311.24	961
713.21	796		1043
	959	3311.26	904
	1207	3313.21	1057
721.04 to 721.11	1277	3313.37	1522
727.14	894	3313.42	1522
731.02	882	3313.642	903
731.12	882	3313.81	1285
731.13	851	3313.811	1285
731.44	898	3315.06	1411
731.45	898	Chapter 3354	1305
741.18	979	3375.15	1300
759.04	856	3375.48	1210
759.07	856	3513.191	1261
759.47	856	3513.251	1512
955.21	1067	3513.252	1512
955.26	825	3701.19	978
971.02	1103	Chapter 3709	1058
1103.311	1005	3709.20	978
1103.32	941	3709.21	978
1151.292(H)	1580	3732.01	950
1343.01	1577	3769.082(E)	779
1531.08	770	3905.42	1304
	1122	3905.44	878
1531.09	770	3917.04	1286
1531.10	770	4501.01(I)	1445
1531.11	770	4503.06	892
1531.12	770	4503.061	892
Chapter 1548	930	Chapter 4505	930
1548.20	930	4505.06	1197
1711.09	1045	4505.13	930
1711.15	1417	4507.162	867
1901.02	1339	Chapter 4511	809

TABLES

<i>Rev. Code</i>	<i>1964 Opinion</i>	<i>Rev. Code</i>	<i>1964 Opinion</i>
4511.01	809	5553.20	1198
4511.12	867	Chapter 5555	1198
4511.13	867	5555.61	1183
4511.15	867	5555.71	1183
4511.18 to 4511.23	867	5557.02	1274
4511.25 to 4511.48	867	5591.35	1338
4511.57 to 4511.65	867	5705.10	782
4511.75	867	5705.14	782
Chapter 4582	1277		1456
4582.02	1584	5705.15	960
4582.14	1277	5705.16	960
Chapter 4707	786	5705.19	1523
4707.08	786		1578
4707.09	786	5705.192	1523
Chapter 4709	1303	5705.21	761
4709.05	1303		1523
4731.29	1301	5705.44	1524
5121.03	828	5707.03	1521
5123.05	828	5735.27	1499
5127.01	1302	5739.23	1521
Chapter 5153	1306	5901.02	769
5153.16	1177	Chapter 6103	973
	1492	6103.02	978
5153.161	1302	6103.20	1042
	1306	Chapter 6115	1579
5153.20	1177	6115.45	1579
5301.011	1053	Chapter 6117	978
5535.02	894	6117.01	978
5543.19	1183	6117.02	858
Chapter 5553	1198	6131.31	960
5553.042	1517	6131.50	960
5553.18	1198		

TABLE 3

Prior Ohio Attorney General Opinions Affected

<i>Former Opinion</i>		<i>1964 Opinion</i>
1551, 1960	Overruled by	1261, 1964
532, 1962	Overruled by	1184, 1964
3229, 1962	Limited by	858, 1964
152, 1963	Modified by	1499, 1964
1277, 1964	Overruled by	1584, 1964

TABLE 4

Compatible and Incompatible Offices

Note: The following table, in two parts, lists *Compatible Offices* and *Incompatible Offices*, as determined in Opinions of the Attorney General issued during the year 1964.

Offices and positions are considered incompatible when one is subordinate to the other or is a check upon the other. Also, positions may be deemed incompatible when it is physically impossible for one person to discharge the duties of both offices (State, ex rel Attorney General v Gebert, 12 CC (NS) 274).

There are several constitutional and statutory provisions affecting the compatibility of offices, as follows:

Ohio Constitution

- Art. II, §4
- Art. III, §14
- Art. IV, §14

Ohio Revised Code

3.11	315.02	2919.08
143.41	319.07	2919.09
309.02	705.02	2919.10
311.04	731.12	3501.02

In some instances, court decisions have ruled upon the compatibility of offices. Such court decisions are not covered in this table.

Incompatible Offices

<i>Office</i>	<i>Incompatible With</i>	<i>1964 Opinion No.</i>
City (See under individual subject)		
Community college district, treasurer	Treasurer, county	1305
Community improvement corporation, governing board	Councilman	882
Councilman	Governing board, community improvement corporation	882
County prosecutor (See PROSECUTOR)		

<i>Office</i>	<i>Incompatible With</i>	<i>1964 Opinion No.</i>
Department head, municipality	General assembly, member	879
Deputy, county officer	General assembly, member	879
General assembly, member	Department head, municipality	879
	Deputy, county officer	879
	Officer, appointive, charter city	879
	Prosecutor, assistant, county	879
Judge, municipal court (part-time)	Solicitor, village (part-time)	1023
Municipal court judge (See JUDGE, MUNICIPAL COURT)		
Officer, appointive, charter city	General assembly, member	879
Planning commission City, member	Planning commission, county, member	959
County, member	Planning commission, city, member	959
Regional (See REGIONAL PLANNING COMMISSION)		
Prosecutor Assistant, county	General assembly, member	879
Regional planning commission Director	Consultant, township zoning commission or board of zoning appeals	796
Solicitor, village (part-time)	Judge, municipal court (part-time)	781 1023
Treasurer, county	Treasurer, community college district	1305
Village (See under individual subject)		
Zoning commission con- sultant or board of zon- ing appeals, township	Director, regional planning commission	796

Compatible Offices

<i>Office</i>	<i>Compatible With</i>	<i>1964 Opinion No.</i>
Auditor, municipal corporation	Soldiers' relief commission, county, member	769
Board of elections Member	Secretary, congressman	897
Board of health (See HEALTH, BOARD OF)		
Bus driver, school City board of education	Clerk, school board Dog warden, county	1612 870
Clerk Municipality, unclassified service School board Village	General assembly member, elected Bus driver, school Health, board of, county, member	879 1612 759
Congressman, secretary	Board of elections, member	897
County court Deputy clerk, special	Police chief, municipal corporation	1516
Dog warden, county	Bus driver, school, city board of education	870
Elections (See BOARD OF ELECTIONS)		
General assembly member, elected	Clerk, municipality, unclassified service	879
Health, board of County, member Inspector, general health district	Clerk, village Health, board of, member, second general health district	759 1058
Police chief, municipal corporation	Deputy clerk, special, county court	1516
School bus driver (See BUS DRIVER, SCHOOL)		
Soldiers' relief commission County member	Auditor, municipal corporation	769
Soldiers' relief commission, member	Treasurer, county	1611
Treasurer, county	Soldiers' relief commission, member	1611