

OPINIONS
OF THE
ATTORNEY GENERAL
OF OHIO

1988

during the period
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ANTHONY J. CELEBREZZE, JR.
Attorney General

Opinions published quarterly
with tables and index

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**Attorney General
Anthony J. Celebrezze, Jr.**

March 31, 1988

I take much pride in the publication of Banks-Baldwin's twenty-fourth annual edition of the Opinions of the Attorney General.

This publication has been of considerable assistance to those concerned with and affected by formal opinions issued by Ohio attorneys general. I trust that this most recent volume will be of equal benefit to those who refer to it.

If you have any suggestions for changes that will make this publication more useful, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Anthony J. Celebrezze, Jr." in a cursive style.

Anthony J. Celebrezze, Jr.
Attorney General
State of Ohio

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 (d)	1904-Nov., 1908 (e)
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	1971-1983
Anthony J. Celebrezze, Jr.	1983-

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

(e) Term extended to 1909 by constitutional amendment.

(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

Complete to March 31, 1988

Chapter 109 ATTORNEY GENERAL

	ORGANIZATION, POWERS, AND DUTIES		
109.01	Election; term	109.29	Probate and common pleas papers relating to charitable trusts
109.02	Duties	109.30	Notice to admit will involving charitable trust to probate
109.03	Appointment of assistant attorney general and chief counsel; duties	109.31	Annual report by trustees; exceptions; fees
109.04	Powers and duties of first assistant attorney general	109.32	Charitable foundations fund
109.05	Employees	109.33	Assistants, employees, experts; compensation
109.06	Bond		REPRESENTATION OF OFFICER OR EMPLOYEE
109.07	Special counsel	109.36	Definitions
109.08	Special counsel to collect claims	109.361	Representation of officer or employee
109.081	Claims fund	109.362	Denial of request
109.09	Action on official bonds	109.363	Employer's report
109.10	Proceedings in quo warranto	109.364	Remedy in court of claims
109.11	Canal land disputes; title; reports	109.365	Information privileged; exceptions
109.12	Legal advice to state officers and board	109.366	Rules
109.121	Land title review and opinion		OBSCENITY LAWS
109.122	Defense of tort actions against certain employees—Repealed	109.40	Compilation and distribution of statutes relative to obscenity laws
109.13	General assembly may require written opinions		AGENT IN ESCHEAT PROCEEDINGS
109.14	Attorney general shall advise prosecuting attorneys	109.41	Agent in certain escheat matters
109.15	Forms of contracts		VICTIMS' RIGHTS PAMPHLET
109.16	Suits may be brought in Franklin county	109.42	Victims' rights pamphlet; publication and distribution; costs
109.17	Writs in other counties		BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION
109.18	Service by publication	109.51	Creation of bureau of criminal identification and investigation
109.19	Security for costs and verification of pleadings	109.52	Criminal analysis laboratory; investigators and technicians
109.20	Actions to be taken out of their order	109.53	Equipment and furnishings of the bureau
109.21	Annual report	109.54	Intergovernmental cooperation; drug investigations; recording and televising equipment for child sex offense victims; list of persons to question sex offense victims
109.22	Registers shall be kept	109.55	Coordination of law enforcement activities
	CHARITABLE TRUSTS	109.56	Training local law enforcement authorities
109.23	Definition of charitable trust; application	109.57	Duties of the superintendent of the bureau
109.231	Administration of private foundation or split-interest trust	109.571	Law enforcement communications committee created; duties
109.232	Amendment of trust to conform to federal law; approval		
109.24	Enforcement		
109.25	Service of process on charitable trust		
109.26	Registration of charitable trusts; exemptions; duty of trustees		
109.27	Rules and regulations concerning information for register		
109.28	Inspection of register		

- 109.58 Superintendent shall prepare a standard fingerprint impression sheet; may provide to schools
- 109.59 Fingerprint impression and descriptive measurement records
- 109.60 Duty of sheriffs and chiefs of police to take fingerprints; report; exception
- 109.61 Descriptions, fingerprints, and photographs sent to bureau by sheriffs and chiefs of police
- 109.62 Interstate, national, and international cooperation
- 109.63 Superintendent and assistants may testify in court
- 109.64 Information bulletin concerning missing children

OHIO PEACE OFFICER TRAINING COUNCIL

- 109.71 Creation of Ohio peace officer training council; members; definitions
- 109.72 Membership; appointment; term; meetings; expenses
- 109.73 Powers and duties
- 109.74 Promulgation of rules and regulations by attorney general
- 109.741 Training in handling children's cases
- 109.742 Rules on training in crisis intervention
- 109.75 Executive director
- 109.751 Approval of schools; attendance of undercover drug agents
- 109.76 Construction of act
- 109.77 Certificate of training for peace officer, liquor control investigator, bailiff, or criminal investigator; training in domestic matters, crisis intervention; exceptions; prohibition
- 109.78 Certification as special police officer or security guard; payment of cost; firearms training; peace officer private security fund
- 109.79 Ohio peace officer training academy
- 109.80 Basic training course for sheriffs; continuing education

ANTITRUST SECTION

- 109.81 Attorney general to represent state or political subdivision in antitrust cases
- 109.82 Antitrust section; antitrust fund; use

MISCELLANEOUS INVESTIGATORY POWERS AND DUTIES

- 109.83 Investigation of organized crime; referral to prosecuting attorney or grand jury
- 109.84 Powers regarding workers' compensation
- 109.85 Investigations and prosecutions for excess medicaid payments
- 109.86 Investigation and prosecution of patient abuse

VICTIMS ASSISTANCE

- 109.91 Crime victims assistance office; state victims assistance advisory board; duties
- 109.92 State financial assistance to victims assistance programs; procedures
- 109.93 to 109.98 Criminal justice services—Repealed

MISCELLANEOUS PROVISIONS

- 109.99 Penalty

CROSS REFERENCES

Salaries of elective state officers, death benefit, 141.01, 141.011
 Police and firemen's disability and pension fund board, counsel to, membership, 742.03, 742.09
 Interception of communications, training of investigative officers, 2933.64
 School employees retirement board, legal adviser, membership, 3309.05, 3309.13
 Ohio reciprocity board, membership, 4503.36
 Engineers and surveyors registration board, attorney general as legal adviser, 4733.23
 Highway patrol retirement board legal adviser, attorney general as, 5505.23

LEGAL ENCYCLOPEDIAS AND ALR

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
 1953 H 1; GC 331

CROSS REFERENCES

Salaries of elective state officers, death benefit, 141.01, 141.011
 Annual financial reports of elective state officers, 149.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 49, State of Ohio § 12
 OJur 3d: 37, Elections § 11
 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
 1953 H 1; GC 333

Note: 1987 H 171, § 39, eff. 7-1-87, reads, in part: *Appointment of Legal Counsel for the Governor*
Notwithstanding the provisions of sections 109.02 and 109.07 of the Revised Code, the Governor may appoint legal counsel without the approval of the Attorney General to be used in proceedings involving the Governor in his official capacity or his office only. Such legal counsel shall be paid for services from funds appropriated by the General Assembly for that purpose.

CROSS REFERENCES

Teletypewriters for deaf required in certain state offices, 9.55
Public officials and employees, attorney general, powers and duties in regard to, indemnification, 9.87
Bond of secretary of state, sureties to be approved by attorney general, 111.02
Transfer of statistics to secretary of state, duty as to, 111.14
Salaries of elective state officers, 141.01
Contracts for public buildings, duties of attorney general as to, 153.08, 153.20
Contracts and agreements involving state, review by attorney general, 713.30
Attorney general, duties, bank liquidation, 1113.02, 1113.08
Attorney general to seek injunction of petroleum acquisitions that may substantially lessen competition, 1331.021
Foreign corporation in violation of Ohio monopoly law; attorney general to stop business in Ohio; quo warranto action, 1331.07
Actions in quo warranto, duties and powers of attorney general, 1331.11, 1331.12, 2733.03
Discovery powers of attorney general in enforcing monopoly law, 1331.16
Business opportunity plans; attorney general may investigate; remedies, 1334.07, 1334.08
Consumer protection, attorney general, powers and duties, 1345.05 et seq.
Enforcement of orders of soil and water conservation division chief, actions concerning, 1511.07
Coal mining violations, actions concerning, 1513.15
Colleges, attorney general, enjoining award of diplomas or course offerings when not authorized, 1713.06
Attorney general may enforce performance of duties of officers of educational corporations, 1713.31
Judges, removal or suspension, attorney general powers and duties in regard to, 2701.11
Court of claims, attorney general, assistants, special counsel, powers and duties, 2743.14 et seq.
Bingo games, powers and duties, 2915.08, 2915.10
Attorney general, appeals by, 2945.67
Statistical reporting of domestic disputes and violence, duty of attorney general to oversee, 3113.32
Domestic violence shelters fund, powers and duties of attorney general, 3113.37 to 3113.39
Statistical reporting regarding domestic violence shelters, duty of attorney general, 3113.39
Shawnee state university, treasurer's bond, approval by attorney general, 3362.02
Initiative and referendum petitions, certification by attorney general, 3519.01
Air pollution violation, prosecution, 3704.06
Adulteration of food, drugs, or cosmetics, prosecution, 3715.56
Mobile home park violation, prosecutions by attorney general, 3733.08
Marina violation, prosecution, 3733.26
Agricultural labor camp violation, prosecution, 3733.47

Insurance companies, duties of attorney general regarding, 3907.03, 3925.01, 3929.37
Fraternal benefit societies, actions against, 3921.06
Industrial commission, duties of attorney general as to, 4101.09
Workers' compensation, duties of attorney general as to, 4123.92
Nuclear energy, attorney general, powers and duties in regard to, 4163.06
Motor vehicle sales, attorney general, powers and duties in regard to, 4517.34
Odometer rollback and disclosure, attorney general, powers and duties in regard to, 4549.45, 4549.48
Public utilities commission, duties of attorney general as to, 4901.17
Enforcement of railroad bridge regulations, 4961.24
Lease of state real estate for oil or gas, attorney general to draw, 5101.12
Legal rights service for mentally ill and developmentally disabled independent of office of attorney general, 5123.60
Boundaries of state land, attorney general, approval of agreements by, 5301.21
Nonresident aliens, acquisition of real property, action for failure to register, 5301.254
Preparation of system of books, records, etc., for use of officers required to perform duties under the land registration act, 5309.97
Actions against treasurer of state under provisions relating to "Torrens Act" to be defended by the attorney general, 5310.10
Condominium actions, attorney general, powers and duties, 5311.27
Code of military justice, judge advocates, 5924.06
Safe drinking water act, enforcement by attorney general, 6109.32, 6109.33

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 9 to 27

NOTES ON DECISIONS AND OPINIONS

1. Representation of state agencies
2. Other counsel authorized
3. Representation of state officer or employee
4. Powers in litigation
5. Other matters

1. Representation of state agencies

20 Misc 115, 252 NE(2d) 463 (CP, Trumbull 1969), *Sowers v Ohio Civil Rights Comm.* The attorney general is the legal representative of the Ohio civil rights commission with respect to all legal matters.

30 NP(NS) 238 (1932), *Wolfe v Fulton*; affirmed by Court of Appeals (1933). The court has no authority to appoint counsel for the superintendent of banks contrary to this section, which constitutes the attorney general the sole counsel for the state and all its departments.

56 USLW 4022 (US 1987), *Karcher v May*. Where a New Jersey statute, passed over the governor's veto, permits pupils to observe one minute of silence before each school day as "quiet and private contemplation or retrospection," and the attorney general, state education department, education commissioner, and two school districts refuse to defend the law when it is attacked in federal court, and where the presiding officers of the state legislature are allowed to intervene as defendants in which capacity they lose both in the district court and on appeal, when these officers give up their posts before filing an appeal with the supreme court and their successors withdraw the legislature from that appeal the matter

is moot even though one of the presiding officers of the legislative session that enacted the statute wishes to pursue it.

OAG 74-089. A representative of the attorney general's office is the proper person to present complaints before hearings of the ethics commission, under present circumstances.

2. Other counsel authorized

32 OS(2d) 245, 291 NE(2d) 434 (1972), *State ex rel Brown v Ferguson*. Where the general assembly passed a bill providing general appropriations and the appropriation for the attorney general therein carries a provision that whenever the secretary of state in his official capacity is a party in any court to a lawsuit involving O Const Art XI, or any part of 2 USC 2, 2a, or 2c, he may employ counsel of his own choosing to represent him as secretary of state, notwithstanding RC Ch 109; such counsel shall be compensated, in such amount as determined by the secretary of state, out of the appropriated funds of the attorney general; but to be reimbursed by the controlling board, such provision constitutes an item separate and distinct from the appropriation for the attorney general in subject, purpose and amount and is an item within O Const Art II, § 16, and the governor's item veto of that bill was a valid exercise of his rights established by that section.

165 OS 447, 136 NE(2d) 47 (1956), *State ex rel Devine v Schwarzwald*. Service as an attorney examiner and as chief of the permit division in the department of liquor control is "actively engaging in the practice of law" within the meaning of RC 1901.06.

95 Abs 42, 188 NE(2d) 199 (CP, *Tuscarawas* 1962), *Leach v Goshen Brick & Clay Corp*. The administrator of the bureau of unemployment compensation may prosecute an appeal in his own name without being represented by the attorney general.

OAG 85-012. A regional organization for civil defense is not entitled to the general legal counsel of a prosecuting attorney or of the attorney general, but may hire legal counsel as needed for the performance of its duties.

OAG 78-036. Absent an agreement with the attorney general pursuant to RC 109.08, an attorney who recovers a subrogation claim owed to the department of public welfare under RC 5101.58 may not charge the department a fee for representing it.

3. Representation of state officer or employee

OAG 73-029. The office of the attorney general may defend a state highway patrolman who is accused of a criminal offense committed in the scope of his official duties even though the prosecution is conducted by the county prosecutor.

OAG 72-076. When a state highway patrolman is sued for false arrest, the attorney general may defend him if, after careful examination of the facts and circumstances upon which the suit is based, he concludes that the patrolman attempted in good faith to perform his official duties.

1950 OAG 2532. If a state pilot in his individual capacity is subjected to a suit instituted by a party damaged or injured as the result of the crash of a state-owned aircraft being operated on official business, there is no authority for the state to furnish counsel to represent him in such action.

1927 OAG 1072. Employment of a special counsel by the attorney general and his assignment to the department of highways and public works cannot be made so

as to authorize payment of the compensation of such employee out of the appropriations made to such department by the 87th general assembly.

4. Powers in litigation

86 Abs 390, 177 NE(2d) 557 (CP, *Franklin* 1960), *State ex rel Board of County Commissioners v Rhodes*. Attorney general does not have power to waive statutory immunity of state.

506 FSupp 1278 (SD Ohio 1981), *Ohio v United Transportation, Inc*. The attorney general of Ohio may maintain an antitrust action challenging taxicab monopoly in one city; the city is not necessarily an indispensable party.

323 FSupp 326 (ND Ohio 1971), *Hammond v Brown*; affirmed by 450 F(2d) 480 (6th Cir Ohio 1971). In proceedings before a special grand jury, the attorney general and his special counsel have and exercise the rights, privileges and powers of prosecuting attorneys.

OAG 78-024. The board of trustees of a state university may, with the concurrence of the attorney general, pay a cash settlement pursuant to either a journalized entry or a nonjudicially approved contract to an individual who has properly asserted a claim against the university in a forum other than the court of claims.

5. Other matters

633 FSupp 1123 (ND Ohio 1986), *Akron Center for Reproductive Health v Rosen*; appeal dismissed sub nom *Akron Center for Reproductive Health v Slaby*, 805 F(2d) 1033 (6th Cir Ohio 1986). Although the attorney general may be required by RC 109.02 to defend the constitutionality of state law in certain instances, this circumstance does not preclude the naming of a city prosecutor or a county prosecuting attorney as a defendant in an action challenging a statute.

OAG 73-117. The attorney general may advise that a state statute is invalid insofar as it conflicts with a federal statute.

1937 OAG 497. A fee paid by an attorney for the state on admission to the United States supreme court, when a case involving the state is up for hearing there, is a personal responsibility arising from the qualifying of an attorney at law to practice his profession; hence the charge should be paid by the attorney rather than by the state authority from public funds.

1927 OAG 785. The attorney general's department is not one of the several departments included in GC 154-20 (RC 121.16), the term "several departments," as used in that section, applying only to the departments enumerated in GC 154-3 (RC 121.02).

1927 OAG 785. The inhibition contained in the last sentence of GC 154-20 (RC 121.16) has no application whatsoever to any of the employees in the attorney general's department, including the special counsel designated under GC 497 (RC 4901.17), to act as attorney for the public utilities commission.

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: 1953 H 1, eff. 10-1-53
GC 334

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 3

NOTES ON DECISIONS AND OPINIONS

14 App(3d) 299, 14 OBR 356, 471 NE(2d) 181 (Franklin 1984), Huber v Celebrezze. An assistant attorney general appointed pursuant to RC 109.03 is in the unclassified civil service and serves at the pleasure of the attorney general, whatever his classification for salary purposes.

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: 1953 H 1, eff. 10-1-53
GC 335

CROSS REFERENCES

Court of claims, attorney general, assistants, special counsel, powers and duties, 2743.14 et seq.
Assistant attorney general, representation of public utilities commission, 4901.17

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 567 to 571

109.05 Employees

The attorney general may appoint such employees as are necessary.

HISTORY: 1953 H 1, eff. 10-1-53
GC 337

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: 1953 H 1, eff. 10-1-53
GC 332, 335

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 414 to 449, 487 to 566

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: 1953 H 1, eff. 10-1-53
GC 336

Note: See note under 109.02 from 1987 H 171, § 39.

CROSS REFERENCES

Attorney general; special counsel allowed for litigation involving bank conservator, 1113.02, 1113.08
Attorney general; special counsel allowed for litigation involving savings and loan conservator, 1157.01
Court of claims, attorney general, assistants, special counsel, powers and duties, 2743.14 et seq.

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 3

NOTES ON DECISIONS AND OPINIONS

109 OS 623, 143 NE 189 (1924), State ex rel Walton v Crabbe. The attorney general may appoint and discharge special counsel to represent the state and may fix the compensation of such special counsel.

109 OS 623, 143 NE 189 (1924), State ex rel Walton v Crabbe. Where the attorney general had, under this section, appointed special counsel at request of the director of public welfare and after such counsel had prepared and entered upon his duties, notified the director that the fees of such counsel would not be paid by his department, mandamus will lie against him to pay the reasonable fees up to the time such counsel learned of the notice.

OAG 71-088. Governor may disapprove language in 1971 S 456, eff. 12-6-71, appropriating funds for employment of counsel by secretary of state even though legislature provides that item shall not be construed as separate appropriation item.

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: 1953 H 1, eff. 10-1-53
GC 336-1

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 3

NOTES ON DECISIONS AND OPINIONS

OAG 78-036. Absent an agreement with the attorney general pursuant to RC 109.08, an attorney who recovers a subrogation claim owed to the department of public welfare under RC 5101.58 may not charge the department a fee for representing it.

Ethics Op 75-016. Special counsel, appointed by the attorney general pursuant to RC 109.08, are independent contractors, and therefore are not prohibited by RC 102.04 from receiving or agreeing to receive, directly or indirectly, compensation for services rendered or to be rendered by them personally, in any case, proceeding, application or other matter which is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state.

109.081 Claims fund

Five per cent of all moneys collected by the attorney general, either directly or by special counsel pursuant to section 109.08 of the Revised Code, on claims due the state shall be paid into the state treasury to the credit of the attorney general claims fund, which is hereby created. The fund shall be used solely for the expenses of the claims section of the office of the attorney general.

HISTORY: 1985 H 201, eff. 7-1-85
1983 H 291

Note: 1987 H 171, § 13, eff. 7-1-87, reads, in part: *Payments into the Attorney General Claims Fund*
Notwithstanding section 109.081 of the Revised Code, during the 1987-1989 fiscal biennium, nine per cent of all moneys collected by the Attorney General, either directly or by special counsel pursuant to section 109.08 of the Revised Code, on claims due the state shall be paid into the state treasury to the credit of the Attorney General Claims Fund. In fiscal year 1988, up to one per cent of such money may be used to pay the general operating expenses of the Office of the Attorney General, and in fiscal year 1989, up to two per cent of such money may be used to pay such general operating expenses.

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: 1953 H 1, eff. 10-1-53
GC 338

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 268, 270, 291; 29, Criminal Law § 2361
Am Jur 2d: 7, Attorney General § 18, 21

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: 1953 H 1, eff. 10-1-53
GC 339

CROSS REFERENCES

Foreign corporation in violation of Ohio monopoly law; attorney general to stop business in Ohio; quo warranto action, 1331.07

Quo warranto, 1331.11, 1331.12, 2733.03

Prepaid entertainment contracts, surety bond required when facilities under construction, 1345.421

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 23

109.11 Canal land disputes; title; reports

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 commission¹, 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

¹So in original; should this read "recreation and resources commission"?

Note: Former 109.11 repealed by 125 v 351, eff. 10-14-53; 1953 H 1; GC 340.

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: 1953 H 1, eff. 10-1-53
GC 341

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 2.17

CROSS REFERENCES

Ohio state university legal adviser, 3335.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Prisons and Prisoners § 12; 54, Universities and Colleges § 40
Am Jur 2d: 7, Attorney General § 10, 11

NOTES ON DECISIONS AND OPINIONS

OAG 73-117. The attorney general may advise that a state statute is invalid insofar as it conflicts with a federal statute.

1939 OAG 534. When a decision of common pleas court is in conflict with an opinion of the attorney general, said decision prevails in the particular county over which said court has jurisdiction, but an administrative officer of one county is not bound by the decision of the common pleas court of another county and may abide by a ruling of the bureau of inspection and supervision of public offices, based upon an opinion of the attorney general which is in conflict with said common pleas court decision. (See also 1928 OAG 2304; 1927 OAG 397.)

1927 OAG 397. Administrative officers in the performance of their official duties should act in accordance with the orders of a court, even though such orders may not be in accord with the opinion of the attorney general and even though the court's decision may have been made in the discharge of an administrative duty rather than in its strictly judicial capacity.

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

Note: The version of 109.121 as enacted by 1972 H 1170, eff. 10-19-72, was recodified as 109.122 by 1973 H

1, eff. 3-22-73, thereby leaving in effect 109.121 as enacted by 1969 S 205.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 49, State of Ohio § 20
Am Jur 2d: 7, Attorney General § 10, 11

109.122 Defense of tort actions against certain employees—Repealed

HISTORY: 1980 S 76, eff. 3-13-80
1973 H 1

Note: Former 109.122 is former 109.121 (as enacted by 1972 H 1170, eff. 10-19-72), recodified by 1973 H 1, eff. 3-22-73; see now 109.36 to 109.366 for provisions analogous to former 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: 1953 H 1, eff. 10-1-53
GC 342

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 10, 11

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: 1953 H 1, eff. 10-1-53
GC 343

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 2.17

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 382
Am Jur 2d: 7, Attorney General § 13

NOTES ON DECISIONS AND OPINIONS

OAG 87-082. Whether a foster parent appointed and certified by a county children services board pursuant to RC 5153.16 and accompanying regulations is an employee of or an independent contractor for the county pursuant to RC 2744.01(B) in a particular case is a question of fact related to the contractual and regulatory relationship between the foster parent and the county children services board with respect to that particular case. RC 109.14 does not authorize the attorney general to decide questions of fact by means of an opinion.

OAG 87-039. Whether the use of coffee pots, refrigerators, and microwave ovens is necessary for the proper operation of the courts is a question of fact, which cannot be resolved by means of an opinion of the attorney general.

OAG 87-033. The attorney general will abstain from rendering an opinion where another governmental entity has been granted the authority to render advisory opinions concerning the relevant subject matter.

OAG 87-025. Because RC 102.08 grants the ethics commission the authority to render advisory opinions interpreting a statute, the attorney general will not also render opinions construing the same statute.

OAG 73-121. Where a request for an opinion of the attorney general presents a question calling for the interpretation of a municipal ordinance, and there is the possibility that the state may become a party because the expenditure of public funds is involved, it is proper for his office to express an opinion on such a question.

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: 1953 H 1, eff. 10-1-53
GC 344

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 45, Public Works and Contracts § 19
Am Jur 2d: 7, Attorney General § 10

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: 1953 H 1, eff. 10-1-53
GC 345

PRACTICE AND STUDY AIDS

Merrick-Rippner, Ohio Probate Law (3d Ed.), Text 185.11

CROSS REFERENCES

Commencement of action, venue, where proper, Civ R 3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 51, Taxation § 450; 55, Venue § 13, 18

OJur 3d: 41, Environmental Protection § 97
Am Jur 2d: 7, Attorney General § 13

NOTES ON DECISIONS AND OPINIONS

41 App(2d) 165, 324 NE(2d) 589 (1974), *State v Licsak*. Pursuant to Civ R 3(B)(8), it is error for a court to allow an action to be brought against the executor of an estate in a county other than the one in which he was appointed.

4 App 413, 25 CC(NS) 218 (1913), *State ex rel Hogan v Renschler*; affirmed by 90 OS 363, 107 NE 758 (1914), *Renschler v State*. The court of appeals of Franklin county has jurisdiction of an information by the attorney general against an individual of another county who is assuming to insure lives. This section and GC 12311 (RC 2733.03), giving jurisdiction to the circuit court, apply to the court of appeals.

10 NP(NS) 325, 21 D 593 (1910), *State v Fenn*; affirmed by 18 CC(NS) 375, 25 CD 75 (1912). Terms of this section are broad enough to embrace ejection.

1940 OAG 2503. An action may be maintained by the state on relation of the attorney general against a person who has removed sand or gravel from Lake Erie without the license of the superintendent of public works for the conversion thereof and to enjoin further threatened removal without such license having been issued.

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: 1953 H 1, eff. 10-1-53
GC 346

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 44, Process § 31; 49, Sheriffs, Marshals, and Constables § 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 published in 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: 1977 H 42, eff. 10-7-77
1953 H 1; GC 347

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 65, Quo Warranto § 52, 58, 129

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: 1953 H 1, eff. 10-1-53
GC 348

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43, Pleading § 49; 48, Sales, Use, and Storage Taxes § 64

OJur 3d: 4, Appellate Review § 231, 232; 19, Costs in Civil Actions § 48; 28, Criminal Law § 1671

Am Jur 2d: 4, Appeal and Error § 330; 61A, Pleading § 340, 341

NOTES ON DECISIONS AND OPINIONS

77 App 295, 65 NE(2d) 164 (1946), State ex rel Jenkins v Houchin. Under this section, in an action in quo warranto brought on relation of attorney general of state, petition is not required to be verified, but if temporary injunctive relief is sought, requisite affidavit must be filed by relator showing that he is entitled to such relief as provided in GC 11877 (RC 2727.03).

17 Abs 495 (App, Montgomery 1934), Fulton v Tischer; reversed by 17 Abs 449 (App, Montgomery 1934). Superintendent of banks is state officer under provisions of this section and cannot be required to give undertaking or security in the prosecution or defense of any action, writ or proceeding; however, when such officer takes over the liquidation of a bank he acts as a fiduciary, and must give the notice of appeal required of fiduciaries when appealing an order in litigation involving the bank.

1960 OAG 1085. The filing of a judgment for state retail sales tax is subject to the fee provided by division (F) of RC 2303.20, but the tax commissioner, as an officer of the state, is not required to pay such fee in advance.

1928 OAG 1576. There is no authority to require the payment of advanced costs in an action instituted by the state of Ohio in the common pleas court of Hamilton county.

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: 1953 H 1, eff. 10-1-53
GC 349

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: 1953 H 1, eff. 10-1-53
GC 350

CROSS REFERENCES

Filing of official reports, 149.01

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: 1953 H 1, eff. 10-1-53
GC 351

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 person 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

PRACTICE AND STUDY AIDS

Merrick-Rippner, *Ohio Probate Law* (3d Ed.), Text 4.02, 229.10

CROSS REFERENCES

Religious and benevolent organizations, definitions, 1715.51

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 4, 22; 49, Fiduciaries § 3
Am Jur 2d: 15, Charities § 80, 81, 118
Right of attorney general to intervene in will contest case involving charitable trust. 74 ALR2d 1066

NOTES ON DECISIONS AND OPINIONS

56 OS(2d) 85, 382 NE(2d) 1155 (1978), *Brown v Concerned Citizens for Sickle Cell Anemia, Inc.* Where a person or organization represents to the public that the net proceeds generated from bingo games are to be used for charitable purposes, the attorney general may bring suit to ensure that funds so obtained are employed for charitable purposes.

35 OS(2d) 191, 299 NE(2d) 279 (1973), *Brown v Buyer's Corp.* The charitable purposes expressed in a trust become vested in use or enjoyment within the meaning of RC 109.23 when the right of present or future use or enjoyment for such charitable purposes becomes fixed and irrevocable, so that where there is such a duty on the holder of trust property to devote it to charitable purposes, such purposes expressed in the trust are vested in use and enjoyment even though the actual enjoyment of the benefits of the trust by the beneficiaries thereof may occur only in the future.

56 App(2d) 153, 381 NE(2d) 1151 (1978), *Monroe v Brown.* Owners of casino-type gambling facilities operated for the benefit of charitable organizations are subject to RC 109.24, pertaining to the administration and enforcement of charitable trusts.

27 App(2d) 31, 272 NE(2d) 162 (1970), *In re Farren.* Where testamentary trust provides that moneys should be granted to hospital for the care of indigents, or to "owner, owners or ownership of said hospital for the care of indigent[s]," the testator intended to create a charitable trust for benefit of indigents, and not a private trust for benefit of hospital, and such trust does not terminate because such hospital ceases to function, and proceeds from the res may be diverted to other hospitals under the trust doctrine of deviation.

No. 7593 (2d Dist Ct App, Montgomery, 10-14-82), *Folino v Dayton Bar Assn.* Where testator's will provides for the creation of a trust to provide low interest

loans to young lawyers establishing their practice and to young or indigent lawyers during financially embarrassing periods of their practice, such trust is a valid public charitable trust.

25 Misc(2d) 8, 25 OBR 229, 495 NE(2d) 973 (CP, Delaware 1984), *Barton v Parrott.* A testamentary trust for the establishment of an annual harness horse stake race is not for a charitable purpose and does not create a valid charitable trust; therefore the doctrine of cy pres does not apply to the trust, and the trust violates RC 2131.08, the rule against perpetuities.

51 Misc 51, 365 NE(2d) 1277 (CP, Cuyahoga 1976), *Brown v Marine Club, Inc.* Charitable bingo operations and operators are subject to RC 2915.01 et seq., and are not subject, as to those operations, to RC 109.23 and RC 1716.01 et seq.

89 Abs 289, 186 NE(2d) 213 (Prob, Warren 1961), *Baily and Waggoner v McElroy.* Where there has been no vesting in use or enjoyment of a testamentary trust, the attorney general is not a necessary party to a will construction action.

73 Abs 164, 134 NE(2d) 586 (CP, Cuyahoga 1956), *Spang v Cleveland Trust Co.* The attorney general is not a necessary party to a will contest case even though the proceeding may result in the nonexistence of a purported charitable trust created by the alleged will.

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

CROSS REFERENCES

Adult parole authority, per diem maintenance for parolees, probationers, and furloughees, OAC 5120:1-3-01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 3
Am Jur 2d: 15, Charities § 97, 98, 135 et seq.

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

CROSS REFERENCES

Adult parole authority, per diem maintenance for parolees, probationers, and furloughees, OAC 5120:1-3-01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 3
Duty of trustees of charitable trust to furnish information and records to attorney general relating to trust administration. 86 ALR2d 1375

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 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 do all of the following:

(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. If the production of documents required by the request would be unduly burdensome, the person upon whom the request is served, in lieu of producing such books or papers at the place designated in the request, shall 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 complaint 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 complaint shall contain a brief statement of facts entitling such person to have such requests quashed. No answer to such complaint is required. Upon the filing of the complaint, the court, on motion of the complainant, shall enter an order fixing a date for a hearing on the complaint and requiring that a copy of the complaint 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 the hearing on the complaint, the court shall determine from the complaint 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 is a special proceeding, and final orders in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. 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 of it whenever he considers such action advisable or if directed to do so by the governor, the supreme court, the general assembly, or either house of the general assembly. 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 in which the trust property or any part of it is situated or invested, or in which 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 of it, 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: 1986 H 412, eff. 3-17-87
1975 H 347; 125 v 351

CROSS REFERENCES

Adult parole authority, per diem maintenance for parolees, probationers, and furloughees, OAC 5120:1-3-01

Charitable trusts, representation by attorney general, 2109.34, 2307.131

Commencement of action, venue, where proper, Civ R 3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 4, 33, 35; 51 Gambling § 15
Am Jur 2d: 15, Charities § 106, 139, 144 to 146

Retention of private counsel by trustees of public charitable trust. 67 ALR2d 1289

Duty of trustees of charitable trust to furnish information and records to attorney general relating to trust administration. 86 ALR2d 1375

NOTES ON DECISIONS AND OPINIONS

56 OS(2d) 85, 382 NE(2d) 1155 (1978), *Brown v Concerned Citizens for Sickle Cell Anemia, Inc.* Where a person or organization represents to the public that the net proceeds generated from bingo games are to be used for charitable purposes, the attorney general may bring suit to ensure that funds so obtained are employed for charitable purposes.

56 App(2d) 153, 381 NE(2d) 1151 (1978), *Monroe v Brown*. Owners of casino-type gambling facilities operated for the benefit of charitable organizations are subject to RC 109.24, pertaining to the administration and enforcement of charitable trusts.

462 F(2d) 978 (6th Cir Ohio 1972), *In re Estate of Toulmin*. Under Ohio law the right of trustees under general powers of administration to effect an indirect diversion of corpus from principal to income in favor of life beneficiaries was so limited and restricted that the value of the charitable remainder was "presently ascertainable" as of the date of the decedent's death, and the possibility the charitable remainder would not become effective was so remote as to be negligible.

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

PRACTICE AND STUDY AIDS

Merrick-Rippner, *Ohio Probate Law* (3d Ed.), Text 4.01, 4.04, 97.20, 107.31

CROSS REFERENCES

Necessary parties to will contest, 2107.73
Attorney general as representative for beneficiaries of charitable trust, 2109.34
Intervention of right, Civ R 24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 33, 35; 33, Decedents' Estates § 1203, 1219
Am Jur 2d: 15, Charities § 106, 139, 144 to 146
Duty of trustees of charitable trust to furnish information and records to attorney general relating to trust administration. 86 ALR2d 1375

NOTES ON DECISIONS AND OPINIONS

67 App(2d) 45, 425 NE(2d) 924 (1979), *O'Neal v Buckley*. RC 109.25 does not make the attorney general a necessary party to a will contest where the will in question merely contains an unconditional bequest to a trustee of a charitable trust, since a will with such a provision does not create a charitable trust.

73 Abs 164, 134 NE(2d) 586 (CP, Cuyahoga 1956), *Spang v Cleveland Trust Co*. The attorney general is not a necessary party to a will contest case even though the proceeding may result in the nonexistence of a purported charitable trust created by the alleged will.

109.26 Registration of charitable trusts; exemptions; duty of trustees

Except as provided in this section, 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.

County or independent agricultural societies organized under Chapter 1711. of the Revised Code are not charitable trusts.

Every charitable trust shall be registered with the attorney general in accordance with this section within six months after the effective date of this section, November 19, 1975, within six months after the creation of such trust, or within six months after occurrence of an event by reason of which such trust is required to register by this section, whichever is later, provided that all registrations of charitable trusts made prior to November 19, 1975, shall be deemed in full compliance with this section 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: 1977 H 659, eff. 1-10-78
1977 H 1; 1975 H 347; 129 v 582; 125 v 351

Penalty: 109.99

CROSS REFERENCES

Facilities contracting with adult parole authority, OAC 5120:1-1-38

Application to probate a will, C P Sup R 26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 37

Am Jur 2d: 15, Charities § 181, 184

Duty of trustees of charitable trust to furnish information and records to Attorney General relating to trust administration. 86 ALR2d 1375

NOTES ON DECISIONS AND OPINIONS

67 App(2d) 45, 425 NE(2d) 924 (1979), O'Neal v Buckley. RC 109.25 does not make the attorney general a necessary party to a will contest where the will in question merely contains an unconditional bequest to a trustee of a charitable trust, since a will with such a provision does not create a charitable trust.

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

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 15, Charities § 181, 184

109.28 Inspection of register

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

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 33

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 registered 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.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 33; 33, Decedents' Estates § 1115

Am Jur 2d: 80, Wills § 932, 933

NOTES ON DECISIONS AND OPINIONS

67 App(2d) 45, 425 NE(2d) 924 (1979), O'Neal v Buckley. RC 109.25 does not make the attorney general a necessary party to a will contest where the will in question merely contains an unconditional bequest to a trustee of a charitable trust, since a will with such a provision does not create a charitable trust.

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
\$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.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Charities § 37

Am Jur 2d: 15, Charities § 181, 184

Duty of trustees of charitable trust to furnish information and records to attorney general relating to trust administration. 86 ALR2d 1375

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.

109.33 Assistants, employees, experts; compensation

The attorney general may appoint, with salaries fixed pursuant to section 124.15 or 124.152 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 of the Revised Code. The attorney general may also employ experts for assistance in any specific matter at a reasonable rate of compensation.

HISTORY: 1986 H 831, eff. 4-9-86
1977 H 1; 132 v H 93; 125 v 351

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 3

REPRESENTATION OF OFFICER OR EMPLOYEE

109.36 Definitions

As used in this section and sections 109.361 to 109.366 of the Revised Code:

(A) "Officer or employee" means any person who, at the time a cause of action against him arises, is serving in an elected or appointed office or position with the state; is employed by the state; or is rendering medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract with a department, agency, or institution of the state. Officer or employee does not include any person elected, appointed, or employed by any political subdivision of the state.

(B) "State" means the state of Ohio, including but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

(C) "Political subdivisions" of the state means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.

(D) "Employer" means the general assembly, the supreme court, any office of an elected state officer, or any department, board, office, commission, agency, institution, or other instrumentality of the state of Ohio that employs or contracts with an officer or employee or to which an officer or employee is elected or appointed.

HISTORY: 1982 S 204, eff. 7-26-82
1980 S 76

CROSS REFERENCES

Tort actions against soil and water conservation districts, legal representation by attorney general, 1515.081

NOTES ON DECISIONS AND OPINIONS

OAG 83-013. Under the facts provided, an individual who serves as a medical or psychological consultant for the bureau of disability determination of the rehabilitation services commission does not render medical, psychiatric, or psychological services within the meaning of RC 109.36(A) and is not entitled to representation by the attorney general under RC 109.361.

109.361 Representation of officer or employee

Upon the receipt of a written request by any officer or employee, the attorney general shall, except as provided in section 109.362 of the Revised Code and except for civil actions in which the state is the plaintiff, represent and defend the officer or employee in any civil action instituted against the officer or employee. All expenses and court costs, including the reasonable compensation of special counsel, incurred by the attorney general in the defense of an officer or employee of the state shall be paid by the employer that employed the officer or employee at the time the alleged act or omission occurred.

The defense of the officer or employee may be rendered by the attorney general, an assistant attorney general, or by any special counsel appointed by the attorney general, who, in addition to providing the defense of the officer or employee, may file counterclaims and cross-claims and engage in third party practice on behalf of the officer or employee. If the officer or employee recovers any money pursuant to any counterclaim or cross-claim filed by the attorney general, the officer or employee shall, to the extent of the recovery on the counterclaim or cross-claim, reimburse the attorney general for all expenses and court costs, including the reasonable compensation of assistant attorneys general and special counsel, incurred by the attorney general in bringing the counterclaim or cross-claim. The officer or employee shall cooperate fully with the attorney general's defense. Sections 109.36 to 109.366 of the Revised Code do not deprive any officer or employee of the right to select counsel of his own choice or settle his case at his own expense at any time, and do not prohibit the attorney general from entering his appearance in a case to protect the interest of the state even though no request for the appearance has been made by the officer or employee.

HISTORY: 1980 S 76, eff. 3-13-80

CROSS REFERENCES

Public officials and employees, attorney general, powers and duties in regard to, indemnification, 9.87

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 12

NOTES ON DECISIONS AND OPINIONS

31 App(3d) 144, 31 OBR 233, 508 NE(2d) 1025 (Franklin 1986), *Sullivan v Rehabilitation Services Comm.* Where a state employee fails to file a written request for representation in a civil action with the attorney general and where the attorney general is not given the chance to exercise his discretion in determining whether to appoint special counsel of his choosing, the attorney general does not abuse his discretion in refusing to appoint and compensate an attorney of the state employee's choosing.

OAG 83-013. Under the facts provided, an individual who serves as a medical or psychological consultant for the bureau of disability determination of the rehabilitation services commission does not render medical, psychiatric, or psychological services within the meaning of RC 109.36(A) and is not entitled to representation by the attorney general under RC 109.361.

109.362 Denial of request

(A) Prior to undertaking any defense under section 109.361 of the Revised Code, the attorney general shall conduct an investigation of the facts to determine whether the requirements of this section have been met. If the attorney general determines that any officer who holds an elective state office was acting manifestly outside the scope of his official responsibilities or that any other officer or employee was acting manifestly outside the scope of his employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner, the attorney general shall not represent and defend the officer or employee. An initial determination to represent and defend the officer or employee does not prohibit a later determination that the requirements of this section have not been met.

(B) The attorney general shall also deny a request for representation upon a determination that the requesting officer or employee is covered by a policy of insurance purchased by the state requiring the insurer to provide counsel in the action and that the amount of the claim against the officer or employee is not in excess of the amount of coverage under the policy of insurance. If the amount of the claim against the officer or employee is in excess of the amount of coverage under the policy of insurance, the state is not the plaintiff, and the officer or employee is not otherwise prohibited by this section from being represented and defended by the attorney general, the attorney general shall represent and defend the officer or employee for the amount of the claim in excess of the amount of coverage.

(C) If the attorney general denies representation to an employee or officer who makes a request in accordance with the provisions of section 109.361 of the Revised Code, the attorney general shall notify the requesting officer or employee in writing of the denial setting forth the reasons for the denial within a reasonable time

after the attorney general's receipt of the written request from the officer or employee.

HISTORY: 1980 S 76, eff. 3-13-80

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 12

NOTES ON DECISIONS AND OPINIONS

16 App(3d) 160, 16 OBR 169, 474 NE(2d) 1201 (Franklin 1984), *Wrenn v Mental Health & Mental Retardation Dept.* Where a state agency and its employee are sued for defamation, there is no conflict of interest in the attorney general representing both, so long as the alleged defamatory statements were made by the employee within the scope of his employment and in good faith.

109.363 Employer's report

The employer of the defendant officer or employee shall provide the attorney general with a written report indicating the present or former position, job title, or classification of the officer or employee with the state and, citing pertinent facts, whether in its opinion the officer or employee meets the requirements of section 109.362 of the Revised Code. In addition, the employer shall provide any additional information that is requested by the attorney general.

HISTORY: 1980 S 76, eff. 3-13-80

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 12

109.364 Remedy in court of claims

If the attorney general denies representation to an officer or employee who made a request for representation under section 109.361 of the Revised Code, the officer or employee may, upon the termination of the action for which he requested the representation, commence an action in the court of claims against the employer pursuant to sections 2743.01 to 2743.20 of the Revised Code for the reasonable expenses incurred in providing his own defense.

An action brought pursuant to this section shall be commenced no later than two years after the cause of action arising under this section accrues. A cause of action arising under this section accrues upon the conclusion of the civil action instituted against the officer or employee for which the attorney general denied the officer's or employee's request for representation if the time for filing an appeal in the action lapses without the filing of an appeal or upon the conclusion of the final appeal in the civil action instituted against the officer or employee for which the attorney general denied the officer's or employee's request for representation if an appeal is filed in the action.

If the court of claims finds that the officer or employee was entitled to have the attorney general

represent and defend him under section 109.361 of the Revised Code, the court shall enter judgment against the employer in favor of the officer or employee in the amount of the reasonable expenses incurred by the officer or employee in providing his own defense and in bringing the action authorized by this section. The reasonable expenses may include, but are not limited to, payment of court costs, attorney's fees, investigative costs, and expert witness fees.

HISTORY: 1980 S 76, eff. 3-13-80

109.365 Information privileged; exceptions

Information obtained by the attorney general pursuant to his investigation to determine whether to defend an officer or employee is privileged and is not admissible as evidence against the officer or employee in any legal action or proceeding and no reference to the information may be made in any trial or hearing. The decision of the attorney general to defend or not defend an officer or employee is not admissible as evidence in any trial or hearing. This section does not apply to any trial or hearing to determine the right of an officer or employee to reimbursement pursuant to section 109.364 of the Revised Code or to any trial or hearing held as a result of an action filed pursuant to division (F) of section 9.87 of the Revised Code.

HISTORY: 1980 S 76, eff. 3-13-80

109.366 Rules

The attorney general may promulgate any rules that are necessary for the implementation of sections 109.36 to 109.366 of the Revised Code.

HISTORY: 1980 S 76, eff. 3-13-80

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 supplement-

tal material in the manner provided in this section.

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 28, Criminal Law § 1866
Am Jur 2d: 7, Attorney General § 11

AGENT IN ESCHEAT PROCEEDINGS

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 1, Abandoned, Lost, and Escheated Property § 34
Am Jur 2d: 7, Attorney General § 25; 27, Escheat § 46

NOTES ON DECISIONS AND OPINIONS

54 App(2d) 79, 375 NE(2d) 57 (1977), *Borovskaya v State*. The specific mandate of RC 2105.06 et seq., governing escheats of property to the state, must be strictly followed to create a valid finding and judgment by the probate court of the escheat of property to the state where a decedent leaves no heirs, and to be valid, such judgment of escheat must be that there are no heirs, not that "to the knowledge of plaintiff there are no known next of kin."

54 App(2d) 79, 375 NE(2d) 57 (1977), *Borovskaya v State*. Where there is a living heir of a decedent, even though he may be unknown to the administrator at the time of administration of the estate, the state takes no title to the personal property of the estate by escheat.

VICTIMS' RIGHTS PAMPHLET

109.42 Victims' rights pamphlet; publication and distribution; costs

(A) The attorney general shall prepare and have printed a pamphlet that contains a compilation of

all statutes relative to victim's rights in which he lists and explains the statutes in the form of a victim's bill of rights. He shall distribute the pamphlet to all sheriffs, marshals, municipal corporation and township police departments, constables, and other law enforcement agencies, to all prosecuting attorneys, city directors of law, village solicitors, and other similar chief legal officers of municipal corporations, and to organizations that represent or provide services for victims of crime. The victim's bill of rights set forth in the pamphlet shall contain a description of all of the rights of victims that are provided for in the Revised Code, and shall include, but not be limited to, all of the following:

(1) The right to seek the assistance of an attorney hired by a neighborhood organization pursuant to section 122.95 of the Revised Code;

(2) A victim's right to attend a proceeding before a grand jury, in a juvenile case, or in a criminal case pursuant to a subpoena without being discharged from his employment, having his employment terminated, having his pay decreased or withheld, or being otherwise punished, penalized, or threatened as a result of time lost from regular employment because of his attendance at the proceeding pursuant to the subpoena, as set forth in section 2151.211, 2939.121, or 2945.451 of the Revised Code;

(3) The potential availability pursuant to section 2151.411 of the Revised Code of a forfeited recognizance to pay damages caused by a child when the delinquency of the child or child's violation of probation is found to be proximately caused by the failure of the child's parent or guardian to subject the child to reasonable parental authority or to faithfully discharge the conditions of probation;

(4) The availability of awards of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code for injuries caused by criminal offenses;

(5) The right of the victim in certain criminal cases to receive, pursuant to section 2937.081 of the Revised Code, notice of the date, time, and place of the trial in the case or, if there will not be a trial, notice of the date, time, and place at which the prosecutor, as defined in section 2937.01 of the Revised Code, will enter a nolle prosequi, at which a plea of guilty or no contest will be entered, or at which the final disposition of the case will be made;

(6) If the victim in certain criminal cases, or a representative member of the victim's family if the victim died as a result of the criminal act, attends certain criminal proceedings, the right of that victim or the representative member of his family to receive, pursuant to section 2943.041 or 2945.07 of the Revised Code, notice of the name of the person charged with the violation, the case or docket number assigned to the charge, and a telephone number or numbers that can be called to obtain information about the disposition of the case;

(7) If the victim in certain criminal cases, or a representative member of the victim's family if the victim died as a result of the criminal act, attends certain criminal proceedings, the authority of the court, pursuant to section 2943.041 or 2945.07 of the Revised Code, to permit the victim or the representative member of his family, in the court's discretion and subject to any terms set by the court, to make a statement about the victimization, or if applicable, about the sentencing of the offender;

(8) The opportunity to obtain a court order, pursuant to section 2945.04 of the Revised Code, to prevent or stop the commission of the offense of intimidation of a crime victim or witness;

(9) If the victim in certain criminal cases, or a representative member of the victim's family if the victim died as a result of the criminal act, attends certain criminal proceedings, the right, pursuant to section 2967.12 of the Revised Code, to receive notice of any pending commutation, pardon, or parole for the person who committed the offense against the victim and to send a written statement relative to the victimization and the pending action to the adult parole authority;

(10) The right of the victim to bring a civil action pursuant to sections 2969.01 to 2969.06 of the Revised Code to obtain money from the offender's profit fund;

(11) The right, pursuant to section 3109.09 of the Revised Code, to maintain a civil action to recover compensatory damages not exceeding three thousand dollars and costs from the parents having the custody and control of a minor who willfully damages property through the commission of an act that would be a theft offense, as defined in section 2913.01 of the Revised Code, if committed by an adult;

(12) The right, pursuant to section 3109.10 of the Revised Code, to maintain a civil action to recover compensatory damages not exceeding two thousand dollars and costs from the parents having the custody and control of a minor who willfully and maliciously assaults a person;

(13) The possibility of receiving restitution from an offender or a delinquent child pursuant to section 2151.355, 2929.11, or 2929.21 of the Revised Code;

(14) The right of the victim, pursuant to section 309.18 of the Revised Code, to receive notice of the escape from confinement or custody of the person who committed the offense, if the offense was a felony offense of violence; the description also shall indicate that this notice is given to the victim at his last address or telephone number known by the prosecuting attorney of the county, and that if either the victim's address or telephone number changes, it is in his interest to provide the new address or telephone number to the prosecuting attorney.

(B)(1)(a) Any prosecuting attorney, assistant prosecuting attorney, city director of law, assistant director of law, village solicitor, assistant village

solicitor, or similar chief legal officer of a municipal corporation or his assistant who prosecutes an offense committed in this state, upon first contact with the victim of the offense, his family, or his dependents, shall give the victim, his family, or his dependents a copy of the pamphlet prepared pursuant to division (A) of this section and explain, upon request, the information in the pamphlet to the victim, his family, or his dependents.

(b) Any law enforcement agency that investigates an offense committed in this state shall give the victim of the offense, his family, or his dependents a copy of the pamphlet prepared pursuant to division (A) of this section at one of the following times:

(i) Upon first contact with the victim, his family, or his dependents;

(ii) If the offense is an offense of violence, the circumstances of the offense and the condition of the victim, his family, or his dependents indicate that the victim, his family, or his dependents will not be able to understand the significance of the pamphlet upon first contact with the agency, and the agency anticipates that it will have an additional contact with the victim, his family, or his dependents, upon the agency's second contact with the victim, his family, or his dependents.

If the agency does not give the victim, his family, or his dependents a copy of the pamphlet upon first contact with them and does not have a second contact with the victim, his family, or his dependents, the agency shall mail a copy of the pamphlet to the victim, his family, or his dependents at their last known address.

(2) The failure of a law enforcement agency or of a prosecuting attorney, assistant prosecuting attorney, director of law, assistant director of law, village solicitor, assistant village solicitor, or similar chief legal officer of a municipal corporation or his assistant to give, as required by division (B)(1) of this section, the victim of an offense, his family, or his dependents a copy of the pamphlet prepared pursuant to division (A) of this section does not give, and shall not be construed as giving, the victim, his family, or his dependents any rights under section 122.95, 2743.51 to 2743.72, 2937.081, 2943.041, 2945.04, 2945.07, 2967.12, 2969.01 to 2969.06, 3109.09, or 3109.10 of the Revised Code or under any other provision of the Revised Code and does not affect, and shall not be construed as affecting, any right under those sections.

(3) A law enforcement agency that distributes a copy of the pamphlet prepared pursuant to division (A) of this section shall not be required to distribute a copy of an information card or other printed material provided by the clerk of the court of claims pursuant to section 2743.71 of the Revised Code.

(C) The cost of printing and distributing the pamphlet prepared pursuant to division (A) of this section shall be paid out of the reparations fund, created pursuant to section 2743.191 of the

Revised Code, in accordance with division (D) of that section.

HISTORY: 1987 H 207, eff. 9-24-87
1986 H 657

CROSS REFERENCES

Reparations fund, publicity expenses, 2743.191

**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.

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

Note: 109.51 is analogous to former 5149.01 repealed by 130 v H 263, eff. 9-24-63.

CROSS REFERENCES

Department of mental health, written report regarding criminal records of any applicant, 5119.072

Department of mental retardation and developmental disabilities, persons convicted of certain offenses, not to be employed; enforcement, 5123.081

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 49, Sheriffs, Marshals, and Constables § 19
OJur 3d: 25, Criminal Law § 89

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89

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

109.54 Intergovernmental cooperation; drug investigations; recording and televising equipment for child sex offense victims; list of persons to question sex offense victims

(A) 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 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 superintendent and any agent of the bureau may participate, as the director of an organized crime task force established under section 177.02 of the Revised Code or as a member of the investigatory staff of such a task force, in an investigation of organized criminal activity anywhere within this state under sections 177.01 to 177.03 of the Revised Code.

(B) 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 2923.12 of the Revised Code.

(C)(1) The bureau shall obtain recording equipment that can be used to record depositions of the type described in division (A) of section 2151.3511 and division (A) of section 2907.41 of the Revised Code, or testimony of the type described in division (D) of section 2151.3511 and division (D) of section 2907.41 or in division (C) of section 2937.11 of the Revised Code, shall obtain closed circuit equipment that can be used to televise testimony of the type described in division (C) of section 2151.3511 and division (C) of section 2907.41 or in division (B) of section 2937.11 of the Revised Code, and shall provide

such equipment, upon request, to any court for use in recording any such deposition or testimony or in televising such testimony in accordance with the applicable division.

(2) The bureau shall obtain the names, addresses, and telephone numbers of persons who are experienced in questioning children in relation to an investigation of a violation of section 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.12, 2907.21, 2907.31, 2907.32, 2907.321, 2907.322, or 2907.323, or division (B)(5) of section 2919.22 of the Revised Code, and shall maintain a list of those names, addresses, and telephone numbers, which list shall include a classification of the names, addresses, and telephone numbers by appellate district. Upon request, the bureau shall provide any county sheriff, chief of police, prosecuting attorney, village solicitor, city director of law, or similar chief legal officer with the name, address, and telephone number of any person contained in the list.

HISTORY: 1986 H 108, eff. 10-14-86
1986 S 74; 1970 H 956; 130 v H 263

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89; 29, Criminal Law § 2277; 50, Food, Drugs, Poisons, and Hazardous Substances § 74, 77

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.

In formulating and recommending cooperative policies, the superintendent shall emphasize the provisions of section 2901.30 of the Revised Code.

The superintendent shall develop procedures and forms to implement section 2901.30 of the Revised Code.

HISTORY: 1984 S 321, eff. 4-9-85
130 v H 263

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89

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

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 of the Revised Code, in regard to the registration of habitual sex offenders.

(B) The superintendent 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 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 149.43 of the Revised Code.

(E) The attorney general shall adopt rules, in accordance with Chapter 119. of the Revised Code, setting forth the procedure by which a person may receive or release information gathered by the superintendent pursuant to division (A) of this section. A reasonable fee may be charged for this service.

HISTORY: 1984 H 235, eff. 6-7-84
1980 H 736; 1977 H 1; 1970 H 956; 130 v S 160, H 263

CROSS REFERENCES

Crime statistics, compilation by prosecuting attorney, 309.15

Unclaimed or forfeited computers or software, donation to law enforcement agency, 2933.41

Persons convicted of certain offenses not to be employed by department of mental health, 5119.072

Persons convicted of certain offenses not to be employed by department of mental retardation and development, 5123.081

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 47, Records and Recordings § 2, 21

OJur 3d: 25, Criminal Law § 89

Am Jur 2d: 21, Criminal Law § 799, 1020

NOTES ON DECISIONS AND OPINIONS

1952 OAG 1771. Police officers may not forward fingerprints of juveniles to the state bureau of criminal identification, and may not procure and file for record the fingerprints of juveniles who are in any place of confinement under a commitment by a juvenile court on a charge of delinquency. (Annotation from former RC 5149.03.)

1927 OAG 6. Upon a nolle prosequi being entered under provisions of former GC 2919 (Repealed) any photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent, taken by virtue of this section, of an accused who is not a well-known and habitual criminal, or who is not confined in any workhouse, jail, reformatory or penitentiary for the violation of state laws, shall be given to the accused upon his request. (Annotation from former RC 5149.03.)

1925 OAG 2328. Chief of police, marshals and sheriffs may take fingerprints, etc., of first and second offenders against the state liquor laws at their discretion,

and when they exercise such discretion the superintendent of the state bureau of criminal identification and investigation is entitled to copies thereof. (Annotation from former RC 5149.03.)

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; may provide to schools

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. Upon the request of the board of education of a school district or of the principal or chief administrative officer of a nonpublic school, the superintendent shall provide standard impression sheets to the district or school for use in their fingerprinting programs under section 3313.96 of the Revised Code.

HISTORY: 1984 S 321, eff. 4-9-85
130 v H 263

CROSS REFERENCES

Missing children informational programs, fingerprinting of students, procedure, 3313.96

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89, 90

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

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 them, together with such other descriptions¹ 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 or a nolle prosequi entered in any case, then the 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: 1977 S 170, eff. 11-16-77
1970 H 956; 130 v H 263

¹Prior and current versions differ although no amendment to this language was indicated in 1977 S 170; "descriptions" appeared as "description" in 1970 H 956.

LEGAL ENCYCLOPEDIAS AND ALROJur 2d: 49, Sheriffs, Marshals, and Constables § 19
Am Jur 2d: 21A, Criminal Law § 799**NOTES ON DECISIONS AND OPINIONS**

283 FSupp 217, 15 Misc 55 (ND Ohio 1968), *United States v Laub Baking Co.* An Ohio sheriff has the power to fingerprint persons arrested for the commission of a misdemeanor both by virtue of RC 109.60 et seq., and the power implied from his duties to execute the criminal laws of the state.

1929 OAG 497. GC 1841-13 to 1841-21 (RC 5149.01 to RC 5149.09) do not confer any right upon sheriffs of the several counties of the state, chiefs of police of cities and marshals of villages to take fingerprints before arrest of a person suspected of committing a crime; however, officers have the right, generally, to subject persons whom they have reasonable grounds to believe have committed a felony, to a compulsory physical examination, which includes the taking of fingerprints for the purpose of ascertaining their identity. (Annotation from former RC 5149.06.)

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 90

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89

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.

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89

109.64 Information bulletin concerning missing children

The bureau of criminal identification and investigation shall prepare a periodic information bulletin concerning missing children who it determines may be present in this state. The bureau shall compile the bulletin from information contained in the national crime information center computer. The bulletin shall indicate the names and addresses of these minors who are the subject of missing children cases, and other information that the superintendent of the bureau considers appropriate. The bulletin shall contain a reminder to law enforcement agencies of their responsibilities under section 2901.30 of the Revised Code.

The bureau shall send a copy of each periodic bulletin prepared pursuant to this section to each law enforcement agency in this state and to the department of education for use in connection with its responsibilities under division (B) of section 3301.25 of the Revised Code. The bureau shall provide a copy of the bulletin, upon request, to other persons or entities. The superintendent,

with the approval of the attorney general, may establish a reasonable fee for a copy of a bulletin provided to persons or entities other than law enforcement agencies in this or other states or of the federal government, the department of education, governmental entities of this state, and libraries in this state.

As used in this section, "missing children," "information," and "minor" have the same meanings as in section 2901.30 of the Revised Code.

HISTORY: 1984 S 321, eff. 4-9-85

CROSS REFERENCES

Department of education, distribution of periodic information bulletin, notification procedure, 3301.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 89

OHIO PEACE OFFICER TRAINING COUNCIL

109.71 Creation of Ohio peace officer training council; members; definitions

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

(A) "Peace officer" means:

(1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state or by a metropolitan housing authority, 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;

(2) 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;

(3) Employees of the department of taxation engaged in the enforcement of Chapter 5743. of the Revised Code, and designated by the tax commissioner for peace officer training for purposes of the delegation of investigation powers under section 5743.45 of the Revised Code;

(4) An undercover drug agent;

(5) Liquor control investigators in the enforcement division and the intelligence division of the department of liquor control engaged in the enforcement of Chapter 4301. of the Revised Code;

(6) An employee of the department of natural resources who is a park officer designated pursuant to section 1541.10, a forest officer designated pursuant to section 1503.29, a game protector designated pursuant to section 1531.13, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code;

(7) An employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code;

(8) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code;

(9) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the governor pursuant to sections 4973.17 to 4973.22 of the Revised Code;

(10) Ohio veterans' home policemen designated under section 5907.02 of the Revised Code.

(B) "Undercover drug agent" has the same meaning as in division (B)(2) of section 109.79 of the Revised Code.

(C) "Crisis intervention training" means training in the use of interpersonal and communication skills to most effectively and sensitively interview victims of rape and felonious sexual penetration.

(D) "Missing children" has the same meaning as in section 2901.30 of the Revised Code.

HISTORY: 1987 H 231, § 1, eff. 10-5-87
1987 H 231, § 6, H 261, § 1, 3; 1986 S 364, § 1, 3, S 278, § 1, 3; 1984 H 129, § 1, 3, S 321, H 435, H 759, S 85; 1981 H 44; 1977 S 141; 1976 S 272; 1969 H 111, H 575; 131 v H 363

Publisher's Note: The amendment of this section by 1984 H 129, § 3—as subsequently amended by 1986 S 278, § 3, and 1986 S 364, § 3, to take effect 12-31-87—was repealed by 1987 H 261, § 3, eff. 11-1-87. See *Baldwin's Ohio Legislative Service*, 1984 Laws of Ohio, page 5-842, 1986 Laws of Ohio, pages 5-113 and 5-861, and 1987 Laws of Ohio, page 5-271.

Note: An explanatory note by the Legislative Service Commission states,

"This section was amended by both Sec. 1 of H.B. 231 and Sec. 1 of H.B. 261 of the 117th G.A. The section published here has been harmonized to include the amendments of Sec. 1 of both of these acts. [1987 H 231, § 1, eff. 10-5-87, and 1987 H 261, § 1, eff. 11-1-87.]

"Prior to H.B. 231 and H.B. 261, there were two versions of this section—one "current" and the other, a "future" version that was scheduled to take effect on December 31, 1987.

"Sec. 3 of H.B. 261 repealed the future version of the section—thus giving permanent effect to the current version. Sec. 6 of H.B. 231, however, contemporaneously amended both the current and future versions—thus creating a future version that was not repealed by Sec. 3 of H.B. 261. H.B. 231 so amended the future version solely to ensure that the amendments originating with it would continue as part of the section when the future version became effective.

"The future version resulting from Sec. 6 of H.B. 231 is not printed here since the legislative history described above shows the General Assembly's intention to have eliminated the future version from the law. The Legislative Service Commission will propose legislation to confirm this result." [See *Baldwin's Ohio Legislative Service*, 1987 Laws of Ohio, pages 5-261, 5-271, 5-507, and 5-627, for original versions of these Acts.]

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 21.14
Gotherman & Babbit, Ohio Municipal Law, Text 13.24

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3

Right of sexual offense victim to interview by peace officer with crisis intervention training, 2907.30

Security personnel for licensed bingo games, definition, 2915.01

Private investigators and security guards, basic firearm training program, 4749.10

Basic firearm training program, application to carry firearm, 4947.10

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

NOTES ON DECISIONS AND OPINIONS

29 App(3d) 279, 29 OBR 343, 504 NE(2d) 1202 (Portage 1986), *State v Giallombardo*. A privately employed security guard is not required to provide Miranda warnings upon detaining a shoplifting suspect because a private security guard is not a peace officer under RC 109.71(A)(1) or RC 2935.01(B).

OAG 87-057. A person appointed as a special constable pursuant to RC 1711.35 to assist in keeping the peace during a county agricultural society's annual fair is a "peace officer" as defined in RC 2935.01(B), but is not a "peace officer" as defined in RC 109.71(A).

OAG 87-015. A person who is appointed as an agent by the agriculture department director to investigate the illegal sale of food stamps is not a peace officer as defined by RC 109.71(A).

OAG 85-060. Special constables appointed pursuant to RC 1907.201 and RC 1907.211 are not included in the definition of peace officer set forth in RC 109.71(A)(1) and, therefore, need not receive certification from the Ohio peace officer training council.

OAG 84-020. A person designated by the board of directors of a conservancy district, pursuant to RC 6101.75, to police the works of the district is not subject to the training and certification requirements imposed by RC 109.77(A).

OAG 84-008. In order for a person to be a peace officer as defined in RC 109.71(A)(1), three criteria must be met: (1) the person must be appointed to one of the specific positions enumerated therein; (2) the person must be commissioned or employed by a political subdivision of this state; and (3) the person's primary duties must be to preserve the peace, to protect life and property, and to enforce laws, ordinances or regulations.

OAG 81-102. An individual who served as a state highway patrolman on January 1, 1966, did not hold "peace officer" status as defined by RC 109.71(A). Therefore, such an individual must complete the course of training prescribed by the Ohio peace officer training council pursuant to RC 109.71 to RC 109.77 in order to receive an appointment as a "peace officer."

OAG 70-073. Park district rangers and patrolmen shall attend the Ohio peace officers' training institute and obtain certification upon satisfactory completion of the course.

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

109.73 Powers and duties

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

(1) The approval, or revocation of approval, of peace officer training schools administered by the state, counties, municipal corporations, public school districts, technical college districts, and the department of natural resources;

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

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

(4) The requirements of minimum basic training that peace officers appointed to probationary terms shall complete before being eligible for permanent appointment, which requirements shall include a minimum of fifteen hours of training in the handling of domestic disputes, a minimum of six hours of crisis intervention training, and a specified amount of training in the handling of missing children and child abuse and neglect cases, and the time within which such basic training shall be completed following such appointment to a probationary term;

(5) The requirements of minimum basic training that 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, which requirements shall include a minimum of fifteen hours of training in the handling of domestic disputes, a minimum of six hours of crisis intervention training, and a specified amount of training in the handling of missing children and child abuse and neglect cases, and the time within which such basic training shall be completed fol-

lowing such appointment on a non-permanent basis;

(6) Categories or classifications of advanced in-service training programs for peace officers, including programs in the handling of domestic disputes, in crisis intervention, and in the handling of missing children and child abuse and neglect cases, and minimum courses of study and attendance requirements with respect to such categories or classifications;

(7) Permitting persons appointed and commissioned as railroad policemen or hospital police officers 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 or hospitals sponsoring the policemen or police officers pay the entire cost of the training and certification and if trainee vacancies are available;

(8) Permitting undercover drug agents to attend approved peace officer training schools, other than the Ohio peace officer training academy, and to receive certificates of satisfactory completion of basic training programs, if, for each undercover drug agent, the county, township, or municipal corporation that employs that undercover drug agent pays the entire cost of the training and certification;

(9)(a) The requirements for basic training programs for bailiffs and deputy bailiffs of courts of record of this state and for criminal investigators employed by the state public defender that those persons shall complete before they may carry a firearm while on duty;

(b) The requirements for any training received by a bailiff or deputy bailiff of a court of record of this state or by a criminal investigator employed by the state public defender prior to June 6, 1986 that is to be considered equivalent to the training described in division (A)(9)(a) of this section.

(10) Establishing minimum qualifications and requirements for certification for dogs utilized by law enforcement agencies.

(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. The executive director 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 expenses within the amounts available by appropriation. The executive director may appoint such officers, employees, agents, and consultants as he considers necessary, prescribe their duties, and provide for reimbursement of their expenses within the amounts available for reimbursement by appropriation and with the approval of the council.

(C) The council may:

(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 that has been approved by the executive director or for which application for approval has been made;

(3) Make recommendations, from time to time, to the executive director, the 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 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: 1986 S 364, eff. 3-17-87

1986 S 149; 1984 S 321, H 435, H 759; 1981 H 44; 1978 H 835; 1976 S 272; 1971 S 396; 132 v H 93; 131 v H 363

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3, 109:2-5, 109:2-6

Peace officer training for criminal investigators employed by state public defender, 120.04

Peace officer training for bailiffs and deputy bailiffs, 1901.32, 2151.13, 2301.12, 2301.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

109.74 Promulgation 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 council 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

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 21.05

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3, 109:2-5, 109:2-6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

NOTES ON DECISIONS AND OPINIONS

OAG 70-073. Park district rangers and patrolmen shall attend the Ohio peace officers' training institute and obtain certification upon satisfactory completion of the course.

109.741 Training in handling children's cases

The attorney general shall adopt, in accordance with Chapter 119, or pursuant to section 109.74 of the Revised Code, rules governing the training of peace officers in the handling of missing children and child abuse and neglect cases. The rules shall specify the amount of that training necessary for the satisfactory completion of basic training programs at approved peace officer training schools, other than the Ohio peace officer training academy and the time within which a peace officer is required to receive that training, if he receives his appointment as a peace officer before receiving that training.

HISTORY: 1985 S 84, eff. 4-9-85
1984 S 321

109.742 Rules on training in crisis intervention

The attorney general shall adopt, in accordance with Chapter 119, or pursuant to section 109.74 of the Revised Code, rules governing the training of peace officers in crisis intervention. The rules shall specify six or more hours of that training for the satisfactory completion of basic training programs at approved peace officer training schools, other than the Ohio peace officer training academy.

HISTORY: 1984 H 435, eff. 4-4-85

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, which shall be exercised with the general advice of the council and only in accordance with section 109.751 of the Revised Code and the rules adopted pursuant to that section, and with the rules adopted by the attorney general pursuant to sections 109.74, 109.741, and 109.742 of the Revised Code:

(A) To approve peace officer training schools administered by the state, counties, municipal corporations, and the department of natural resources, to issue certificates of approval to approved schools, and to revoke an approval or certificate;

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

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

(D) To cause studies and surveys to be made relating to the establishment, operation, and approval of state, county, and municipal peace officer 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 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: 1986 H 428, eff. 12-23-86
1984 S 321, H 435, H 759; 1981 H 44; 131 v H 363

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 99.04

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3

Traffic laws, power of arrest for violations on state highways, 4513.39

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

OJur 3d: 7, Automobiles and Other Vehicles § 295

NOTES ON DECISIONS AND OPINIONS

OAG 66-137. Each township constable appointed on a permanent basis after January 1, 1966, pursuant to RC 509.01, and each chief and member of a township police district, appointed on a permanent basis after January 1, 1966, pursuant to RC 505.01, must have been certified by the executive director of the Ohio peace officer training council as having completed an approved state, county, or municipal police basic training program.

109.751 Approval of schools; attendance of undercover drug agents

(A) The executive director of the Ohio peace officer training council shall not approve, or issue a certificate of approval to, a peace officer training school pursuant to section 109.75 of the Revised Code unless the school agrees to permit, in accordance with rules adopted by the attorney general

pursuant to division (C) of this section, undercover drug agents to attend its basic training programs. The executive director shall revoke his approval, and the certificate of approval of, a peace officer training school that does not permit, in accordance with rules adopted by the attorney general pursuant to division (C) of this section, undercover drug agents to attend its basic training programs.

This division does not apply to peace officer training schools for employees of conservancy districts who are designated pursuant to section 6101.75 of the Revised Code or for park officers, forest officers, game protectors, or state watercraft officers of the department of natural resources.

(B)(1) A peace officer training school is not required to permit an undercover drug agent, a bailiff or deputy bailiff of a court of record of this state, or a criminal investigator employed by the state public defender to attend its basic training programs if:

(a) In the case of the Ohio peace officer training academy, the employer county, township, municipal corporation, court, or state public defender or the particular undercover drug agent, bailiff, deputy bailiff, or criminal investigator has not paid the tuition costs of training in accordance with section 109.79 of the Revised Code;

(b) In the case of other peace officer training schools, the employer county, township, municipal corporation, court, or state public defender fails to pay the entire cost of the training and certification.

(2) A training school shall not permit a bailiff or deputy bailiff of a court of record of this state, or a criminal investigator employed by the state public defender to attend its basic training programs unless the employing court of the bailiff or deputy bailiff or the state public defender, whichever is applicable, has authorized the bailiff, deputy bailiff, or investigator to attend the school.

(C) The attorney general shall adopt, in accordance with Chapter 119, or pursuant to section 109.74 of the Revised Code, rules governing the attendance of undercover drug agents at approved peace officer training schools, other than the Ohio peace officer training academy, and the certification of the agents upon their satisfactory completion of basic training programs.

HISTORY: 1986 H 428, eff. 12-23-86
1986 S 278, S 149; 1984 H 759; 1981 H 44

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3, 109:2-5, 109:2-6

109.76 Construction of act

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

the provisions of Chapter 124. of the Revised Code.

HISTORY: 1977 H 1, eff. 8-26-77
131 v H 363

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

109.77 Certificate of training for peace officer, liquor control investigator, bailiff, or criminal investigator; training in domestic matters, crisis intervention; exceptions; prohibition

(A) Notwithstanding any general, special, or local law or charter to the contrary, and except as provided in division (C) of this section, no person shall receive an original appointment on a permanent basis as a peace officer of any county, township, municipal corporation, or metropolitan housing authority, as a park officer, forest officer, game protector, or state watercraft officer of the department of natural resources, as an employee of a park district under section 511.232 or 1545.13 of the Revised Code, as an employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code, or as a state university law enforcement officer unless the person previously has 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, municipal, or department of natural resources peace officer basic training program. 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, municipal corporation, or metropolitan housing authority, as a park officer, forest officer, game protector, or state watercraft officer of the department of natural resources, as an employee of a park district under section 511.232 or 1545.13 of the Revised Code, or as an employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code shall forfeit his position as such unless he previously has satisfactorily completed, or within the time prescribed by rules promulgated by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, municipal, or department of natural resources peace officer basic training program for temporary or probationary officers and is awarded a certificate by the director attesting to the satisfactory completion of the program. For purposes of this division, a state, county, municipal, or department of natural resources peace officer basic training program, regardless of whether the program is to be completed by peace officers appointed on a permanent or temporary, probationary, or other nonpermanent basis, shall include at least fifteen hours of training in the handling of domestic dispute problems and at least six hours of crisis interven-

tion training. The requirement to complete fifteen hours of training in the handling of domestic dispute problems does not apply to any person serving as a peace officer on March 27, 1979, and the requirement to complete six hours of training in crisis intervention does not apply to any person serving as a peace officer on April 4, 1985. Any person who is serving as a peace officer on April 4, 1985, who terminates his employment after that date, and who is subsequently hired as a peace officer by the same or another law enforcement agency shall complete the six hours of training in crisis intervention within the time prescribed by rules promulgated by the attorney general pursuant to section 109.742 of the Revised Code. No peace officer shall have his employment terminated and then be reinstated with intent to circumvent this section.

This division does not apply to any person serving on a permanent basis on March 28, 1985, as a park officer, forest officer, game protector, or state watercraft officer of the department of natural resources or as an employee of a park district under section 511.232 or 1545.13 of the Revised Code, or to any person serving on a permanent basis on March 6, 1986 as an employee of a conservancy district designated pursuant to section 6101.75 of the Revised Code.

(B) No person shall, after September 20, 1984, receive an original appointment on a permanent basis as a liquor control investigator in the enforcement division or intelligence division of the department of liquor control, engaged in the enforcement of Chapter 4301. of the Revised Code, or as an Ohio veterans' home policeman designated under section 5907.02 of the Revised Code, unless the person previously has been awarded a certificate by the executive director of the Ohio peace officer training council attesting to his satisfactory completion of an approved 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 liquor control investigator in the enforcement division or intelligence division of the department of liquor control, engaged in the enforcement of Chapter 4301. of the Revised Code, or as an Ohio veterans' home policeman designated under section 5907.02 of the Revised Code, shall forfeit his position as such unless the person previously has satisfactorily completed, or within one year from the time of his appointment, satisfactorily completes an approved police basic training program.

(C) No bailiff or deputy bailiff of a court of record of this state and no criminal investigator who is employed by the state public defender shall carry a firearm, as defined in section 2923.11 of the Revised Code, while on duty unless he has been awarded a certificate by the executive director of the Ohio peace officer training council, which certificate attests to his satisfactory completion of an approved state, county, or municipal basic training program for bailiffs and deputy bailiffs of courts of record and for criminal investiga-

tors employed by the state public defender that has been recommended by the Ohio peace officer training council, unless he successfully completed a firearms training program approved by the Ohio peace officer training council prior to his employment as a bailiff, deputy bailiff, or criminal investigator or unless, prior to June 6, 1986, he was authorized to carry a firearm by the court that employed him or by the state public defender and has received training in the use of firearms that the Ohio peace officer training council determines is equivalent to the training that is otherwise required by this division.

(D) A person who was employed as a peace officer of a county, township, or municipal corporation, of the state of Ohio on January 1, 1966, and who has completed at least sixteen years of full-time active service as such peace officer may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer, without complying with the requirements of division (A) of this section.

(E) No person, who is appointed as a peace officer of a county, township, or municipal corporation on or after April 9, 1985, shall serve as a peace officer of that county, township, or municipal corporation, unless he has received training in the handling of missing children and child abuse and neglect cases from an approved state, county, township, or municipal police basic training program or receives the training within the time prescribed by rules promulgated by the attorney general pursuant to section 109.741 of the Revised Code.

(F) No part of any approved state, county, or municipal basic training program for bailiffs and deputy bailiffs of courts of record and no part of any approved state, county, or municipal basic training program for criminal investigators employed by the state public defender shall be used as credit toward the completion by a peace officer of any part of the approved state, county, or municipal peace officer basic training program that the peace officer is required by this section to complete satisfactorily.

(G) This section does not apply to any member of the police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to section 737.04 of the Revised Code.

HISTORY: 1987 H 231, § 1, eff. 10-5-87

1987 H 231, § 6, H 261, § 1, 3; 1986 H 428, § 1, 3, S 278, § 1, 3, S 149, § 1, 3; 1985 S 84, § 1, 4; 1984 H 129, § 1, 3, H 435, S 321, H 759, S 85; 1982 H 738; 1978 H 835, H 588; 1969 H 575; 131 v H 363

Publisher's Note: The amendment of this section by 1984 H 129, § 3—as subsequently amended by 1985 S 84, § 4, 1986 S 149, § 3, 1986 S 278, § 3, and 1986 H 428, § 3, to take effect 12-31-87—was repealed by 1987 H 261, § 3, eff. 11-1-87. See *Baldwin's Ohio Legislative*

Service, 1984 Laws of Ohio, page 5-842, 1985 Laws of Ohio, page 5-12, 1986 Laws of Ohio, pages 5-118, 5-113, and 5-1218, and 1987 Laws of Ohio, page 5-271.

Note: An explanatory note by the Legislative Service Commission states,

"This section was amended by both Sec. 1 of H.B. 231 and Sec. 1 of H.B. 261 of the 117th G.A. The section published here has been harmonized to include the amendments of Sec. 1 of both of these acts. [1987 H 231, § 1, eff. 10-5-87, and 1987 H 261, § 1, eff. 11-1-87.]

"Prior to H.B. 231 and H.B. 261, there were two versions of this section—one "current" and the other, a "future" version that was scheduled to take effect on December 31, 1987.

"Sec. 3 of H.B. 261 repealed the future version of the section—thus giving permanent effect to the current version. Sec. 6 of H.B. 231, however, contemporaneously amended both the current and future versions—thus creating a future version that was not repealed by Sec. 3 of H.B. 261. H.B. 231 so amended the future version solely to ensure that the amendments originating with it would continue as part of the section when the future version became effective.

"The future version resulting from Sec. 6 of H.B. 231 is not printed here since the legislative history described above shows the General Assembly's intention to have eliminated the future version from the law. The Legislative Service Commission will propose legislation to confirm this result." [See *Baldwin's Ohio Legislative Service*, 1987 Laws of Ohio, pages 5-262, 5-271, 5-507, and 5-628, for original versions of these Acts.]

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 21.05, 21.19, 21.32, 23.01, 23.16, 97.18

Gotherman & Babbit, Ohio Municipal Law, Text 13.24

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3, 109:2-5, 109:2-6

Public employees retirement system; deputy sheriff, township constable, and county narcotics agent defined, 145.01

Rules, regulation and appointment of township police officers, 505.49

Township constables, suspension or removal, compensation, 509.01

Memorial buildings, halls, parks; law enforcement, 511.232

Park districts, police powers of employees, 1545.13

Corrupt activities; forfeiture of property, proceeds for peace officer training special account, 2923.35

State university law enforcement officers, appointment, 3345.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4; 49, Sheriffs, Marshals, and Constables § 5, 10

NOTES ON DECISIONS AND OPINIONS

No. 544 (4th Dist Ct App, Jackson, 11-23-87), *Hayburn v Jayjohn*. Consideration of the provisions of RC 109.77 by an arbitrator, in ruling on a reduction in force dispute involving sheriff's employees, exceeds the arbitrator's authority as provided in RC 2711.10(D) since 4117.10(A) mandates that provisions of a collective bargaining agreement, lawfully adopted and gov-

erned by RC Ch 4117, dealing with terms and conditions of employment, take precedence over conflicting laws.

OAG 86-070. A board of township trustees of a non-civil service township may implement a layoff of police constables and police district employees hired under RC 509.01 and RC 505.49(A), respectively, who have been awarded certificates attesting to satisfactory completion of a police basic training program; such layoffs need not follow the procedures prescribed by RC 505.491 to RC 505.495 for the removal or suspension of such persons, but may be accomplished in any reasonable manner.

OAG 86-070. Police constables and police district employees, who have been awarded certificates attesting to satisfactory completion of a police basic training program, may not exercise police powers while they are properly laid off.

OAG 85-060. Special constables appointed pursuant to RC 1907.201 and RC 1907.211 are not included in the definition of peace officer set forth in RC 109.71(A)(1) and, therefore, need not receive certification from the Ohio peace officer training council.

OAG 84-020. A person designated by the board of directors of a conservancy district, pursuant to RC 6101.75, to police the works of the district is not subject to the training and certification requirements imposed by RC 109.77(A).

OAG 84-008. A deputy sheriff appointed by a court of common pleas for the purpose of preserving peace within the courthouse is subject to the training and certification requirements imposed by RC 109.77(A).

OAG 84-008. A court constable appointed by a court of common pleas pursuant to RC 2701.07 to preserve order within the courthouse is not subject to the training and certification requirements imposed by RC 109.77(A).

OAG 81-102. An individual who served as a state highway patrolman on January 1, 1966, did not hold "peace officer" status as defined by RC 109.71(A). Therefore, such an individual must complete the course of training prescribed by the Ohio peace officer training council pursuant to RC 109.71 to 109.77 in order to receive an appointment as a "peace officer."

OAG 74-038. A township constable who has qualified under RC 109.77, and has been appointed under RC 509.01, may only be removed or suspended pursuant to RC 505.491 et seq., and in the absence of such a removal or suspension, he may continue to perform the duties and exercise the authority provided him by statute.

OAG 70-073. Park district rangers and patrolmen shall attend the Ohio peace officers' training institute and obtain certification upon satisfactory completion of the course.

OAG 70-032. Township police constable who has not been awarded a certificate of completion of approved police basic training program serves at pleasure of township trustees and may be removed from office at their pleasure and discretion.

OAG 67-123. Mandatory police training prescribed by RC 109.77 is required for any sheriff's deputy unless the rights, powers and duties of such deputy were significantly limited by the appointing sheriff.

OAG 67-123. A county sheriff may employ general office personnel who do not perform specific duties of the sheriff without formally deputizing such employees and without age limitation of said employees.

OAG 67-029. A special constable, who is empowered to carry firearms, and appointed pursuant to RC 1907.201 and RC 1907.211, is a "peace officer" and, as

such, must be certified by the executive director of the Ohio peace officer training council as having satisfactorily completed a basic training course within one year of his original appointment.

OAG 67-015. A private policeman, appointed pursuant to RC 737.05, on a temporary basis or for a probationary term or on other than a permanent basis, must receive, within one year from the time of his appointment, a certificate of his satisfactory completion of the basic course of peace officer training.

OAG 67-015. The determination of whether the members of an auxiliary police unit must be certified by the executive director of the Ohio peace officer training council, as required by RC 109.77, is a factual one to be made by comparing the municipal legislation creating the unit and establishing the unit's members' duties and authority, with the rules and regulations of the Ohio peace officer training council.

OAG 66-179. A private policeman who is appointed on other than a permanent basis must receive, within one year from the time of his appointment, a certificate of his satisfactory completion of the basic course of peace officer training; such time limit may be extended by the director, or such time limit may be lessened by the appointing subdivision, in accordance with the provisions of rule No. P.C. 1-11 of the rules and regulations of the peace officers training council.

OAG 66-137. Each township constable appointed on a permanent basis after January 1, 1966, pursuant to RC 509.01, and each chief and member of a township police district, appointed on a permanent basis after January 1, 1966, pursuant to RC 505.01, must have been certified by the executive director of the Ohio peace officer training council as having completed an approved state, county, or municipal police basic training program.

OAG 66-137. A board of township trustees may pay the expenses of the required training for the chief and members of a township police district, and may make such payments in advance pursuant to RC 505.54.

OAG 66-137. A board of township trustees may pay necessary travel and other expenses incurred incident to a township police constable's being trained as required by RC 109.77, and since such expenses are not specifically provided for by statute, it is within the discretion of the board of township trustees to pay such expenses in advance.

109.78 Certification as special police officer or security guard; payment of cost; firearms training; peace officer private security fund

(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. Application for approval of a training program designed to qualify persons for such positions shall be made to the council. An application for approval shall be submitted to the council with a fee of one hundred twenty-five dollars, which fee shall be refunded if the application is denied. 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. A person who is issued a certificate for satisfactory completion of an approved basic training program shall pay to the council a fee of fifteen dollars. A duplicate of a lost, spoliated, or destroyed certificate may be issued upon application and payment of a fee of fifteen dollars. 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)(1) 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 basic firearms training programs, and shall issue certificates to class A, B, or C licensees or prospective class A, B, or C licensees under Chapter 4749. of the Revised Code and to registered or prospective employees of such class A, B, or C licensees who have satisfactorily completed a basic firearms training program of the type described in division (A)(1) of section 4749.10 of the Revised Code.

Application for approval of a basic firearms training program shall be made to the council. An application shall be submitted to the council with a fee of one hundred dollars, which fee shall be refunded if the application is denied.

A person who is issued a certificate for satisfactory completion of an approved basic firearms training program shall pay a fee of ten dollars to the council. A duplicate of a lost, spoliated, or destroyed certificate may be issued upon application and payment of a fee of five dollars.

(2) The executive director, on behalf of the council and in accordance with rules promulgated by the attorney general, also shall certify firearms requalification training programs and instructors for the annual requalification of class A, B, or C licensees under Chapter 4749. of the Revised Code and registered or prospective employees of such class A, B, or C licensees who are authorized to carry a firearm under section 4749.10 of the Revised Code. Application for approval of a training program or instructor for such purpose shall be made to the council. Such an application shall be submitted to the council with a fee of fifty dollars, which fee shall be refunded if the application is denied.

(3) The executive director, upon request, also shall review firearms training received within

three years prior to the effective date of this division by any class A, B, or C licensee or prospective class A, B, or C licensee, or by any registered or prospective employee of any class A, B, or C licensee under Chapter 4749. of the Revised Code to determine if the training received is equivalent to a basic firearms training program that includes twenty hours of handgun training and five hours of training in the use of other firearms, if any other firearm is to be used. If the executive director determines the training was received within the three-year period and that it is equivalent to such a program, he shall issue written evidence of his approval of the equivalency training to the licensee or employee.

(C) There is hereby established in the state treasury the peace officer private security fund, which shall be used by the Ohio peace officer training council to administer the training program to qualify persons for positions as special policemen, security guards, or other private employment in a police capacity, as described in division (A) of this section, and the training program in basic firearms and the training program for firearms requalification, both as described in division (B) of this section. All fees paid to the council by applicants for approval of a training program designed to qualify persons for such private police positions, basic firearms training program, or a firearms requalification training program or instructor, as required by division (A) or (B) of this section, by persons who satisfactorily complete a private police training program or a basic firearms training program, as required by division (A) or (B) of this section, or by persons who satisfactorily requalify in firearms use, as required by division (B)(2) of section 4749.10 of the Revised Code, shall be transmitted to the treasurer of state for deposit in the fund. The fund shall be used only for the purpose set forth in this division.

(D) No public or private educational institution, port authority, superintendent of the state highway patrol, or regional transit 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: 1987 H 419, eff. 7-1-87
1986 H 428; 1985 H 402; 1977 S 194; 1974 S 192; 1972 H 633; 1971 H 1; 1969 H 575

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 13.24

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3

Regional transit authority, security operations, 306.35

State universities, special policemen, 3345.04
Special police for institutions under jurisdiction of department of mental health, 5119.14
Special police for institutions under jurisdiction of department of mental retardation and developmental disabilities, 5123.13
State highway patrol, special police officers, 5503.09

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

109.79 Ohio peace officer training academy

(A) The Ohio peace officer training council shall establish and conduct a training school for law enforcement officers of any political subdivision of the state or of the state public defender's office. The school shall be known as the Ohio peace officer training academy. No bailiff or deputy bailiff of a court of record of this state and no criminal investigator employed by the state public defender shall be permitted to attend the academy for training unless the employing court of the bailiff or deputy bailiff or the state public defender, whichever is applicable, has authorized the bailiff, deputy bailiff, or investigator to attend the 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, a course in crisis intervention with six or more hours of training, and training in the handling of missing children and child abuse and neglect cases, and shall establish rules 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 that sponsors them or, if the officer is a criminal investigator employed by the state public defender, as determined by the state public defender. The political subdivision may pay the tuition costs of the law enforcement officers they sponsor and the state public defender may pay the tuition costs of criminal investigators of that office who attend the academy.

If trainee vacancies exist, the academy may train and issue certificates of satisfactory completion to peace officers who are employed by a railroad company or who are hospital police officers

appointed and commissioned by the governor pursuant to sections 4973.17 to 4973.22 of the Revised Code, provided that no such officer shall be trained at the academy unless the officer meets the qualifications established for admission to the academy and the railroad company or hospital prepays the entire cost of the training. A railroad company or hospital is not entitled to reimbursement from the state for any amount paid for the cost of training the railroad company's peace officers or hospital's police officers.

The academy shall permit investigators employed by the state medical board to take selected courses that the board determines are consistent with its responsibilities for initial and continuing training of investigators as required under division (C) of section 4731.05 of the Revised Code. The board shall pay the entire cost of training that investigators receive at the academy.

(B) As used in this section:

(1) "Law enforcement officers" include any undercover drug agent, any bailiff or deputy bailiff of a court of record, and any criminal investigator who is employed by the state public defender.

(2) "Undercover drug agent" means any person who:

(a) Is employed by a county, township, or municipal corporation for the purposes set forth in division (B)(2)(b) of this section but who is not an employee of a county sheriff's department, of a township constable, or of the police department of a municipal corporation or township;

(b) In the course of his employment by a county, township, or municipal corporation, investigates and gathers information pertaining to persons who are suspected of violating Chapter 2925. or 3719. of the Revised Code, and generally does not wear a uniform in the performance of his duties.

(3) "Crisis intervention training" has the same meaning as in section 109.71 of the Revised Code.

(4) "Missing children" has the same meaning as in section 2901.30 of the Revised Code.

HISTORY: 1986 S 364, eff. 3-17-87
1986 H 769, S 149; 1984 S 321, H 435; 1981 H 44; 1979 H 83; 1976 S 272; 1970 H 1160

Note: A special endorsement by the Legislative Service Commission states, "Comparison of these amendments [1986 S 364, eff. 3-17-87 and 1986 H 769, eff. 3-17-87] in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment." In accordance with this endorsement, changes made by 1986 S 364, eff. 3-17-87 and 1986 H 769, eff. 3-17-87 have been incorporated in the above amendment. See *Baldwin's Ohio Legislative Service*, 1986 Laws of Ohio, pages 5-859 and 5-792, for original versions of these Acts.

CROSS REFERENCES

Ohio peace officers basic training program, OAC Ch 109:2-1 to 109:2-3, 109:2-5, 109:2-6

Corrupt activities, forfeiture of property, proceeds for peace officer training special account, 2923.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 43A, Police § 4

109.80 Basic training course for sheriffs; continuing education

(A) The Ohio peace officer training council shall develop and conduct a basic training course lasting at least three weeks for sheriffs appointed or elected on or after January 1, 1988 and shall establish criteria for what constitutes successful completion of the course. The basic training course shall include instruction in contemporary law enforcement, criminal investigations, the judicial process, civil rules, corrections, and other topics relevant to the duties and operations of the office of sheriff. The council shall offer the course every four years within six months after the general election of sheriffs in each county and at other times when it is needed to permit sheriffs to attend within six months after appointment or election. The course shall be conducted at the Ohio peace officer training academy.

(B) The attorney general shall appoint a continuing education committee, consisting of not fewer than five nor more than seven members, including but not limited to, members of the Ohio peace officer training council and sheriffs. The council and the committee jointly shall determine the type of continuing education required for sheriffs to complete the requirements of division (F) of section 311.01 of the Revised Code and shall establish criteria for what constitutes successful completion of the requirement. The committee shall approve the courses that sheriffs may attend to complete the continuing education requirement and shall publish an approved list of those courses. The council shall maintain a list of approved training schools that sheriffs may attend to complete the continuing education requirement. Upon request, the committee may approve courses other than those courses conducted as part of a certified law enforcement manager program.

(C) Upon presentation of evidence by a sheriff that because of medical disability or for other good cause he is unable to complete the basic or continuing education requirement, the council may waive the requirement until the disability or cause terminates.

HISTORY: 1986 H 683, eff. 3-11-87

ANTITRUST SECTION

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 37, Monopolies and Combinations § 35, 55
Am Jur 2d: 54, Monopolies, Restraints on Trade and Unfair Trade Practices § 628

NOTES ON DECISIONS AND OPINIONS

506 FSupp 1278 (SD Ohio 1981), *Ohio v United Transportation, Inc.* The attorney general of Ohio may maintain an antitrust action challenging taxicab monopoly in one city; the city is not necessarily an indispensable party.

109.82 Antitrust section; 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, which is hereby created. The fund shall be used for expenses of the antitrust section. The expenses of the antitrust section in excess of the money available in the fund shall be paid out of the regular appropriation to the office of the attorney general.

HISTORY: 1985 H 201, eff. 7-1-85
1977 S 221; 132 v H 556

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 37, Monopolies and Combinations § 35

NOTES ON DECISIONS AND OPINIONS

506 FSupp 1278 (SD Ohio 1981), *Ohio v United Transportation, Inc.* The attorney general of Ohio may maintain an antitrust action challenging taxicab monopoly in one city; the city is not necessarily an indispensable party.

MISCELLANEOUS INVESTIGATORY POWERS AND DUTIES

109.83 Investigation of organized crime; referral to prosecuting attorney or grand jury

(A) When directed by the governor or general assembly, the attorney general may investigate any organized criminal activity in this state. When it appears to the attorney general, as a result of an investigation conducted pursuant to this division, 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, to a regular grand jury drawn and impaneled pur-

suant 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. When the crime or the elements of the crime were committed in two or more counties, the referral shall be to the prosecuting attorney, the regular grand jury, or a special grand jury of the county in which the most significant portion of the crime or the elements of the crime occurred or, if it is not possible to determine that county, the county with the largest population. 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.

(B)(1) When information is referred to the attorney general by an organized crime task force or the organized crime investigations commission pursuant to section 177.03 of the Revised Code, the attorney general shall review the information and if he determines that there is cause to prosecute for the commission of a crime, he shall refer the information as evidence to a regular or special grand jury in the manner described in, and in the county determined in accordance with the provisions of, division (A) of this section, or shall initiate a criminal action or proceeding in a court of proper jurisdiction. If an indictment is returned by a grand jury pursuant to a referral made under this division, the attorney general has sole responsibility to prosecute the accused offender.

(2) The attorney general, and any assistant or special counsel designated by him who appears under this division in any county for the prosecution of any crime has the same powers and authority as a prosecuting attorney, including, but not limited to, powers relating to attendance before the courts and grand juries of the county, preparation and trial of indictments for crimes, and representation of the state in any criminal proceeding or in any appeal from a criminal case in any court of this state.

(C) When proceeding under the authority of this section, the attorney general may appear for the state in any court or tribunal of proper jurisdiction for the purpose of conducting investigations under division (A) of this section, or for the purpose of conducting criminal proceedings or any other proceeding that is necessary to promote and safeguard the public interests of the citizens of this state.

(D) This section shall not be construed to prevent the attorney general and prosecuting attorneys or special prosecutors from cooperating in the investigation and prosecution of offenses under this section. However, in cases in which information was referred to the attorney general by an organized crime task force because the office of a prosecuting attorney was implicated by

an investigation conducted by the task force, the attorney general shall not inform the implicated prosecutor of the investigation or referral and shall not cooperate with the prosecutor on the matter.

(E) As used in this section, "organized criminal activity" has the same meaning as in section 177.01 of the Revised Code.

HISTORY: 1986 S 74, eff. 9-3-86
1970 H 956

CROSS REFERENCES

Organized crime investigations commission, organized crime task force, investigations, reports, powers and duties of attorney general, Ch 177

Prosecuting attorneys' powers and duties, exceptions, 309.08

Engaging in pattern of corrupt activity, investigations, 2923.32

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 405; 25, Criminal Law § 89, 92; 28, Criminal Law § 2112, 2113

Am Jur 2d: 7, Attorney General § 26, 27

NOTES ON DECISIONS AND OPINIONS

52 Cin L Rev 503 (1983). RICO: The Corporation as "Enterprise" and Defendant, Frederick Woodbridge, Jr.

52 Cin L Rev 490 (1983). Use of Collateral Estoppel in Private Civil Actions Under RICO; the Procedural Benefits of Parklane Hosiery Co. v. Shore, Elizabeth Devin Brain.

52 Cin L Rev 467 (1983). Multiple Prosecutions and Punishments Under RICO: A Chip Off the Old "Blockbuster," Gary E. Becker.

52 Cin L Rev 456 (1983). RICO, Past and Future: Some Observations and Conclusions, Ilene H. Nagel and Sheldon J. Plager.

52 Cin L Rev 431 (1983). Conspiracy, Group Danger and the Corporate Defendant, Kathleen F. Brickey.

52 Cin L Rev 404 (1983). RICO Forfeiture in Practice: A Prosecutorial Perspective, Dan K. Webb and Scott F. Turow.

52 Cin L Rev 385 (1983). Reconciling RICO's Conspiracy and "Group" Enterprise Concepts with Traditional Conspiracy Doctrine, James F. Holderman.

52 Cin L Rev 378 (1983). White Collar Crime: A Legal Overview, Paul Marcus.

62 OS(2d) 370, 406 NE(2d) 499 (1980), State v Young. RC 2923.04 fails to establish ascertainable standards of guilt and is, therefore, void for vagueness under the due process clause of US Const Am 14.

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

CROSS REFERENCES

Workers' compensation, powers and duties of attorney general, 4123.519, 4123.92

LEGAL ENCYCLOPEDIAS AND ALR

OJur 2d: 58, Workmen's Compensation § 140

OJur 3d: 28, Criminal Law § 1866; 39, Employment Relations § 13

NOTES ON DECISIONS AND OPINIONS

OAG 77-019. When the Ohio highway patrol is ordered to investigate alleged criminal activity within the scope of RC 109.84, the evidence it gathers must be presented to the attorney general for his consideration pursuant to that section; a duplicate copy of such an investigative report may only be made available to a local prosecuting attorney for prosecution of violations, when the attorney general determines pursuant to RC 109.84(B) to refer the matter to the prosecuting attorney.

109.85 Investigations and prosecutions for excess medicaid payments

(A) Upon the written request of the governor, the general assembly, the auditor of state, the director of human services, the director of health, or the director of budget and management, or upon the attorney general's becoming aware of criminal or improper activity related to Chapter 3721. and section 5111.02 of the Revised Code, the attorney general shall investigate any criminal or civil violation of law related to Chapter 3721. or section 5111.02 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, and any assistant or special counsel designated by him for that purpose, have all rights, privileges, and powers of prosecuting attorneys. The attorney general shall have exclusive supervision and control of all investigations and prosecutions initiated by him under this section. Nothing in this section shall prevent a county prosecuting attorney from investigating and prosecuting criminal activity related to Chapter 3721. and section 5111.02 of the Revised Code.

HISTORY: 1985 H 201, eff. 7-1-85
1979 H 176; 1978 S 159

CROSS REFERENCES

Medicaid fraud, application for reimbursement of cost of investigation and prosecution, 2913.40

Medical assistance program, attorney general finding amounts due state uncollectible, recommendation that claims be cancelled, 5111.021

Civil or criminal action against medicaid provider, effect on medical assistance provider agreements, 5111.03

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 7, Attorney General § 26, 27

109.86 Investigation and prosecution of patient abuse

(A) The attorney general shall investigate any activity he has reasonable cause to believe is in violation of section 2903.34 of the Revised Code. Upon written request of the governor, the general assembly, the auditor of state, or the director of health, human services, aging, mental health, or mental retardation and developmental disabilities, the attorney general shall investigate any activity these persons believe is in violation of section 2903.34 of the Revised Code. If after an investigation the attorney general has probable cause to prosecute for the commission of a crime, he shall refer the evidence to the prosecuting attorney, director of law, or other similar chief legal officer having jurisdiction over the matter. If the prosecuting attorney decides to present the evidence to a grand jury, he shall notify the attorney general in writing of the decision within thirty days after referral of the matter and shall present the evidence prior to the discharge of the next

regular grand jury. If the director of law or other chief legal officer decides to prosecute the case, he shall notify the attorney general in writing of the decision within thirty days and shall initiate prosecution within sixty days after the matter was referred to him.

(B) If the prosecuting attorney, director of law, or other chief legal officer fails to notify the attorney general or to present evidence or initiate prosecution in accordance with division (A) of this section, the attorney general may present the evidence 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 action in any court or tribunal of competent jurisdiction in this state. The attorney general, and any assistant or special counsel designated by him, have all the powers of a prosecuting attorney, director of law, or other chief legal officer when proceeding under this section. Nothing in this section shall limit or prevent a prosecuting attorney, director of law, or other chief legal officer from investigating and prosecuting criminal activity committed against a resident or patient of a care facility.

HISTORY: 1986 H 566, eff. 9-17-86

VICTIMS ASSISTANCE

109.91 Crime victims assistance office; state victims assistance advisory board; duties

(A) There is hereby established within the office of the attorney general the crime victims assistance office.

(B) There is hereby established the state victims assistance advisory board. The board shall consist of a chairman, to be appointed by the attorney general, four ex officio members, and fifteen members to be appointed by the attorney general as follows: one member who represents the Ohio victim-witness association; three members who represent local victim assistance programs, including one from a municipally operated program and one from a county-operated program; one member who represents the interests of elderly victims; one member who is a board member of any statewide or local organization that exists primarily to aid victims of domestic violence, or who is an employee of, or counselor for, such an organization; one member who is an employee or officer of a county probation department or a probation department operated by the department of rehabilitation and correction; one member who is a county prosecuting attorney; one member who is a city law director; one member who is a county sheriff; one member who is a member or officer of a township or municipal police department; one member who is a court of common pleas judge;

one member who is a municipal court judge or county court judge; and two members who are private citizens and are not government employees.

The board shall include the following ex officio, nonvoting members: the chief justice of the supreme court, the attorney general, one member of the senate to be designated by the president of the senate, and one member of the house of representatives to be designated by the speaker of the house.

Members of the board shall serve without compensation, but shall be reimbursed for travel and other necessary expenses that are incurred in the conduct of their official duties as members of the board. The chairman and members of the board appointed by the attorney general shall serve at the pleasure of the attorney general. The chief justice of the supreme court and the attorney general shall serve on the board until the end of the term of office that qualified them for membership on the board. The member of the senate and the member of the house of representatives shall serve at the pleasure of the president of the senate and the speaker of the house of representatives, respectively.

(C) The victims assistance advisory board shall perform both of the following duties:

(1) Advise the crime victims assistance office in determining crime and delinquency victim service needs, determining crime and delinquency victim policies for the state, and improving and exercising leadership in the quality of crime and delinquency victim programs in the state;

(2) Review and recommend to the crime victims assistance office the victim assistance programs that should be considered for the receipt of state financial assistance pursuant to section 109.92 of the Revised Code. The financial assistance allocation recommendations of the board shall be based on the following priorities:

(a) Programs in existence on the effective date of this section shall be given first priority;

(b) Programs offering or proposing to offer the broadest range of services and referrals to the community served, including medical, psychological, financial, educational, vocational, and legal services that were not in existence on the effective date of this section shall be given second priority;

(c) Other qualified programs shall be given last priority.

(D) As used in this section and section 109.92 of the Revised Code, "victim assistance program" includes, but is not limited to a program that provides at least one of the following:

(1) Services to victims of any offense of violence or delinquent act that would be an offense of violence if committed by an adult;

(2) Financial assistance or property repair services to victims of crime or delinquent acts;

(3) Assistance to victims of crime or delinquent acts in judicial proceedings;

(4) Assistance to victims of crime or delinquent acts under the operation of any political subdivi-

sion of the state or a branch of the criminal justice system set forth in division (B)(1), (2), or (3) of section 122.21 of the Revised Code;

(5) Technical assistance to persons or organizations that provide services to victims of crime or delinquent acts under the operation of a branch of the criminal justice system set forth in divisions (B)(1), (2), and (3) of section 122.21 of the Revised Code.

A victim assistance program does not include the program for the reparation of crime victims established pursuant to Chapter 2743. of the Revised Code.

HISTORY: 1987 H 231, eff. 10-5-87
1987 H 171; 1984 S 195

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 26, Criminal Law § 430

109.92 State financial assistance to victims assistance programs; procedures

(A) Funds may be appropriated [*sic*] to the office of the attorney general for the purpose of providing state financial assistance to victim assistance programs that operate in the state. Any funds appropriated for that purpose by the general assembly shall be used to provide financial assistance to victim assistance programs in accordance with section 109.91 of the Revised Code and this section. The program for the provision of such financial assistance shall be administered by the crime victims assistance office established pursuant to section 109.91 of the Revised Code.

(B) A victim assistance program may apply to the crime victims assistance office for state financial assistance out of funds appropriated to the office of the attorney general for that purpose by the general assembly. Each application for such financial assistance shall include all of the following information:

(1) Evidence that the program is incorporated in this state as a nonprofit corporation or is a program established by a unit of state or local government;

(2) The proposed budget of the program for the period during which the financial assistance is sought;

(3) A summary of services offered by the program;

(4) An estimate of the number of persons served by the program.

(C) Within thirty days of receipt of an application for financial assistance from a victim assistance program in accordance with division (B) of this section, the crime victims assistance office, based in part on the recommendations of the victim assistance advisory board made pursuant to section 109.91 of the Revised Code, shall notify the program in writing whether it is eligible for financial assistance and, if eligible, estimate the amount that will be made available to the program

and the time when the financial assistance will be made available.

(D) Each victim assistance program that receives any financial assistance pursuant to this section shall use the financial assistance only to provide the services identified in its application for such assistance as being services it offered and to cover a reasonable cost of administration of the program. Each victim assistance program that receives any such financial assistance shall make a good faith effort to minimize its costs of administration.

HISTORY: 1984 S 195, eff. 7-1-85

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 26, Criminal Law § 430
Am Jur 2d: 21A, Criminal Law § 1051 to 1054

**109.93 to 109.98 Criminal justice services—
Repealed**

HISTORY: 1987 H 231, eff. 10-5-87
1987 H 171

Note: 109.93 to 109.941 amended and recodified as 122.21 to 122.23, 109.942 and 109.95 recodified as

122.24 and 122.25, and 109.96 and 109.97 amended and recodified as 122.26 and 122.27 by 1987 H 231, eff. 10-5-87.

Note: Former 109.93 to 109.942 were former 122.21 to 122.24 amended and recodified, former 109.95 was former 122.25 recodified, and former 109.96 and 109.97 were former 122.26 and 122.27 amended and recodified by 1987 H 171, eff. 7-1-87; 1983 H 291, § 4; 1982 H 536; 1981 H 440; 1978 H 1277, § 1, 4, 5.

MISCELLANEOUS PROVISIONS

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

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 6, Attorney General § 24

OHIO ATTORNEY GENERAL OPINIONS

INDEX

Covering opinions issued January 1, 1988 to December 31, 1988
Cross references to another main heading are in CAPITAL LETTERS.

ADJUTANT GENERAL

Camp Perry, lease of military property at, 88-010

ADMINISTRATIVE SERVICES DEPARTMENT

Employee recognition award program, establishment, 88-016

ADVERTISING

Fireworks, prohibitions, 88-040

AGREEMENTS

Interstate—See INTERSTATE AGREEMENTS.

AGRICULTURAL SOCIETIES, COUNTY

Buildings, insurance by county commissioners, 88-044

Employees

Indemnification of, 88-034

Self-insurance for, 88-034

Fairgrounds, renting as campgrounds during non-fair events

License requirement, 88-046

Formation

Specific agricultural society statutes governing, 88-026

Organization, conduct, and government

Nonprofit corporation statutes governing in absence of specific agricultural society statutes, 88-026

Political subdivision, considered to be, 88-034

AGRICULTURE

Septage disposal not deemed agricultural use or incidental to agriculture, 88-051

ALCOHOLIC BEVERAGES

Possession in public places

Motor vehicle on public roadway or in public parking lot, 88-061

ALIMONY

Support orders

Child support enforcement agency as trustee for persons entitled to receive payments pursuant to, 88-094

AMBULANCE SERVICES

Youth services department, institutions operated by Township providing services

Charges, 88-042

Contracts with township trustees for, 88-042

ANNEXATION

Partnership real property

Partnership as owner which may petition for, 88-102

Township trustees, counsel for

Contracts for, 88-066

County commissioners expending county funds for, 88-066

County prosecutor's duty to represent, 88-066

APPROPRIATIONS

County mental retardation and developmental disabilities boards, to finance, 88-096

AUTOMOBILES—See MOTOR VEHICLES.

BAIL

Failure to post

Misdemeanors, duty of sheriff to detain persons charged with commission of in jail, 88-060

BANKS

Corporate appointee insurance agencies, ownership of, 88-056

Customer lists

Insurance agencies, prohibition on sale to, 88-056

Holding companies

Corporate appointee insurance agencies, ownership of, 88-056

Lease payments from insurance agencies

Commissions, treated as when compensation for lessor procuring insurance contracts, 88-056

BOARDS OF EDUCATION—See EDUCATION, LOCAL BOARDS.

BONDS AND NOTES

Library districts issuing

Submission of question to electorate, 88-013

Refunding bonds

Development director, authority to issue, 88-079

Interest rate lower than rate of refunded bonds for duration of term, 88-079

BONDS, SURETY

Acting judges, bond requirement, 88-024

BRIDGES

County bridge commissions

Commissioners as employees, 88-098

Operation as governmental function, 88-098

Political subdivisions, as, 88-098

BRIDGES—continued

Repairs

Cooperative agreement between county and municipal corporation for, 88-039

BUILDINGS AND GROUNDS

County agricultural societies, county commissioners insuring buildings of, 88-044

CAMPGROUNDS

Fairgrounds, county agricultural societies renting as during non-fair events

License requirement, 88-046

CAMP PERRY

Adjutant general, lease of military property by, 88-010

CARS—See MOTOR VEHICLES.

CEMETERIES

Township

Sextons, deduction of Medicare taxes, 88-021

CHILD SUPPORT

Arrearages

Enforcement agency applying lump-sum payments to, 88-012

Employers, enforcement by

Vacation pay, withholding of lump-sum payments, 88-052

Enforcement

County prosecutor representing party in action for
Costs, deposit with and collection by common pleas court, 88-094

Vacation pay, employers withholding lump-sum payments, 88-052

Enforcement agencies

Application of lump-sum payments to arrearages, 88-012

Assistant county prosecutors providing legal services pursuant to agreement as employees for sovereign immunity purposes, 88-094

Trustee for persons entitled to receive payments pursuant to alimony orders, as, 88-094

Wage withholding

Vacation pay, withholding of lump-sum payments, 88-052

CITIES—See MUNICIPAL CORPORATIONS.

CIVIL SERVICE—See also PUBLIC EMPLOYEES,
for general provisions.

County highway departments

Classified employees

Township trustees, as, 88-020

Police—See **POLICE.**

COLLECTIVE BARGAINING, PUBLIC EMPLOYEES

Agreements

General assembly, submission to

Approval or rejection as a whole, 88-030

Failure to submit, mandamus as remedy, 88-030

First or second regular sessions or special session, during, 88-030

Manner of submission, 88-030

Rehabilitation services commission, employee recognition award program, 88-016

COMMISSIONERS, COUNTY—See COUNTY COMMISSIONERS.

COMMON PLEAS COURTS—See COURTS OF COMMON PLEAS.

COMMUNITY ACTION AGENCIES

Board of directors, county commissioner serving on

Conflict of interest, 88-041

COMMUNITY IMPROVEMENT CORPORATIONS

Acquisition of property, authority

Limited to acquisition of property for construction of industrial plants or business establishments, 88-037

COMPATIBLE OFFICES—See INCOMPATIBLE OFFICES.

COMPENSATION—See also WAGES AND HOURS.

Common pleas court reporters

Grand jury proceedings, compensation for services, 88-025

County engineers

Motor vehicle fuel excise tax revenues used for, 88-081

Motor vehicle license tax revenues used for, 88-081

County law librarians, 88-104

Municipal court clerks

Salary increases paralleling judges' increases, 88-014

Rehabilitation services commission employees

Recognition award program, 88-016

Vacation leave—See **VACATION LEAVE.**

CONFLICT OF INTEREST

County commissioner serving on community action agency board of directors, 88-041

CONSTABLES—See LAW ENFORCEMENT OFFICERS, generally.

CONTRACTS

Contract law principles, applicability to public contracts, 88-076

CONTRACTS, PUBLIC

- Continuing contracts
 - Nonteaching school employees, effect of change in law on existing contracts, 88-059
- Contract law principles, applicability, 88-076
- Fire protection, for
 - Modification, 88-076
 - Renegotiation, right to require, 88-076
 - Township and village contracting to provide, allocation of duties, 88-074
- School employees, nonteaching
 - Continuing contracts, effect of change in law on, 88-059

CORONERS

- Deputy coroners
 - Unexplained deaths, powers and duties regarding, 88-035
- Investigators
 - Unexplained deaths, powers and duties regarding, 88-035
- Unexplained deaths, powers and duties regarding
 - Dead body and area and evidence near, control over, 88-035
 - Deputy coroners, 88-035
 - Family, notification of, 88-035
 - Investigators, 88-035

CORPORATIONS

- Foreign—See FOREIGN CORPORATIONS.
- Nonprofit—See NONPROFIT CORPORATIONS.

CORRECTIONAL INSTITUTIONS—See JAILS.**COSMETOLOGISTS**

- Schools
 - Refusal to certify student's record for transfer, duty of board to obtain record or certify credits, 88-075

COSMETOLOGY BOARD, STATE

- Cosmetology schools
 - Refusal to certify student's record for transfer, duty of board to obtain record or certify credits, 88-075

COSTS—See FEES AND COSTS.**COUNTIES**

- Agricultural societies—See AGRICULTURAL SOCIETIES, COUNTY.
- Bridge commissions
 - Commissioners as employees, 88-098
 - Operation as governmental function, 88-098
 - Political subdivisions, as, 88-098
- Commissioners—See COUNTY COMMISSIONERS.
- Employees
 - Common pleas judges as, 88-055
 - Duty to defend not including reimbursement for use of private counsel, 88-055

COUNTIES—continued

- Employees—continued
 - Retirement incentive plans
 - County engineer's office, for; eligibility of other employees, 88-085
 - Vacation leave, service credit
 - Anniversary date of employment, effect of, 88-089
 - County law librarian, service as, 88-095
 - Prior service with state, county, or other political subdivision, 88-089
- Engineers—See ENGINEERS, COUNTY.
- Hazardous waste disposal and treatment, fees, 88-099
- Health boards—See HEALTH BOARDS, COUNTY.
- Highway departments
 - Classified employees
 - Township trustees, as, 88-020
- Highways and roads—See HIGHWAYS AND ROADS, COUNTY.
- Human services departments—See HUMAN SERVICES DEPARTMENTS, COUNTY.
- Law librarians
 - Compensation, 88-104
 - Vacation leave credit for service as, 88-095
- Law library associations
 - Expenditure of funds by, 88-104
 - Provision of supplies and services for, 88-104
- Local government revenue sharing fund, use of sales tax revenues for, 88-018
- Municipal corporation, cooperative agreement with to repair bridge on county road, 88-039
- Officers
 - Common pleas judges as, 88-055
 - Duty to defend not including reimbursement for use of private counsel, 88-055
- Prosecutors—See PROSECUTORS, COUNTY.
- Records commissions
 - Regional transit authorities, responsibility for providing rules for retention and disposal of records of, 88-083
- Veterans service commissions
 - Applications for assistance as public records, 88-103
- Zoning—See ZONING.

COUNTY COMMISSIONERS

- Annexation proceedings
 - Township trustees, expending county funds for counsel for, 88-066
- Community action agency board of directors, serving on
 - Conflict of interest, 88-041
- County agricultural societies, insurance of buildings of, 88-044
- County engineer, compensation of
 - Motor vehicle license tax and fuel excise tax, directing revenues to be used for, 88-081
- Excise tax on hotels providing lodging to transient guests
 - Percentage refunded to township or municipal corporation not levying tax, 88-082

COUNTY COMMISSIONERS—continued**Fees**

- Water and sewer lines, regulation and inspection, 88-043
- Jail, sheriff residing in; cost of utilities furnished to, 88-058
- Law librarians, compensation, 88-104
- Law library associations, provisions of supplies and services for, 88-104
- Local board of education member, as, 88-011
- Mental retardation and developmental disabilities boards
 - Appropriations to finance, 88-096
 - General fund, financing from, 88-096
 - Levies to finance, 88-096
- Natural resources department reclamation inspector, as, 88-017
- Public roads or highways within townships, dedication
 - Establishment without, 88-080
- Residency requirements
 - Commissioner moving to adjoining county after being elected, 88-057
- Retirement incentive plans
 - County engineer's office, designation as employing unit for purposes of, 88-085
- Sheriff residing in county jail, cost of utilities furnished to, 88-058
- Utilities, cost furnished to sheriff residing in county jail, 88-058
- Veterans' organizations
 - Authority to appropriate funds to chapters of, 88-084
- Waste disposal
 - Single county garbage and refuse disposal district, requiring use of certain facility, 88-009

COUNTY HUMAN SERVICES DEPARTMENTS—See HUMAN SERVICES DEPARTMENTS, COUNTY.**COUNTY PROSECUTORS—See PROSECUTORS, COUNTY.****COURTS**

- Common pleas—See COURTS OF COMMON PLEAS.
- Juvenile—See JUVENILE COURTS.
- Municipal—See MUNICIPAL COURTS.

COURTS OF COMMON PLEAS

- Acting judges
 - Bond requirements, 88-024
 - Capacity, 88-024
 - Search warrants, issuance of, 88-024
- Child support enforcement
 - County prosecutors representing party in action for Costs, deposit with and collection by court, 88-094

COURTS OF COMMON PLEAS—continued**Clerk**

- Foreclosure, United States district court order confirming sale of real property subject to Satisfaction of lien, manner of recording; fees, 88-077

Court reporters

- Grand jury proceedings, compensation for services, 88-025

Judges

- County employees, as, 88-055
- County officers, as, 88-055
- Duty of county to defend not including reimbursement for use of private counsel, 88-055

CRIMES AND OFFENSES—See particular subject concerned.**CUSTODY OF CHILDREN, INSTITUTIONAL**

- Youth services department, home furloughs for children institutionalized with
 - Early release, court approval requirement, 88-062

DEATH

- Coroners, powers and duties regarding unexplained deaths
 - Dead body and area and evidence near, control over, 88-035
 - Family, notification of, 88-035
 - Family, notification of by coroner, 88-035

DEFERRED COMPENSATION PROGRAM

- Libraries and library districts
 - Employees, eligibility, 88-028
 - Public employees retirement board, approval, 88-028

DEVELOPMENT DEPARTMENT

- Facilities establishment fund, limitation on loans from; applicability, 88-006
- Refunding bonds
 - Authority to issue to refund bonds issued by county or municipal corporations, 88-079

DISABILITY DETERMINATION BUREAU

- Interest payments on purchases and leases
 - Rehabilitation services commission providing funds for, 88-007

DOCTORS—See PHYSICIANS.**DOGS**

- County dog wardens
 - Peace officers, as, 88-071
 - Peace officer training council, requirement of certification by, 88-071
- Dog and kennel fund
 - Livestock, compensation from to insured owners for loss or injury of, 88-097

EDUCATION, LOCAL BOARDS—See also
SCHOOLS AND SCHOOL DISTRICTS.
 County commissioner, member as, 88-011
 Religious instruction released-time policy, propriety,
 88-001

ELECTIONS BOARDS

Employees
 Sick leave, entitlement to, 88-091

EMERGENCY MEDICAL SERVICES

Youth services department, institutions operated by
 Township providing services
 Charges, 88-042
 Contracts with township trustees for, 88-042

EMPLOYER AND EMPLOYEE

Child support obligor, withholding wages of
 Duties of employer, 88-052
 Vacation pay, 88-052
 Public employees—See **PUBLIC EMPLOYEES.**

ENGINEERS, COUNTY

Compensation
 Motor vehicle fuel excise tax revenues used for, 88-081
 Motor vehicle license tax revenues used for, 88-081
 Construction of facilities
 Motor vehicle fuel excise tax revenues used for, 88-004
 Motor vehicle license tax revenues used for, 88-004
 Public roads or highways within townships
 Naming, numbering and mapping, 88-080
 Retirement incentive plans
 Employing unit, designation as for purposes of, 88-085
 Self-insurance programs
 Motor vehicle fuel excise tax revenues used for, 88-067
 Motor vehicle license tax revenues used for, 88-067

EVIDENCE

Dead body, on or near
 Coroners, control over, 88-035

EXCISE TAXES

Hotels furnishing lodging to transient guests, on
 Corporation renting lodging for thirty days or
 more, applicability, 88-065
 County commissioners refunding percentage to
 township or municipal corporation not levy-
 ing tax, 88-082
 Lottery tickets, on sale of, 88-019
 Motor vehicle fuel excise tax
 County engineers
 Compensation, expenditure of revenues for, 88-081
 Construction of facilities, expenditure of reve-
 nues for, 88-004
 Self-insurance programs, expenditure of revenues
 for, 88-067

FAIRGROUNDS

County agricultural societies renting as campgrounds
 during non-fair events
 License requirement, 88-046

FEES AND COSTS—See also particular subject con-
 cerned.

Child support enforcement
 County prosecutors representing party in action for
 Costs, deposit with and collection by common
 pleas court, 88-094
 Foreclosure, United States district court order con-
 firming sale of real property subject to
 Satisfaction of mortgage or lien, fees for recording,
 88-077
 Hazardous waste disposal and treatment
 Fees imposed by county or township, 88-099
 Sewer lines, inspection and regulation by county com-
 missioners; fees, 88-043
 Solid waste disposal
 Fees imposed by solid waste management policy
 committee, joint solid waste management
 district, or township, 88-099
 Water lines, inspection and regulation by county
 commissioners; fees, 88-043

FELONIES

Reporting requirements
 Psychologist-client privilege, applicability, 88-027

FINES AND FORFEITURES—See particular sub-
 ject concerned.

FIRE FIGHTERS AND FIRE DEPARTMENTS

Fire protection, public contracts for
 Modification, 88-076
 Renegotiation, right to require, 88-076
 Township and village contracting, allocation of
 duties, 88-074
 Youth services department, institutions operated by
 Township providing services
 Charges, 88-042
 Contracts with township trustees for, 88-042

FIREWORKS

Advertising, prohibition, 88-040

FIRST AMENDMENT RIGHTS

Governmental proceedings, public's right to access
 Audio and video recording of, rules of township
 trustees regarding to protect right to access,
 88-087

FORECLOSURE

Sale of real property subject to, United States district
 court order confirming
 Common pleas court clerk, manner of recording
 satisfaction of lien, 88-077
 County recorder, manner of recording satisfaction
 of mortgage, 88-077

FOREIGN CORPORATIONS

Unlicensed

Summons, service on secretary of state, 88-031

FRINGE BENEFITS—See COMPENSATION, generally.

FUNDS, PUBLIC

Dog and kennel fund

Livestock, compensation from to insured owners for loss or injury of, 88-097

Facilities establishment fund

Limitation on loans from, applicability, 88-006

Korean Conflict compensation bond retirement fund

Balance, distribution of, 88-063

State highway system, fund for construction and maintenance of

Balance, distribution of, 88-063

World War II compensation bond retirement fund

Balance, distribution of, 88-063

FURLOUGHS

Youth services department, children institutionalized with

Early release, court approval requirement, 88-062

GARBAGE AND REFUSE DISPOSAL DISTRICTS

Single county districts

County commissioners requiring use of certain facility, 88-009

GENERAL ASSEMBLY

Collective bargaining agreements, submission to

Approval or rejection as a whole, 88-030

First or second regular sessions or special session, during, 88-030

GRAND JURIES

Common pleas court reporters

Compensation for services during proceedings, 88-025

HAZARDOUS MATERIALS

Disposal and treatment, fees, 88-099

Fuel, facility incinerating hazardous waste as

Fees imposed by counties or townships, 88-099

Hazardous waste facilities

County or township adopting or enforcing provisions affecting, 88-099

Polychlorinated biphenyls, applicability of township zoning exemption, 88-053

Township zoning exemption, applicability, 88-053

Hazardous waste facility board

Facilities incinerating hazardous waste as fuel pursuant to permit issued by, fees, 88-099

HAZARDOUS WASTE FACILITY BOARD

Fuel, facility incinerating hazardous waste as pursuant to permit issued by

Fees imposed by counties or townships, 88-099

HEALTH BOARDS, COUNTY

Septage disposal

Township zoning ordinance superseding health board permit, 88-051

HEALTH DEPARTMENT

Director, clinical associate professor of medicine at state university as, 88-022

HIGHWAYS AND ROADS, COUNTY

County highway departments

Classified employees

Township trustees, as, 88-020

Repairs

Cooperative agreement between county and municipal corporation for, 88-039

Subdivision plat, roadway access scheme

Deviations, power of county commissioners to enjoin, 88-054

HIGHWAYS AND ROADS, STATE

Construction and maintenance, public fund for

Balance, distribution of, 88-063

HIGHWAYS AND ROADS, TOWNSHIP

Districts

Taxation of property in municipal corporation within township, 88-036

Improvements, authority of township to make

Municipal corporation, road located in; not extending to, 88-036

Village, road located in; not extending to, 88-036

Levy for, proceeds accruing to township, 88-036

Maintenance, duty of township

Municipal corporation, road located in; not extending to, 88-036

Village, road located in; not extending to, 88-036

Municipal corporation, within

Improvements, municipal corporation authorized to make, 88-036

Maintenance, municipal corporation responsible for, 88-036

Public road or highway, tract of land in established as

Common law dedication or prescription, by, 88-080

County engineer naming, numbering and mapping, 88-080

Right-of-way, 88-080

HORSE RACING

Tax for local political subdivisions

Deduction from daily revenue prior to allocation of purse money, propriety, 88-032

HOSPITALS

Mentally ill persons, authority of sheriff to convey to, 88-070

HOTELS

Excise tax on lodging furnished to transient guests

Corporation renting lodging for thirty days or more, applicability, 88-065

HOTELS—continued

Excise tax on lodging furnished to transient guests—
continued

County commissioners refunding percentage to township or municipal corporation not levying tax, 88-082

HUMAN SERVICES DEPARTMENTS, COUNTY

Child support enforcement agency, as
Assistant county prosecutors providing legal services pursuant to agreement as employees for sovereign immunity purposes, 88-094

INCOMPATIBLE OFFICES

Assistant county prosecutor and assistant city law director, 88-086
Assistant county prosecutor and township trustee, 88-049
County commissioner and local board of education member, 88-011
County commissioner and natural resources department reclamation inspector, 88-017
Deputy municipal court clerk and municipal police officer, 88-093
Health director and clinical associate professor of medicine at state university, 88-022
Township trustee and classified county highway department employee, 88-020
Township trustee and county park district commissioner, 88-033

INDEMNIFICATION

Common pleas judges
Duty of county to indemnify not including reimbursement for use of private counsel, 88-055
County agricultural societies
Employees, indemnification of, 88-034

INITIATIVE AND REFERENDUM

Township zoning resolution, proposed amendment to
Approval by township trustees, referendum available to challenge, 88-005
Denial by township trustees, initiative unavailable to challenge, 88-005

INSURANCE

Agents
Real estate brokers licensed as, 88-056
Corporate appointee insurance agencies
Bank or savings and loan association holding companies, ownership by, 88-056
Banks or savings and loan associations, ownership by, 88-056
County agricultural societies
Buildings, county commissioners insuring, 88-044
Employees, self-insurance for, 88-034
County engineers, self-insurance programs for
Motor vehicle fuel excise tax revenues used for, 88-067
Motor vehicle license tax revenues used for, 88-067

INSURANCE—continued

Lease payments from insurance agencies
Commissions, treated as when compensation for lessor procuring insurance contracts, 88-056

INTEREST

Refunding bonds
Interest rate lower than rate of refunded bonds for duration of term, 88-079
State purchases and leases, on
Rehabilitation services commission providing funds for disability determination bureau, 88-007

INTERSTATE AGREEMENTS

Multi-state lottery, authority of lottery commission to enter into, 88-002

JAILS

Prisoners charged with commission of misdemeanors, duty of sheriff to detain in, 88-060
Sheriff residing in
Utilities, cost furnished by county commissioners, 88-058

JUDGES

Common pleas courts—See COURTS OF COMMON PLEAS.

JUVENILE COURTS

Youth services department, commitment of children to custody of
Educational costs, determination of liability, 88-023

JUVENILE DELINQUENCY

Foreign state sending to Ohio
Persons over age twenty-one, effect of delinquency adjudications of sending state, 88-050

LAW DIRECTORS, CITY

Assistants
Assistant county prosecutors as, 88-086

LAW ENFORCEMENT OFFICERS—See also POLICE; SHERIFFS.

Certificate of training
Sheriff, requirements, 88-048
Unexplained deaths, powers and duties regarding
Dead body and area and evidence near, coroner having control over, 88-035
Forensic tests, requests to coroner for, 88-035
Photographs, coroner having authority to allow, 88-035

LAW LIBRARIES, COUNTY—See COUNTIES.**LEASES**

Adjutant general, lease of military property at Camp Perry by, 88-010

LEASES—continued

Interest on

Rehabilitation services commission providing funds for disability determination bureau, 88-007

LEGAL SERVICES

Assistant county prosecutors providing to child support enforcement agency pursuant to agreement

Employees for sovereign immunity purposes, as, 88-094

LEVIES

County mental retardation and developmental disabilities boards, to finance, 88-096

Library districts, issuance of bonds by, 88-013

Replacement levies

Existing levies, effect of passage or defeat on, 88-068

Township

Roads, for

Proceeds accruing to township, 88-036

Youth services department, institutions operated by
Exempt from, 88-042

Tuberculosis and related diseases; care, treatment, and maintenance of patients

Educational grants and information, proceeds not to be used for, 88-101

LIBRARIES AND LIBRARY DISTRICTS

Bonds, issuance of

Submission of question to electorate, 88-013

Deferred compensation program

Employees, eligibility, 88-028

Public employees retirement board, approval, 88-028

Employees

Deferred compensation program, eligibility, 88-028

Law libraries, county—See COUNTIES.

LICENSES AND PERMITS—See also particular subject concerned.

County agricultural societies

Fairgrounds, renting as campgrounds during non-fair events

License requirement, 88-046

Motor vehicles

License tax

County engineers, construction of facilities; expenditure of revenues for, 88-004

County engineers, expenditure of revenues to compensate, 88-081

County engineers, self-insurance programs; expenditure of revenues for, 88-067

Social workers

Continuing education requirement, applicability to social workers licensed prior to effective date, 88-047

Qualifications for licensure, 88-064

LIENS

Real property subject to foreclosure, United States district court order confirming sale of

Common pleas court clerk, manner of recording satisfaction of lien, 88-077

LIQUOR—See ALCOHOLIC BEVERAGES.

LIVESTOCK

Loss or injury

Dog and kennel fund, compensation from to insured owners of, 88-097

LOTTERY COMMISSION

Multi-state lottery, authority to enter into, 88-002

LOTTERY, STATE

Commission—See LOTTERY COMMISSION.

Excise tax imposed on sale of tickets, 88-019

Multi-state lottery, authority of lottery commission to enter into, 88-002

MANDAMUS

Collective bargaining agreements, failure to submit to general assembly

Mandamus to compel, 88-030

MEDICAL SCHOOLS, STATE

Faculty

Clinical associate professor of medicine, health director as, 88-022

MEDICARE

Township cemetery sextons, deduction of Medicare taxes, 88-021

MEETINGS—See also particular group holding meeting.

Open meetings—See OPEN MEETINGS.

MENTAL HEALTH BOARDS, COMMUNITY

Private nonprofit agencies providing mental health services and facilities, loan or donation of funds to, 88-045

MENTALLY ILL PERSONS

Custody, authority of sheriff to take into upon determination of substantial risk, 88-070

Hospitals, authority of sheriff to convey to, 88-070

MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES BOARDS, COUNTY

County commissioners

Appropriations to finance, 88-096

General fund, financing from, 88-096

Levies to finance, 88-096

Teachers employed in education programs

Teachers retirement system, membership in, 88-069

MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES DEPARTMENT

Residential facilities, inspection of
Home of relative or guardian, exception, 88-015

MILITIA—See NATIONAL GUARD.

MINORS

Child support—See CHILD SUPPORT.

Juvenile delinquents, foreign state sending to Ohio
Persons over age twenty-one, effect of delinquency
adjudications of sending state, 88-050

Public employees retirement system

Survivor benefits, "child" not defined to include
stepchild, 88-090

Teachers' retirement system

Survivor benefits, "child" not defined to include
stepchild, 88-090

Youth services department—See YOUTH SERVICES DEPARTMENT.

MISDEMEANORS

Municipal officers

Duty of sheriff to detain persons charged with commission of in jail, 88-060

State offenses

Duty of sheriff to detain persons charged with commission of in jail, 88-060

MORTGAGES

Real property subject to foreclosure, United States
district court order confirming sale of
County recorder, manner of recording satisfaction
of mortgage, 88-077

MOTOR VEHICLE LICENSE TAX

County engineers

Compensation, expenditure of revenues for, 88-081
Construction of facilities, expenditure of revenues
for, 88-004

Self-insurance programs, expenditure of revenues
for, 88-067

MOTOR VEHICLES

Alcoholic beverages, possession in public place
Public roadway or public parking lot, 88-061

Taxation—See particular tax concerned.

Traffic violations—See TRAFFIC VIOLATIONS.

MOTOR VEHICLES BUREAU

Traffic violations on federal property, violation
notices received from federal district courts
Recording of information not required, 88-092

MUNICIPAL CORPORATIONS

Annexation

Partnership real property, partnership as owner
which may petition for, 88-102

MUNICIPAL CORPORATIONS—continued

Community improvement corporations, donation of
funds to

Acquisition of property for construction of housing
units, for; prohibited, 88-037

County, cooperative agreement with to repair bridge
on county road, 88-039

County prosecutors, agreements with to prosecute
cases in municipal courts

City, offenses occurring in, 88-086

Unincorporated areas, offenses occurring in, 88-086

Excise taxes

Hotels furnishing lodging to transient guests, on;
county commissioners refunding percentage
of revenues to, 88-082

Lottery tickets, imposed on sale of, 88-019

Township roads within

Improvements, authority to make, 88-036

Maintenance, duty, 88-036

Villages—See VILLAGES.

Zoning—See ZONING.

MUNICIPAL COURTS

Clerks

Salary increases paralleling judges' increases, 88-
014

County prosecutors, agreements with city to prosecute
cases in

City, offenses occurring in, 88-086

Unincorporated areas, offenses occurring in, 88-086

Deputy clerks

Municipal police officers as, 88-093

NATIONAL GUARD

Educational grant program

Participation, eligibility, 88-038

NATURAL RESOURCES DEPARTMENT

Reclamation inspectors

County commissioner, as, 88-017

NONPROFIT CORPORATIONS

County agricultural societies; organization, conduct,
and government

Nonprofit corporation statutes governing in
absence of specific agricultural society statutes,
88-026

NOTES—See BONDS AND NOTES.

OFFICES, INCOMPATIBLE—See INCOMPATIBLE OFFICES.

OPEN MEETINGS

Public employees retirement system

Executive sessions, investments in intangible property
considered at, 88-003

Public utilities commission nominating council

Procedure, 88-029

PARKS AND PARK DISTRICTS

County park district commissioner
Township trustee, as, 88-033

PAROLE**Officers**

Mentally ill persons, assisting sheriffs in determination whether substantial risk present, 88-070

PARTNERSHIPS**Annexation of real property**

Partnership as owner which may petition for, 88-102

PEACE OFFICERS—See also LAW ENFORCEMENT OFFICERS; particular type by title.

County dog wardens as, 88-071

Peace officer training council

County dog wardens, requirement of certification of, 88-071

PERMITS—See LICENSES AND PERMITS.**PHOTOGRAPHS****Dead bodies, of**

Autopsy, during; coroner's authority to allow, 88-035

PHYSICIANS

Mentally ill persons, assisting sheriffs in determination whether substantial risk present, 88-070

PLATS**Subdivision plat, roadway access scheme**

Deviations, power of county commissioners to enjoin, 88-054

POLICE—See also LAW ENFORCEMENT OFFICERS; SHERIFFS, generally.**Municipal officers**

Deputy municipal court clerks as, 88-093

POLITICAL SUBDIVISIONS

Cities—See MUNICIPAL CORPORATIONS.

Counties—See COUNTIES.

County agricultural societies considered to be, 88-034

County bridge commissions considered to be, 88-098

Local government revenue sharing fund, county establishing with sales tax revenues, 88-018

Townships—See TOWNSHIPS.

Villages—See VILLAGES.

PREVAILING WAGES—See WAGES AND HOURS.**PRISONERS**

Misdemeanors, duty of sheriff to detain persons charged with commission of in jail, 88-060

PRIVATE AND PAROCHIAL SCHOOLS—See SCHOOLS AND SCHOOL DISTRICTS, generally.

PROBATION**Officers**

Sheriff, experience as qualifying for position of, 88-048

PROPERTY

Investments in intangible property as purchase of, 88-003

PROSECUTORS, COUNTY**Assistants**

Assistant city law directors, as, 88-086

Child support enforcement agency, providing legal services to pursuant to agreement

Employees for sovereign immunity purposes, as, 88-094

Township trustee, as, 88-049

Child support enforcement, representing party in action for

Costs, deposit with and collection by common pleas court, 88-094

Municipal courts, agreements with city to prosecute cases in

City, offenses occurring in, 88-086

Unincorporated areas, offenses occurring in, 88-086

Township fire district, village part of

Questions addressed to, 88-074

Township trustees, representation of

Annexation proceedings, duty to represent, 88-066

Opposing proposed actions affecting township or residents, authority, 88-088

PSYCHIATRISTS

Mentally ill persons, assisting sheriffs in determination whether substantial risk present, 88-070

PSYCHOLOGISTS

Mentally ill persons, assisting sheriffs in determination whether substantial risk present, 88-070

Psychologist-client privilege**Felonies, reporting**

Liability for voluntary disclosure, 88-027

Requirement, 88-027

Unlicensed supervisees, applicability, 88-027

Unlicensed supervisees**Psychologist-client privilege**

Applicability, 88-027

Felonies, reporting, 88-027

PUBLIC CONTRACTS—See CONTRACTS, PUBLIC.

PUBLIC EMPLOYEES—See also particular employee concerned.

Civil service—See CIVIL SERVICE.

Collective bargaining—See COLLECTIVE BARGAINING, PUBLIC EMPLOYEES.

PUBLIC EMPLOYEES—continued

Compensation—See COMPENSATION, generally.
 Coroners, notifying of unexplained deaths, 88-035
 County bridge commissioner as, 88-098
 Employee recognition award program, establishment,
 88-016

PUBLIC EMPLOYEES RETIREMENT SYSTEM Board

Deferred compensation program, libraries and library districts; approval, 88-028
 Combined retirement benefits, determination
 Retirement credit applied to, 88-072
 Deferred compensation program
 Libraries and library districts, board approval, 88-028
 Investments
 Intangible property, consideration; open meeting requirement, 88-003
 Meetings
 Investments in intangible property considered at, open meeting requirement, 88-003
 Retirement credit
 Combined retirement benefits, application to, 88-072
 Reduction in credit certified from other system, 88-073
 Survivor benefits, "child" not defined to include stepchild, 88-090

PUBLIC EMPLOYERS

Collective bargaining agreements
 General assembly, submission to
 Failure to submit, mandamus as remedy, 88-030
 Manner of submission, 88-030

PUBLIC FUNDS—See FUNDS, PUBLIC.

PUBLIC OFFICIALS

Compatibility of offices—See INCOMPATIBLE OFFICES.

PUBLIC UTILITIES

Commission—See PUBLIC UTILITIES COMMISSION.
 County jail, sheriff residing in; county commissioners furnishing cost of, 88-058

PUBLIC UTILITIES COMMISSION

Nominating council
 Meetings
 Open Meetings Act, applicability, 88-029
 Procedure, 88-029
 Statutory qualifications of nominees, duty to insure, 88-029

PURCHASING, STATE

Interest on
 Rehabilitation services commission providing funds for disability determination bureau, 88-007

REAL ESTATE BROKERS AND SALESPERSONS

Brokerage firms
 Corporate appointee insurance agencies, affiliation with, 88-056
 Insurance agents, brokers licensed as, 88-056

REAL PROPERTY

Subdivisions
 Plat, roadway access scheme
 Deviations, power of county commissioners to enjoin, 88-054

RECLAMATION INSPECTORS—See NATURAL RESOURCES DEPARTMENT.

RECORDERS, COUNTY

Foreclosure, United States district court order confirming sale of real property subject to
 Satisfaction of mortgage, manner of recording; fees, 88-077

RECORDS AND REPORTS—See also particular subject concerned.

County veterans service commissions
 Applications for assistance as public records, 88-103
 Foreclosure, United States district court order confirming sale of real property subject to
 Satisfaction of mortgage or lien, manner of recording, 88-077
 Regional transit authorities
 County records commission, responsibility for providing rules for retention and disposal of records, 88-083

REFERENDUM—See INITIATIVE AND REFERENDUM.

REGIONAL TRANSIT AUTHORITIES

Records and reports
 County records commission, responsibility for providing rules for retention and disposal of records, 88-083

REHABILITATION SERVICES COMMISSION

Employees
 Recognition award program, 88-016
 Interest payments on purchases and leases
 Disability determination bureau, providing funds for, 88-007

RELIGION

Local boards of education, propriety of religious instruction released-time policy, 88-001

RESCUE SERVICES

Youth services department, institutions operated by
 Township providing services
 Charges, 88-042
 Contracts with township trustees for, 88-042

RESIDENCY REQUIREMENTS

County commissioners

Commissioner moving to adjoining county after being elected, 88-057

RETIREMENT

County engineers, retirement incentive plans

Eligibility of other county employees, 88-085

Employing unit, designation as for purposes of, 88-085

RETIREMENT SYSTEMS—See particular system concerned.

REVENUE SHARING

Local government revenue sharing fund, county establishing with sales tax revenues, 88-018

RULES AND RULEMAKING POWERS

Township trustees

Meetings, audio and video recording of
Public's right to access to be protected, 88-087

SALES TAX

Local government revenue sharing fund, county using revenues for, 88-018

SAVINGS AND LOAN ASSOCIATIONS

Corporate appointee insurance agencies, ownership of, 88-056

Customer lists

Insurance agencies, prohibition on sale to, 88-056

Holding companies

Corporate appointee insurance agencies, ownership of, 88-056

Lease payments from insurance agencies

Commissions, treated as when compensation for lessor procuring insurance contracts, 88-056

SCHOOLS AND SCHOOL DISTRICTS—See also **EDUCATION, LOCAL BOARDS.**

Contracts by

Nonteaching employees, effect of change in law on existing contracts, 88-059

Employees, nonteaching

Continuing contracts, effect of change in law on, 88-059

Teachers—See **TEACHERS.**

Tuition

Children in custody of youth services department, liability for, 88-023

SEARCH WARRANTS

Acting judge, issuance by, 88-024

SECRETARY OF STATE

Summons, service on

Foreign corporations, unlicensed, 88-031

SERVICE OF PROCESS

Summons—See **SUMMONS.**

SEWER DISTRICTS

Fees

Inspection and regulation by county commissioners, for, 88-043

SHERIFFS—See also **LAW ENFORCEMENT OFFICERS; POLICE,** generally.

County jail, residing in

Utilities, cost furnished by county commissioners, 88-058

Expenses incurred in performance of official duties, expenditure of funds for

Reasonability, determination, 88-100

Mentally ill persons

Custody, authority to take into upon determination of substantial risk, 88-070

Hospital, authority to convey to, 88-070

Prisoners charged with commission of misdemeanors, duty to detain in jail, 88-060

Qualifications

Certificate of training, requirements, 88-048

Probation officer, experience as, 88-048

SICK LEAVE

Elections boards, employees entitled to, 88-091

SINKING FUND

Commissioners

Public funds, reports to general assembly regarding balances in, 88-063

Korean Conflict compensation bond retirement fund

Balance, report to general assembly on, 88-063

State highway system, public fund for construction and maintenance of

Balance, report to general assembly on, 88-063

World War II compensation bond retirement fund

Balance, report to general assembly on, 88-063

SOCIAL SECURITY ACT

Court costs—See **FEEES AND COSTS.**

SOCIAL WORKERS

Continuing education requirement

Social workers licensed prior to effective date, applicability, 88-047

Licenses

Continuing education requirement, applicability to social workers licensed prior to effective date, 88-047

Qualifications, 88-064

SOLID WASTE

Disposal facilities

Fees imposed by solid waste management policy committee, joint solid waste management district, or township, 88-099

SOVEREIGN IMMUNITY**Employees**

Assistant county prosecutors providing legal services to child support enforcement agency pursuant to agreement as, 88-094

SUBDIVISIONS, REAL PROPERTY**Plat, roadway access scheme**

Deviations, power of county commissioners to enjoin, 88-054

SUMMONS**Foreign corporations, unlicensed**

Secretary of state, service on, 88-031

SUPPORT AND MAINTENANCE

Alimony—See **ALIMONY**.

Child support—See **CHILD SUPPORT**.

TAXATION

Excise taxes—See **EXCISE TAXES**.

Levies—See **LEVIES**.

Motor vehicle license tax—See **MOTOR VEHICLE LICENSE TAX**.

Sales tax—See **SALES TAX**.

TEACHERS—See also **SCHOOLS AND SCHOOL DISTRICTS**, generally.

Mental retardation and developmental disabilities board education programs, teachers employed in

Teachers retirement system, membership in, 88-069

TEACHERS' RETIREMENT SYSTEM

Mental retardation and developmental disabilities board education programs, teachers employed in

Membership in, 88-069

Retirement credit

Reduction in credit certified from other system, 88-073

Survivor benefits, "child" not defined to include stepchild, 88-090

TOWNSHIPS

Cemetery sextons, deduction of Medicare taxes, 88-021

Clerk

Fire district, keeping records of, 88-074

Excise tax on hotels providing lodging to transient guests

County commissioners refunding percentage to, 88-082

Fire district, village part of

County prosecutor or township legal counsel, questions addressed to, 88-074

Township clerk keeping records, 88-074

Township trustees governing, 88-074

Fire protection, contracts with village to provide

Allocation of duties, 88-074

TOWNSHIPS—continued**Funds**

Proposed actions affecting township or residents, authority of trustees to contribute to groups opposing, 88-088

Governmental proceedings

Audio and video recording of, rules regarding to protect public's right of access, 88-087

Hazardous waste disposal and treatment, fees, 88-099

Highways and roads—See **HIGHWAYS AND ROADS, TOWNSHIP**.

Joint fire district with village

Clerk and attorney, employment, 88-074

Fire district trustees, governed by, 88-074

Public road or highway, tract of land in established as Common law dedication or prescription, by, 88-080

County engineer naming, numbering and mapping, 88-080

Right-of-way, 88-080

Road levy, proceeds accruing to, 88-036

Solid waste disposal, fees, 88-099

Trustees—See **TOWNSHIP TRUSTEES**.

Youth services department, institutions operated by

Fire, rescue, ambulance, and emergency medical services, providing

Charges, 88-042

Zoning

Hazardous waste facilities, applicability of exemption, 88-053

Septage disposal, township zoning ordinance superseding health board permit, 88-051

TOWNSHIP TRUSTEES

Additional legal counsel, employment of

Opposing proposed actions affecting township or residents, authority, 88-088

Annexation proceedings, counsel for

Contracts for, 88-066

County commissioners expending county funds for, 88-066

County prosecutor's duty to represent, 88-066

Assistant county prosecutor, as, 88-049

Classified county highway department employee, as, 88-020

County park district commissioner, as, 88-033

County prosecutor, representation by

Opposing proposed actions affecting township or residents, authority, 88-088

Denial of proposed amendment to zoning resolution Statute not allowing challenge by initiative, 88-005

Meetings, audio and video recording of

Rulemaking powers

Public's right to access to be protected, 88-087

Proposed actions affecting township or residents

Authority to contest, 88-088

Contribution of township funds to groups opposing authority, 88-088

Employment of additional legal counsel to oppose, authority, 88-088

Representation by county prosecutor, authority, 88-088

TOWNSHIP TRUSTEES—continued**Rulemaking powers**

- Meetings, audio and video recording of
- Public's right to access to be protected, 88-087

Township fire district, village part of

- Governing of, 88-074

Township road levy, authority to expend funds from

- Municipal corporation, road located in; not extending to, 88-036

- Village, road located in; not extending to, 88-036

Youth services department, institutions operated by

- Fire, rescue, ambulance, and emergency medical services, contracts with to provide, 88-042

TRAFFIC VIOLATIONS**Federal property, on**

- Violation notices from federal district courts, motor vehicles bureau not required to record information, 88-092

TUBERCULOSIS**Care, treatment, and maintenance of patients; levies for**

- Educational grants and information, proceeds not to be used for, 88-101

TUITION**Youth services department, children in custody of**

- School districts, liability for, 88-023

UNITED STATES DISTRICT COURTS**Foreclosure, order confirming sale of real property subject to**

- Common pleas court clerk, manner of recording satisfaction of lien, 88-077

- County recorder, manner of recording satisfaction of mortgage, 88-077

Traffic violations, violation notices for

- Motor vehicles bureau not required to record information, 88-092

UNIVERSITIES AND COLLEGES**Medical schools, state—See MEDICAL SCHOOLS, STATE.****Wright State University—See WRIGHT STATE UNIVERSITY.****VACATION LEAVE****County employees****Service credit**

- Anniversary date of employment, effect of, 88-089

- County law librarian, service as, 88-095

- Prior service with state, county, or other political subdivision, 88-089

VETERANS**County veterans service commission**

- Applications for assistance as public records, 88-103

VETERANS—continued**Eligibility for benefits**

- DD Form 214, based on, 88-078
- Entire military record, based on, 88-078

Honorable discharge

- Veterans' home trustee promulgating rules to determine, 88-078

Organizations

- County commissioners, authority to appropriate funds to chapters of, 88-034

VETERANS' HOME**Eligibility for admission, 88-078****Trustees**

- Honorable discharge, promulgation of rules to determine, 88-078

VETERINARIANS**Sales truck service, operation of, 88-008****VILLAGES—See also MUNICIPAL CORPORATIONS, for general provisions.****Fire protection, contracts with township to provide**

- Allocation of duties, 88-074

Joint fire district with township

- Clerk and attorney, employment, 88-074

- Fire district trustees, governed by, 88-074

Township fire district, part of

- County prosecutor or township legal counsel, questions addressed to, 88-074

- Township clerk keeping records, 88-074

- Township trustees governing, 88-074

Township roads within

- Improvements, authority to make, 88-036

- Maintenance, duty, 88-036

WAGES AND HOURS—See also COMPENSATION.**Rehabilitation services commission employees**

- Recognition award program, 88-016

WASTE DISPOSAL**Fees**

- Hazardous waste, imposed by county or township, 88-099

- Solid waste, imposed by solid waste management policy committee, joint solid waste management district, or township, 88-099

Hazardous waste facilities

- County or township adopting or enforcing provisions affecting, 88-099

- Polychlorinated biphenyls, applicability of township zoning exemption, 88-053

- Township zoning exemption, applicability, 88-053

Septage disposal not deemed agricultural use or incident to agriculture, 88-051**Single county garbage and refuse disposal districts**

- County commissioners requiring use of certain facility, 88-009

WASTE DISPOSAL—continued

Solid waste disposal facilities

- Fees imposed by solid waste management policy committee, joint solid waste management district, or township, 88-099

WATER SUPPLY AND WATERWORKS

Fees

- Inspection and regulation by county commissioners, for, 88-043

WRIGHT STATE UNIVERSITY

- Clinical associate professor of medicine, health director as, 88-022

YOUTH SERVICES DEPARTMENT

Educational costs of children

- Determination of liability, 88-023

- Receipt of tuition, 88-023

Home furloughs for institutionalized children

- Early release, court approval requirement, 88-062

Institutions operated by

- Fire, rescue, ambulance, and emergency medical services, township providing

- Charges, 88-042

YOUTH SERVICES DEPARTMENT—continued

Institutions operated by—continued

- Fire, rescue, ambulance, and emergency medical services, township providing—continued

- Contracts with township trustees for, 88-042

- Township tax levy, exempt from, 88-042

ZONING

- Denial of proposed amendment to resolution by township trustees

- Statute not allowing challenge by initiative, 88-005

Hazardous waste facilities

- Township zoning exemption, applicability, 88-053

Septage disposal

- Township zoning ordinance superseding health board permit, 88-051

Township

- Hazardous waste facilities, applicability of exemption, 88-053

- Septage disposal, township zoning ordinance superseding health board permit, 88-051

TABLE 1

OHIO LAW INTERPRETED

Covering opinions issued January 1, 1988 to December 31, 1988

Ohio Const.	Opinion	Rev. Code	Opinion	Rev. Code	Opinion
O Const I §7	88-001	149.38	88-083	519.02	88-051
O Const I §11	88-087	149.43	88-103	519.12	88-005
O Const II §1	88-019	153.61	88-039	519.21	88-051
O Const II §8	88-030	Ch 165	88-079	519.211	88-053
O Const II §20	88-014	165.07	88-079	Ch 709	88-066
O Const VI §3	88-001	166.02	88-006		88-102
O Const VIII §2b	88-063	166.07	88-006	709.02	88-102
O Const VIII §2c	88-063	Ch 305	88-057	711.101	88-054
O Const VIII §2d	88-063	305.01	88-011	711.102	88-054
O Const XII §5a	88-004		88-017	717.01	88-039
O Const XII §11	88-013	305.14	88-055	737.05	88-093
O Const XV §6	88-002	306.32	88-083	955.12	88-071
	88-019	307.01	88-058	955.29	88-097
O Const XVIII §3	88-019	307.11	88-017	1513.03	88-017
		307.15	88-039	1513.04	88-017
		307.66	88-084	1545.05	88-033
		307.73	88-043	1702.03	88-026
Rev. Code	Opinion	309.06	88-049	1702.58	88-026
1.59	88-003	309.09	88-049	1703.191	88-031
9.39	88-063		88-055	Ch 1711	88-026
9.44	88-089		88-066	1711.01	88-034
9.60	88-042		88-088	1711.11	88-046
	88-074		88-048	1711.24	88-044
	88-076	311.01	88-035	1724.02	88-037
101.01	88-030	313.05	88-035	1724.10	88-037
109.71	88-071	313.11	88-035	1901.11	88-014
109.77	88-048	313.12	88-035	1901.31	88-014
	88-071	313.13	88-035		88-093
121.22	88-003	313.14	88-035	1901.34	88-086
	88-029	313.15	88-035	1905.35	88-060
	88-087	313.17	88-035	1907.14	88-024
122.69	88-041	313.21	88-067	2151.355	88-062
124.11	88-020	315.12	88-077	2151.357	88-023
124.14	88-016	317.32	88-100	2151.38	88-062
124.152	88-016	325.071	88-081	2151.56	88-050
124.17	88-016	325.14	88-089	2301.18	88-025
124.38	88-091	325.19	88-095	2301.22	88-025
124.57	88-020		88-045	2301.24	88-025
126.30	88-007	340.03	88-045	2301.25	88-025
133.09	88-013	340.031	88-009	2301.34	88-094
141.04	88-014	343.01	88-036	2301.35	88-012
Ch 145	88-072	Ch 503	88-020	2301.36	88-094
145.11	88-003	505.01	88-033	2303.20	88-077
145.297	88-085		88-074	2323.261	88-077
145.37	88-072	505.37	88-074	2323.31	88-094
	88-073	505.371	88-042	2329.022	88-077
145.43	88-090	505.39	88-066	2329.025	88-077
145.45	88-090	505.62	88-042	Ch 2744	88-094
145.71 et seq.	88-028	505.84	88-021	2744.01	88-034
145.74	88-028	517.17			

Rev. Code	Opinion	Rev. Code	Opinion	Rev. Code	Opinion
2744.01	<i>—continued</i>	Ch 3745	88-053	5705.05	88-096
	88-098	3769.08	88-032	5705.19	88-096
2744.07	88-055	3769.081	88-032	5705.191	88-068
2744.08	88-034	Ch 3770	88-019	5705.20	88-101
	88-067	3770.03	88-002	5705.23	88-013
2744.081	88-034	3905.01	88-056	5705.25	88-068
2921.22	88-027	3905.05	88-056	5709.08	88-042
2933.21	88-024	3905.16	88-056	5735.05	88-004
2935.05	88-060	3905.18	88-056	5735.25	88-004
2935.13	88-060	3905.22	88-056	5735.27	88-004
2937.32	88-060	Ch 4117	88-016		88-067
3105.18	88-094	4117.10	88-030	5739.01	88-065
3113.21	88-012	4301.632	88-061	5739.02	88-065
	88-052	4501.04	88-004	5739.021	88-018
3304.11	88-016		88-067	5739.024	88-065
3307.01	88-069	4503.02	88-004		88-082
3307.41	88-073	4507.021	88-092	5739.026	88-018
3307.48	88-090	4509.05	88-092	5739.211	88-018
3307.49	88-090	Ch 4713	88-075	5741.023	88-018
3313.01	88-011	4713.02	88-075	5741.031	88-018
3313.02	88-011	4732.19	88-027	Ch 5901	88-103
3313.20	88-001	4732.22	88-027	5901.09	88-103
3313.47	88-001	Ch 4741	88-008	5907.04	88-078
3313.64	88-023	4741.21	88-008	5913.09	88-010
3319.02	88-059	4741.22	88-008	5919.34	88-038
3319.081	88-059	4757.02	88-064	6103.02	88-043
Ch 3323	88-069	4757.05	88-047	Ch 6111	88-053
3323.09	88-096	4757.09	88-047	6117.01	88-043
3352.03	88-022		88-064		
3352.06	88-022	4901.021	88-029		
Ch 3375	88-028	5122.10	88-070	OAC	Opinion
3375.43	88-013	5123.19	88-015	3901-1-10	88-056
3375.48	88-095	5126.05	88-096	3901-1-11	88-056
	88-104	5139.06	88-062	4757-11-02	88-064
3375.49	88-104	5301.36	88-077	4757-25-03	88-047
3375.50	88-104	5535.01	88-036	5907-3-01	88-078
3375.54	88-104	5535.08	88-036		
3701.03	88-022	5543.04	88-080		
Ch 3704	88-053	5543.19	88-020	Civil Rules	Opinion
3707.01	88-051	5553.03	88-080	CivR 54(D)	88-094
3709.21	88-051	5553.31	88-080		
3733.03	88-046	5555.06	88-039	Criminal Rules	Opinion
Ch 3734	88-053	5557.02	88-039	CrimR 4	88-031
	88-099	5571.01	88-036		
3734.05	88-053	5571.02	88-036		
	88-099	5573.21	88-036	Juvenile Rules	Opinion
3734.18	88-099	Ch 5593	88-098	JuvR 34(C)	88-023
3734.57	88-099	5593.05	88-098		
3743.65	88-040	5705.01	88-036		

TABLE 2

PRIOR OHIO ATTORNEY GENERAL OPINIONS AFFECTED

Covering opinions issued January 1, 1988 to December 31, 1988

Former Opinion		Later Opinion
154, 1911	Followed by	88-058
475, 1912	Overruled in part by	88-058
723, 1917	Overruled in part by	88-036
	Approved and followed by	88-036
1332, 1918	Overruled by	88-010
1036, 1920	Reference in	88-025
364, 1927	Reference in	88-055
1896, 1928	Reference in	88-076
1732, 1930	Overruled in part by	88-058
1764, 1930	Reference in	88-044
2171, 1930	Reference in	88-025
3266, 1931	Reference in	88-087
3462, 1931	Distinguished by	88-022
4255, 1932	Reference in	88-055
974, 1933	Reference in	88-096
1889, 1933	Overruled in part by	88-058
5078, 1936	Reference in	88-056
2660, 1938	Reference in	88-039
182, 1939	Reference in	88-098
1572, 1939	Overruled by	88-081
2422, 1940	Followed by	88-078
3088, 1940	Followed by	88-011
3681, 1941	Reference in	88-096
6875, 1944	Followed by	88-026
514, 1945	Reference in	88-078
559, 1945	Reference in	88-078
1109, 1946	Reference in	88-044
1870, 1950	Reference in	88-057
2143, 1950	Distinguished by	88-022
597, 1951	Reference in	88-026
	Reference in	88-034
930, 1951	Reference in	88-028
1138, 1952	Reference in	88-060
1330, 1952	Reference in	88-039
1897, 1952	Reference in	88-077
3285, 1953	Reference in	88-054
3645, 1954	Reference in	88-025
4856, 1955	Reference in	88-104
460, 1957	Reference in	88-030
516, 1957	Overruled by	88-026
606, 1957	Reference in	88-078
2696, 1958	Overruled in part by	88-036
	Approved and followed by	88-036
3144, 1958	Reference in	88-009
223, 1959	Overruled by	88-020
457, 1959	Distinguished by	88-075
889, 1959	Reference in	88-092
1278, 1960	Reference in	88-085

Former Opinion		Later Opinion
1507, 1960	Reference in	88-084
2066, 1961	Followed by	88-093
3005, 1962	Overruled in part by	88-020
3109, 1962	Reference in	88-070
152, 1963	Reference in	88-004
398, 1963	Reference in	88-054
978, 1964	Reference in	88-043
1499, 1964	Reference in	88-004
1500, 1964	Reference in	88-005
65-015	Followed by	88-080
65-191	Reference in	88-025
65-224	Reference in	88-077
66-061	Reference in	88-066
	Reference in	88-088
66-114	Reference in	88-076
68-071	Reference in	88-037
68-072	Reference in	88-057
69-015	Reference in	88-096
69-036	Reference in	88-035
69-055	Overruled in part by	88-036
69-159	Followed by	88-100
70-148	Reference in	88-019
70-168	Reference in	88-049
72-020	Reference in	88-054
72-058	Reference in	88-059
73-064	Questioned by	88-033
73-065	Overruled by	88-090
73-071	Reference in	88-104
74-015	Reference in	88-045
74-032	Reference in	88-104
74-039	Reference in	88-034
74-064	Reference in	88-008
74-072	Reference in	88-087
75-011	Reference in	88-035
75-062	Reference in	88-027
75-067	Reference in	88-057
75-084	Reference in	88-045
76-001	Reference in	88-091
76-012	Reference in	88-060
	Reference in	88-102
76-040	Reference in	88-095
76-057	Overruled in part by	88-042
76-062	Reference in	88-029
76-069	Reference in	88-100
77-009	Limited by	88-089
77-057	Reference in	88-045
77-097	Reference in	88-101
77-102	Reference in	88-035
78-019	Reference in	88-060
78-059	Reference in	88-029
79-008	Reference in	88-060
79-012	Reference in	88-100
79-015	Reference in	88-069
79-019	Reference in	88-083
79-021	Followed by	88-070
79-031	Reference in	88-040
79-036	Reference in	88-095
79-039	Reference in	88-083

Former Opinion		Later Opinion
79-043	Reference in	88-102
79-061	Reference in	88-029
79-107	Reference in	88-043
79-111	Reference in	88-011
	Reference in	88-017
	Reference in	88-020
	Reference in	88-022
	Reference in	88-033
	Reference in	88-049
	Reference in	88-086
	Reference in	88-093
80-009	Reference in	88-096
80-016	Reference in	88-004
80-027	Reference in	88-015
80-029	Reference in	88-077
80-034	Reference in	88-102
80-039	Reference in	88-080
80-076	Overruled in part by	88-055
80-091	Approved and followed by	88-035
80-096	Reference in	88-103
81-007	Reference in	88-039
81-010	Reference in	88-017
81-015	Followed by	88-091
81-027	Reference in	88-076
81-038	Reference in	88-103
81-052	Reference in	88-016
	Reference in	88-091
81-053	Approved and followed by	88-052
81-059	Reference in	88-083
81-093	Reference in	88-065
	Reference in	88-082
81-103	Reference in	88-087
	Reference in	88-088
82-006	Reference in	88-100
82-024	Reference in	88-018
82-028	Reference in	88-080
82-029	Reference in	88-001
	Reference in	88-015
82-030	Reference in	88-001
82-037	Reference in	88-101
82-052	Distinguished by	88-053
82-055	Reference in	88-069
	Approved and followed by	88-095
82-056	Reference in	88-013
82-060	Reference in	88-102
82-061	Reference in	88-046
82-068	Reference in	88-040
82-081	Reference in	88-103
82-093	Reference in	88-089
83-013	Reference in	88-007
83-019	Reference in	88-089
83-022	Reference in	88-059
83-029	Reference in	88-016
83-030	Reference in	88-049
83-042	Reference in	88-016
	Reference in	88-018
83-057	Reference in	88-074
83-064	Reference in	88-083

Former Opinion		Later Opinion
83-069	Reference in	88-045
	Reference in	88-101
83-078	Reference in	88-094
83-087	Reference in	88-059
	Reference in	88-076
	Reference in	88-079
84-008	Reference in	88-071
84-012	Reference in	88-065
	Reference in	88-082
84-025	Reference in	88-057
84-028	Followed by	88-093
84-032	Reference in	88-079
84-047	Reference in	88-056
84-053	Reference in	88-034
84-055	Limited by	88-089
	Reference in	88-095
84-080	Reference in	88-056
84-085	Reference in	88-043
85-006	Followed by	88-033
85-007	Reference in	88-007
	Reference in	88-056
85-011	Reference in	88-079
85-012	Reference in	88-083
85-014	Followed by	88-055
	Reference in	88-088
85-017	Reference in	88-013
85-021	Reference in	88-093
85-030	Reference in	88-104
85-035	Reference in	88-094
85-042	Reference in	88-017
	Reference in	88-086
85-044	Reference in	88-029
85-053	Reference in	88-053
85-058	Modified by	88-009
	Reference in	88-099
85-061	Reference in	88-034
85-071	Reference in	88-074
	Reference in	88-083
85-078	Reference in	88-007
85-079	Reference in	88-053
85-080	Reference in	88-020
85-091	Reference in	88-030
85-093	Limited by	88-089
85-094	Reference in	88-004
	Distinguished by	88-067
85-098	Followed by	88-042
85-102	Reference in	88-089
86-015	Reference in	88-017
	Questioned by	88-059
86-019	Reference in	88-102
86-023	Reference in	88-067
86-026	Followed by	88-042
86-027	Reference in	88-091
86-034	Reference in	88-052
86-035	Followed by	88-086
86-036	Reference in	88-088
86-040	Reference in	88-069
86-048	Reference in	88-085

Former Opinion		Later Opinion
86-052	Reference in	88-016
86-064	Reference in	88-056
86-075	Reference in	88-007
86-076	Reference in	88-004
	Reference in	88-008
86-078	Reference in	88-027
86-081	Reference in	88-043
	Reference in	88-067
86-086	Reference in	88-019
86-091	Reference in	88-029
86-094	Reference in	88-080
86-102	Reference in	88-104
86-103	Reference in	88-101
87-003	Reference in	88-074
87-004	Reference in	88-047
87-005	Reference in	88-027
87-018	Reference in	88-087
87-022	Reference in	88-094
87-024	Reference in	88-094
87-025	Reference in	88-022
	Reference in	88-041
87-029	Reference in	88-091
87-033	Reference in	88-094
87-040	Followed by	88-042
	Reference in	88-074
87-041	Reference in	88-016
87-042	Reference in	88-087
87-046	Reference in	88-080
87-048	Reference in	88-009
	Reference in	88-018
	Reference in	88-099
87-055	Reference in	88-095
87-057	Reference in	88-026
	Reference in	88-071
87-063	Reference in	88-095
87-067	Reference in	88-085
87-080	Reference in	88-053
87-082	Reference in	88-015
	Reference in	88-037
	Reference in	88-046
87-089	Reference in	88-074
87-090	Reference in	88-094
87-093	Reference in	88-082
	Reference in	88-086
87-096	Reference in	88-067
87-102	Followed by	88-098
87-107	Reference in	88-101
87-110	Reference in	88-054
88-002	Reference in	88-019
88-004	Distinguished by	88-067
88-013	Reference in	88-082
88-014	Reference in	88-086
88-015	Reference in	88-100
88-017	Reference in	88-059
88-018	Reference in	88-099
88-034	Followed by	88-098
88-036	Reference in	88-074
88-040	Reference in	88-061

Former Opinion
88-041
88-053
88-066

Reference in
Reference in
Reference in

Later Opinion
88-086
88-099
88-088

TABLE 3

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 1988.

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	2921.42
Art. III, § 14	124.57	319.07	3501.02
	309.02	705.02	
	311.04	731.12	

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

Office	Compatible With	Opinion
Assistant county prosecutor	Assistant city law director	88-086
County commissioner	Natural resources department reclamation inspector	88-017
Health director	State university clinical associate professor of medicine	88-022
Township trustee	Classified county highway department employee	88-020

Office	Incompatible With	Opinion
County commissioner	Local board of education member	88-011
Municipal police officer	Deputy municipal court clerk	88-093
Township trustee	Assistant county prosecutor	88-049
Township trustee	County park district commissioner	88-033