

REFERENCE TITLE: attorney general; representation; recusal

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1705

Introduced by
Senator Wadsack

AN ACT

AMENDING SECTION 41-192, ARIZONA REVISED STATUTES; RELATING TO THE
ATTORNEY GENERAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-192, Arizona Revised Statutes, is amended to
3 read:

4 41-192. Powers and duties of attorney general; restrictions
5 on state agencies as to legal counsel; exceptions;
6 compromise and settlement monies

7 A. The attorney general shall have charge of and direct the
8 department of law, ~~and~~ shall serve as chief legal officer of the state AND
9 SHALL PROTECT THE LEGAL AND CIVIL RIGHTS OF THE PEOPLE OF THE STATE. The
10 attorney general shall:

11 1. Be the legal advisor of the departments of this state and render
12 such legal services as the departments require. IF A DEPARTMENT ACTS IN A
13 MANNER THAT MAY BE CONSIDERED CONTRARY TO THE LEGAL AND CIVIL RIGHTS OF
14 THE PEOPLE, THE ATTORNEY GENERAL SHALL NOT PARTICIPATE IN THE
15 ACTIVITY. IN SUCH CIRCUMSTANCES, THE ATTORNEY GENERAL SHALL DO ALL OF THE
16 FOLLOWING:

17 (a) ADVISE THE DEPARTMENT OF THE PERCEIVED BREACH OR MISCONDUCT AND
18 ANY APPROPRIATE SOLUTIONS.

19 (b) IF THE ATTORNEY GENERAL IS UNABLE TO FIND AN APPROPRIATE
20 SOLUTION, RECUSE HIMSELF FROM REPRESENTING THE DEPARTMENT.

21 (c) REPORT THE PERCEIVED BREACH OR MISCONDUCT TO THE GOVERNOR, THE
22 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

23 2. Establish administrative and operational policies and procedures
24 within ~~his~~ THE department.

25 3. Approve long-range plans for developing departmental programs
26 ~~therein~~, and coordinate the legal services required by other departments
27 of this state or other state agencies.

28 4. Represent school districts and governing boards of school
29 districts in any lawsuit involving a conflict of interest with other
30 county offices.

31 5. Represent political subdivisions, school districts and
32 municipalities in suits to enforce state or federal statutes pertaining to
33 antitrust, restraint of trade or price-fixing activities or conspiracies,
34 if the attorney general notifies in writing the political subdivisions,
35 school districts and municipalities of the attorney general's intention to
36 bring any such action on their behalf. At any time within thirty days
37 after the notification, a political subdivision, school district or
38 municipality, by formal resolution of its governing body, may withdraw the
39 authority of the attorney general to bring the intended action on its
40 behalf.

41 ~~7.~~ 6. Organize the civil rights division within the department of
42 law and administer ~~such~~ THE division pursuant to the powers and duties
43 provided in chapter 9 of this title.

44 ~~8.~~ 7. Compile, publish and distribute to all state agencies,
45 departments, boards, commissions and councils, and to other persons and

government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Subject to chapter 4, article 4 of this title, employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.

4. Compromise or settle any action or claim by or against this state or any department, board or agency of this state. If the compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by the department, board or agency. If ~~the~~ A department or agency is NOT named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

D. Notwithstanding any law to the contrary, except as provided in subsections E and F of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission.
4. The Arizona board of regents.
5. The auditor general.
6. The corporation commissioners and the corporation commission other than the securities division.
7. The office of the governor.

1 8. The constitutional defense council.

2 9. The office of the state treasurer.

3 10. The Arizona commerce authority.

4 11. The water infrastructure finance authority of Arizona.

5 E. If the attorney general determines that he is disqualified from
6 providing judicial or quasi-judicial legal representation or legal
7 services on behalf of any state agency in relation to any matter, the
8 attorney general shall give written notification to the state agency
9 affected. If the agency has received written notification from the
10 attorney general that the attorney general is disqualified from providing
11 judicial or quasi-judicial legal representation or legal services in
12 relation to any particular matter, the state agency is authorized to make
13 expenditures and incur indebtedness to employ attorneys to provide the
14 representation or services.

15 F. If the attorney general and the director of the department of
16 agriculture cannot agree on the final disposition of a pesticide complaint
17 under section 3-368, if the attorney general and the director determine
18 that a conflict of interest exists as to any matter or if the attorney
19 general and the director determine that the attorney general does not have
20 the expertise or attorneys available to handle a matter, the director is
21 authorized to make expenditures and incur indebtedness to employ attorneys
22 to provide representation or services to the department with regard to
23 that matter.

24 ~~6.~~ G. In any action brought by the attorney general pursuant to
25 state or federal statutes pertaining to antitrust, restraint of trade, or
26 price-fixing activities or conspiracies for the recovery of damages by
27 this state or any of its political subdivisions, school districts or
28 municipalities, in addition to the attorney general's other powers and
29 authority, the attorney general on behalf of this state may enter into
30 contracts relating to the investigation and prosecution of such action
31 with any other party plaintiff who has brought a similar action for the
32 recovery of damages and with whom the attorney general finds it
33 advantageous to act jointly or to share common expenses or to cooperate in
34 any manner relative to such action. In any such action, notwithstanding
35 any ~~other laws~~ LAW to the contrary, the attorney general may undertake,
36 among other things, to render legal services as special counsel or to
37 obtain the legal services of special counsel from any department or agency
38 of the United States, of this state or any other state or any department
39 or agency thereof or any county, city, public corporation or public
40 district in this state or in any other state that has brought or intends
41 to bring a similar action for the recovery of damages or its duly
42 authorized legal representatives in such action.

43 ~~6.~~ H. Any department or agency of this state authorized by law to
44 maintain a legal division or incur expenses for legal services from funds
45 derived from sources other than the general revenue of the state, or from

1 any special or trust fund, shall pay from such source of revenue or
 2 special or trust fund into the general fund of ~~the~~ THIS state, to the
 3 extent such funds are available and on a reimbursable basis for warrants
 4 drawn, the amount actually expended by the department of law within
 5 legislative appropriations for such legal division or legal services.

6 ~~H.~~ I. Appropriations made pursuant to subsection ~~G~~ H of this
 7 section ~~shall~~ ARE not ~~be~~ subject to lapsing provisions otherwise provided
 8 by law. Services for departments or agencies to which this subsection and
 9 subsection F of this section ~~are applicable~~ APPLY shall be performed by
 10 special or regular assistants to the attorney general.

11 ~~I.~~ J. Notwithstanding section 35-148, monies received by the
 12 attorney general from charges to state agencies and political subdivisions
 13 for legal services relating to interagency service agreements shall be
 14 deposited, pursuant to sections 35-146 and 35-147, in an attorney general
 15 agency services fund. Monies in the fund are subject to legislative
 16 appropriation and are exempt from the provisions of section 35-190
 17 relating to lapsing of appropriations.

18 ~~J.~~ K. Unless otherwise provided by law, monies received for and
 19 belonging to the state and resulting from compromises and settlements
 20 entered into pursuant to subsection B of this section, excluding
 21 restitution and reimbursement to state agencies for costs or attorney
 22 fees, shall be deposited into the state treasury and credited to the state
 23 general fund pursuant to section 35-142. Monies received for and
 24 belonging to the state and resulting from a compromise or settlement are
 25 not considered custodial, private or quasi-private monies unless
 26 specifically provided by law. On or before January 15, April 15, July 15
 27 and October 15, the attorney general shall file with the governor, with
 28 copies to the director of the department of administration, the president
 29 of the senate, the speaker of the house of representatives, the secretary
 30 of state and the staff director of the joint legislative budget committee,
 31 a full and complete account of the deposits into the state treasury made
 32 pursuant to this subsection in the previous calendar quarter. For the
 33 purposes of this subsection, "restitution" means monies intended to
 34 compensate a specific, identifiable person, including this state, for
 35 economic loss.

36 L. IF THE ATTORNEY GENERAL CONTINUES TO REPRESENT A DEPARTMENT IN
 37 VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS SECTION, THE CONTINUED
 38 REPRESENTATION MAY BE CONSIDERED ETHICAL MISCONDUCT, SUBJECT TO REVIEW AND
 39 DISCIPLINE BY THE APPROPRIATE PROFESSIONAL REGULATORY BOARD.