

GOVERNMENT CODE
CHAPTER 402. ATTORNEY GENERAL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. ASSISTANTS. (a) If the attorney general is absent or unable to act, the attorney general's first office assistant shall perform the duties of the attorney general that are prescribed by law.

(b) The attorney general shall, at the request of an agency, designate one or more assistants to attend the meetings of the agency if the attorney general served as an ex officio member of the governing board of the agency on August 23, 1963.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.002. REGISTER. (a) The attorney general shall keep in a proper book a register of:

(1) the official acts and opinions of the attorney general; and

(2) actions, demands, and related proceedings involving state revenue prosecuted or defended by the attorney general or a district or county attorney.

(b) The attorney general shall deliver the register to the successor to that office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.003. REPORT. The attorney general shall report to the governor on the first Monday of December of each even-numbered year. The report must include the following information for the preceding two years:

(1) a summary of the cases in which the state was a party that were acted on by the supreme court and court of criminal appeals; and

(2) a summary of civil cases in which the state was a party that were prosecuted or defended by the attorney general in other state or federal courts.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 691, Sec. 1, eff. Sept. 1, 2003.

Sec. 402.004. ADMISSION, AGREEMENT, OR WAIVER. An admission, agreement, or waiver made by the attorney general in an action or suit to which the state is a party does not prejudice the rights of the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.005. ACCEPTANCE OF GIFTS, GRANTS, AND FORFEITED ASSETS; CREATION OF SPECIAL ACCOUNT. (a) The attorney general may not accept or use money offered by an individual, firm, partnership, corporation, or association for investigating or prosecuting a matter.

Text of subsec. (b) as amended by Acts 1993, 73rd Leg., ch. 380,
Sec. 1

(b) The attorney general may accept gifts and grants on behalf of the state for purposes related to duties performed by the attorney general or to public educational opportunities, unless the acceptance is prohibited under Subsection (a) or other law. Money received under this subsection shall be deposited in the state treasury to the credit of an account established in the general revenue fund for the receipt of those funds.

Text of subsec. (b) as amended by Acts 1993, 73rd Leg., ch. 761,
Sec. 7

(b) The attorney general law enforcement account is created as a dedicated account in the general revenue fund in the state treasury. The account shall consist of law enforcement-related gifts and grants, and forfeited assets, and shall be administered by the attorney general.

(c) The attorney general may accept gifts and grants on behalf of the state for purposes related to law enforcement duties performed by the attorney general, unless the acceptance is prohibited under Subsection (a) or other law. Money received under this subsection shall be deposited in the law enforcement account established pursuant to Subsection (b) and may be appropriated only for the purpose for which the money was given.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 380, Sec. 1, eff. June 2, 1993; Acts 1993, 73rd Leg., ch. 761, Sec. 7, eff. Sept. 1, 1993.

Sec. 402.006. FEES. (a) For an affirmance of judgment in a case to which the state is a party and that involves liability to the state, the attorney general is entitled to a fee in an amount equal to 10 percent of the amount collected up to \$1,000 and five percent of the amount collected in excess of \$1,000. This fee shall

be paid from the amount collected when it is collected.

(b) For a case involving a forfeiture of a charter heard on appeal before the supreme court or court of appeals, the attorney general is entitled to a fee of \$500.

(c) In a case in which the state is entitled to recover a penalty or damages the attorney general is entitled, on behalf of the state, to reasonable attorney's fees and court costs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.007. PAYMENT TO TREASURY. The attorney general shall immediately pay into the state treasury money received for a debt or penalty.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.008. OFFICE. The attorney general shall keep the attorney general's office in Austin.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.009. AUTHORITY TO EMPLOY AND COMMISSION PEACE OFFICERS. The attorney general may employ and commission peace officers as investigators for the limited purpose of assisting the attorney general in carrying out the duties of that office relating to prosecution assistance and crime prevention.

Added by Acts 1991, 72nd Leg., ch. 545, Sec. 1, eff. Aug. 26, 1991.

Amended by Acts 1999, 76th Leg., ch. 599, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. DUTIES

Sec. 402.021. REPRESENTATION OF STATE. The attorney general shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.0212. PROVISION OF LEGAL SERVICES--OUTSIDE COUNSEL. (a) Except as authorized by other law, a contract for legal services between an attorney, other than a full-time employee of the agency, and a state agency in the executive department, other than an agency established by the Texas Constitution, must be approved by the attorney general to be valid. The attorney general shall provide legal services for a state agency for which the attorney general determines those legal services are appropriate and for which the attorney general denies approval for a contract for those services under this subsection.

(b) For purposes of this section, the functions of a hearing examiner, administrative law judge, or other quasi-judicial officer are not considered legal services.

(c) This section shall not apply to the Texas Turnpike Authority division of the Texas Department of Transportation.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 5.01, eff. Aug. 22, 1991.

Amended by Acts 1993, 73rd Leg., ch. 753, Sec. 3, eff. June 17, 1993;

Acts 2001, 77th Leg., ch. 1420, Sec. 9.003, eff. Sept. 1, 2001.

Sec. 402.0213. APPEARANCE THROUGH VIDEOCONFERENCING TECHNOLOGY. (a) The office of the attorney general may use videoconferencing technology:

(1) as a substitute for personal appearances in civil and criminal proceedings, as approved by the court; and

(2) for any proceeding, conference, or training conducted by an employee of the office of the attorney general whose duties include the implementation of Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code.

(b) In this section, "videoconferencing technology" means technology that provides for a conference of individuals in different locations, connected by electronic means, through audio, video, or both.

(c) The attorney general shall obtain the approval of the appropriate authority overseeing a proceeding under Subsection (a)(2) before using videoconferencing technology under this section.

Added by Acts 1997, 75th Leg., ch. 509, Sec. 1, eff. Sept. 1, 1997.

Sec. 402.023. CORPORATE CHARTERS. (a) Unless provided otherwise by law, the attorney general shall seek a judicial forfeiture of a private corporation's charter if sufficient cause exists. If satisfactory evidence is presented to the attorney general that a corporation receiving state aid has forfeited its charter or rights under its charter, the attorney general shall immediately seek a judicial forfeiture of the charter.

(b) The attorney general shall inquire into the charter rights of each private corporation and act in the name of the state as proper and necessary to prevent the corporation from exercising

a power or demanding or collecting a tax, toll, freight, or wharfage not authorized by law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.0231. CORPORATE INTEGRITY UNIT. (a) In this section, "corporate fraud" means a violation of state or federal law or rules relating to fraud committed by a corporation, limited liability company, or registered limited liability partnership or an officer, director, or partner of those entities while acting in a representative capacity.

(b) A corporate integrity unit is created within the office of the attorney general to assist in the enforcement of the laws relating to corporate fraud or other similar illegal activities. The unit shall:

(1) assist district attorneys and county attorneys in the investigation and prosecution of corporate fraud or other similar illegal activities allegedly committed by corporations, limited liability companies, and registered limited liability partnerships;

(2) assist state agencies with investigation of complaints and administrative enforcement actions for corporate fraud violations, including the assessment of an administrative penalty or other administrative sanction; and

(3) serve as a clearinghouse for information relating to the investigation and prosecution of corporate fraud and other similar illegal activities in this state.

(c) To the extent allowed by law, a state agency or local law enforcement agency shall cooperate with the corporate integrity unit by providing information requested by the unit as necessary to carry out the purposes of this section. Information disclosed under this subsection is confidential and not subject to disclosure under Chapter 552.

Added by Acts 2003, 78th Leg., ch. 932, Sec. 1, eff. Sept. 1, 2003.

Sec. 402.024. DEFENSE OF DISTRICT ATTORNEY, GRAND JURY COMMISSIONER, OR GRAND JUROR. (a) The attorney general shall defend a state district attorney in an action in a federal court if:

(1) the district attorney is a defendant because of the district attorney's office;

(2) the cause of action accrued while the person filing the action was confined in a Texas Department of Corrections facility;

(3) the district attorney requests the attorney general's assistance in the defense; and

(4) there is no action pending against the district attorney in which the attorney general is required to represent the state.

(b) The attorney general shall defend a state grand jury commissioner or grand juror who is a defendant in an action in any court if:

(1) the suit involves an act of the person while in the performance of duties as a grand jury commissioner or grand juror; and

(2) the person requests the attorney general's assistance in the defense.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.01(a), eff. Sept. 1, 1989.

Sec. 402.025. PROPERTY TRANSACTIONS. (a) If property is sold under a deed of trust or because of an execution, order, or sale on a judgment in favor of the state, except an execution on a judgment in a case of scire facias, the agent representing the state, with the advice and consent of the attorney general, shall purchase the property if the purchase is considered proper to protect the interest of the state in the collection of the judgment or debt. The agent's bid may not exceed the amount necessary to satisfy the judgment or debt and related costs. The officer selling the property shall execute and deliver to the state a deed to the property as if the state were an individual.

(b) The agent, with the advice and consent of the attorney general, may dispose of the property in the manner it was acquired, on the terms and conditions that the agent considers most advantageous to the state. Money received for the property in excess of the amount necessary to satisfy the judgment or debt and related costs shall be deposited in the state treasury to the credit of the general revenue fund. The attorney general, in the name of the state, shall deliver to the purchaser a deed to the property vesting right and title to the property in the purchaser.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.026. INSPECTION OF ACCOUNTS. At least monthly the attorney general shall inspect the accounts of the offices of the comptroller and each other person responsible for collection or custody of state funds. The attorney general shall immediately bring or cause to be brought an action to recover state funds in the hands of a person in default or arrears and shall immediately begin criminal proceedings against a person who has illegally applied or retained state funds.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.1, eff. Sept. 1, 1997.

Sec. 402.027. FORMS. On request of the comptroller, the attorney general shall prepare proper forms for contracts, obligations, and other instruments needed for state use.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.028. ASSISTANCE TO PROSECUTING ATTORNEYS. (a) At the request of a district attorney, criminal district attorney, or county attorney, the attorney general may provide assistance in the prosecution of all manner of criminal cases, including participation by an assistant attorney general as an assistant prosecutor when so appointed by the district attorney, criminal district attorney, or county attorney.

(b) A district attorney, criminal district attorney, or county attorney may appoint and deputize an assistant attorney general as assistant prosecutor to provide assistance in the prosecution of criminal cases, including the performance of any duty imposed by law on the district attorney, criminal district attorney, or county attorney.

(c) Nothing in this section shall prohibit an assistant attorney general from appointment as attorney pro tem under the provisions of Article 2.07, Code of Criminal Procedure.

Added by Acts 1995, 74th Leg., ch. 785, Sec. 2, eff. Sept. 1, 1995.

Sec. 402.029. NOTICE OF ATTORNEY OF RECORD. (a) This section applies to each child support case in which the attorney general provides services.

(b) The attorney general shall provide each party or the party's attorney of record with written notice of the name, address, telephone number, and facsimile number of the assistant attorney general who is the attorney of record in the case.

(c) Not later than the seventh day after the date of a change, the attorney general shall provide each party or the party's attorney of record with written notice of a change in the name, address, telephone number, or facsimile number of the assistant attorney general who is the attorney of record in the case.

Added by Acts 1999, 76th Leg., ch. 722, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.030. PARTICIPATION BY FATHERS. (a) The attorney general shall periodically examine office policies and procedures to determine if the policies and procedures deter or encourage participation of fathers in functions performed by the attorney general relating to children.

(b) Based on the examination required under Subsection (a), the attorney general shall modify policies and procedures as necessary to permit full participation of fathers in functions performed by the attorney general relating to children in all appropriate circumstances.

Added by Acts 2001, 77th Leg., ch. 256, Sec. 3, eff. Sept. 1, 2001.

SUBCHAPTER C. OPINIONS

Sec. 402.041. DEFINITION. In this subchapter "opinion" means advice or a judgment or decision and the legal reasons and principles on which it is based.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.042. QUESTIONS OF PUBLIC INTEREST AND OFFICIAL DUTIES. (a) On request of a person listed in Subsection (b), the attorney general shall issue a written opinion on a question affecting the public interest or concerning the official duties of the requesting person.

(b) An opinion may be requested by:

- (1) the governor;
- (2) the head of a department of state government;
- (3) a head or board of a penal institution;
- (4) a head or board of an eleemosynary institution;
- (5) the head of a state board;
- (6) a regent or trustee of a state educational institution;

(7) a committee of a house of the legislature;
(8) a county auditor authorized by law; or
(9) the chairman of the governing board of a river authority.

(c) A request for an opinion must be in writing and sent by certified or registered mail, with return receipt requested, addressed to the office of the attorney general in Austin. The attorney general shall:

(1) acknowledge receipt of the request not later than the 15th day after the date that it is received; and

(2) issue the opinion not later than the 180th day after the date that it is received, unless before that deadline the attorney general notifies the requesting person in writing that the opinion will be delayed or not rendered and states the reasons for the delay or refusal.

(d) The attorney general and the requesting person by written agreement may waive the provisions of Subsections (a) and (c) if the waiver does not substantially prejudice any person's legal rights.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.043. QUESTIONS RELATING TO ACTIONS IN WHICH THE STATE IS INTERESTED. The attorney general shall advise a district or county attorney of this state, on the attorney's request, in the prosecution or defense of an action in which the state is interested before a district or inferior court if the requesting attorney has investigated the question involved and submitted a brief to the attorney general.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.044. QUESTIONS RELATING TO BONDS. The attorney general shall advise the proper legal authorities in regard to the issuance of bonds that by law require the attorney general's approval.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 402.045. LIMITATION. The attorney general may not give legal advice or a written opinion to a person other than a person named in this subchapter.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.