

EXECUTIVE LAW, ARTICLE 5 (§§60-74). DEPARTMENT OF LAW

Executive Law §63. General duties.

The attorney-general shall:

1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state, but this section shall not apply to any of the military department bureaus or military offices of the state. No action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality of the state, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant.

2. Whenever required by the governor, attend in person, or by one of his deputies, any term of the supreme court or appear before the grand jury thereof for the purpose of managing and conducting in such court or before such jury criminal actions or proceedings as shall be specified in such requirement; in which case the attorney-general or his deputy so attending shall exercise all the powers and perform all the duties in respect of such actions or proceedings, which the district attorney would otherwise be authorized or required to exercise or perform; and in any of such actions or proceedings the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general so attending. In all such cases all expenses incurred by the attorney-general, including the salary or other compensation of all deputies employed, shall be a county charge.

3. Upon request of the governor, comptroller, secretary of state, commissioner of transportation, superintendent of financial services, commissioner of taxation and finance, commissioner of motor vehicles, or the state inspector general, or the head of any other department, authority, division or agency of the state, investigate the alleged commission of any indictable offense or offenses in violation of the law which the officer making the request is especially required to execute or in relation to any matters connected with such department, and to prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury.

4. Cause all persons indicted for corrupting or attempting to corrupt any member or member-elect of the legislature, or the commissioner of general services, to be brought to trial.

5. When required by the comptroller or the superintendent of public works, prepare proper drafts for contracts, obligations and other instruments for the use of the state.

6. Upon receipt thereof, pay into the treasury all moneys received by him for debts due or penalties forfeited to the people of the state.

7. He may, on behalf of the state, agree upon a case containing a statement of the facts and submit a controversy for decision to a court of record which would have jurisdiction of an action brought on the same case. He may agree that a referee, to be appointed in an action to which the state is a party, shall receive such compensation at such rate per day as the court in the order of reference may specify. He may with the approval of the governor retain counsel to recover moneys or property belonging to the state, or to the possession of which the state is entitled, upon an agreement that such counsel shall receive reasonable compensation, to be fixed by the attorney-general, out of the property recovered, and not otherwise.

8. Whenever in his judgment the public interest requires it, the attorney-general may, with the approval of the governor, and when directed by the governor, shall, inquire into matters concerning the public peace, public safety and public justice. For such purpose he may, in his discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he deems necessary, determine their duties and, with the approval of the governor, fix their compensation. All appointments made pursuant to this subdivision shall be immediately reported to the governor, and shall not be reported to any other state officer or department. Payments of salaries and compensation of officers and employees and of the expenses of the inquiry shall be made out of funds provided by the legislature for such purposes, which shall be deposited in a bank or trust company in the names of the governor and the attorney-general, payable only on the draft or check of the attorney-general, countersigned by the governor, and such disbursements shall be subject to no audit except by the governor and the attorney-general. The attorney-general, his deputy, or other officer, designated by him, is empowered to subpoena witnesses, compel their attendance, examine them under oath before himself or a magistrate and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered so to do by the officer conducting such inquiry, he shall be guilty of a misdemeanor. It shall be the duty of all public officers, their deputies, assistants and subordinates, clerks and employees, and all other persons, to render and furnish to the attorney-general, his deputy or other designated officer, when requested, all information and assistance in their possession and within their power. Each deputy or other officer appointed or designated to conduct such inquiry shall make a weekly report in detail to the attorney-general, in form to be approved by the governor and the attorney-general, which report shall be in duplicate, one copy of which shall be forthwith, upon its receipt by the attorney-general, transmitted by him to the governor. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the governor or the attorney-general the name of any witness examined or

any information obtained upon such inquiry, except as directed by the governor or the attorney-general, shall be guilty of a misdemeanor.

9. Bring and prosecute or defend upon request of the industrial commissioner or the state division of human rights, any civil action or proceeding, the institution or defense of which in his judgment is necessary for effective enforcement of the laws of this state against discrimination by reason of age, race, creed, color or national origin, or for enforcement of any order or determination of such commissioner or division made pursuant to such laws.

10. Prosecute every person charged with the commission of a criminal offense in violation of any of the laws of this state against discrimination because of race, creed, color, or national origin, in any case where in his judgment, because of the extent of the offense, such prosecution cannot be effectively carried on by the district attorney of the county wherein the offense or a portion thereof is alleged to have been committed, or where in his judgment the district attorney has erroneously failed or refused to prosecute. In all such proceedings, the attorney-general may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

11. Prosecute and defend all actions and proceedings in connection with safeguarding and enforcing the state's remainder interest in any trust which meets the requirements of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law.

12. Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Notwithstanding any law to the contrary, all monies recovered or obtained under this subdivision by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law. In connection with any such application, the attorney general is authorized to take proof and make determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Such

authorization shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this section.

13. Prosecute any person for perjury committed during the course of any investigation conducted by the attorney-general pursuant to statute. In all such proceedings, the attorney-general may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties necessary or required to be exercised or performed in prosecuting any such person for such offense.

15. In any case where the attorney general has authority to institute a civil action or proceeding in connection with the enforcement of a law of this state, in lieu thereof he may accept an assurance of discontinuance of any act or practice in violation of such law from any person engaged or who has engaged in such act or practice. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the reasonable costs and disbursements incurred by the attorney general during the course of his investigation. Evidence of a violation of such assurance shall constitute prima facie proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the attorney general.

16. (a) Notwithstanding any other law to the contrary, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, any claim or cause of action, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, a state agency or a state official or employee acting in their official capacity shall not have the authority to include or agree to include in such resolution any term or condition that would provide the state agency, official, or employee, their agent or designee, the settling party, or any third party with control or discretion over how any moneys to be paid by the settling party would be used, spent, or allocated.

(b) Paragraph (a) of this subdivision shall not apply to any provision in the resolution of a claim or cause of action providing (1) moneys to be distributed to the federal government, to a local government, or to any holder of a bond or other debt instrument issued by the state, any public authority, or any public benefit corporation; (2) moneys to be distributed solely or exclusively as a payment of damages or restitution to individuals or entities that were specifically injured or harmed by the defendant's or settling party's conduct and that are identified in, or can be identified by the terms of, the relevant judgment, stipulation, decree, agreement to settle, assurance of discontinuance, or relevant instrument resolving the claim or cause of action; (3) moneys recovered or obtained by the attorney general where application of paragraph (a) of this subdivision is prohibited by federal law, rule, or regulation, or would result in the reduction or loss of federal funds or eligibility for federal benefits pursuant to federal law, rule, or regulation; (4) moneys recovered or obtained by or on behalf of a public authority, a public benefit corporation, the department of taxation and finance, the workers' compensation board, the New York state higher education services corporation, the tobacco settlement financing corporation, a state or local retirement system, an employee health benefit program administered by the New York state department of civil service, the Title IV-D child support fund, the lottery prize fund, the abandoned property fund, or an endowment of the state university of New York or any unit thereof or any state agency, provided that all of the

moneys received or recovered are immediately transferred to the relevant public authority, public benefit corporation, department, fund, program, or endowment; (5) moneys to be refunded to an individual or entity as (i) an overpayment of a tax, fine, penalty, fee, insurance premium, loan payment, charge or surcharge; (ii) a return of seized assets; or (iii) a payment made in error; and (6) moneys to be used to prevent, abate, restore, mitigate or control any identifiable instance of prior or ongoing water, land or air pollution.

(c) Where an agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or other legal instrument resolves (1) any claim or any cause of action asserted by a state agency or a state official or employee acting in their official capacity and (2) any claim or cause of action asserted by one or more foreign jurisdictions or third parties, paragraph (a) of this subdivision shall only apply to the resolution of the claim or cause of action asserted by the state agency, official, or employee.

Executive Law §63-A. Action by attorney-general for forfeiture of public office.

The attorney-general may maintain an action, upon his own information or upon the complaint of a private person, against a public officer, civil or military, who has done or suffered an act which by law works a forfeiture of his office.

Executive Law §63-B. Action by attorney-general against usurper of office or franchise.

1. The attorney-general may maintain an action, upon his own information or upon the complaint of a private person, against a person who usurps, intrudes into, or unlawfully holds or exercises within the state a franchise or a public office, civil or military, or an office in a domestic corporation. The attorney-general may set forth in the complaint, in his discretion, the name of the person rightfully entitled to the office and facts showing his right thereto. Judgment may be rendered upon the right of the defendant and of the party so alleged to be entitled, or only upon the right of the defendant, as justice requires. Where two or more persons claim to be entitled to the same office or franchise, the attorney-general may bring the action against all to determine their respective rights thereto.

2. If the complaint sets forth the name of the person rightfully entitled to the office and the facts showing his right thereto, a provisional order to arrest the defendant may be granted by the court if the defendant by means of his usurpation or intrusion has received any fees or emoluments belonging to the office.

3. Where a defendant is adjudged to be guilty of usurping or intruding into or unlawfully holding or exercising an office, franchise or privilege, final judgment shall be rendered, ousting and excluding him therefrom, and in favor of the state or the relator, as the case requires, for the costs of the action. As a part of the final judgment in an action for usurping or intruding into or unlawfully holding or exercising an office, franchise or privilege, the court, in its discretion, also may award that the defendant, or, where there are two or more defendants, that one or

more of them, pay to the state a fine not exceeding two thousand dollars. The judgment for the fine may be docketed and execution may be issued thereupon in favor of the state, as if it had been rendered in an action to recover the fine.

4. Where final judgment has been rendered upon the right and in favor of the person alleged in the complaint to be entitled to an office, he may recover, by action against the defendant, the damages which he has sustained in consequence of the defendant's usurpation, intrusion into, unlawful holding or exercise of the office.

Executive Law §63-C. Action by the people for illegal receipt or disposition of public funds or other property.

1. Where any money, funds, credits, or other property, held or owned by the state, or held or owned officially or otherwise for or in behalf of a governmental or other public interest, by a domestic, municipal, or other public corporation, or by a board, officer, custodian, agency, or agent of the state, or of a city, county, town, village or other division, subdivision, department, or portion of the state, has heretofore been, or is hereafter, without right obtained, received, converted, or disposed of, an action to recover the same, or to recover damages or other compensation for so obtaining, receiving, paying, converting, or disposing of the same, or both, may be maintained by the state in any court of the state, or before any court or tribunal of the United States, or of any other state, or of any territory of the United States, or of any foreign country, having jurisdiction thereof, although a right of action for the same cause exists by law in some other public authority, and whether an action therefor in favor of the latter is or is not pending when the action in favor of the state is commenced. The attorney-general shall commence an action, suit or other judicial proceeding, as prescribed in this section, whenever he deems it for the interests of the state so to do; or whenever he is so directed, in writing, by the governor.

2. Upon the commencement by the state of any action, suit or other judicial proceeding, as prescribed in this section, the entire cause of action, including the title to the money, funds, credits, or other property, with respect to which the suit or action is brought, and to the damages or other compensation recoverable for the obtaining, receipt, payment, conversion or disposition thereof, if not previously so vested, is transferred to and becomes absolutely vested in the state.

3. Any court of the state in which an action is brought by the state, as prescribed in this section, may direct, by the final judgment therein, or by a subsequent order, that any money, funds, damages, credits, or other property, recovered by or awarded to the plaintiff therein, which, if that action had not been brought, would not have vested in the state, be disposed of, as justice requires, in such a manner as to reinstate the lawful custody thereof, or to apply the same or the proceeds thereof to the objects and purposes for which they were authorized to be raised or procured; after paying into the state treasury out of the proceeds of the recovery all expenses incurred by the state in the action.

4. Any corporation, board, officer, custodian, agency, or agent, in behalf of any city, county, town, village, or other division, subdivision, department, or portion of the state, which was not a party to an action, brought as prescribed in this section, and which claims to be entitled to the custody or disposition of any of the money, funds, damages, credits, or other property, recovered by, or awarded to the plaintiff, by the final judgment in the action, or any of the proceeds thereof, and not disposed of as prescribed in subdivision three, may bring a special proceeding against the attorney-general at any time after the actual collection of the money and its payment into the state treasury, or the actual receipt of the property by the state, in the supreme court, county of Albany, seeking disposition of the money or other property.

5. Notwithstanding any other law to the contrary, including without limitation; section sixty-four of this article; the education law; the retirement and social security law and the administrative code of the city of New York, the portion of all money received by the attorney general in connection with the settlement of an action arising out of the management, operation, investments of or otherwise in connection with a retirement or other fund established pursuant to the education law, the retirement and social security law or the administrative code of the city of New York attributable to the harm suffered by such fund shall be deposited into such fund.

Executive Law §63-D. Attorney-general; death penalty prosecutions.

1. The attorney-general shall, whenever required by the governor or his designee after a request of the governor by a district attorney, direct that the resources and personnel of the department of law be used to provide assistance relating to the prosecution or appeal of any case where the defendant may be subject to the penalty of death. Such assistance shall include the use of any department resource or services, which the attorney-general deems proper, and may be performed or provided by the attorney-general or any employee of the department of law. Assistance pursuant to this section may only be provided with respect to proceedings where: (i) the defendant is represented by counsel appointed pursuant to the provisions of section thirty-five-b of the judiciary law or the defendant is receiving expert, investigative or other services pursuant to such section, or (ii) the defendant, through counsel retained privately by the defendant through his or her own means or through the means of a person other than the defendant, or through representation by pro bono counsel, is able to marshal substantially greater legal and investigatory resources than those reasonably available to the district attorney.

2. A request of the governor made by a district attorney for assistance in a death penalty case shall be accompanied by a certificate of need stating that as a result of cases where the defendant may be subject to the penalty of death additional resources or personnel are needed to supplement the district attorney's staff and available resources in order to fulfill such district attorney's responsibilities.

Executive Law §65. Register.

The attorney-general shall keep a register of all actions and proceedings prosecuted or defended by him, and of all proceedings in relation thereto, and shall deliver the same to his successor.

Executive Law §71. Attorney-general authorized to appear in cases involving the constitutionality of an act of the legislature, or a rule or regulation adopted pursuant thereto.

1. Whenever the constitutionality of a statute, or a rule or regulation adopted pursuant thereto is brought into question upon the trial, hearing or appeal of any action or proceeding, civil or criminal, in any court of record of original or appellate jurisdiction, and proof of the notice of such constitutional challenge, as required by paragraph one of subdivision (b) of section one thousand twelve of the civil practice law and rules, has not been filed, the court or justice before whom such action or proceeding is pending, shall make an order, directing the party desiring to raise such question, to serve notice thereof on the attorney-general, and providing that **the attorney-general be permitted to appear at any such trial or hearing in support of the constitutionality of such statute, or rule or regulation adopted pursuant thereto.** The court or justice before whom any such action or proceeding is pending may also make such order upon the application of any party thereto, and the court shall make such order in any such action or proceeding upon motion of the attorney-general. When such order has been made in any manner mentioned in this section and notice pursuant to such order has been given, the attorney-general shall be permitted to appear in such action or proceeding in support of the constitutionality of such statute, or a rule or regulation adopted pursuant thereto.

2. In the event the constitutionality of a statute, or rule or regulation adopted pursuant thereto is brought into question and the party questioning such constitutionality, or any other party to the action or proceeding serves the attorney-general pursuant to paragraph one of subdivision (b) of section one thousand twelve of the civil practice law and rules, proof of such service upon the attorney-general shall be accepted by the court in satisfaction of the provisions of subdivision one of this section.

3. The court having jurisdiction in an action or proceeding in which the constitutionality of a statute, rule or regulation is challenged, shall not consider any challenge to the constitutionality of such statute, rule or regulation unless proof of service of the notice required by this section or required by subdivision (b) of section one thousand twelve of the civil practice law and rules is filed with such court.

Referred-to CPLR provision –

CPLR §1012. ...notice to attorney-general...

(b) Notice to attorney-general..., where constitutionality in issue.

1. When the constitutionality of a statute of the state, or a rule and regulation adopted pursuant thereto is involved in an action to which the state is not a party, the attorney-general, shall be notified and permitted to intervene in support of its constitutionality.

3. The court having jurisdiction in an action or proceeding in which the constitutionality of a state statute, local law, ordinance, rule or regulation is challenged shall not consider any challenge to the constitutionality of such state statute, local law, ordinance, rule or regulation unless proof of service of the notice required by this subdivision is filed with such court.