

**OPINIONS**  
OF THE  
**ATTORNEY GENERAL**  
**OF OHIO**  
**1974**

during the period

January 1, 1974 to December 31, 1974

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1974 OPINIONS 74-001 to 74-108

**WILLIAM J. BROWN**  
Attorney General

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Opinions published quarterly  
*with tables and index*

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*and*  
*Publisher's Staff*

ERRATA

Note: Please make the following corrections in the April 1974 Advance Sheets to correct errors in the typing of the official Opinions:

OAG 74-003	Page 2-15, paragraph 2, line 5	RC 711.012 should be RC 711.102
OAG 74-008	Page 2-33, paragraph 1, line 5	RC 3721.051 should be RC 3721.05
OAG 74-024	Page 2-114, Syllabus: 1., line 5	RC 519.09 should be RC 519.05

# OFFICE OF THE ATTORNEY GENERAL

STATE OF OHIO

COLUMBUS 43215

**WILLIAM J. BROWN**  
ATTORNEY GENERAL

**GEORGE L. JENKINS**  
FIRST ASSISTANT ATTORNEY GENERAL



I take great pride in participating in the publication of this, the tenth volume of the Opinions of the Attorney General.

Throughout the years, the publication has been well received and has been a positive aid to those interested in the formal Opinions of this office. It is my hope that the annual volumes to be published during my term as Attorney General will prove informative and useful to you.

Any suggestions which you may have by way of making the publication more relevant to your individual needs would be welcome.

WILLIAM J. BROWN

Attorney General of Ohio

*April 10, 1974*

**ATTORNEYS GENERAL**  
of the  
**STATE OF OHIO**

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

Henry Stanberry . . . . .	1846-1851
Joseph McCormick . . . . .	1851-1852
George E. Pugh . . . . .	1852-1854
George W. McCook . . . . .	1854-1856
Francis D. Kimball . . . . .	1856-
C.P. Wolcott (a) . . . . .	1856-1861
James Murray . . . . .	1861-1863
Lyman R. Critchfield . . . . .	1863-1865
William P. Richardson . . . . .	1865-
Chauncey N. Olds (b) . . . . .	1865-1866
William H. West . . . . .	1866-1868
Francis B. Pond . . . . .	1868-1872
John Little . . . . .	1872-1878
Isaiah Pillars . . . . .	1878-1880
George K. Nash . . . . .	1880-1883
D.A. Hollingsworth (c) . . . . .	1883-1884
James Lawrence . . . . .	1884-1886
Jacob A. Kohler . . . . .	1886-1888
David K. Watson . . . . .	1888-1892
John K. Richards . . . . .	1892-1896
Frank S. Monnett . . . . .	1896-1900
John W. Sheets . . . . .	1900-1904
Wade H. Ellis (e) . . . . .	1904-Nov., 1908(d)
Ulysses G. Denman (f) . . . . .	Nov., 1908- 1911
Timothy S. Hogan . . . . .	1911-1915
Edward C. Turner . . . . .	1915-1917
Joseph McGee . . . . .	1917-1919
John G. Price . . . . .	1919-1923
C. C. Crabbe . . . . .	1923-1927
Edward C. Turner . . . . .	1927-1929
Gilbert Bettman . . . . .	1929-1933
John W. Bricker . . . . .	1933-1937
Herbert S. Duffy . . . . .	1937-1939
Thomas J. Herbert . . . . .	1939-1945
Hugh S. Jenkins . . . . .	1945-1949
Herbert S. Duffy . . . . .	1949-1951
C. William O'Neill . . . . .	1951-1957
William B. Saxbe . . . . .	1957-1959
Mark McElroy . . . . .	1959-1963
William B. Saxbe . . . . .	1963-1969
Paul W. Brown . . . . .	1969-1971
William J. Brown . . . . .	1971-

over

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**Notes:**

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

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

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

(d) Term extended to 1909 by constitutional amendment.

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

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

# OHIO REVISED CODE

## Chapter 109

### ATTORNEY GENERAL

Amended to March 1, 1974

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- 109.04 Powers and duties of first assistant attorney general.
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#### CROSS REFERENCES

OJur 2d: 49, State of Ohio § 13

#### 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)

#### CROSS REFERENCES

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

OJur 2d: 6, Attorney General § 1

##### 109.02 Duties.

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

(1969 S 438. Eff. 11-17-69)

109.02 former GC 333

## CROSS REFERENCES

See Baldwin's Ohio School Law, Text 3.03

Special counsel, appointment of, 109.07.  
 Actions on official bonds, 109.09, 2307.35.  
 Actions in quo warranto, duties and powers of attorney general, 109.10, 1331.11, 1331.12, 2733.03.  
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 Attorney general shall enforce regulations as to railroad bridges, 4961.24.  
 Oil and gas leases of state property, attorney general to draw, 5101.12.  
 Limitation of employment of inmates of penitentiaries, duty to enforce, 5147.26.  
 Attorney general shall prepare system of books, records, etc., for use of officers required to perform duties under the land registration act, 5309.97.  
 Actions against treasurer of state under provisions relating to "Torrens act" to be defended by the attorney general, 5310.10.  
 Code of military justice, judge advocates, 5924.06.  
 See 4111.15 and note citing 1937 OAG 1393.  
 OJur 2d: 6, Attorney General § 1, 7, 12; 26, Governor § 4

**109.03 (234). 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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

**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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

**109.05 (337). Employees.**

The attorney general may appoint such employees as are necessary.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

**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.<sup>1</sup>

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.<sup>2</sup>

Source: <sup>1</sup> GC § 332, <sup>2</sup> § 335.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 1, 6; 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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

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

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

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

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 6

**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.

## CROSS REFERENCES

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.

## CROSS REFERENCES

Quo warranto, 1331.11, 1331.12, 2733.03.  
 OJur 2d: 6, Attorney General § 16; 45, Quo Warranto § 3,  
 25

**109.11 Canal land disputes; title.**

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

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

The attorney general shall submit quarterly reports to the natural resources commission, and the legislative service commission summarizing the activities of the office of the attorney general in connection herewith.

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

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

**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.

**CROSS REFERENCES**

See Baldwin's Ohio School Law, Text 3.03

Printing and distribution of opinions, 125.69.

OJur 2d: 6, Attorney General § 7; 43, Prisons and Prisoners § 11; 54, Universities, etc § 40

**109.121 Land title review and opinion.**

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

(1969 S 205. Eff. 11-12-69)

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

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

departments and the attorney general.

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

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

**109.13 (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.

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 7

**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.

**CROSS REFERENCES**

See Baldwin's Ohio School Law, Text 3.03

OJur 2d: 6, Attorney General § 7

**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.

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 10; 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.

**CROSS REFERENCES**

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

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

**109.17 (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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 14; 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.

## CROSS REFERENCES

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.

## CROSS REFERENCES

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

**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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 14

**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.

## CROSS REFERENCES

Reports of state officers, 149.01.

OJur 2d: 6, Attorney General § 12; 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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 7, 12

## CHARITABLE TRUSTS

**109.23. Definition of charitable trust; application.**

As used in sections 109.23 to 109.33, 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 35L. Eff. 10-14-53.)

**Note:** In addition to those types of charitable trusts which 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

## CROSS REFERENCES

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

OJur 2d: 8, Attorney General § 8

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

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

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

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

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the

trust, within the meaning of section 4944 of the internal revenue code of 1954, so as to give rise to any liability for any tax imposed by section 4944 of the internal revenue code of 1954; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**109.24. Enforcement.**

The 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.

## CROSS REFERENCES

OJur 2d: 6, Attorney General § 24; 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)

## CROSS REFERENCES

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 § 24; 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).

## CROSS REFERENCES

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

**109.27. Rules and regulations concerning information for register.**

The attorney general shall make such rules and regulations subject to the provisions of sections 119.01 to

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

## CROSS REFERENCES

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.)

## CROSS REFERENCES

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.)

## CROSS REFERENCES

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.)

## CROSS REFERENCES

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.)

## CROSS REFERENCES

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.)

## CROSS REFERENCES

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)

## CROSS REFERENCES

See Merrick-Rippner Probate Manual, Text 3(1) (2)

**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)

## CROSS REFERENCES

**OJur 2d: 6, Attorney General § 3; 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; drug investigations.**

The bureau of criminal identification and investigation may investigate any criminal activity in this state which is of statewide or intercounty concern when requested by local authorities and may aid federal authorities, when requested, in their investigation of any criminal activity in this state. On and after July 1, 1971, the Bureau may investigate any criminal activity in this state involving drug abuse or illegal drug distribution prohibited under Chapter 3719, or 4729, of the Revised Code.

The bureau may provide such trained investigative personnel and specialized equipment as may be requested by any sheriff, chief of police, or other law officer to aid and assist such officer in the investigation and solution of any crime or the control of any criminal activity occurring within his jurisdiction. This assistance shall be furnished by the bureau without disturbing or impairing any of the existing law enforcement authority or the prerogatives of local law enforcement authorities or officers. Investigators provided pursuant to this section, or engaged in an investigation pursuant to section 109.83 of the Revised Code, may go armed in the same manner as sheriffs and regularly appointed police officers under section 2923.01 of the Revised Code. (1970 H 956, eff. 9-16-70. 130 v H 263)

**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 Duties of the superintendent of the bureau.

(A) The superintendent of the bureau of criminal identification and investigation shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent, of all persons who have been convicted of a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, within the state, and of all well known and habitual criminals, from wherever procurable. The person in charge of any state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, shall furnish such material to the superintendent of the bureau upon request. Fingerprints, photographs, or other descriptive information of a child under eighteen years of age shall not be procured by the superintendent or furnished by any person in charge of any state correctional institution, except as may be authorized in section 2151.313 of the Revised Code. Every court of record in this state shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. Such summary shall include the style and number of the case, the dates of arrest, commencement of trial, and conviction, a statement of the offense and the conduct which constituted it, and the sentence or terms of probation imposed, or other disposition of the offender. The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on charge of felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. He shall also file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions.

The superintendent shall carry out sections 2950.01 to 2950.08, inclusive, of the Revised Code, in regard to the registration of habitual sex offenders.

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

(C) The superintendent of the bureau of criminal identification and investigation may operate a center for

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

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

(1970 H 956, eff. 9-16-70. 130 v S 160, H 263)

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

#### 109.571 Law enforcement communications committee created; duties.

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

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

(C) The committee shall aid and encourage coordination and cooperation among law enforcement agencies in the operation and utilization of data processing facilities and equipment, and a statewide law enforcement communications network.

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

1970 H 956

#### 109.58 Superintendent shall prepare a standard fingerprint impression sheet.

The superintendent of the bureau of criminal identification and investigation shall prepare standard impression sheets on which fingerprints may be made in accordance with the fingerprint system of identification. Such sheets may provide for other descriptive matter which the superintendent may prescribe. Such sheets shall be furnished to each sheriff, chief of police, and person in charge of every workhouse, reformatory, or penitentiary within the state. (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, or for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused be found not guilty of the offense charged, then said fingerprints and description shall be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice or wanted by any jurisdiction in this or any other state or the United States or a foreign country for any offense, he shall at once inform the arresting officer of such fact and give appropriate notice to the proper authorities in the jurisdiction in which such person is wanted, or, if such jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to such foreign country. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance unless the officers have reason to believe that such person is a past offender, or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age, except as provided in section 2151.313 of the Revised Code.

(1970 H 956, eff. 9-16-70. 130 v H 263)

**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, dyes, 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 Creation of Ohio peace officer training council; members; definition of "peace officer."**

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

As used in sections 109.71 to 109.77, inclusive, of the Revised Code, "peace officer" means a deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of Ohio, ordinances of a municipal corporation, or regulations of a board of county commissioners or board of township trustees, or any such laws, ordinances, or regulations.

(1969 H 575. Eff. 11-21-69. 1969 H 111; 131 v H 363)

**CROSS REFERENCES**

OJur 2d: 6, Attorney General § 4

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

Ohio peace officer training council member terms shall be for three years, commencing on the twentieth day of September and ending on the nineteenth day of September. Each member shall hold office from the date of his appointment until the end of the term for

which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. An interim chairman shall be appointed by the governor until such time as the council elects a permanent chairman.

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

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

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

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

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

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

#### 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 college districts;

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

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

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

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

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

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

(C) The council may, in addition:

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

HISTORY: 1971 S 396, eff. 2-17-72  
132 v H 93; 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)

#### CROSS REFERENCES

OJur 2d: 6, Attorney General § 4

**109.75 Executive director.**

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

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

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

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

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

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

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

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

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

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

**109.76 Construction of act.**

Nothing in sections 109.71 to 109.77, inclusive, of the Revised Code, shall be construed to except any peace officer, or other officer or employee from the provisions of Chapter 143. of the Revised Code. (131 v H 363. Eff. 9-6-65)

**109.77 Certificate necessary for appointment; prohibition.**

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

No peace officer shall have his employment terminated and then be reinstated with intent to circumvent this section. (1969 H 575. Eff. 11-21-69. 131 v H 363)

**CROSS REFERENCES**

See Baldwin's Ohio Township Law, Text 16.02, 16.04

Rules, regulation and appointment of township police officers, 505.49

Constables, suspension or removal, compensation, 509.01

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

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

(B) No public or private educational institution shall employ a person as a special policeman, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless such person has completed twenty years of active duty as a peace officer.

HISTORY: 1972 H 633, eff. 4-3-72  
1971 H 1; 1969 H 575

**109.79 Ohio peace officer training academy.**

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

The Ohio peace officer training council shall develop the training program, which shall include courses in both the civil and criminal functions of law enforcement officers, and shall establish rules and regulations governing qualifications for admission to the academy. The council may require competitive examinations to determine fitness of prospective trainees, so long as the examinations or other criteria for admission to the academy are consistent with the provisions of Chapter 143. of the Revised Code.

The Ohio peace officer training council shall determine tuition costs which shall be sufficient in the aggregate

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

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

(1970 H 1160, eff. 8-31-70)

### ANTITRUST CASES

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

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

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

(A) When directed by the governor or general assem-

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

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

(1970 H 956, eff. 9-16-70)

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#### 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.)

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323.17	74-068	2935.04	74-094
323.18	74-033	2935.041	74-041
323.24	74-033	2937.20	74-009
325.19	74-085	2939.27	74-101
339.39	74-032	2945.71	74-062
340.03	74-015	2945.72	74-062
340.04	74-015	2947.061	74-005
505.10	74-020	2949.19	74-101
505.491	74-038	2967.31	74-005
509.01	74-038	3313.17	74-002
517.03	74-083	3313.20	74-012
517.19	74-083		74-063
519.05	74-024		74-095
711.09	74-070	3313.202	74-050
711.10	74-078	3313.41	74-002
711.132	74-078	3313.47	74-063
			74-095

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<i>Rev. Code</i>	<i>1974 Opinion</i>	<i>Rev. Code</i>	<i>1974 Opinion</i>
3313.483	74-104	3709.20	74-014
3313.64	74-076	3709.21	74-003
3313.67	74-069		74-014
3313.71	74-069	3709.28	74-032
3313.75	74-086	3709.34	74-032
3313.76	74-063	Chap. 3721	74-008
3313.77	74-063	Chap. 3737	74-008
	74-086	3770.02	74-054
3313.81	74-043	4123.025	74-105
	74-086	4123.341	74-067
3317.01	74-080	4123.342	74-067
3317.021	74-066	4123.44	74-067
3317.03	74-066	4123.52	74-018
Chap. 3319	74-045		74-019
3319.08	74-082	4123.54	74-105
3319.081	74-045	4123.59	74-018
3319.082	74-045	4123.59(B)	74-019
3319.09	74-004	4123.60	74-018
3319.11	74-004	4141.01	74-096
3319.12	74-096	4141.29	74-096
3321.04	74-066		74-104
3327.01	74-040	4151.04	74-021
3327.04	74-066	4504.06	74-010
3345.19	74-011	4505.06	74-059
3345.20	74-098	4505.10	74-031
3349.02	74-098	4505.11(C)	74-059
3356.03	74-016	4511.06	74-079
3356.04	74-016	4511.11	74-053
3375.06	74-042	4511.21	74-035
3375.28	74-042	4511.211	74-035
3375.42	74-051	4511.75	74-106
3375.56	74-056	4511.99	74-079
3501.15	74-006	4715.01	74-058
3505.27	74-103	4723.16	74-049
3515.04	74-103	4735.03	74-099
3517.10	74-075	4741.22(D)	74-064
	74-087	4749.08	74-041
3517.12	74-075	4931.03	74-073
3599.40	74-087	4933.14	74-073
3701.34	74-014	5126.03	74-017
3705.08	74-028	5126.04	74-091
3705.13	74-028	5503.04	74-056
3707.01	74-003	5521.01	74-007

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<i>Rev. Code</i>	<i>1974 Opinion</i>	<i>Rev. Code</i>	<i>1974 Opinion</i>
5526.04	74-091	5727.06	74-100
5528.41	74-037	5739.02	74-052
5537.04	74-029	5739.17	74-052
5591.02	74-007	5901.08	74-093
5704.412	74-043	5923.05	74-022
5705.221	74-061		74-030
5705.41	74-043		
	74-044		
5713.17	74-047		
5713.20	74-047		
5719.01	74-047	Crim R 1(c)	74-062

TABLE 3

## Prior Ohio Attorney General Opinions Affected

<i>Former Opinion</i>		<i>1974 Opinion</i>
1776, 1920	Rendered obsolete	74-068
1664, 1928	Rendered obsolete	74-068
1670, 1928	Approved and followed by	74-063
1679, 1928	Rendered obsolete	74-068
4333, 1935	Rendered obsolete	74-068
1464, 1937	Overruled by	74-048
2235, 1947	Approved and followed by	74-058
1005, 1957	Overruled by	74-068
1468, 1960	Approved and followed by	74-022
65-145	Overruled by	74-085
70-117	Approved and followed by	74-031
72-063	Modified by	74-077
73-058	Clarified by	74-051
73-104	Approved and followed by	74-021
73-131	Approved and followed by	74-021

**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 1974.

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

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

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

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

**Compatible Offices**

<i>Office</i>	<i>Compatible With</i>	<i>1974 Opinion No.</i>
Board of education member	Board of election member	74-006
	Classified civil service member	74-034
Board of election member	Board of education member	74-006

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<i>Office</i>	<i>Compatible With</i>	<i>1974 Opinion No.</i>
Classified civil service member	Board of education member	74-034
Councilman	Highway department	74-071
Highway department	Councilman	74-071

**Incompatible Offices**

<i>Office</i>	<i>Incompatible With</i>	<i>1974 Opinion No.</i>
Councilman	Highway department	74-071
County agricultural society director	County commissioner	74-039
County commissioner	County agricultural society director	74-039
Highway department	Councilman	74-071