

OPINIONS
OF THE
ATTORNEY GENERAL
OF OHIO
1968

1968 OPINIONS 68-003 to 68-172

WILLIAM B. SAXBE
Attorney General

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with tables and index

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ATTORNEYS GENERAL
of the
STATE OF OHIO

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

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

Note:

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

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

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

(d) Term extended to 1909 by constitutional amendment.

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

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

ATTORNEY GENERAL OF OHIO
Personnel of Office
January 1, 1968

William B. Saxbe, Attorney General
 Robert E. Boyd, Jr., First Assistant Attorney General
 Charles S. Lopeman, Chief Counsel

Assistant Attorneys General

Baird, William C.	Grubbs, William H.
Bell, Eugene	Hadley, James F.
Bell, Langdon D.	Hansen, Alfred F.
Boyd, John C.	Hayes, William T.
Bodoh, William T.	Heffernan, Bernard L.
Brake, Larry	Hisrich, Thomas H.
Braun, Lawrence H.	Hoiles, William M.
Brownlee, Wyatt C.	Holzman, Wallace R. Jr.
Budd, David G.	Howdysshell, Walter J.
Burwell, Lloyd W.	Hynes, Bart R.
Carlin, William J.	Jones, Donald L.
Carpenter, George L.	Kahle, James G.
Chalfant, Robert P.	Kandel, Harry N.
Chaney, Virginia	Kent, Charles H.
Cherrill, Donna E.	Kessler, David L.
Cherrington, Sue	Kidd, Anthony R.
Clark, William A.	Kilcoyne, J. Daniel
Cole, John R.	Langmaid, Clair W. Jr.
Collins, William M.	Lanza, Louis R.
Connor, John A.	Lee, Andrew Jr.
Conway, Leo J.	Lee, William J. Jr.
Cunningham, Pierce E.	Leonard, William L.
Curtice, William L. Jr.	Lindley, Edgar L.
Davidson, John T.	Little, Don A.
Dawson, C. William	MacDaniels, William J.
Dersom, Charles R.	MacDonald, Thomas S. Jr.
Dobnicker, Allan D.	Macklin, Robert
Dodd, Robert J. Jr.	Manos, Eli
Dunton, Winifred	Marchbank, Ray L. Jr.
Ebeling, Harry G.	Marshall, Paul
Eisenberg, Richard D.	Masters, Joseph M.
Everhart, Eugene P.	Matia, Paul R.
Fanelly, Angelo A.	Maurer, James
Fell, George	McFadden, James F.
Folland, Robert F.	McLaughlin, James A.
Ford, James R.	Miller, Stephen M.
Freeman, Brian A.	Milligan, William W.
Friedman, William S.	Morgan, David
Gallas, James S.	Moulton, Thomas S.
Giha, Paul D.	Nemeth, Julius J.
Godwin, Ralph C.	Newcomer, James D.
Goldberg, Gerald	Niarchos, Gust P.
Gregg, Charles R.	Ostrander, James L.
Gromen, Frederick E.	Paulino, Harry R.

Assistants - continued

Pelteson, Edward F.
Petro, J. William
Petzold, John P.
Pfeifer, Paul E.
Pisarro, Joseph J.
Polorny, George R.
Poorman, Joseph J.
Rattan, James E.
Redick, J. Philip
Reeves, Joseph E.
Reid, Arthur J. Jr.
Reiners, Fred G.
Ressing, T. Garrett
Rhoads, I. Charles
Rice, Ted W.
Rickman, James W.
Rogers, William A. Jr.
Ruggles, Warren W.
Sepessy, Edward L.
Sharpe, Clarence L.
Shaw, Henry E. Jr.
Sokolsky, Morris M.
Speer, Richard L.
Stark, Leo P.
Stehle, William L.
Sullivan, Noel E.
Talbot, Harold B.
Tekulve, Charles J.
Travis, Alan
Trueblood, Brooks
Valentine, John D.
Van Buren, Stanley K.
Van Schaack, Harold S.
Vidoli, Joseph G. M.
Walsh, John M.
Waterfield, Charles W.
Watters, W. Robinson
Webb, Robert D.
Weckstein, Donald
Whiting, Herbert R.
Wiletzky, Rosalind
William, Glen A.
Wolfe, Janice E.
Zellers, Paul T.
Ziegler, Jon Allen
Zitko, Robert D.

OHIO REVISED CODE

CHAPTER 109

ATTORNEY GENERAL

Amended to April 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

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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.²

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

Source: ¹GC § 332, ²§ 335.

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

109.07 (336). Special counsel.

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

OJur 2d: 6, Attorney General § 3

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

The attorney general may appoint special counsel to represent the state in connection with all claims of whatsoever nature which are certified to the attorney general for collection under any law or which the 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, 2065.06.

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, 149.01.

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

109.22 (351). Registers shall be kept.

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

OJur 2d: 6, Attorney General § 4, 9

CHARITABLE TRUSTS

109.23. Definition of charitable trust; application.

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

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

See Merrick-Rippner Probate Manual, Text 3(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 summonses 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

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for
OPINIONS
of the

ATTORNEYS GENERAL OF OHIO

*Covering All Published Opinions for the Period
January 1, 1958 to December 31, 1968*

Hon. William B. Saxbe	1957-1959
Hon. Mark McElroy	1959-1963
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TABLE 1

Ohio Constitution Provisions Interpreted

<i>Ohio Const.</i>	<i>1968 Opinion</i>
Art. IV, § 6	68-110
Art. XV, § 4	68-072
§10	68-087
	68-088
	68-171

TABLE 2

Ohio Revised Code Sections Interpreted

<i>Rev. Code</i>	<i>1968 Opinion</i>	<i>Rev. Code</i>	<i>1968 Opinion</i>
121.161	68-086	308.04	68-111
131.06	68-032	308.06	68-076
133.24	68-152	309.09	68-036
143.01	68-171	311.04	68-112
143.03	68-171	311.29	68-021
143.09	68-008	319.202	68-165
143.10	68-171	319.28	68-063
143.101	68-008	319.29	68-063
143.23	68-171	319.34	68-063
143.29	68-082	319.54	68-068
Chapter 167	68-004		68-069
167.03	68-004		68-075
305.02	68-072		68-165
305.14	68-036	325.19	68-086
305.171	68-140	325.27	68-082
307.01	68-099	505.441	68-155
	68-152	519.12	68-096
307.02	68-152	709.03	68-091
307.09	68-152	713.21	68-004
307.20	68-076	715.44	68-130
307.29	68-152	717.01	68-076
307.84	68-029	737.04	68-155
	68-105	742.37	68-172
307.846	68-029	955.16	68-053
307.85	68-088	1501.051	68-168

<i>Rev. Code</i>	<i>1968 Opinion</i>	<i>Rev. Code</i>	<i>1968 Opinion</i>
1707.02	68-089	3513.12	68-013
1707.08	68-089	3517.01	68-013
1707.15	68-089	3701.64	68-032
1724.01	68-071	3701.83	68-032
1724.02	68-071	3709.28	68-063
1724.10	68-071	3709.29	68-063
1901.101	68-099	3905.01	68-102
1901.34	68-117	3905.03	68-102
2101.11	68-094	3917.04	68-064
	68-126	4501.03	68-084
2111.05	68-036	4501.041	68-084
2151.07	68-123	4503.10	68-084
2151.10	68-094	4504.02	68-127
2301.20	68-123	4504.05	68-084
2919.09	68-111	4505.06	68-025
2923.01	68-022	4507.03	68-109
2937.23	68-112	4507.08	68-070
2938.13	68-117	4507.16	68-070
2941.40	68-020	4511.01	68-132
2941.51	68-098	4511.17	68-132
2949.19	68-098	4511.19	68-097
2953.03	68-098	4511.191	68-037
2953.21	68-020		68-097
3307.381	68-120	4513.17	68-132
3311.231	68-074	4513.35	68-021
	68-100	4709.19	68-060
3313.11	68-113	5126.01	68-015
3313.20	68-161		68-093
3313.202	68-007	5126.03	68-093
	68-090		68-170
3313.48	68-156	5126.04	68-093
3313.62	68-156	5127.01	68-015
3313.66	68-061		68-170
3317.06	68-156	5127.04	68-093
3317.13	68-007	5153.06	68-015
	68-052	5153.16	68-036
	68-085	5511.01	68-096
3317.14	68-052	5705.19	68-015
	68-085	5705.20	68-051
3319.07	68-031	5705.21	68-035
3319.08	68-120	5705.25	68-051
3319.081	68-095	5705.41	68-076
3319.22	68-103	5707.03	68-048
3319.41	68-161	5707.04	68-048
3321.01	68-061	5707.05	68-048
3321.03	68-061	5715.51	68-062
3327.01	68-058	5731.48 (est. tax)	68-115
	68-103	5731.53 (inh. tax)	68-115
	68-156	5735.28	68-003
Chapter 3354	68-031	5739.02	68-025
3501.10	68-042	6111.041	68-054
3501.38	68-074	Chapter 6119	68-124
3505.10	68-013	6121.02	68-168
3513.11	68-013		

TABLE 3

Prior Ohio Attorney General Opinions Affected

<i>Former Opinion</i>		<i>1968 Opinion</i>
1863, 1938	Followed by	68-155
61-2147	Followed by	68-061
62-2998	Followed by	68-061
63-120	Followed by	68-061
66-179	Followed by	68-155

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 1968.

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

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

Ohio Constitution	Ohio Revised Code		
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>1968 Opinion No.</i>
Bondsman	Deputy sheriff, special	68-112
Community college; member, board of trustees	Teacher; municipal school district	68-031
Deputy sheriff, special	Bondsman	68-112
Teacher; municipal school district	Community college; member, board of trustees	68-031

TABLE 5

Informal Opinions

Note: 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.

68-001	68-049	68-129
68-002	68-050	68-131
68-005	68-055	68-133
68-006	68-056	68-134
68-009	68-057	68-135
68-010	68-059	68-136
68-011	68-065	68-137
68-012	68-066	68-138
68-014	68-067	68-139
68-016	68-073	68-141
68-017	68-077	68-142
68-018	68-078	68-143
68-019	68-079	68-144
68-023	68-080	68-145
68-024	68-081	68-146
68-026	68-083	68-147
68-027	68-092	68-148
68-028	68-101	68-149
68-030	68-104	68-150
68-033	68-106	68-151
68-034	68-107	68-153
68-038	68-108	68-154
68-039	68-114	68-157
68-040	68-116	68-158
68-041	68-118	68-160
68-043	68-119	68-162
68-044	68-121	68-163
68-045	68-122	68-164
68-046	68-125	68-166
68-047	68-128	68-167
		68-169