

# REPRESENTING THE STATE OF OHIO

## THE OHIO ATTORNEY GENERAL HANDBOOK FOR SPECIAL COUNSEL

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# **The Office of Ohio Attorney General**

## **History of the Office**

### **Before Statehood**

The earliest reference to an Attorney General in Ohio can be found in the Congressional Act of June 16, 1795, which provided for the interests of the Northwest Territory's government to be represented by an Attorney General before the General Court of the Territory. The act also prescribed fees to be paid to the Attorney General, including 62 cents for court motions, \$5 for criminal cases, and \$8 for capital cases.

Paul Fearing was appointed to the position of Attorney General in 1799, and he is thought to have held the post until Ohio became a state in 1803. Legislation provided an annual salary of \$400 for the officeholder and \$50 to \$125 for his deputies.

The first Ohio Constitution of 1802 did not include a provision for an Attorney General, although it did state that the Attorney General was not eligible for membership in the General Assembly. The executive branch is described as having a Governor, Secretary of State, Treasurer, Auditor, and various civil officers.

The framers of the state's first Constitution may not have included an Attorney General for several reasons. First, Ohio's government was very decentralized. Law enforcement was handled on the county level, and the Ohio Supreme Court appointed each county's prosecuting attorney. Second, cases of state interest were limited, and county prosecutors represented the state in those when necessary. Finally, if the state needed additional legal representation, for many years it was cheaper to hire a private attorney than to fund another state office.

### **Early Statehood**

The Ohio General Assembly created the position of Attorney General on Feb. 16, 1846, as a position elected by the General Assembly and commissioned by the Governor for a five-year term. The officeholder had to be a Franklin County resident, maintain an office in Columbus, take an oath to support the Constitution, and post a \$5,000 bond. He was paid \$750 annually, plus 3.5 percent of all monies he collected, up to a maximum of \$1,300 per year.

The 1846 act spelled out these responsibilities of the Attorney General:

- Serve as legal advisor to state government
- Represent the interests of the state
- Provide legal opinions to state officials
- Prepare all state contracts

- Maintain records and prepare an annual report to the General Assembly

The Attorney General represented the state in all civil and criminal matters before the Ohio Supreme Court and, at the request of the Governor or either house of the General Assembly, in other courts. He was authorized to consult with and advise county prosecuting attorneys and was directed to compile crime statistics as reported to him by county prosecutors.

Attorney Henry Stanbery, a member of the Whig Party, was Ohio's first appointed Attorney General. He opened his office April 6, 1846, in Columbus, although no record has been found to indicate its location. Much of his first year was spent organizing the office and creating a case-tracking system and a uniform crime report format for county prosecutors.

In his first report to the General Assembly, delivered Dec. 20, 1847, Stanbery stated he had collected \$3,051.07 owed to the state and won judgments for another \$2,849.32. He also noted that providing legal opinions to state officials and county prosecutors took more time than his other responsibilities. Stanbery further noted that compiling crime statistics was difficult, as county prosecutors were less than diligent in providing him with crime reports, and he had no authority to make them comply.

In 1848, the General Assembly authorized the Attorney General (with assent from the State Auditor) to negotiate with debtors against whom the state had judgments that were at least two years old. This gave the Attorney General the flexibility to collect money the state needed to operate. The construction of canals, roads, and railroads in the decades leading up to this development helped fuel Ohio's growth, but it also put state government \$18 million in debt. The state's financial problems were exacerbated by several instances of embezzlement.

In 1849, about mid-way through Stanbery's five-year term, the General Assembly voted to change the Attorney General's position to that of a statewide elective office, effective at the conclusion of Stanbery's term. Since Stanbery's term expired in April 1851, and the general election was not until November of that year, the Democratic majority in the General Assembly appointed Democrat Joseph McCormick to act as Attorney General from May until the fall election.

### **A Maturing State**

The General Assembly adopted Ohio's second Constitution in 1851. Both Stanbery and McCormick were delegates to the Second Constitutional Convention. By this time, Ohio's population was approaching 2 million, making it the third most populous state in the union.

The new constitution provided for an executive branch consisting of a Governor, Lieutenant Governor, Secretary of State, Auditor, and Attorney General — all elected offices with two-year terms. The constitution did not outline the duties of the Attorney General other than to require him, along with the other executive officers, to submit an annual written report to the Governor five days prior to the regular session of the Ohio General Assembly.

The General Assembly bolstered the responsibilities of the Attorney General in May 1852. In addition to duties outlined in the 1846 act, he was directed to "enforce the performance

of trusts for charitable and educational purposes and restrain the abuse thereof’ and to provide legal opinions to a wider circle of state officials. His ability to prosecute people upon the request of state officers was narrowed to include only actions authorized in writing by the Governor.

As the state and its government grew, so too did the expectations placed on the Attorney General’s Office. In 1865, Attorney General Chauncey Olds reported that he had provided 70 to 80 written opinions (filling 170 handwritten pages) and twice that number orally.

Still, for much of the 19th century, the office of Attorney General was a part-time position with little stature or pay. Historical records indicate the office did not warrant much in the way of staff — consisting only of the Attorney General and a clerk/secretary until 1900 — and that the office moved frequently. In 1901, the office was housed in the Ohio Justice Building (today referred to as the Senate Annex), where it remained until it moved to its current headquarters in the James A. Rhodes State Office Tower in 1974.

### **Early 20th Century**

The Ohio General Assembly reorganized the Attorney General’s Office on March 31, 1904, to reflect the current structure, and legal counsel employed by various state agencies joined the office. The General Assembly also appropriated \$21,766.40 for the office to hire special counsel, more than twice the \$10,000 appropriated that year for the entire office. The following year, \$21,000 was allotted for both expenses.

The reorganized Attorney General’s Office included a First Assistant Attorney General, whose primary responsibility was to oversee the legal aspects of the office and represent the Attorney General when he was not available. A Second Assistant Attorney General served as the office’s business manager, and a Chief Clerk acted as office manager and kept docket records.

The precise structure and priorities of the office changed through the years, as dictated by the officeholder and the needs of the era.

In 1905, Attorney General Wade Ellis’ office had 10 sections:

- Governor and Trustees of State Institutions
- Secretary of State
- State Auditor and State Treasurer
- Public Works, Highways, and Agriculture
- General Criminal Business
- Dairy and Food
- Health and Medical

- Insurance
- Common Schools and Universities
- Miscellaneous (including Labor, Mines, and Railroads)

In addition to restructuring the office, Attorney General Ellis compiled and indexed the opinions the office issued from 1846 to 1904. He also took part in editing the *Ellis Annotated Municipal Code of 1903–1909*.

In 1910, a dozen members of the Ohio General Assembly were convicted of bribery charges after a bi-partisan legislative committee was formed to investigate corruption within various departments of state government. Attorney General Timothy Hogan testified before the grand jury in that case.

Also in 1910, the office established its first library to serve as a resource for the staff. A budget of \$1,000 was set aside to cover the cost of books furniture, and carpet.

As the workload and responsibilities of the Attorney General grew, so did the staff and its hours. In 1911, Attorney General Timothy Hogan increased the staff's work day from six hours to seven and a half.

Attorney General Edward Turner's 1915–16 administration saw an increase in efficiency, economy, and impartiality. Turner reduced the operating expenses of the office almost \$5,000 per month in each of his first 18 months. During that year and a half period, Attorney General Turner also collected a record \$589,067.40 for the state treasury, including one sum as small as 8 cents.

Between 1917 and 1919, Attorney General Joseph McGhee helped enact Ohio's workers' compensation law, which gave the office responsibility to collect premiums due from employers and to enforce awards. Other changes in Ohio law gave the Attorney General authority to collect nearly all claims for the state; previously, the office had collected only delinquent corporate taxes.

With ratification of the 18th Amendment to the U.S. Constitution, Prohibition became the law of the land in January 1920. Attorney General Charles Crabbe personally authored several law enforcement measures between 1923 and 1927 to enforce the amendment and took a prominent role in temperance legislation during the 83rd General Assembly.

During his terms from 1937 to 1939 and 1949 to 1951, Attorney General Herbert Duffy settled a renowned antitrust case against the Ohio Bell Telephone Co. This case was brought before the Public Utilities Commission of Ohio, the Supreme Court of Ohio, and the United States Supreme Court before finally being settled, a process that lasted 14 years.

## **Late 20th Century**

The Attorney General's term increased from two to four years in 1954. And while the main functions and statutory obligations of the office have remained constant for many decades, the priorities of Ohio's attorneys general have led to various new programs and initiatives.

Attorney General C. William O'Neill's investigations into narcotics trafficking in the mid-1950s resulted in a model narcotics control bill. Passed by the Ohio General Assembly in 1955, the bill included some of the strictest penalties in the country at that time.

Assistance to law enforcement was a major focus of the 1960s and '70s. The Bureau of Criminal Investigation (BCI) was brought under the office's oversight in 1965. The Ohio Peace Officer Training Commission was formed in 1965, and the Ohio Peace Officer Training Academy opened in 1976.

The office's Consumer Protection Section was created and expanded between 1971 and 1983, quickly becoming a central focus of office operations. During the 1980s, the office became renowned for its efforts to protect Ohioans and the environment, winning the right to regulate the cleanup of nuclear and chemical pollution.

The office made protecting children a priority in the early 1990s, forming the Education Section, the Children's Protection Section, the Missing Children Clearinghouse, and Project Safe Schools.

The office focused heavily on crime-fighting in the late '90s. In addition to approving construction of a new headquarters for BCI, the office increased its crime-fighting budget to the highest level in 151 years, both in actual dollars and as a percentage of the office's budget.

## **Today's Attorney General's Office**

At the start of the new millennium, the Ohio Attorney General's Office prioritized its mission of protecting Ohioans from fraud, waste, and abuse while improving the effectiveness of government operations. The office recovered billions for workers and retirees and expanded consumer protection services to help small businesses and nonprofits.

Under Ohio Attorney General Mike DeWine, the office has sharpened its focus on work that protects Ohio's families and children. Among a wide range of initiatives, it has stepped up assistance to and resources for law enforcement, strengthened efforts to solve crimes against children, and introduced measures to catch and prosecute those responsible for consumer scams.

Today, the Attorney General's Office employs about 1,500 Ohioans and consists of these sections:

- Antitrust
- Appeals
- Bureau of Criminal Investigation
- Business Counsel
- Charitable Law
- Civil Rights
- Collections Enforcement
- Constituent Services
- Constitutional Offices
- Consumer Protection
- Court of Claims
- Crime Victims
- Criminal Justice
- Education
- Employment Law
- Environmental
- Executive Agencies
- Health & Human Services
- Health Care Fraud
- Labor Relations
- Opinions
- Ohio Organized Crime Investigations Commission
- Ohio Peace Officer Training Academy and Commission
- Outside Counsel
- Public Utilities
- Taxation
- Tobacco Enforcement
- Transportation
- Workers' Compensation

To best serve Ohioans, the Attorney General's Office has operated satellite offices around the state since establishing an office in Cleveland in the early 1950s. Its regional offices:

- Lausche Building in Cleveland, with 80 staff members
- Carew Tower in Cincinnati, with 40 staff members
- Federal Plaza West in Youngstown, with 38 staff members
- One Government Center in Toledo, with 17 staff members

In addition, the Attorney General's Bureau of Criminal Investigation is headquartered in London and includes operations in Athens, Bowling Green, Richfield, and Youngstown. The Ohio Peace Officer Training Academy is based in London and has a campus in Richfield.

## **Outside Counsel Section**

### **Overview**

The Outside Counsel Section is responsible for the engagement, retention, and oversight of private sector attorneys appointed as special counsel by the Attorney General to provide legal representation to state clients. State clients include state agencies, colleges, universities, retirement systems, boards and commissions for non-collections matters.

The Attorney General, pursuant to R.C. 109.07, is empowered to 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. The Attorney General considers many factors when selecting representation for matters that require special counsel. The factors considered include, but are not limited to, a firm's efficiency, areas of expertise, and ability to perform the work requested at state rates.

Appointment as special counsel reflects the Attorney General's confidence in a law firm's legal expertise, integrity, and ability. Special counsel may be selected to provide legal services ranging from general matters to highly specialized areas such as intellectual property, real estate, benefits, and complex litigation.

## **Appointment Process**

The Attorney General considers many factors when selecting representation for matters that require special counsel. It is important that law firms and individual lawyers seeking an appointment as special counsel take the time to provide detailed information when submitting information to the Office for consideration. Complete and concise responses will allow the Outside Counsel Section to adequately review the candidates and make the best recommendations.

### **Request for Qualifications**

Law firms or individual lawyers seeking an appointment to serve as special counsel must submit a Request for Qualifications ("RFQ"). RFQ information is available online at [www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov). The RFQ submitted by each law firm and individual lawyer will be reviewed for the purposes of determining the highest qualified law firm or individual lawyer to represent the client.

## **Request for Proposals**

The Ohio Attorney General may choose to solicit Request for Proposals from law firms and individual lawyers as the need for counsel arises. The Outside Counsel Section will review the submitted proposals to determine which law firm or individual lawyer can most adequately and efficiently take on the special counsel assignment.

## **The Attorney—Client Relationship and Conflicts Check**

Before an appointment is made it is important that special counsel candidates perform a thorough conflict check. Verification that a check has been made is required before an assignment is awarded.

In situations where a special counsel appointment has been made and a conflict issue arises, special counsel must notify the Outside Counsel Section immediately. Special counsel may be required to have clients sign a waiver of conflicts interest, or if the conflict cannot be waived, the Attorney General reserves the right to disqualify special counsel from further representation of the client.

## **Updating Information**

Special counsel is encouraged to make regular updates of the above mentioned forms. It is special counsel's duty to provide up-to-date information and documentation to the Attorney General's Office.

## **Terms of Appointment**

### **The Retention Agreement**

The Retention Agreement details important parameters of the appointment including billing requirements, necessary communications, expense reimbursement and status reports. Special counsel will be presumed to be familiar with the terms set forth in the Retention Agreement and those terms will be enforced.

### **Assignment Duration and Renewal**

No appointment as special counsel will last longer than one year. Appointments will be evaluated at the end of the assignment or end of each fiscal year. The purpose of the evaluation is to determine whether the appointed special counsel has best met the needs of the client in the most efficient manner possible.

The Attorney General has an interest in maintaining good working relationships with the attorneys and law firms that have been appointed as special counsel. The Attorney General recognizes the investment law firms and individual lawyers make to the State by serving as special counsel. Thus, it will not be uncommon upon a positive

review that special counsel will be reappointed to another assignment or selected to continue as special counsel.

### **Assignment Deviation**

Special counsel must stay within the parameters of the assignment to ensure payment for work performed. It is anticipated that on occasion the nature of the legal work requested may uncover new issues that redirect the work required under the assignment. Should that occur, notice must be given to the Attorney General Section managing the assignment and to the Director of Outside Counsel. Upon receipt of such notice, consideration will be given to whether the matter is within the original assignment, a new assignment should be made, or the Attorney General Section should take the matter in-house.

### **Discovery; Coordination of Information Gathering**

Discovery can be an expensive and intrusive process. Thus, discovery should not be commenced without an assessment of strategy with the managing Attorney General Section. Experts are to be engaged only with the approval of the Attorney General and as otherwise directed by the Retention Agreement.

### **Case Reporting**

The Attorney General requires the submission of quarterly status reports from all special counsel. The information provided in these reports will assist in monitoring the status of assignments and evaluating the needs of the client. The following are reports that special counsel must submit to the Attorney General's Office:

#### Quarterly Status Reports

The Attorney General requires the submission of a quarterly status report for every assignment managed by special counsel. Status reports must include a description of each matter assigned identified by AGO number, a list of the current status of particular cases involved, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.

Special counsel shall send a copy of each status report to the Director of Outside Counsel at [specialcounsel@ohioattorneygeneral.gov](mailto:specialcounsel@ohioattorneygeneral.gov), the Section Chief in the Attorney General's Office indicated in the related Assignment Letter, and the state client.

#### Significant Case Report

The Attorney General classifies certain special counsel assignments as "Significant Matters". Special counsel appointed to a Significant Matter will be notified of the classification and will receive a request to comply with certain reporting requirements. A reporting template has been developed for this purpose and should be

submitted on a monthly basis to the Director of Outside Counsel and the designated Assistant Attorney General.

