

**OPINIONS**  
OF THE  
**ATTORNEY GENERAL**  
**OF OHIO**  
**1977**

during the period

**JANUARY 1, 1977 to DECEMBER 31, 1977**

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**1977 OPINIONS 77-001 to 77-102**

**WILLIAM J. BROWN**  
**Attorney General**

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Opinions published quarterly  
*with tables and index*

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April 22, 1977

Dear Reader:

I take great pride in the publication of this, the thirteenth annual volume in Banks-Baldwin's series of Ohio Attorney General Opinions.

This publication has been well received throughout the years and has been a positive aid to those interested in the formal Opinions published by the Attorney General's office. It is my hope that the annual volumes, published during my terms as Attorney General, will prove informative and useful to you.

Any suggestions that you may have for the improvement of this publication would be welcome.

Yours very truly,

A handwritten signature in cursive script that reads "William J. Brown".

WILLIAM J. BROWN  
Attorney General

## 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 . . . . .	1963-1969
Paul W. Brown . . . . .	1969-1971
William J. Brown . . . . .	1971-

**Notes:**

(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.

# OHIO REVISED CODE

## Chapter 109

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*Amended to April 1, 1977*

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#### CROSS REFERENCES

OJur 2d: 49, State of Ohio § 12

#### ORGANIZATION, POWERS AND DUTIES

##### 109.01 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.

HISTORY: 129 v 582, eff. 1-10-61  
GC 331

## CROSS REFERENCES

Compensation of state officials, 141.01 et seq.  
Official annual reports of state officials, 149.01

OJur 2d: 6, Attorney General § 1  
Am Jur 2d: 7, Attorney General § 2

**109.02 Duties**

The attorney general is the chief law officer for the state and all its departments and shall be provided with adequate office space in Columbus. 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.

HISTORY: 1969 S 438, eff. 11-17-69  
GC 333

## CROSS REFERENCES

See Whiteside Appellate Practice, Form 11.75  
See Baldwin's Ohio School Law, Text 3.03

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Code of military justice, judge advocates, 5924.36

OJur 2d: 6, Attorney General § 1, 12; 26, Governor § 4  
Am Jur 2d: 7, Attorney General § 6, 7, 9, 11 to 17

**109.03 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.

HISTORY: GC 334

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6  
Am Jur 2d: 7, Attorney General § 3

**109.04 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.

HISTORY: GC 335

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

**109.05 Employees**

The attorney general may appoint such employees as are necessary.

HISTORY: GC 337

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

**109.06 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.

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.

HISTORY: GC 332, 335

## CROSS REFERENCES

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

**109.07 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.

**HISTORY:** GC 336

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 6  
Am Jur 2d: 7, Attorney General § 3, 5

**109.08 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.

**HISTORY:** GC 336-1

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 6  
Am Jur 2d: 7, Attorney General § 3, 5

**109.09 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.

**HISTORY:** GC 338

**CROSS REFERENCES**

OJur 2d: 44, Public Officers § 99, 125, 127  
Am Jur 2d: 7, Attorney General § 18

**109.10 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.

**HISTORY:** GC 339

**CROSS REFERENCES**

Quo warranto, 1331.11, 1331.12, 2733.03  
OJur 2d: 6, Attorney General § 16; 45, Quo warranto § 3, 25, 30, 33  
Am Jur 2d: 7, Attorney General § 20

**109.11 Canal land disputes; title**

The attorney general shall be the legal advisor of the department of administrative services 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.

**HISTORY:** 1973 S 174, eff. 12-4-73  
128 v 317

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

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 7

**109.12 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.

**HISTORY:** GC 341

**CROSS REFERENCES**

See Baldwin's Ohio School Law, Text 3.03  
Printing and distribution of opinions, 125.69  
OJur 2d: 6, Attorney General § 7; 43A, Prisons and Prisoners § 12; 54, Universities, etc. § 40  
Am Jur 2d: 7, Attorney General § 8

**109.121 Land title review and opinion**

Prior to the acquisition by the state of any right, title, or interest in real property, except highway rights-of-way, evidence of such right, title, or interest shall be submitted to the attorney general for his review and opinion. Such evidence shall be that customarily and generally used in the community in which the real property is situated and may consist of, but not be limited to, attorneys' opinions of title, abstracts of title, title guarantees, or title insurance.

**HISTORY:** 1969 S 205, eff. 11-12-69

**109.122 Defense of tort actions against certain employees**

The attorney general shall defend employees of the department of mental health and mental retardation, the department of rehabilitation and correction, and the Ohio youth commission in civil actions arising out of their acts in the scope of their employment in a governmental and non-proprietary course of conduct or function. The department of mental health and mental



retardation, the department of rehabilitation and correction, and the Ohio youth commission shall pay their respective costs of such defense as agreed between the departments and the attorney general.

**HISTORY:** 1973 H 1, eff. 3-22-73  
1972 H 1170

Note: This section was erroneously enacted by 1972 H 1170 as 109.121. 1973 H 1, eff. 3-22-73, changed the number to 109.122.

#### **109.13 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.

**HISTORY:** GC 342

##### **CROSS REFERENCES**

OJur 2d: 6, Attorney General § 7  
Am Jur 2d: 7, Attorney General § 8

#### **109.14 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.

**HISTORY:** GC 343

##### **CROSS REFERENCES**

See Baldwin's Ohio School Law, Text 3.03  
OJur 2d: 6, Attorney General § 7  
Am Jur 2d: 7, Attorney General § 8, 10

#### **109.15 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.

**HISTORY:** GC 344

##### **CROSS REFERENCES**

OJur 2d: 6, Attorney General § 10; 26, Governor § 4; 45, Public Works and Contracts § 19

#### **109.16 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.

**HISTORY:** GC 345

##### **CROSS REFERENCES**

See Jacoby Civil Practice, Rule 3(B) and discussion following  
Water pollution control, forfeiture for failure to obey orders, prima-facie evidence, 6111.30  
OJur 2d: 6, Attorney General § 13; 51, Taxation § 450; 55, Venue § 13, 18

#### **109.17 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.

**HISTORY:** GC 346

##### **CROSS REFERENCES**

OJur 2d: 6, Attorney General § 14; 44, Process § 31; 49, Sheriffs etc. § 16

#### **109.18 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.

**HISTORY:** GC 347

##### **CROSS REFERENCES**

OJur 2d: 45, Quo warranto § 39, 40, 54  
Am Jur 2d: 65, Quo Warranto § 58

#### **109.19 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.

**HISTORY:** GC 348

## CROSS REFERENCES

OJur 2d: 3, Appellate Review § 334, 628; 6, Attorney General § 14; 14, Costs § 58, 90; 38, Municipal and County Courts § 77, 300; 43, Pleading § 43; 45, Quo warranto § 40; 48, Sales, Use and Storage Taxes § 64  
Am Jur 2d: 4, Appeal § 30; 61, Pleading § 338

**109.20 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.

**HISTORY:** GC 349

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 14

**109.21 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.

**HISTORY:** GC 350

## CROSS REFERENCES

Reports of state officers, 149.01

OJur 2d: 6, Attorney General § 12, 26, Governor § 15

**109.22 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.

**HISTORY:** GC 351

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 7, 12

## CHARITABLE TRUSTS

**109.23 Definition of charitable trust; application**

As used in sections 109.23 to 109.33 of the Revised Code:

(A) "Charitable trust" means any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the per-

son by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious, or educational purpose.

(B) "Charitable trust" includes the fiduciary relationship, the entity serving as trustee, the status as trustee, the corpus of such trust, or a combination of any or all of such meanings, regardless of the primary meaning of any use of the term, that is necessary in any circumstances to effect the purposes of such sections.

(C) An executor, administrator, guardian, or other conservator of the estate of a decedent, incompetent, or other similarly protected person is, when holding assets in which a charitable trust has a vested or contingent interest and to the extent that such sections are not clearly inapplicable, to be considered a fiduciary of a charitable trust.

(D) The fact that any person sought to be charged with fiduciary duties is a corporation, association, foundation, or any other type of organization that has, under judicial decisions or other statutes, been distinguished from a charitable trust does not provide a presumption against its being a charitable trust as defined in this section.

**HISTORY:** 1975 H 347, eff. 11-19-75  
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 99A with the Internal Revenue Service. Interpretation of Att General, March 30, 1960, reported at 33 Ohio Bar 502

## CROSS REFERENCES

Religious and benevolent organizations, definitions, 1715.51

OJur 2d: 6, Attorney General § 24

Right of attorney general to intervene in will contest case involving charitable trust, 74 ALR2d 1066.

**109.231 Administration of private foundation or split-interest trust**

(A) In the administration of any trust which is a "private foundation" as defined in section 509 of the internal revenue code of 1954, a trust for charitable purposes described in section 4947 (a) (1) of the internal revenue code of 1954 to the extent that it is treated for federal tax purposes as such a private foundation, or a "split-interest trust" as described in section 4947 (a) (2) of the internal revenue code of 1954, the following acts are prohibited:

(1) Engaging in any act of "self-dealing," as defined in section 4941 (d) of the internal revenue code of 1954, which would give rise to any liability for any tax imposed by section 4941 of the internal revenue code of 1954;

(2) Retaining any "excess business holdings," as defined in section 4943 (c) of the internal revenue code of 1954, which would give rise to any liability for any tax imposed by section 4943 of the internal revenue code of 1954;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the internal revenue code of 1954, so as to give rise to any liability for any tax imposed by section 4944 of the internal revenue code of 1954; or

(4) Making any "taxable expenditures," as defined

in section 4945 (d) of the internal revenue code of 1954, which would give rise to any liability for any tax imposed by section 4945 of the internal revenue code of 1954. The prohibitions of this division do not apply to split-interest trusts, or to amounts thereof, to the extent that such prohibitions are inapplicable thereto by reason of section 4947 of the internal revenue code of 1954.

(B) In the administration of any trust which is a "private foundation" as defined in section 509 of the internal revenue code of 1954, or a trust for charitable purposes described in section 4947 (a) (1) of the internal revenue code of 1954 to the extent that it is treated for federal tax purposes as such a private foundation, there shall, for the purposes specified in the governing instrument, be distributed at such time and in such manner, for each taxable year, amounts of income and principal at least sufficient to avoid liability for any tax imposed by section 4942 of the internal revenue code of 1954.

(C) Divisions (A) and (B) of this section express the continuing policy of this state with respect to charitable trust interests and are enacted to assist such trusts in maintaining various tax benefits extended to them, and apply to all trusts described therein, whether or not contrary to the provisions of the governing instrument of such a trust, provided that divisions (A) and (B) of this section do not apply to a trust in existence on the effective date of this section to the extent that the attorney general, the trustor, or any beneficiary of such trust, on or before November 30, 1971, files with the trustee of such trust a written objection to application to such trust of one or more provisions of said divisions, and if the trustee receiving such written objection commences an action on or before December 31, 1971, in the court having jurisdiction over such trust to reform, or to excuse such trust from compliance with, its governing instrument or any other instrument in order to meet the requirements of said divisions. A trustee receiving such written objection shall commence such an action, and the one or more provisions of said divisions specified in such written objection will not apply to such trust unless and until said court determines that their application to such trust is in the best interests of all parties in interest.

(D) No trustee of a trust to which division (A) or (B) of this section is applicable shall be surcharged for a violation of a prohibition or requirement of said divisions, unless he participated in such violation knowing that it was a violation, nor shall such trustee be surcharged if such violation was not willful and was due to reasonable cause, provided that this division does not exonerate a trustee from any responsibility or liability to which he is subject under any other rule of law whether or not duplicated in division (A) or (B) of this section.

(E) As used in this section, "trust" includes a trust or any other organization, other than a corporation, which is a "private foundation" as defined in section 509 of the internal revenue code of 1954, and "trustee" includes any member of the governing body of such organization.

(F) Except as provided in division (D) of this section, nothing in this section impairs the rights and powers of the courts or the attorney general of this state with respect to any trust.

HISTORY: 1971 S 198, eff. 9-17-71

Note: 1971 S 198, eff. 9-17-71, reads:

§3. That divisions (H)(1) and (2) of section 1702.12 and divisions (A) and (B) of section 109.231 of the Revised Code shall affect a corporation, trust or other organization organized before January 1, 1970, only on and after the first day of its first taxable year (for federal tax purposes) beginning on or after January 1, 1972.

#### CROSS REFERENCES

See Blackford Corporation Law, Text 59.30

#### 109.232 Amendment of trust to conform to federal law; approval

(A) The governing instrument of a trust described in division (A) of section 109.231 of the Revised Code may be amended to permit the trust to acquire the characteristics of a trust described in section 664 (D) (1) or (2) of the internal revenue code of 1954, or to conform to the requirements of, or to obtain benefits available under, section 507, 508, or 509 of the internal revenue code of 1954. Such amendment may be made by the trustee with the approval of the attorney general, of the trustor, and, if one or more beneficiaries are named in the governing instrument of such trust, of each named beneficiary. If the trustor is not then living or is not then competent to give such approval, such amendment may be made by the trustee with the approval of the attorney general and, if one or more beneficiaries are named in the governing instrument of such trust, of each named beneficiary. If one or more of said required approvals is not obtained, the trustee may apply to the court having jurisdiction over such trust for approval of such amendment. Said governing instrument may also be amended in any respect and by any method set forth therein or as otherwise provided by law.

(B) Nothing in this section impairs the rights and powers of the courts or the attorney general of this state with respect to any trust.

(C) For the purposes of sections 109.231 and 109.232 of the Revised Code, all references to sections of the internal revenue code of 1954 include all amendments or reenactments thereof.

HISTORY: 1972 S 533, eff. 7-15-72  
1971 S 198

#### 109.24 Enforcement

The powers of the attorney general under sections 109.23 to 109.33 of the Revised Code shall be in addition to and not in limitation of his powers held at common law. The attorney general may investigate transactions and relationships of trustees of a charitable trust for the purpose of determining whether or not the property held for charitable, religious, or educational purposes has been and is being properly administered in accordance with fiduciary principles as established by the courts and statutes of this state. The attorney general is empowered to require the production of any books or papers which are relevant to the inquiry. Each such request shall be in writing, and shall:

(A) Identify the person to whom the request is directed;

(B) State the specific purpose of the investigation;

(C) Describe any books and the papers to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(D) Prescribe a return date which will provide at least

ten days' notice within which the books or papers to be produced may be assembled;

(E) State the place where and the time within which any books or papers are to be produced, provided, however, that copies of such books and papers may be produced in lieu of the originals.

No request shall contain any requirement which would be held to be unreasonable or oppressive or which would be privileged from disclosure if contained in a subpoena duces tecum issued by a court of this state pursuant to the Rules of Civil Procedure, as amended. Where the production of documents required by the request would be unduly burdensome, the person upon whom the request is served shall, in lieu of producing such books or papers at the place designated in the request, make such books or papers available for inspection, copying, or reproduction at the place where such books or papers are kept.

Whenever a request fails to meet the requirements enumerated in this section, any person upon whom the request is served may file a petition to quash such request in the court of common pleas of the county in which the trust, institution, association, or corporation has its principal place of business in this state. The petition shall contain a brief statement of facts entitling such person to have such request quashed. No answer to such petition is required. Upon the filing of the petition, the court on motion of the petitioner shall enter an order fixing a date for hearing the petition and requiring that a copy of the petition and a notice of the filing and of the date for hearing be given to the attorney general or his assistant in the manner in which summons is required to be served or substituted services required to be made in other cases. On the day fixed for hearing on the petition, the court shall determine from the petition and from such evidence as is submitted by either party whether the person upon whom the request was served is entitled to have the request quashed. The proceeding shall be a special proceeding within the meaning of section 2505.02 of the Revised Code, and final orders therein may be vacated, modified, or reversed as provided in sections 2505.01 to 2505.45 of the Revised Code.

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 the court of common pleas of any county wherein the trust property or any part thereof is situated or invested, or where the trustee resides; provided that in the case of a charitable trust created by, arising as a result of, or funded by a will, such action may be brought in either the court of common pleas of any such county, or the probate division thereof, at the election of the attorney general. 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. This section is intended to allow the attorney general full discretion concerning the manner in which the action is to be prosecuted, including the authority to settle an action when he considers that advisable.

HISTORY: 1975 H 347, eff. 11-19-75  
125 v 351

#### CROSS REFERENCES

See Jacoby Civil Practice, Rule 3(B) and discussion following

OJur 2d: 6, Attorney General § 24; 9, Charities § 35  
Am Jur 2d: 15, Charities § 56, 115, 119 to 121

#### 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 judicial proceedings, the object of which is to:

(A) Terminate a charitable trust or distribute assets;

(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 or deviation;

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

(D) Determine the validity of a will having provisions for a charitable trust.

A judgment rendered in such proceedings without service of process or summons 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 judicial proceeding affecting a charitable trust when requested to do so by the court having jurisdiction of the proceeding, and may intervene in any judicial proceeding affecting a charitable trust when he determines that the public interest should be protected in such proceeding.

HISTORY: 1975 H 347, eff. 11-19-75  
129 v 582; 125 v 351

#### CROSS REFERENCES

See Jacoby Civil Practice, Rule 24(A) and discussion following

Attorney general as representative for beneficiaries of charitable trust, 2109.34

OJur 2d: 6, Attorney General § 24; 9, Charities § 35  
Am Jur 2d: 15, Charities § 56, 115, 119 to 121

#### 109.26 Register of charitable trusts; duty of trustees

Except as hereinafter provided, every charitable trust established or active in this state shall register with the attorney general. The attorney general shall prepare and maintain a register of such charitable trusts. The following charitable trusts are not required to register under this section:

(A) Charitable remainder trusts created after July 31, 1969, gifts to which are deductible for federal income, gift, or estate tax purposes;

(B) Charitable trusts in which all charitable interests are contingent and will vest only upon conditions which have not occurred;

(C) Decedent's estates;

(D) Such other classes of charitable trusts as the attorney general may exempt from registration by regulation pursuant to section 109.27 of the Revised Code.

Such trust shall be registered with the attorney general in accordance with this section within six months after the effective date of this section, six months after the creation of such trust, or [six months after the creation of such trust, or] six months after occurrence of an event by reason of which such trust is required to register by this section, whichever is later; provided, however, that all registrations of charitable trusts made prior to

the effective date of this section shall be in full compliance herewith and no further registration shall be required.

No trustee of a charitable trust shall willfully fail to register such charitable trust as required by this section.

**HISTORY:** 1975 H 347, eff. 11-19-75  
129 v 582; 125 v 351

Note: Bracketed language was erroneously duplicated in the amendment of this section by 1975 H 347, eff. 11-19-75.

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 99A with the Internal Revenue Service. Interpretation of Att General, March 30, 1960, reported at 33 Ohio Bar 502

Penalty, 109.99(A)

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24; 9, Charities § 37  
Am Jur 2d: 15, Charities § 121

#### 109.27 Rules and regulations concerning information for register

The attorney general shall make such rules subject to the provisions of sections 119.01 to 119.13 of the Revised Code, as are necessary to administer sections 109.23 to 109.33 of the Revised Code.

**HISTORY:** 1975 H 347, eff. 11-19-75  
125 v 351

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24  
Am Jur 2d: 15, Charities § 121

#### 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.

**HISTORY:** 125 v 351, eff. 10-14-53

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24

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

The clerk of each court of common pleas or the judge of the probate division thereof, and of each court of appeals 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.

**HISTORY:** 1975 H 347, eff. 11-19-75  
125 v 351

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24; 9, Charities § 33; 31, Judges § 41

#### 109.30 Notice to admit will involving charitable trust to probate

After admission to probate of a will creating or purporting to create a charitable trust which must be regis-

tered under section 109.26 of the Revised Code, or containing a gift valued in excess of one thousand dollars to any charitable trust, notice shall be given to the attorney general as well as to other beneficiaries pursuant to section 2107.19 of the Revised Code. If probate of a will creating or purporting to create any charitable trust is refused by interlocutory order under section 2107.181 of the Revised Code, notice of the further hearing under that section shall be given to the attorney general as well as to the other necessary parties.

**HISTORY:** 1975 H 347, eff. 11-19-75

Note: Former 109.30 repealed by 1975 H 347, eff. 11-19-75; 125 v 351.

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24; 9, Charities § 33; 55, Wills § 262

#### 109.31 Annual report by trustees; exceptions; fees

Except as otherwise provided by this section, the trustees of a charitable trust required to register under section 109.26 of the Revised Code shall file annual reports, on forms prescribed by the attorney general, on or before the fifteenth day of the fifth month following the close of the trust's taxable year as established for federal tax purposes; or, in lieu of filing such reports, the trustees may file complete copies of all annual federal returns required to be filed by the trust with the Internal Revenue Service for the taxable year, together with all schedules, attachments, and reports due with the return or returns. The federal returns shall be filed with the attorney general at the same time as required by the Internal Revenue Service, taking into account any applicable extension of the federal filing date.

The annual report must be signed by the trustee who is authorized to sign. The annual report shall be considered certified by the trustee and his signature on the report shall have the same effect as though made under oath.

A charitable trust required to register under section 109.26 of the Revised Code is not required to file the reports required by this section if:

(A) It is organized and operated exclusively for religious purposes;

(B) It is an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(C) For any taxable year it has gross receipts of less than five thousand dollars and at the end of which it has gross assets of less than fifteen thousand dollars. The attorney general may, by regulation pursuant to section 109.27 of the Revised Code, exempt other classes of charitable trusts from the requirements of this section.

The attorney general may institute judicial proceedings to secure compliance with this section and to secure the proper administration of any trust or other relationship to which this section applies. The willful failure of any trustee to file reports as required by this section may be grounds for judicial removal of the trustee responsible for such failure.

The attorney general shall charge the following fees for filing the annual report:

Assets	Fee
Less than \$25,000	\$ 0
\$25,000 but less than \$100,000	25

Assets	Fee
\$100,000 but less than \$500,000	50
\$500,000 or more	100

For the purposes of this section, "assets" refers to the total fair market value of the charitable trust's assets at the end of that trust's taxable year as established for federal tax purposes.

**HISTORY:** 1975 H 347, eff. 11-19-75

Note: Former 109.31 repealed by 1975 H 347, eff. 11-19-75; 125 v 351.

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24; 9, Charities § 37  
Am Jur 2d: 15, Charities § 121

#### 109.32 Charitable foundations fund

All annual filing fees obtained by the attorney general pursuant to section 109.31 of the Revised Code, and all receipts obtained from the sale of the charitable foundations directory, shall be paid into the state treasury to the credit of the charitable foundations fund. The charitable foundations fund shall be used insofar as its moneys are available for the expenses of the charitable foundations section of the office of the attorney general. The expenses of the charitable foundations section in excess of moneys available in the charitable foundations fund shall be paid out of regular appropriations to the office of the attorney general.

**HISTORY:** 1975 H 347, eff. 11-19-75

Note: Former 109.32 repealed by 1975 H 347, eff. 11-19-75; 125 v 351.

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 24; 9, Charities § 33

#### 109.33 Assistants, employees, experts; compensation

The attorney general may appoint with salaries fixed pursuant to section 143.09 of the Revised Code, such assistants and may employ such 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.

**HISTORY:** 132 v H 93, eff. 5-17-67  
125 v 351

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 6, 24  
Am Jur 2d: 7, Attorney General § 3

### 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.

**HISTORY:** 128 v 554, eff. 11-5-59

#### CROSS REFERENCES

OJur 2d: 34, Lewdness § 1

### 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 the property has been abandoned, or on any other grounds, the attorney general may, after making diligent effort to notify the owner of the property and failing in the same, act as attorney in fact for the Ohio owner to claim the property. Upon taking custody of the property, the attorney general shall deposit same in the general fund of Ohio, or if the 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 the sale in the general fund. Claims to the property shall thereafter be made in the manner provided for in Chapter 2743, of the Revised Code.

**HISTORY:** 1974 H 800, eff. 1-1-75  
129 v 497

Note: 1974 H 800, §3, eff. 1-1-75, reads:

This act shall take effect on January 1, 1975. Notwithstanding section 2743.16 of the Revised Code, enacted herein, all actions commenced against the state under this chapter prior to July 1, 1975 shall be timely if commenced within two years of accrual of the cause of action or if commenced within whatever period of limitations would have been applicable to the particular cause of action if commenced against a private party. Any claim pending with the sundry claims board on December 31, 1974 may be commenced anew by filing in the court of claims, and any such claim shall not be barred by section 2743.16 of the Revised Code, enacted herein, or any other statute of limitations otherwise applicable, if filed in said court on or before March 31, 1975, and if the claim would have been timely commenced if it could have been filed in a court of this state at the time it was filed with the sundry claims board. The sundry claims board shall continue in operation after December 31, 1974 for so long as is necessary to complete the processing of claims decided on or before that date. No later than October 1, 1974, the sundry claims board shall notify by certified mail all claimants with claims pending as of the date of notification of the enactment and effect of this bill, in particular the provisions of this Section 3. Similar notification shall be provided to all persons filing claims with the sundry claims board between October 1, 1974, and January 1, 1975.

#### CROSS REFERENCES

OJur 2d: 20, Escheat § 10.5  
Am Jur 2d: 27, Escheat § 46

### 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 investi-

gation 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.

HISTORY: 130 v H 263, eff. 9-24-63

CROSS REFERENCES

OJur 2d: 6, Attorney General § 3; 15, Criminal Law § 44

**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.

HISTORY: 130 v H 263, eff. 9-24-63

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**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.

HISTORY: 130 v H 263, eff. 9-24-63

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**109.54 Intergovernmental cooperation; drug investigations**

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. On and after July 1, 1971, the Bureau may investigate any criminal activity in this state involving drug abuse or illegal drug distribution prohibited under Chapter 3719. or 4729. of the Revised Code.

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. Investigators provided pursuant to this section, or engaged in an investigation pursuant to section 109.83 of the Revised Code, may go armed in the same manner as sheriffs and regularly appointed

police officers under section 2923.01 of the Revised Code.

HISTORY: 1970 H 956, eff. 9-16-70  
130 v H 263

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**109.55 Coordination of law enforcement activities**

The superintendent of the bureau of criminal identification and investigation shall recommend cooperative policies for the co-ordination of the law enforcement work and crime prevention activities of all state and local agencies and officials having law enforcement duties to promote co-operation 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.

HISTORY: 130 v H 263, eff. 9-24-63

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**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.

HISTORY: 130 v H 263, eff. 9-24-63

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**109.57 Duties of the superintendent of the bureau**

(A) 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 a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, 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 or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, shall furnish such material to the superintendent of the bureau upon request. Fingerprints, photographs, or other descriptive information of a child under eighteen years of age shall not be procured by the superintendent or furnished by any person in charge of any state correctional institution, except as may be authorized in section 2151.313 of the Revised Code. Every court of record in this state shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. Such summary shall include the style and number of the case, the dates of arrest, commencement of trial, and conviction, a statement of the

offense and the conduct which constituted it, and the sentence or terms of probation imposed, or other disposition of the offender. 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 or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. 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.

(B) The superintendent of the bureau of criminal identification and investigation shall prepare and furnish to every state penal and reformatory institution and to every court of record in this state standard forms for reporting the information required under division (A) of this section.

(C) The superintendent of the bureau of criminal identification and investigation may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals, criminal activity, crime prevention, law enforcement, and criminal justice, and may establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies.

(D) The information and materials furnished to the superintendent pursuant to division (A) of this section are not public records under section 149.53\* of the Revised Code.

HISTORY: 1970 H 956, eff. 9-16-70  
130 v S 160, H 263

\*So in the original. Should this read "149.35"?

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**109.571 Law enforcement communications committee created; duties**

(A) There is hereby created a law enforcement communications committee, consisting of the superintendent of the bureau of criminal identification and investigation as chairman, and four members appointed by the superintendent to serve at his pleasure, one each of whom shall be a representative of the office of budget and management, the division of state highway patrol, the county sheriffs, and the chiefs of police.

(B) The committee shall meet at least once every six months, or more often upon call of the superintendent or the written request of any two members. Committee members shall receive no compensation for their services as such, but are entitled to their actual and necessary expenses incurred in the performance of committee duties, as determined by the state employees compensation board.

(C) The committee shall aid and encourage coordination and cooperation among law enforcement agencies in the operation and utilization of data processing

facilities and equipment, and a statewide law enforcement communications network.

HISTORY: 1973 S 174, eff. 12-4-73  
1970 H 956

**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.

HISTORY: 130 v H 263, eff. 9-24-63

CROSS REFERENCES

OJur 2d: 15, Criminal Law § 44

**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.

HISTORY: 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, or for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, 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 or wanted by any jurisdiction in this or any other state or the United States or a foreign country for any offense, he shall at once inform the arresting officer of such fact and give appropriate notice to the proper authorities in the jurisdiction in which such person is wanted, or, if such jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to such foreign country. 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 unless the officers have reason to believe that such person is a past offender, or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, 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 2151.313 of the Revised Code.

**HISTORY:** 1970 H 956, eff. 9-16-70  
130 v H 263

**CROSS REFERENCES**

OJur 2d: 15, Criminal Law § 45

**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.

**HISTORY:** 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 co-operate 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.

**HISTORY:** 130 v H 263, eff. 9-24-63

**CROSS REFERENCES**

OJur 2d: 15, Criminal Law, § 44

**109.63 Superintendent and assistants may testify in court**

The superintendent of the bureau of criminal iden-

tification 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.

**HISTORY:** 130 v H 263, eff. 9-24-63

**CROSS REFERENCES**

OJur 2d: 15, Criminal Law, § 44

**OHIO PEACE OFFICER TRAINING COUNCIL**

**109.71 Creation of Ohio peace officer training council; members; definition of "peace officer"**

There is hereby created in the office of the attorney general the Ohio peace officer training council. Such council shall consist of nine members to be appointed by the governor with the advice and consent of the senate, selected as follows: one member representing the public; two members to be incumbent sheriffs; two members to be incumbent chiefs of police; one member from the bureau of criminal identification and investigation; one member from the state highway patrol; one member to be the special agent in charge of a field office of the federal bureau of investigation in the state; and one member from the state department of education, trade and industrial education services, law enforcement training.

As used in sections 109.71 to 109.77 of the Revised Code, "peace officer" means:

(A) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of, Ohio, ordinances of a municipal corporation, or regulations of a board of county commissioners or board of township trustees, or any such laws, ordinances, or regulations.

(B) A policeman who is employed by a railroad company and appointed and commissioned by the governor pursuant to sections 4973.17 to 4973.22 of the Revised Code.

**HISTORY:** 1976 S 272, eff. 8-19-76

1969 H 575; 1969 H 111; 131 v H 363

**CROSS REFERENCES**

See Ciotherman's Revision of Crowley, Ohio Municipal Law, Text 13.32

Security personnel for licensed bingo games, definition, 2915.01

OJur 2d: 6, Attorney General § 7; 43A Police § 4

**109.72 Membership; appointment; term; meetings; expenses**

Ohio peace officer training council member terms shall be for three years, commencing on the twentieth day of September and ending on the nineteenth day of September. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall

continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. An interim chairman shall be appointed by the governor until such time as the council elects a permanent chairman.

Any member of the council appointed pursuant to section 109.71 of the Revised Code as an incumbent sheriff, incumbent chief of police, representative of the state highway patrol, state department of education, federal bureau of investigation, and bureau of criminal identification and investigation, shall immediately, upon termination of his holding such office, cease to be a member of the council, and a successor shall be appointed.

The council shall meet at least four times each year. Special meetings may be called by the chairman and shall be called by him at the request of the attorney general or upon the written request of five members of the council. The council may establish its own requirements as to quorum and its own procedures with respect to the conduct of its meetings and other affairs; provided, that all recommendations by the council to the attorney general pursuant to section 109.74 of the Revised Code shall require the affirmative vote of five members of the council.

Membership on the council does not constitute the holding of an office, and members of the council shall not be required to take and file oaths of office before serving on the council. The council shall not exercise any portion of the sovereign power of the state.

The members of the council shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

No member of the council shall be disqualified from holding any public office or employment, nor shall he forfeit any such office or employment, by reason of his appointment to the council, notwithstanding any general, special, or local law, ordinance, or city charter to the contrary.

**HISTORY:** 1973 S 131, eff. 8-21-73  
131 v H 363

**CROSS REFERENCES**

OJur 2d: 43A, Police § 4

**109.73 Powers and duties**

(A) The Ohio peace officer training council may recommend to the attorney general rules with respect to:

(1) The approval, or revocation thereof, of peace officer training schools administered by state, county, and municipal corporations, public school districts, and technical college districts;

(2) Minimum courses of study, attendance requirements, and equipment and facilities to be required at approved state, county, and municipal peace officer training schools;

(3) Minimum qualifications for instructors at approved state, county, and municipal peace officer training schools;

(4) The requirements of minimum basic training which peace officers appointed to probationary terms shall complete before being eligible for permanent appointment, and the time within which such basic training must be completed following such appointment to a probationary term;

(5) The requirements of minimum basic training

which peace officers not appointed for probationary terms but appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment, and the time within which such basic training must be completed following such appointment on a non-permanent basis;

(6) Categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements with respect to such categories or classifications;

(7) Permitting persons appointed and commissioned as railroad policemen pursuant to sections 4973.17 to 4973.22 of the Revised Code to attend approved peace officer training schools, including the Ohio peace officer training academy, and to receive certificates of satisfactory completion of basic training programs, if the railroad companies sponsoring the policemen pay the entire cost of the training and certification and if trainee vacancies are available.

(B) The council shall appoint an executive director, with the approval of the attorney general, who shall hold office during the pleasure of the council. He shall perform such duties as may be assigned to him by the council. He shall receive a salary fixed pursuant to Chapter 124. of the Revised Code, and reimbursement for the expenses within the amounts available by appropriation. The executive director may appoint such officers, employees, agents, and consultants as he may deem necessary, prescribe their duties, and provide for reimbursement of their expenses within the amounts available therefor by appropriation and with the approval of council.

(C) The council may, in addition:

(1) Recommend studies, surveys, and reports to be made by the executive director regarding the carrying out of the objectives and purposes of sections 109.71 to 109.77 of the Revised Code;

(2) Visit and inspect any peace officer training school approved by the executive director or for which application for such approval has been made;

(3) Make recommendations, from time to time, to the executive director, attorney general and the general assembly, regarding the carrying out of the purposes of sections 109.71 to 109.77 of the Revised Code;

(4) Report to the attorney general from time to time and to the governor and to the general assembly at least annually, concerning the activities of the council;

(5) Perform such other acts as may be necessary or appropriate to carry out the powers and duties of the council as set forth in sections 109.71 to 109.77 of the Revised Code.

**HISTORY:** 1976 S 272, eff. 8-19-76  
1971 S 396; 132 v H 93; 131 v H 363

**CROSS REFERENCES**

OJur 2d: 43A, Police § 4

**109.74 Pronulcation of rules and regulations by attorney general**

The attorney general, in his discretion, may in accordance with Chapter 119. of the Revised Code, adopt and promulgate any or all of the rules and regulations recommended by the Ohio peace officer training coun-

cil to the attorney general pursuant to section 109.73 of the Revised Code. When the attorney general promulgates any rule or regulation recommended by the council, he shall transmit a certified copy thereof to the secretary of state.

**HISTORY:** 131 v H 363, eff. 9-6-65

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 7; 43A Police § 4

**109.75 Executive director**

The executive director of the Ohio peace officer training council, on behalf of the council, shall have the following powers and duties, to be exercised with the general advice of the council and, to be exercised only in accordance with rules and regulations promulgated by the attorney general pursuant to section 109.74 of the Revised Code:

(A) To approve peace officer training schools administered by state, county, and municipal corporations, to issue certificates of approval to such schools, and to revoke such approval or certificate;

(B) To certify, as qualified, instructors at approved peace officer training schools and to issue appropriate certificates to such instructors;

(C) To certify peace officers who have satisfactorily completed basic training programs and to issue appropriate certificates to such peace officers;

(D) To cause studies and surveys to be made relating to the establishment, operation, and approval of state, county, and municipal peace officers training schools;

(E) To consult and cooperate with state, county, and municipal peace officer training schools for the development of advanced in-service training programs for peace officers;

(F) To consult and cooperate with universities, colleges, and institutes for the development of specialized courses of study in the state for peace officers in police science and police administration;

(G) To consult and cooperate with other departments and agencies of the state and federal government concerned with peace officer training;

(H) To perform such other acts as may be necessary or appropriate to carry out his powers and duties as set forth in sections 109.71 to 109.77, inclusive, of the Revised Code;

(I) To report to the council at each regular meeting of the council and at such other times as may be required.

**HISTORY:** 131 v H 363, eff. 9-6-65

**CROSS REFERENCES**

OJur 2d: 43A, Police § 4

**109.76 Construction of act**

Nothing in sections 109.71 to 109.77, inclusive, of the Revised Code, shall be construed to except any peace officer, or other officer or employee from the provisions of Chapter 143, of the Revised Code.

**HISTORY:** 131 v H 363, eff. 9-6-65

**CROSS REFERENCES**

OJur 2d: 43A, Police § 4

**109.77 Certificate necessary for appointment; prohibition**

Notwithstanding any general, special, or local law or charter to the contrary, no person shall, after January 1, 1966, receive an original appointment on a permanent basis as a peace officer of any county, township, or municipal corporation unless such person has previously been awarded a certificate by the executive director of the Ohio peace officer training council, attesting to his satisfactory completion of an approved state, county, or municipal police basic training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a peace officer of any county, township, or municipal corporation, shall forfeit his position as such unless he previously has satisfactorily completed, or within the time prescribed by regulations promulgated by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, or municipal peace officer basic training school for temporary or probationary officers and is awarded a certificate by such director attesting thereto. No peace officer shall have his employment terminated and then be reinstated with intent to circumvent this section.

**HISTORY:** 1969 H 575, eff. 11-21-69

131 v H 363

**CROSS REFERENCES**

See Gotherman's Revision of Crowley, Ohio Municipal Law, Text 13.32

Deputy sheriff defined, 145.01

Rules, regulation and appointment of township police officers, 505.49

Constables, suspension or removal, compensation, 509.01

OJur 2d: 43A, Police § 4

**109.78 Certification as special policemen; payment of cost**

(A) The executive director of the Ohio peace officer training council, on behalf of the council and in accordance with rules promulgated by the attorney general, shall certify persons who have satisfactorily completed approved training programs designed to qualify persons for positions as special policemen, security guards, or persons otherwise privately employed in a police capacity and issue appropriate certificates to such persons. Such programs shall cover only duties and jurisdiction of such security guards and special policemen privately employed in a police capacity when such officers do not qualify for training under section 109.71 of the Revised Code. A person attending an approved basic training program administered by the state shall pay to the agency administering the program the cost of his participation in the program as determined by the agency. A person attending an approved basic training program administered by a county or municipal corporation shall pay the cost of his participation in the program, as determined by the administering subdivision, to the county or the municipal corporation. Such certificate or the completion of twenty years of active duty as a peace officer shall satisfy the educational requirements for appointment or commission as a special policeman or special deputy of a political subdivision of this state.

(B) No public or private educational institution or

port authority shall employ a person as a special policeman, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless such person has completed twenty years of active duty as a peace officer.

**HISTORY:** 1974 S 192, eff. 9-23-74  
1972 H 633; 1971 H 1; 1969 H 575

#### **109.79 Ohio peace officer training academy**

The Ohio peace officer training council shall establish and conduct a training school for law enforcement officers of any political subdivision of the state. The school shall be known as the Ohio peace officer training academy.

The Ohio peace officer training council shall develop the training program, which shall include courses in both the civil and criminal functions of law enforcement officers, and shall establish rules and regulations governing qualifications for admission to the academy. The council may require competitive examinations to determine fitness of prospective trainees, so long as the examinations or other criteria for admission to the academy are consistent with the provisions of Chapter 124. of the Revised Code.

The Ohio peace officer training council shall determine tuition costs which shall be sufficient in the aggregate to pay the costs of operating the academy. The costs of acquiring and equipping the academy shall be paid from appropriations made by the general assembly to the Ohio peace officer training council for that purpose, or from gifts or grants received for that purpose.

The law enforcement officers, during the period of their training, shall receive compensation as determined by the political subdivision which sponsors them. Such political subdivision may pay the tuition costs of the law enforcement officers they sponsor.

The academy may, if trainee vacancies exist and the railroad company prepays the entire cost of the training, train and issue certificates of satisfactory completion to peace officers who are employed by a railroad company and who meet the qualifications established for admission to the academy. A railroad company is not entitled to reimbursement from the state for any amount paid for the cost of training the railroad company's peace officers.

**HISTORY:** 1976 S 272, eff. 8-19-76  
1970 H 1160

### **ANTITRUST CASES**

#### **109.81 Attorney general to represent state or political subdivision in antitrust cases**

The attorney general shall act as the attorney at law for the state and may act, by agreement, as the attorney at law for any political subdivision of the state or governing body thereof in antitrust cases and do all things necessary to properly represent them in any such case under the laws of any state or the federal government.

**HISTORY:** 132 v H 556, eff. 12-14-67

#### **CROSS REFERENCES**

OJur 2d: 6, Attorney General § 5

#### **109.82 Antitrust section created; antitrust fund, use**

There is hereby created in the office of the attorney general a section of antitrust. Ten per cent of all recoveries obtained by the attorney general pursuant to section 109.81 of the Revised Code by settlement, or by judgment in any court, shall be paid into the state treasury to the credit of the attorney general antitrust fund. The attorney general antitrust fund shall be used insofar as funds are available therein for the expenses of the antitrust section. The expenses of the antitrust section in excess of the funds available in the attorney general antitrust fund shall be paid out of the regular appropriation to the office of the attorney general.

**HISTORY:** 132 v H 556, eff. 12-14-67

#### **CROSS REFERENCES**

OJur 2d: 6, Attorney General § 5

#### **109.83 Investigation of organized crime; referral to grand jury**

(A) When directed by the governor or general assembly, the attorney general may investigate any organized criminal activity in this state. "Organized criminal activity" means any combination or conspiracy to engage in criminal activity as a significant source of income or livelihood, or to violate, or aid, abet, facilitate, conceal, or dispose of the proceeds of the violation of, criminal laws relating to prostitution, gambling, counterfeiting, obscenity, extortion, loan sharking, drug abuse or illegal drug distribution, or corruption of law enforcement officers or other public officers, officials, or employees.

(B) When it appears to the attorney general, as a result of an investigation pursuant to this section, that there is cause to prosecute for the commission of a crime, he shall refer the evidence to the prosecuting attorney having jurisdiction of the matter, or to a regular grand jury drawn and impaneled pursuant to sections 2939.01 to 2939.24, inclusive, of the Revised Code, or to a special grand jury drawn and impaneled pursuant to section 2939.17 of the Revised Code. When evidence is referred directly to a grand jury pursuant to this section, the attorney general and any assistant or special counsel designated by him has the exclusive right to appear at any time before such grand jury to give information relative to a legal matter cognizable by it, or to advise upon a legal matter when required, and may exercise all rights, privileges, and powers of prosecuting attorneys in such cases.

**HISTORY:** 1970 H 956, eff. 9-16-70

#### **CROSS REFERENCES**

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### **MISCELLANEOUS PROVISIONS**

#### **109.84 Powers regarding workers' compensation**

(A) Upon the written request of the governor, the industrial commission, the administrator of the bureau of workers' compensation, or upon the attorney general's becoming aware of criminal or improper activity related

to Chapter 4121, or 4123, of the Revised Code, the attorney general shall investigate any criminal or civil violation of law related to Chapter 4121, or 4123, of the Revised Code.

(B) When it appears to the attorney general, as a result of an investigation under division (A) of this section, that there is cause to prosecute for the commission of a crime or to pursue a civil remedy, he may refer the evidence to the prosecuting attorney having jurisdiction of the matter, or to a regular grand jury drawn and impaneled pursuant to sections 2939.01 to 2939.24 of the Revised Code, or to a special grand jury drawn and impaneled pursuant to section 2939.17 of the Revised Code, or he may initiate and prosecute any necessary criminal or civil actions in any court or tribunal of competent jurisdiction in this state. When proceeding under this section, the attorney general has all rights, privileges, and powers of prosecuting attorneys, and any assistant or special counsel designated by him for that purpose has the same authority.

(C) The attorney general shall be reimbursed by the

industrial commission for all actual and necessary costs incurred in conducting investigations requested by the governor, the industrial commission, or the administrator of the bureau of workers' compensation and all actual and necessary costs in conducting the prosecution arising out of such investigation.

HISTORY: 1976 S 545, eff. 1-17-77

#### **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.

HISTORY: 125 v 351, eff. 10-14-53

#### **CROSS REFERENCES**

OJur 2d: 6, Attorney General § 24; 9 Charities § 37

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### Ohio Constitution Provisions Interpreted

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Art. I, § 2	77-101
Art. II, § 20	77-014
	77-073
	77-082
	77-083
§ 36	77-020
Art. VIII, § 6	77-047
	77-049
Art. XV, § 10	77-025
Art. XVIII, § 3	77-051

## TABLE 2

### Ohio Revised Code Sections Interpreted

<i>Rev. Code</i>	<i>1977 Opinion</i>	<i>Rev. Code</i>	<i>1977 Opinion</i>
9.36	77-098	124.81	77-095
9.41	77-035	124.82	77-095
9.44	77-009	127.05	77-021
	77-062	131.08	77-090
109.84	77-019	141.15	77-023
120.16	77-060	147.01	77-044
120.39	77-060	149.43	77-043
121.05	77-064		77-075
124.09	77-015	173.05	77-071
124.11	77-015	305.14	77-039
	77-025	305.29	77-034
124.14	77-090	305.31	77-045
124.20	77-015	307.02	77-047
124.38	77-029		77-057
	77-062	307.08	77-051
	77-094	307.84	77-030
124.39	77-032	307.843	77-030
124.391	77-032	307.85	77-025
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124.50	77-062	309.08	77-019
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311.01	77-090	3313.483	77-077
311.04	77-027	3317.05	77-069
	77-078	3317.06	77-058
313.12	77-102	3317.08	77-069
313.141	77-102	3317.13	77-074
325.08	77-082	3318.16	77-065
325.17	77-027	3319.01	77-014
325.19	77-007	3319.087	77-077
	77-009	3321.03	77-001
339.33	77-039	3321.04	77-001
340.03	77-048	3323.04	77-069
	77-057	3323.091	77-069
340.07	77-057	3345.16	77-002
341.19	77-093	3353.04	77-059
341.20	77-093	3375.40	77-091
503.07	77-031	3501.01	77-041
505.031	77-037	3501.11	77-041
505.032	77-037		77-091
505.24	77-055	3501.18	77-041
	77-083	3503.11	77-041
505.441	77-097	3704.03	77-016
505.443	77-053	3704.032	77-016
505.49	77-054	3704.05	77-016
505.50	77-097	3733.01	77-038
505.60	77-033	3733.02	77-038
	77-066	3781.06	77-058
505.72	77-066	3781.10	77-058
	77-087	3907.14	77-004
509.01	77-054	4112.05	77-075
703.01	77-056	4113.04	77-076
705.92	77-101	4115.04	77-076
713.02	77-051	4115.05	77-076
713.21	77-034	4123.82	77-017
737.11	77-078	4141.01	77-100
971.02	77-012	4141.29	77-011
1505.07	77-096	4301.01	77-005
1545.22	77-040	4301.45	77-005
1701.86	77-061	4301.52	77-005
	77-089	4303.25	77-005
1701.88	77-089	4501.01	77-092
1702.47	77-089		77-099
1702.49	77-089	4501.02	77-070
1703.13	77-061	4501.04	77-036
1785.02	77-018	4502.02	77-079
1901.31	77-082	4503.10	77-036
1901.34	77-008	4504.02	77-052
2151.02	77-063	4504.06	77-052
2151.021	77-063	4505.05	77-079
2151.022	77-063	4507.40	77-008
2151.34	77-006	4511.01	77-072
2925.01	77-067	4511.191	77-008
2929.11	77-067	4713.02	77-022
2945.39	77-080	4731.82	77-085
3301.16	77-074	4731.90	77-087
3304.16	77-021	4732.21	77-026
3309.31	77-013	4732.24	77-026
3313.11	77-042	4906.02	77-064
3313.20	77-024	4973.17	77-086
3313.47	77-024	5101.51	77-050

<i>Rev. Code</i>	<i>1977 Opinion</i>	<i>Rev. Code</i>	<i>1977 Opinion</i>
5101.52	77-056	5577.13	77-079
5101.55	77-046	5703.01 (1976 H 920)	77-073
5113.15	77-056	5705.19	77-097
5119.64	77-063	5705.28	77-068
5122.31	77-043	5713.01	77-020
5122.35	77-081	5713.30	77-020
5123.29	77-081	5713.31	77-020
5123.96	77-081	5739.021	77-045
5139.281	77-006	5741.021	77-045
5155.06	77-003	5747.05	77-024
5301.13	77-065	5906.02	77-094
5503.02	77-070	6117.01	77-010
5507.01	77-023	6117.02	77-010
5507.09	77-023	6119.06	77-068
5553.04	77-028	6119.19	77-068
5553.042	77-028	6119.38	77-068
Ch. 5571	77-028		

TABLE 3

## Prior Ohio Attorney General Opinions Affected

<i>Former Opinion</i>		<i>1977 Opinion</i>
2495, 1921	Overruled by	77-001
3305 (p 779), 1931	Modified by	77-079
1084 (p 728), 1949	Approved and followed by	77-051
3998 (p 319), 1954	Modified by	77-079
4567, 1954	Followed by	77-039
2261, 1961	Approved and followed by	77-024
2439, 1961	Cited by	77-042
66-056	Approved and followed by	77-084
68-087	Modified by	77-025
68-088	Modified by	77-025
71-080	Followed by	77-039
72-063	Modified by	77-088
72-076	Followed by	77-039
73-090	Reversed by	77-098
73-126	Overruled by	77-064
74-065	Modified by	77-098
74-077	Approved and followed by	77-088
74-096	Clarified by	77-100
74-097	Followed by	77-043
76-001	Clarified by	77-007
	Modified by	77-029
76-025	Overruled by	77-099
76-034	Modified by	77-014
76-043	Overruled by	77-028
76-059	Clarified by	77-067

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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 1977.

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:

<i>Ohio Constitution</i>		<i>Ohio Revised Code</i>	
Art. II, §4	3.11	315.02	2919.08
Art. III, §14	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.

## Compatible Offices

<i>Office</i>	<i>Compatible With</i>	<i>1977 Opinion No.</i>
County administrator	Regional planning director	77-034
Fireman	Sheriff	77-078
Regional planning director	County administrator	77-034
Sheriff	Fireman	77-078

## Incompatible Offices

<i>Office</i>	<i>Incompatible With</i>	<i>1977 Opinion No.</i>
Township administrator	Township clerk	77-037
Township clerk	Township administrator	77-037