

CHAPTER 16

ATTORNEY GENERAL

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16.01 Residence, office, and duties of Attorney General.—The Attorney General:

(1) Shall reside at the seat of government and shall keep his or her office in the capitol.

(2) Shall perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his or her office as may from time to time be required of the Attorney General by law or by resolution of the Legislature.

(3) Notwithstanding any other provision of law, shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.

(4) Shall appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state.

(5) Shall appear in and attend to such suits or prosecutions in any other of the courts of this state or in any courts of any other state or of the United States.

(6) Shall have and perform all powers and duties incident or usual to such office.

(7) Shall make and keep in his or her office a record of all his or her official acts and proceedings, containing copies of all official opinions, reports, and correspondence, and also keep and preserve in the office all official letters and communications to him or her and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the state and to the disposition of the Legislature by act or resolution thereof.

(8) May periodically publish a report of his or her official opinions and may prepare and publish an index or consolidated index or indexes of opinions.

History.—s. 2, ch. 2, 1845; ch. 1845, 1871; RS 85; GS 87; RGS 101; CGL 125; s. 7, ch. 22858, 1945; s. 7, ch. 59-1; s. 1, ch. 78-399; s. 1, ch. 79-159; s. 7, ch. 81-259; s. 1, ch. 85-123; s. 45, ch. 95-147.

16.015 Legal services; Department of Legal Affairs, other counsel.—The Department of Legal Affairs shall be responsible for providing all legal services required by any department, unless otherwise provided by law. However, the Attorney General may authorize other counsel where emergency circumstances exist and shall authorize other counsel when professional conflict of interest is present. Each board, however designated, of which the Attorney General is a member may retain legal services in lieu of those provided by the Attorney General and the Department of Legal Affairs.

History.—s. 11, ch. 69-106; s. 2, ch. 77-105.

16.016 Payment of per diem, mileage, and other expense.—Whenever the Department of Legal Affairs is called upon to represent any administrative agency or regulatory board, the agency or regulatory board so represented shall pay the per diem, mileage, and other reasonable expense of the representative of such department.

History.—s. 1, ch. 65-522; ss. 11, 35, ch. 69-106; s. 5, ch. 79-36.

Note.—Former s. 455.07.

16.02 Appointment of person to act in case of disability of Attorney General.—In case of the disability of the Attorney General to perform any official duty devolving on him or her, by reason of interest or otherwise, the Governor or Attorney General of this state may appoint another person to perform such duty in the Attorney General's stead.

History.—s. 3, ch. 2, 1845; RS 85a; GS 88; RGS 102; CGL 126; s. 46, ch. 95-147.

16.061 Initiative petitions.—

(1) The Attorney General shall, within 30 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the pro-

posed ballot title and substance with s. 101.161. The petition may enumerate any specific factual issues which the Attorney General believes would require a judicial determination.

(2) A copy of the petition shall be provided to the Secretary of State and the principal officer of the sponsor.

History.—s. 2, ch. 87-363.

16.07 Fee for defending offender prohibited.—It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts.

History.—s. 6, ch. 2, 1845; RS 89; GS 92; RGS 106; CGL 130.

16.08 Superintendence and direction of state attorneys.—The Attorney General shall exercise a general superintendence and direction over the several state attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the state attorneys, shall give them her or his opinion upon any question of law.

History.—s. 1, ch. 2098, 1877; RS 90; GS 93; RGS 107; CGL 131; s. 48, ch. 95-147.

16.09 Regulations as to the reports of state attorneys.—The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him or her by state attorneys, and they shall comply with the Attorney General's instructions in this respect.

History.—s. 3, ch. 2098, 1877; RS 91; GS 94; RGS 108; CGL 132; s. 49, ch. 95-147.

16.10 Receipt of Supreme Court reports for office. The Clerk of the Supreme Court shall deliver to the Attorney General a copy of each volume, or part of volume, of the decisions of the Supreme Court, which may be in the care or custody of said clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in her or his office at the capitol, and each retiring Attorney General shall take the receipt of her or his successor for the same and file such receipt in the Treasurer's office; provided that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said court.

History.—ch. 3264, 1881; RS 92; GS 95; RGS 109; CGL 133; s. 50, ch. 95-147.

16.101 Supreme Court reporter.—The Attorney General shall be the reporter for the Supreme Court.

History.—Formerly s. 22, Art. IV of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

16.52 Participation in preserving constitutional integrity of state.—

(1) In order to provide for independent action and cooperative participation by the state in a program of concerted action among the states, and independent procedure to oppose any existing or proposed federal legislative encroachments upon constitutional state powers, it is hereby made a duty of the Department of Legal Affairs to make a study of federal legislation—existing and proposed—to determine whether such legislation has resulted, or may result, in objectionable or harmful encroachments upon the constitutional integrity of state governments, and with due regard to this state's full contribution to the national war effort, in

cooperation with the attorneys general of other states, or alone, to pursue that course best calculated to preserve and safeguard the constitutional state powers of the government of this state. It shall furnish to each of the several representatives in the Congress from this state, a written statement giving the reasons for any action being considered, or about to be taken hereunder at the time; and if possible, shall procure the assistance of such representatives therein and therefor.

(2) It shall be the duty of the Department of Legal Affairs of this state to render opinions to the representatives in Congress from this state, on any question arising within the scope of the subject matter of this act.

(3) In performing the duties imposed upon it under the provisions of this section, the Department of Legal Affairs is hereby authorized to employ therefor the services of the Council of State Governments, a national conference organization, or its successors in name or organization, or any other similar organization, in such manner not inconsistent with its powers and duties, as it may deem desirable; provided, that the cost of such employment, if any, shall be paid from the necessary and regular appropriation of the Department of Legal Affairs.

History.—ss. 1, 2, 3, ch. 21679, 1943; ss. 11, 35, ch. 69-106.

116.53 Legal Affairs Revolving Trust Fund.—

(1) There is created in the State Treasury the Legal Affairs Revolving Trust Fund, from which the Legislature may appropriate funds for the purpose of funding investigation, prosecution, and enforcement by the Attorney General of the provisions of the Racketeer Influenced and Corrupt Organization Act, the Florida Deceptive and Unfair Trade Practices Act, the Florida False Claims Act, or state or federal antitrust laws.

(2) Thirty percent of all moneys recovered by the Attorney General on behalf of the state, its agencies, or units of state government, local governments, or persons resident in this state or, alternatively, attorneys' fees and costs, whichever is greater, in any civil action for violation of state or federal antitrust laws shall be deposited in the fund.

(3) All moneys recovered by the Attorney General under s. 68.086(1) in any civil action for violation of the Florida False Claims Act shall be deposited in the fund.

(4) Subject to the provisions of s. 895.09, when the Attorney General files an action pursuant to s. 895.05, funds provided to the Department of Legal Affairs pursuant to s. 895.09(2)(a) or, alternatively, attorneys' fees and costs, whichever is greater, shall be deposited in the fund.

(5)(a) In the case of a forfeiture action pursuant to s. 895.05, the remainder of the moneys recovered shall be distributed as set forth in s. 895.09.

(b) In other actions brought pursuant to the provisions of the Racketeer Influenced and Corrupt Organization Act or pursuant to the state or federal antitrust laws, the remainder of the moneys recovered on behalf of the state, its agencies, or units of state government shall be deposited in the General Revenue Fund; in the case of other governmental units, transferred to the appropriate fund of such government; or in the case of persons, distributed to such persons or for their benefit, as approved by a court of competent jurisdiction.

(6) "Moneys recovered" means damages or penalties or any other monetary payment, including monetary proceeds from property forfeited to the state pursuant to s. 895.05 remaining after satisfaction of any valid claims made pursuant to s. 895.09(1)(a)-(c), which damages, penalties, or other monetary payment is made by any defendant by reason of any decree or settlement in any Racketeer Influenced and Corrupt Organization Act or state or federal antitrust action prosecuted by the Attorney General, but excludes attorneys' fees and costs.

(7) Any moneys remaining in the fund at the end of any fiscal year in excess of 3 times the amount of the combined budgets for the antitrust and racketeering sections of the Attorney General's office for the forthcoming fiscal year shall be transferred to the General Revenue Fund unallocated.

History.—s. 1, ch. 79-301; s. 1, ch. 83-116; s. 2, ch. 84-249; s. 1, ch. 86-277; s. 2, ch. 89-102; ss. 12, 14, ch. 94-316.

Note.—Section 18, ch. 94-316, provides that "[e]xcept as otherwise provided herein, this act shall take effect July 1, 1994, and shall apply to distributions of proceeds relative to the Legal Affairs Revolving Trust Fund occurring on or after the effective date."

16.535 Legal Services Trust Fund.—

(1) There is created in the State Treasury the Legal Services Trust Fund to be used by the Attorney General in providing legal services to agencies on a contractual basis.

(2) State agencies contracting for legal services with the Department of Legal Affairs are authorized to make advance payments on a quarterly basis.

History.—s. 5, ch. 82-196; s. 2, ch. 85-123.

16.54 Florida Crime Prevention Training Institute; revolving trust fund.—

(1) There is created within the Department of Legal Affairs the Florida Crime Prevention Training Institute, which shall be a comprehensive program of crime prevention training courses suitable for, and made available to, any interested person.

(2) The department shall establish the curriculum and admission requirements in such a manner as to give priority to those training programs which it determines to have the greatest potential for preventing crime. The department shall provide administrative support services for the institute. The department shall adopt rules and policies for the administration and operation of the institute and fix admission fees in an amount which, in the aggregate, does not exceed the cost of the program; and it may accept donations or grants of any type for any function or purpose of the institute.

(3) There is established within the Department of Legal Affairs the Florida Crime Prevention Training Institute Revolving Trust Fund to be used exclusively for the purposes of this section.

(4) All moneys, fees, donations, or grants collected by the department on behalf of the institute shall be deposited into the Florida Crime Prevention Training Institute Revolving Trust Fund and shall be applied to cover all costs incurred in establishing and conducting the crime prevention training programs authorized under this section, including, but not limited to, salaries for instructors and costs of materials connected with such programs.

History.—s. 1, ch. 82-89; s. 4, ch. 83-217.

16.55 Crime prevention training.—The department shall develop model crime prevention training materials for the localities. The training material shall provide each county commission and each city commission in the State of Florida with up-to-date information on how to reduce commercial crime exposure through environmental design. Included in the model training materials shall be information on lighting, cash-handling procedures, obstructed vision, traffic flow, counter placement, and staffing. The model training materials shall be completed and distributed no later than July 1988.

History.—s. 53, ch. 87-243.

16.555 Crime Stoppers Trust Fund; rulemaking.—

(1) As used in this section, the term:

(a) "Department" shall mean the Department of Legal Affairs.

(b) "Units of local government" shall mean the various city and county governments of the State.

(c) "Crime Stoppers" shall mean members of the Florida Association of Crime Stoppers, Incorporated, a Florida Corporation.

(2) The department shall have all the powers necessary or appropriate to carry out the purposes and provisions of this act.

(3) The department shall establish a trust fund for the purpose of grant administration to fund Crime Stoppers and their crime fighting programs within the units of a local government of the state.

(4) The department shall make applications for all federal and state or private grants which meet the purposes of advancing Crime Stoppers in the State of Florida. Upon securing such grants, the funds shall be deposited in the "Crime Stoppers Trust Fund." The department shall then be the disbursing authority for distribution of funding to units of local government, upon their application to the department for funding assistance.

(5) The department shall adopt and enforce rules to implement the provisions of this act. Such rules shall include, but shall not be limited to:

(a) Criteria for local governments to apply for funding from the "Crime Stoppers Trust Fund" in order to aid their local law enforcement agency.

(b) The limits of funding to be distributed to local government units based on a pro rata share of grants made available through the "Crime Stoppers Trust Fund."

(c) Provisions for the return of unused funds to be redeposited in the "Crime Stoppers Trust Fund" if for any reason the unit of local government does not use the funds as intended within an agreed upon time.

(d) Provisions for the coordination with appropriate governmental agencies to support and enhance efforts to train the public in crime prevention methods and in personal safety principles, especially for citizens who live in, work at, or frequent locations having high crime rates.

History.—ss. 12, 13, ch. 91-205.

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the provisions of the Florida Anti-Fencing Act;

5. Any violation of the provisions of the Florida Anti-trust Act of 1980, as amended; or

6. Any crime involving, or resulting in, fraud or deceit upon any person;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.

(b) Upon request, cooperate with and assist state attorneys and state and local law enforcement officials in their efforts against organized crimes.

(c) Request and receive from any department, division, board, bureau, commission, or other agency of the state, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

(2) The Attorney General shall appoint a statewide prosecutor from not less than three persons nominated by the judicial nominating commission for the Supreme Court. The statewide prosecutor shall be in charge of the Office of Statewide Prosecution for a term of 4 years to run concurrently with the term of the appointing official. The statewide prosecutor shall be an elector of the state, shall have been a member of The Florida Bar for the preceding 5 years, and shall devote full time to the duties of statewide prosecutor and not engage in the private practice of law. The Attorney General may remove the statewide prosecutor prior to the end of his or her term. A vacancy in the position of statewide prosecutor shall be filled within 60 days. During the period of any vacancy, the Attorney General shall exercise all the powers and perform all the duties of the statewide prosecutor. A person appointed statewide prosecutor is prohibited from running for or accepting appointment to any state office for a period of 2 years following vacation of office. The statewide prosecutor shall on March 1 of each year report in writing to the Governor and the Attorney General on the activities of the office for the preceding year and on the goals and objectives for the next year.

(3) The statewide prosecutor may conduct hearings at any place in the state; summon and examine wit-

nesses; require the production of physical evidence; sign informations, indictments, and other official documents; confer immunity; move the court to reduce the sentence of a person convicted of drug trafficking who provides substantial assistance; attend to and serve as the legal adviser to the statewide grand jury; and exercise such other powers as by law are granted to state attorneys. The statewide prosecutor may designate one or more assistants to exercise any such powers.

(4) It is the intent of the Legislature that in carrying out the duties of this office, the statewide prosecutor shall, whenever feasible, use sworn investigators employed by the Department of Law Enforcement, and may request the assistance, where appropriate, of sworn investigators employed by other law enforcement agencies.

History.—ss. 1, 9, ch. 85-179; s. 1, ch. 90-12; s. 1, ch. 92-108; s. 4, ch. 93-212; s. 51, ch. 95-147; s. 5, ch. 95-427.

16.57 Office of Civil Rights.—There is created in the Department of Legal Affairs an Office of Civil Rights. The office may investigate and initiate actions authorized by s. 760.51. In investigating violations of constitutional rights under s. 760.51, the Attorney General may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence.

History.—s. 5, ch. 91-74.

16.58 Florida Legal Resource Center.—

(1)(a) There is created within the Department of Legal Affairs the Florida Legal Resource Center, hereinafter referred to as the "center."

(b) The resources of the center, with the exception of state-staffed court reporters, shall be equally available to state agencies, multicounty special districts, universities, community and junior colleges, and city and county governments.

(2) The center shall:

(a) Facilitate interagency legal information sharing and communications through the Florida Information Resource Network or the Administrative Management Information Center, whichever is most appropriate. Executive and judicial entities shall cooperate in the identification of legal bodies of information to be made available to government attorneys through state resources. All entities identified as owning a necessary body of information shall take all action necessary to continually provide electronic access to such information to all government entities requiring the information. The Attorney General shall coordinate these activities.

(b) Establish and maintain a statewide research bank. All state agencies, multicounty special districts exclusive of those created by interlocal agreement, universities, and community and junior colleges are encouraged to participate in the submission of memoranda, briefs, and opinions to be deposited in the research bank. The Attorney General shall adopt a procedure for agency submission to the research bank.

(c) Coordinate and assist in the development of statewide inservice continuing legal education training designed specifically for attorneys employed by the state.

(d) Serve as a centralized acquisition entity for discounted or negotiated purchasing of computerized and printed legal information resources.

(e) Serve as a clearinghouse to facilitate the exchange of attorney expertise between agencies.

(f) Develop interagency communications instruments with the goal of tying the state's legal units into a single information network.

(g) Develop, in consultation with the Florida Court Reporters Association, a pilot project of staff or contract court reporters to provide court reporting services to state agencies. Recommendations for the pilot project shall be transmitted to the Governor and the Speaker of the House of Representatives and the President of the Senate prior to January 1, 1994.

(3) On or before January 1 of each year, and beginning January 1, 1994, the center shall prepare and transmit to the Governor and the Legislature a report of center program activities for the preceding fiscal year. This report shall include a report of legal activities within the state, including the usage of the center by state agencies, universities, community and junior colleges, multicounty special districts exclusive of those created by interlocal agreement, and city and county governments; costs and activities of staff attorney services; and costs and activities of private attorneys by agency, as well as cost-saving opportunities. All state agencies, multicounty special districts exclusive of those created by interlocal agreement, universities, and community and junior colleges shall cooperate with the office of the Attorney General in the preparation and compilation of this report.

History.—s. 6, ch. 93-161.

116.59 Medicaid fraud control.—There is created in the Department of Legal Affairs a Medicaid fraud control office. The office may investigate all violations of s. 409.920 and refer to the statewide prosecutor or the appropriate state attorney any violation for criminal prosecution.

History.—s. 2, ch. 94-251.

Note.—

A. Section 7, ch. 94-251, provides that "[t]his act shall take effect July 1, 1994, or upon certification approval by the U.S. Department of Health and Human Services that the Florida Department of Legal Affairs is the recipient agency for Federal Medicaid Fraud Control funds, whichever is later." Certification was approved effective July 1, 1994.

B. Section 1, ch. 94-251, transfers the personnel of the Medicaid Fraud Control Unit of the Auditor General relating to Medicaid provider fraud to the Department of Legal Affairs and provides that "[t]he Department of Legal Affairs shall set the salary and benefits of these positions in accordance with the rules established for the Selected Exempt Service."

16.60 Public records mediation program within the Office of the Attorney General; creation; duties.—

(1) As used in this section, "mediation" means a process whereby a neutral third person, called the mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a formal, nonadversarial process that has the objective of helping the disputing parties reach a mutually acceptable, voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(2) The public records mediation program is created within the Office of the Attorney General.

(3) The Office of the Attorney General shall:

(a) Employ one or more mediators to mediate disputes involving access to public records. A person may not be employed by the department as a mediator unless that person is a member in good standing of The Florida Bar. The Office of the Attorney General may adopt rules of procedure to govern its mediation proceedings.

(b) Recommend to the Legislature needed legislation governing access to public records.

(c) Assist the Department of State in preparing training seminars regarding access to public records.

(4) This section is intended to provide a method for resolving disputes relating to public records, and is intended to be supplemental to, not a substitution for, the other powers given to the Attorney General by law.

(5) The Office of the Attorney General shall report to the President of the Senate and the Speaker of the House of Representatives by January 1, 1997, information regarding the public records mediation program, including, but not limited to: the number and source of inquiries regarding public records, the number and types of disputes relative to electronically stored public records, the number of disputes mediated, the number of disputes resolved, and any legislation necessary to improve the mediation program or access to public records generally.

History.—s. 4, ch. 95-296.