The state attorney general's core function – his job #1 –
is to ensure that the state and its public officers comply with the New York State Constitution and that laws promulgated are in conformity therewith.
In the absence of scholarship on the subject, here's a little informal analysis –

The state Constitution references the attorney general and his function in several separate articles.

Article V entitled "Officers and Civil Departments" joins the attorney general with the comptroller, both in its §1 and §4 – the latter section identifying, by its first sentence:

> "The head of the department of audit and control shall be the comptroller and of the department of law, the attorney general."

As for §1, it states that payment of public monies, except upon:

> "audit by the comptroller, shall be void and may be restrained upon the suit of any taxpayer with the consent of the supreme court in appellate division on notice to the attorney-general."

A similar wording appears in Article XIV entitled "Conservation", whose concluding §5 states:

> "A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen."

The attorney general's own mandatory litigation duties appear in Article I entitled "Bill of Rights", whose §6 states:

> "…any public officer who, upon being called before a grand jury to testify concerning the conduct of his or her present office or of any public office held by him or her within five years prior to such grand jury call to testify, or the performance of his or her official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his or her present office by the appropriate authority or shall forfeit his or her present office at the suit of the attorney-general.
>
> The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law. No person shall be deprived of life, liberty or property without due process of law."

Finally, Article XIX entitled "Amendments to Constitution" is also mandatory, requiring that all constitutional amendments be referred to the attorney general so that he can "render an opinion in

writing…[as to its] effect…upon other provisions of the constitution."

It is left to statutes to give further definition to the attorney general's duties.

Executive Law, Article V is entitled "Department of Law" and its §63, entitled "General duties" pertain to those of the attorney general. Such "General duties" do not include a "knee jerk" defense of the state or its public officers when sued. Rather, the very first section of §63 explicitly states the attorney general shall "Prosecute and defend all actions and proceedings in which the state is interested… in order to protect the interest of the state". In other words, the attorney general's litigation posture is contingent on "the interest of the state". Thus, when citizens turn to the attorney general with evidence that a public officer is violating the state constitution and statutes and rules or that given statutes and rules are violative of the state constitution, the attorney general's duty, unless he disagrees that the evidence establishes violations, is to bring suit – or, if the citizen has brought suit, to assume or join in its prosecution. And, of course, under no circumstances can the attorney general do what lawyers are forbidden to do – engage in fraud, deceit and misrepresentation – to defend, in the absence of a legitimate defense. Where he has no legitimate defense – indeed, where he has no "merits" defense to evidence of unconstitutionality and unlawfulness -- his duty is not to defend, but to prosecute.

Executive Law §63 confers broad powers on the attorney general for protecting the public from public officers who have corrupted their office – for which no referral from the governor or any other public officer is required. For example, Executive Law §63-A entitled "Action by attorney-general for forfeiture of public office" reads:

> "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."

Likewise, no referral is necessary for protecting the public's money. Executive Law §63-C, entitled "Action by the people for illegal receipt or disposition of public funds or other property", expressly states "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".

This affirmative role of the attorney general to protect public funds is further reinforced by two separate articles of the State Finance Law. The first of these, Article 7-A, entitled "Citizen-Taxpayer Actions", empowering any citizen-taxpayer to bring suit to prevent "illegal or unconstitutional disbursement of state funds" by a state officer or employee, expressly contemplates that the attorney general will either be the plaintiff or join "on behalf of the people of the state". The second, Article 13, is the "New York False Claims Act", empowering the attorney general to bring suit against non-governmental parties procuring public monies by fraud and unlawful conduct.

And just as there is no statute requiring the attorney general to provide a "knee jerk" defense to public officers whose unconstitutional and unlawful conduct cannot be defended consistent with the "interest of the state", so no statute or rule mandates that the attorney general defend a palpably unconstitutional statute or rule or regulation adopted pursuant thereto. Rather, they require that in cases in which the state is not a party that at any stage raise a constitutional challenge, the attorney general be given notice so as to "be permitted to appear…in support of constitutionality" (Executive Law §71; CPLR §1012(b)). In other words, unless he has an argument for constitutionality, he has

no duty to appear in the case.

Public Officers Law §17 entitled "Defense and indemnification of state officers and employees" identifies that where a "civil action or proceeding is brought by or on behalf of the state" – for example, by the attorney general – there is no duty to defend the sued public officer or employee. Then, too, in cases where a public officer of employee is entitled to representation by the attorney general, the attorney general must determine whether, based on "investigation and review of the facts and circumstances of the case", such would be "inappropriate" – entitling the sued public officer or employee to "representation by private counsel of his choice.", paid for by the state.