

OPINIONS
OF THE
ATTORNEY GENERAL
OF OHIO

1967

A. G. OPINION TEAM

1967 OPINIONS 67-001 to 67-127

WILLIAM B. SAXBE
Attorney General

Opinions published quarterly
with tables and index

BANKS-BALDWIN LAW PUBLISHING COMPANY
Oldest Law Publishing House in America - Est. 1804
Cleveland

January 1968 Adv. Sheets

Copyright 1967, 1968
Banks-Baldwin Law Publishing Company

PREFACE

The 1967 volume of Opinions of the Attorney General of Ohio marks the fourth year of the cooperative project between the publisher and the Office of the Attorney General. Both the publisher and the Office of the Attorney General again wish to express their thanks for the fashion in which these publications have been received.

The numbering system of the Opinions which originated in 1965 is still in use. The Opinions are numbered with a prefix designating the year in which the Opinion was rendered, followed by a number designating the specific Opinion. Thus, Opinion No. 67-001, designates Opinion No. 1 for the year 1967. Users of this service should also note that certain Opinions are again omitted. These Opinions are designated by the Office of the Attorney General as "Limited Circulation" Opinions. These Opinions deal with isolated factual situations and, therefore, are not of general interest. Accordingly, their reproduction would serve no useful purpose to users of this service. A list of the omitted 1967 Opinions is contained in the tables of this volume.

Mention should be made that the printed volume of the 1963 Opinions of the Attorney General, distributed by the Secretary of State have been exhausted. However, the publisher of the present volumes has reproduced the 1963 volume and they are available to the public. All inquiries concerning the 1963 volume should be directed to the publisher in Cleveland, Ohio.

WILLIAM B. SAXBE
Attorney General of Ohio

April 6, 1967

ATTORNEYS GENERAL
of the
STATE OF OHIO

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

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

Note:

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

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

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

(d) Term extended to 1909 by constitutional amendment.

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

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

Note: An up-to-date roster of the Attorney General of Ohio's staff will be included with the final Quarterly Advance Sheets for 1967 OPINIONS (to be delivered next January). Meanwhile, see pages 1-7 and 1-8 of the 1966 OPINIONS for the Attorney General's staff on December 31, 1966.

Chapter 109 - Attorney General of the Ohio Revised Code appears on pages 1-9 to 1-16 of the 1966 OPINIONS. Should Chapter 109 be affected by enactments of the current 107th Session of the Ohio General Assembly, the amended chapter will appear in the Quarterly Advance Sheets issued following adjournment of the legislature.

OHIO REVISED CODE

CHAPTER 109

ATTORNEY GENERAL

Amended to January 1, 1968

OJur 2d: 49, State of Ohio § 12

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ORGANIZATION, POWERS AND DUTIES

109.01 (331). Election; term.

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

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

OJur 2d: 6, Attorney General § 1

109.02 (333). Duties.

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

See Townsend Corporation Manual, Form 55.45
 See Baldwin's Ohio School Law, Text 3.03

Actions against treasurer of state under provisions relating to "Torrens act" to be defended by the attorney general, 5310.10.

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Suits brought by superintendent of banks, under authority of law, to be conducted under direction and supervision of the attorney general, 111.11.

To enforce performance of duties of college officers, 1713.31. See 4111.15 and note citing 1937 OAG 1393.

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

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

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

OJur 2d: 6, Attorney General § 3

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

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

OJur 2d: 6, Attorney General § 3

109.05 (337). Employees.

The attorney general may appoint such employees as are necessary.

OJur 2d: 6, Attorney General § 3

109.06 (332). Bond.

Before entering upon the discharge of the duties of his office, the attorney general shall give a bond to the state in the sum of five thousand dollars, with two or more sureties approved by the governor, conditioned for the faithful discharge of the duties of his office. Such bond, with the approval of the governor and the oath of office indorsed thereon, shall be deposited with the secretary of state and kept in his office.⁴

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.⁵

Source: ⁴GC § 332, ⁵§ 335.

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

109.07 (336). Special counsel.

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

OJur 2d: 6, Attorney General § 3

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

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

torney general is authorized to collect.

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

OJur 2d: 6, Attorney General § 3

109.09 (338). Action on official bonds.

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

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

109.10 (339). Proceedings in quo warranto.

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

Quo warranto, 1331.11, 1331.12, 2733.03.

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

109.11 Canal land disputes; title.

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

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

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

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

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

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

Pardon and parole commission, 2965.00.

Printing and distribution of opinions, 125.69.

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

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

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

OJur 2d: 6, Attorney General § 4

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

When requested by them, the attorney general shall

advise the prosecuting attorneys of the several counties respecting their duties in all complaints, suits, and controversies in which the state is, or may be a party.

See Baldwin's School Laws Text § 2.

OJur 2d: 6, Attorney General § 4

109.15 (344). Forms of contracts.

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

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

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

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

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

Water pollution control, forfeiture for failure to obey orders; prima-facie evidence, 6111.30.

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

109.17 (346). Writs in other counties.

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

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

109.18 (347). Service by publication.

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

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

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

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

pleadings on the part of the state or any officer thereof.

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

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

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

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

OJur 2d: 6, Attorney General § 11

109.21 (350). Annual report.

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

Reports of state officers, 140.01.

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

109.22 (351). Registers shall be kept.

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

OJur 2d: 6, Attorney General § 4, 9

CHARITABLE TRUSTS

109.23. Definition of charitable trust; application.

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

Note: In addition to those types of charitable trusts with registration requirements previously recognized, registration will be required of all charitable corporations operating in this state which have been or will be filing Forms 090A with the Internal Revenue Service. Interpretation of Att General, March 30, 1960, reported at 33 Ohio Bar 502.

See Merrick-Rippner Probate Manual, Text 3(1) to (3), 63(7)

OJur 2d: 6, Attorney General § 21

109.24. Enforcement.

The attorney general shall institute and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse thereof whenever

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

* So in original.

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

109.25 Service of process on charitable trust.

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

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

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

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

A judgment rendered in such proceedings without service of process upon the attorney general is void, unenforceable, and shall be set aside upon the attorney general's motion seeking such relief. The attorney general shall intervene in any proceeding affecting a charitable trust when requested to do so by the court having jurisdiction of the proceeding, and may intervene in any proceeding affecting a charitable trust when he determines that the public interest should be protected in such proceeding. No compromise, settlement agreement, contract, or judgment agreed to by any or all parties having or claiming to have an interest in any charitable trust is valid if the compromise, settlement agreement, contract, or judgment modifies or terminates a charitable trust unless the attorney general was made a party to all such proceedings and joined in said compromise settlement agreement, contract, or judgment; provided, that the attorney general is expressly authorized to enter into such compromise, settlement agreements, contracts, or judgments as may be in the best interests of the public. (129 v 582. Eff. 1-10-61. 125 v 351)

See Merrick-Rippner Probate Manual, Text 3(1), 63(7)

Attorney general as representative for beneficiaries of charitable trust, 2109.34.

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

109.26. Register of charitable trusts; duty of trustees.

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

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

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

Penalty, 109.99(A).

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

109.27. Rules and regulations concerning information for register.

The attorney general shall make such rules and regula-

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

OJur 2d: 6, Attorney General § 21

109.28. Register open for inspection, when.

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

OJur 2d: 6, Attorney General § 21

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

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

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

109.30. Notice of will creating charitable trust.

Immediately after the probate of any will containing clauses creating or purporting to create a charitable trust as defined in section 109.23, the probate judge shall notify the attorney general thereof. (125 v 351. Eff. 10-14-53.)

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

109.31. Biennial report by trustees.

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

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

109.32. Investigations and audits.

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

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

109.33. Assistants, employees, experts; compensation.

The attorney general may appoint with salaries fixed pursuant to section 143.09 of the Revised Code, such assistants and may employ such stenographers and clerks as may be necessary to carry out sections 109.23 to 109.33, inclusive, of the Revised Code. The attorney general may also employ experts for assistance in any specific matter at a reasonable rate of compensation. (132 v H 93. Eff. 5-17-67. 125 v 351)

OJur 2d: 6, Attorney General §§ 3, 21

OBSCENITY LAWS

109.40 Compilation and distribution of statutes relative to obscenity laws.

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

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

AGENT IN ESCHEAT

109.41 Agent in certain escheat matters.

Whenever any state begins procedure to escheat property of any person who is an Ohio citizen, corporation, firm, or resident, or whose last known address was in Ohio, on the ground that such property has been abandoned, or on any other grounds, the attorney general may, after making diligent effort to notify the owner of such property and failing in the same, act as attorney in fact for such Ohio owner to claim such property. Upon taking custody of such property, the attorney general shall deposit same in the general fund of Ohio, or if such property be in kind, the attorney general shall cause the same to be sold pursuant to section 2113.40 of the Revised Code, and deposit the proceeds of such sale in said general fund. Claims to such property shall thereafter be made in the manner provided for in section 127.11 of the Revised Code. (129 v 497. Eff. 10-12-61)

BUREAU OF CRIMINAL IDENTIFICATION
AND INVESTIGATION**109.51 Creation of bureau of criminal identification and investigation.**

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

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

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

OJur 2d: 15, Criminal Law § 50

109.52 Criminal analysis laboratory; investigators and technicians.

The bureau of criminal identification and investigation may operate and maintain a criminal analysis laboratory and mobile units thereof, create a staff of

investigators and technicians skilled in the solution and control of crimes and criminal activity, keep statistics and other necessary data, assist in the prevention of crime, and engage in such other activities as will aid law enforcement officers in solving crimes and controlling criminal activity. (130 v H 263. Eff. 9-24-63)

109.53 Equipment and furnishings of the bureau.

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

109.54 Intergovernmental cooperation.

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

The bureau may provide such trained investigative personnel and specialized equipment as may be requested by any sheriff, chief of police, or other law officer to aid and assist such officer in the investigation and solution of any crime or the control of any criminal activity occurring within his jurisdiction. This assistance shall be furnished by the bureau without disturbing or impairing any of the existing law enforcement authority or the prerogatives of local law enforcement authorities or officers. (130 v H 263. Eff. 9-24-63)

109.55 Coordination of law enforcement activities.

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

109.56 Training local law enforcement authorities.

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

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

The superintendent of the bureau of criminal identification and investigation shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent, of all persons who have been convicted of felony within the state, and of all well known and habitual criminals, from wherever procurable. The person in charge of any state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony shall furnish such material to the superintendent of the bureau upon request. The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and

other means of identification of all persons arrested on charge of felony. He shall also file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions.

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

109.58 Superintendent shall prepare a standard fingerprint impression sheet.

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

109.59 Fingerprint impression and descriptive measurement records.

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

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

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

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

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

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

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

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

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

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

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

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

109.62 Interstate, national, and international cooperation.

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

109.63 Superintendent and assistants may testify in court.

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

OHIO PEACE OFFICER TRAINING COUNCIL

109.71 Ohio peace officer training council.

There is hereby created in the office of the attorney general the Ohio peace officer training council. Such council shall consist of nine members to be appointed by the governor with the advice and consent of the senate, selected as follows: one member from the Ohio board of regents; two members to be incumbent sheriffs; two members to be incumbent chiefs of police; one member from the bureau of criminal identification and investigation; one member from the state highway patrol; one member to be the special agent in charge of a field office of the federal bureau of investigation in the state; one member from the state department of education, trade and industrial education services, law enforcement training. (131 v H 363. Eff. 9-6-65)

109.72 Membership; appointment; term; meetings; expenses.

Members of the Ohio peace officer training council shall be appointed for terms of three years, provided that the original appointments shall be made as follows: three for a term of one year; three for a term of two years; three for a term of three years. One chief of police and one sheriff shall be appointed for the first two year term and one chief of police and one sheriff shall be appointed for the first three year term. Thereafter, all appointments shall be for terms of three years. 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 sec-

tion 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 for the unexpired term.

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. (131 v H 363. Eff. 9-6-65)

109.73 Powers and duties.

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

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

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

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

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

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

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

(B) The council shall appoint an executive director, with the approval of the attorney general, who shall hold office during the pleasure of the council. He shall perform such duties as may be assigned to him by the council. He shall receive a salary fixed pursuant to section 143.09 of the Revised Code, and reimbursement for the expenses within the amounts available by appropriation. The executive director may appoint such officers, employees, agents, and consultants as he may deem nec-

essary, prescribe their duties, and provide for reimbursement of their expenses within the amounts available therefor by appropriation and with the approval of council.

(C) The council may, in addition:

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

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

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

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

(5) Perform such other acts as may be necessary or appropriate to carry out the powers and duties of the council as set forth in sections 109.71 to 109.77, inclusive, of the Revised Code. (132 v H 93. Eff. 5-17-67. 131 v H 363)

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. (131 v H 363. Eff. 9-6-65)

109.75 Executive director.

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

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

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

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

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

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

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

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

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

(I) To report to the council at each regular meeting of the council and at such other times as may be required. (131 v H 363. Eff. 9-6-65)

109.76 Construction of act.

Nothing in sections 109.71 to 190.77, inclusive, of the Revised Code, shall be construed to except any peace officer, or other officer or employee from the provisions of Chapter 143. of the Revised Code. (131 v H 363. Eff. 9-6-65)

109.77 Certificate necessary for permanent employment.

Notwithstanding any general, special, or local law or charter to the contrary, no person shall, after January 1, 1966, receive an original appointment on a permanent basis as a peace officer of any county, township, or municipal corporation unless such person has previously been awarded a certificate by the executive director of the Ohio peace officer training council, attesting to his satisfactory completion of an approved state, county, or municipal police basic training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a peace officer of any county, township, or municipal corporation, shall forfeit his position as such unless he previously has satisfactorily completed, or within the time prescribed by regulations promulgated by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, or municipal peace officer basic training school for temporary or probationary officers and is awarded a certificate by such director attesting thereto. (131 v H 363. Eff. 9-6-65)

ANTITRUST CASES**109.81 Attorney general to represent state or politi-**

cal 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. (132 v H 556. Eff. 12-14-67)

109.82 Antitrust section created; antitrust fund, use.

There is hereby created in the office of the attorney general a section of antitrust. Ten percent of all recoveries obtained by the attorney general pursuant to section 109.81 of the Revised Code by settlement, or by judgment in any court, shall be paid into the state treasury to the credit of the attorney general antitrust fund. The attorney general antitrust fund shall be used insofar as funds are available therein for the expenses of the antitrust section. The expenses of the antitrust section in excess of the funds available in the attorney general antitrust fund shall be paid out of the regular appropriation to the office of the attorney general. (132 v H 556. Eff. 12-14-67)

109.99. Penalty.

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

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

TABLES

TABLE 1 — Ohio Constitution Provisions Interpreted

TABLE 2 — Ohio Revised Code Sections Interpreted

TABLE 3— Prior Ohio Attorney General Opinions Affected

TABLE 4 — Compatible and Incompatible Offices

TABLE 5 — Informal Opinions

TABLE 1

Ohio Constitution Provisions Interpreted

<i>Ohio Const.</i>	<i>1967 Opinion</i>	<i>Ohio Const.</i>	<i>1967 Opinion</i>
Art. I, §7	67-045	Art. IV, §2	67-045
§16	67-001	Art. VIII, §13	67-052
Art. II, §20	67-028	Art. XII, §5a	67-107
§35	67-022		

TABLE 2

Ohio Revised Code Sections Interpreted

<i>Rev. Code</i>	<i>1967 Opinion</i>	<i>Rev. Code</i>	<i>1967 Opinion</i>
1.04	67-030	143.11	67-048
9.41	67-083		67-094
9.82	67-001	143.27	67-083
9.83	67-001	143.29	67-003
	67-007	143.30	67-078
109.77	67-015	Chapter 145	67-104
	67-029	149.43	67-018
	67-123	307.01	67-091
121.161	67-048	307.02	67-091
Chapter 143	67-104	307.152	67-107
143.08	67-078	308.44	67-008
	67-104	311.04	67-123
143.09	67-002	313.01	67-080
143.091	67-094	313.13	67-024
143.10	67-002	319.20	67-035
	67-094	319.201	67-035
	67-114	325.071	67-120

<i>Rev. Code</i>	<i>1967 Opinion</i>	<i>Rev. Code</i>	<i>1967 Opinion</i>
340.04	67-104	2323.31	67-036
503.07	67-013	2915.10	67-064
503.14	67-013	2915.12	67-064
505.41	67-007	2923.08	67-024
505.42	67-007	2941.50	67-068
519.21	67-049	2941.51	67-068
701.02	67-007	2947.25	67-092
703.22	67-013	3105.08	67-036
731.02	67-033	3313.59	67-081
733.49	67-115	3313.90	67-063
733.50	67-115	3317.01	67-020
737.05	67-015	3317.05	67-051
737.051	67-015	3317.06	67-051
737.08	67-078	3317.13	67-118
737.13	67-078	3317.14	67-118
737.15	67-015	3319.081	67-003
737.21	67-078	3321.01	67-072
749.15	67-078		67-126
755.12	67-081	3323.01	67-051
759.05	67-012	3323.10	67-051
Chapter 1101	67-102	3327.01	67-063
Chapter 1151	67-102	3327.04	67-063
1151.02	67-011	3327.06	67-063
	67-050	Chapter 3331	67-127
	67-059	3335.09	67-083
1151.08	67-098	3351.06	67-002
1151.20	67-050	3375.24	67-100
1151.34	67-011	3375.33	67-100
1151.47	67-098	3375.40	67-100
1151.61	67-102	3501.32	67-030
1151.63	67-059	3517.01	67-039
	67-102	3519.15	67-039
1701.81	67-102	3705.27	67-024
1701.82	67-102	3735.27	67-065
1701.98	67-059	3937.18	67-008
1721.03	67-012	4109.01	67-127
1724.02	67-052	4109.10	67-127
1724.03	67-052	4109.12	67-127
1724.10	67-052	4123.01	67-022
	67-056	4143.01	67-038
1901.11	67-034	4143.02	67-038
1907.081	67-028	4301.22	67-046
	67-119	4501.04	67-107
1907.082	67-028	4513.11	67-005
1907.201	67-029	4705.01	67-034
1907.211	67-029	5126.01	67-088
2101.12	67-060	5126.03	67-109
2101.41	67-034	5127.01	67-047
2301.23	67-018	5153.16	67-047
2303.16	67-036	5153.161	67-047

<i>Rev. Code</i>	<i>1967 Opinion</i>		<i>Rev. Code</i>	<i>1967 Opinion</i>
5153.30	67-109		5705.24	67-088
5153.31	67-109		5705.25	67-020
5153.34	67-109		5713.04	67-035
5549.21	67-122		5713.08	67-035
5573.13	67-122		5735.23	67-107
5705.19	67-088		5735.27	67-107
	67-107		5923.05	67-048

TABLE 3

Prior Ohio Attorney General Opinions Affected

<i>Former Opinion</i>		<i>1967 Opinion</i>
3421, 1931	Overruled by	67-051
1168, 1946	Modified by	67-109
1464, 1960	Modified by	67-109

TABLE 4

Compatible and Incompatible Offices

Note: The following table, in two parts, lists Compatible Offices and Incompatible Offices, as determined in Opinions of the Attorney General issued during the year 1967.

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

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

<i>Ohio Constitution</i>	<i>Ohio Revised Code</i>		
Art. II, §4	3.11	315.02	2919.08
Art. III, §14	143.41	319.07	2919.09
Art. IV, §14	309.02	705.02	2919.10
	311.04	731.12	3501.02

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

Compatible Offices

<i>Office</i>	<i>Compatible With</i>	<i>1967 Opinion No.</i>
Councilman	Crew chief; superintendent of roads	67-033
Crew chief; superintendent of roads	Councilman	67-033

TABLES

Incompatible Offices

<i>Office</i>	<i>Incompatible With</i>	<i>1967 Opinion No.</i>
City solicitor, representing defendants	State of Ohio, plaintiff	67-112
State of Ohio, plaintiff	City solicitor, representing defendants	67-112

TABLE 5

Informal Opinions

Note: As explained in Mr. Saxbe's preface, Informal Opinions (also referred to as "Limited Circulation" Opinions) by the nature of the isolated factual situations involved are not of general interest, and therefore they are not published. Under the new numbering system Informal Opinions listed in the following Table 5 account for all numbers for which there is no formal opinion reproduced in this Service.

67-004	67-055	67-090
67-006	67-057	67-093
67-009	67-058	67-095
67-010	67-061	67-096
67-014	67-062	67-097
67-017	67-066	67-099
67-019	67-067	67-101
67-021	67-069	67-103
67-023	67-070	67-105
67-025	67-071	67-106
67-026	67-073	67-108
67-027	67-074	67-110
67-031	67-075	67-111
67-032	67-076	67-113
67-037	67-077	67-116
67-040	67-079	67-117
67-041	67-082	67-121
67-042	67-084	67-124
67-043	67-085	67-125
67-044	67-086	67-128
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