

# Office of Elected Attorney General

Final Report

General Assembly of the Commonwealth of Pennsylvania  
JOINT STATE GOVERNMENT COMMISSION  
Harrisburg, Pennsylvania  
September 1, 1978

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The Joint State Government Commission was created by Act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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# JOINT STATE GOVERNMENT COMMISSION, 1977-1978

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John Stauffer, *Vice Chairman*  
K. Leroy Irvis, *Treasurer*

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# Office of Elected Attorney General

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## TASK FORCE

### Senate Members

Michael A. O'Pake, <i>Chairman</i>	George W. Gekas
W. Louis Coppersmith	Henry G. Hager
R. Budd Dwyer	James R. Kelley

### House Members

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## ADVISORY COMMITTEE

### Former Attorneys General Invited to Participate

Honorable Harrington Adams*	Honorable Israel Packel
Honorable Anne X. Alpern*	Honorable William C. Sennett*
Honorable J. Shane Creamer*	Honorable Fred Speaker
Honorable Edward Friedman	Honorable Robert E. Woodside

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Harold Cramer, Esquire, <i>Chairman</i>	Honorable Robert L. Jacobs
Honorable Alexander F. Barbieri	Professor Arthur A. Murphy
Honorable Kenneth G. Biehn	Dean John E. Murray Jr.
Honorable James S. Bowman	Professor W. Edward Sell
Professor Joy Conti	F. Lee Shipman, Esquire
Professor Donald W. Dowd	Professor Ralph S. Spritzer
Professor Joseph D. Harbaugh	Honorable Leroy S. Zimmerman

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\*Did not participate.



**GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA  
JOINT STATE GOVERNMENT COMMISSION**

**ROOM 450 - CAPITOL BUILDING  
HARRISBURG 17120**

September 1, 1978

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this final report of the Task Force on Office of Elected Attorney General, under the able leadership of Senator Michael A. O'Pake.

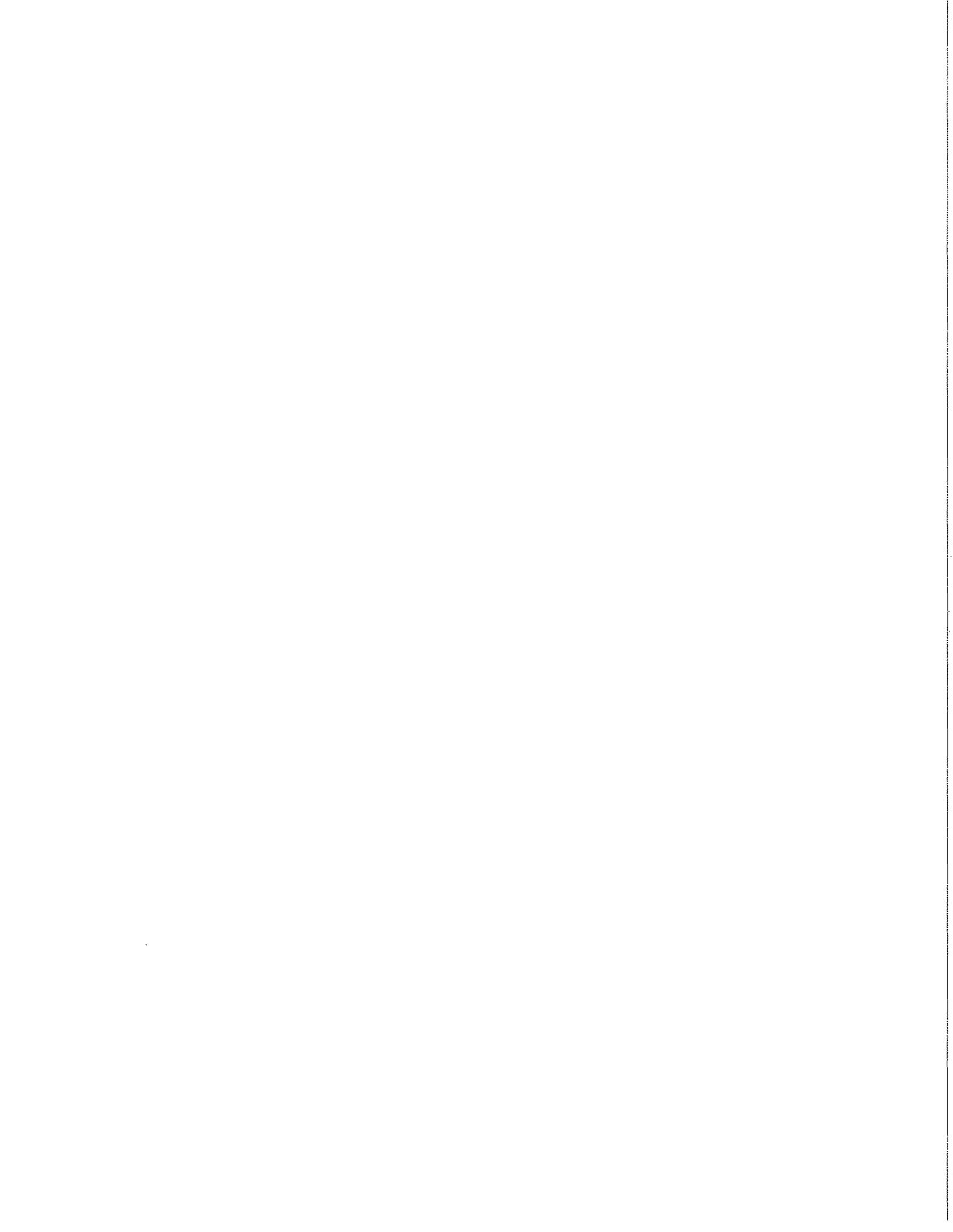
Submitted in accordance with the requirement of 1977 Senate Resolution No. 61, the task force recommendations implement a constitutional amendment adopted on May 16, 1978. The proposed legislation establishes the powers and duties of the elected Attorney General and allocates the responsibility for all legal services to the Commonwealth's executive department.

The Commission acknowledges with appreciation the dedicated work of the task force and distinguished advisory committee as well as the useful information and suggestions provided by State and local officials, organizations and citizens.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fred J. Shupnik".

Fred J. Shupnik  
Chairman



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## Implementing the Constitutional Amendment

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The electorate of the Commonwealth on May 16, 1978 overwhelmingly approved a constitutional amendment creating the office of elected Attorney General to replace the officer appointed by the Governor under constitutional authority since 1874.

The constitutional amendment added Section 4.1 to Article IV, with conforming amendments to Sections 5, 6, 8 and 17 of that article.<sup>1</sup> Section 4.1 provides:

An Attorney General shall be chosen by the qualified electors of the Commonwealth on the day the general election is held for the Auditor General and State Treasurer; he shall hold his office during four years from the third Tuesday of January next ensuing his election and shall not be eligible to serve continuously for more than two successive terms; he shall be the chief law officer of the Commonwealth and shall exercise such powers and perform such duties as may be imposed by law.

The additions to Sections 5, 6, 8 and 17 of Article IV extend to the elected Attorney General the same qualifications and disqualifications for office and the procedures in contested elections as those applicable to Governor and Lieutenant Governor. As a result, eligibility for the

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1. The joint resolutions proposing the constitutional amendment had been passed in two consecutive sessions of the General Assembly as required by Article XI of the Constitution: 1976 Resolution No. 3 (Senate Bill 1273) and 1977 Resolution No. 4 (House Bill 84).

office of elected Attorney General requires attainment of age 30 and Pennsylvania residency for seven years preceding election. The holding of other public office is prohibited. A requirement specific to the elected Attorney General is membership of the bar of the Pennsylvania Supreme Court.

The joint resolution initiating the constitutional amendment expressly provided that "Upon approval of this amendment by the electors, there shall be a vacancy in the office of Attorney General. . . ." Anticipating the problems that might occur in the interim between approval of the amendment in May 1978 and January 1981, when the first elected Attorney General would assume office, as well as contemplating reappraisal of the functions of the office, the Senate on December 12, 1977 adopted a resolution directing the Joint State Government Commission to appoint a task force to study all questions arising from voter approval of an elected Attorney General. Senate Resolution No. 61 authorized the appointment of an advisory committee of outstanding citizens and specified that all former Attorneys General be invited to serve. The Department of Justice was called upon to cooperate with the task force in its review of existing functions and procedures. The advisors appointed included representatives of the judiciary, the Pennsylvania Bar Association, the Commonwealth's law schools and the district attorneys; four former Attorneys General actively participated. The resolution directed:

RESOLVED, That the task force shall issue a preliminary report to the General Assembly by March 1, 1978, which report shall include such recommended legislation as the task force deems necessary to provide for the selection and functions of Attorneys General during the interim; and be it further

RESOLVED, That a final report including recommended legislation for the permanent organization following the first election of the Attorney General shall be submitted by September 1, 1978. . . .

The task force, chaired by Senator Michael A. O'Pake, and advisory committee initiated their work at a meeting held February 8, 1978 and issued a preliminary report containing proposed legislation on March 1. The report concluded:

. . . prior to the May 1978 primary election it would be impractical, if not misleading to the electorate,

to attempt a statutory implementation of the powers and duties to be assigned to an elected Attorney General. Nevertheless . . . the necessity of assuring continuance of the functions and duties of the Department of Justice requires clarification in the proposed legislation: It is recommended that the interim Attorneys General shall continue to exercise all the powers and perform all the duties provided by existing law.

The task force resolved to address the complex issue of the assignment of functions of the elected Attorney General after the electorate has passed upon the constitutional proposition.<sup>2</sup>

This recommendation and provisions for the selection of interim Attorneys General were incorporated into Senate Bill 1323, Printer's No. 1652, enacted on April 18 as 1978 Act No. 25.

Following voter approval of the constitutional amendment, Harold Cramer, Esquire, chairman of the advisory committee, assigned each advisor and task force member to a specific area of emphasis. After thorough review of reports on these subject areas, the advisory committee submitted recommendations to the task force on June 28. These were prepared in draft bill form and circulated among all known interested citizens and organizations. During the week of July 17, public hearings reviewing the draft legislation were held in Pittsburgh, Wilkes-Barre and Philadelphia. On August 1, the task force revised the draft in light of the testimony and other communications received.<sup>3</sup>

The recommendations in this report reflect intensive work by the advisory committee, with the invaluable assistance of former Attorney General Robert P. Kane and Solicitor General Vincent X. Yakowicz; the Interim Acting Attorney General Gerald Gornish along with his staff, particularly Deputy Attorneys General Conrad C. M. Arensberg, J. Justin Blewitt and J. Andrew Smyser; and former Counsel to the State Treasurer, James Marsh.

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2. Joint State Government Commission, Office of Elected Attorney General: Preliminary Report, March 1, 1978, pp. 9-10.

3. Participants are listed in the Appendix, p. 53.

## Task Force Recommendations: Proposed Legislation

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At the outset of their deliberations, the task force and advisory committee reviewed summaries of the activities, powers and duties of the Attorneys General elected in the 42 other states.<sup>4</sup> Also reviewed were all current Pennsylvania statutes which place specific duties upon the Attorney General as well as relevant judicial decisions interpreting the statutes or discussing the functions of the office.

Underlying the legislative recommendations of the task force are five general concepts on which there was substantial consensus:

1. Legislation enacted by the General Assembly is the exclusive source of the powers and duties of the elected Attorney General pursuant to Article IV, Section 4.1, which provides in part that the Attorney General ". . . shall be the chief law officer of the Commonwealth and shall exercise such powers and perform such duties as may be imposed by law."<sup>5</sup>

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4. Particularly helpful assistance was provided by the Attorney General of Illinois whose first assistant, Herbert L. Caplan, appeared at the Pittsburgh public hearing to acquaint the task force with the practices of the office in that state.

5. The single exception to this conclusion is the constitutional directive in Article IV, Section 9(b), which provides in part that "The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor. . . ."

2. Each of the present statutorily created duties of the Department of Justice should be assigned to the elected Attorney General or transferred to another administrative office in the Commonwealth's executive department. Under the appointed Attorney General, all attorneys furnishing legal services to the executive department, including the independent administrative agencies, are appointed by the Attorney General with the approval of the Governor, pursuant to Section 906 of The Administrative Code of 1929.<sup>6</sup> Many of these attorneys in effect have been assigned "permanently" to a department or agency and, during the course of this service, have developed considerable expertise in a specialized subject of law.

3. The assignment of duties to the elected Attorney General should assure independent legal review of the implementation of the statutory policies of the Commonwealth. This policy reflects the apparent constitutional mandate to secure through an elected Attorney General--functioning as "the chief law officer of the Commonwealth"--a necessary check and balance to the activities of the executive department which require legal review.

4. The elected Attorney General must serve as the independent chief law-enforcement officer to investigate and, where appropriate, prosecute criminal charges of wrongdoing by State officials and employees and by persons engaged in widespread organized corruption. The delicate balance between providing a vigorous statewide chief law-enforcement officer while not impinging upon the jurisdiction and duties of the constitutionally created office of county-elected district attorney led to careful consideration of the scope and implementation of the criminal jurisdiction of the elected Attorney General.

5. The elected Attorney General is not to function as a policymaker. Instead, the Attorney General's role is intended to encompass only the traditional role of lawyers in society:

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6. Act of April 9, 1929, P.L. 177, No. 175. An exception is the independent counsel to the Department of Auditor General, established by the amendatory act of December 17, 1970, P.L. 935, No. 292, adding Sections 1002 and 1003, and counsel appointed by the Public Utility Commission under the amendatory act of October 7, 1976, P.L. 1075, No. 216, since codified as Section 306 of the Public Utility Code, 66 Pa.C.S.

. . . it is asserted that the primary social responsibility of a lawyer is to provide guidance to persons to enable them to comply with the law or to achieve their desired goals in a lawful manner. As society and its legal system grow more complex, this task becomes ever more demanding. . . . To the extent that the lawyer injects his own views on the merits of the matters he must handle, he lessens his professional attitude and effectiveness. Such intrusions of conscience must be limited only to those matters of deepest significance to the individual.<sup>7</sup>

### COMMONWEALTH LEGAL SERVICES

Bearing in mind the foregoing concepts, it is apparent that the proposed legislation must not only specifically deal with the powers and duties of the Attorney General but also provide for the necessary executive department legal services--hence its short title, Commonwealth Attorneys Act. In the criminal law area, the legislation defines the relationships between the Attorney General as the State's chief law-enforcement officer and the elected district attorneys at the local (county) level.

#### Legal Advice and Civil Matters

All legal services to be rendered to executive-department agencies are statutorily assigned in the proposed legislation to the Office of Attorney General or to the supervision and jurisdiction of a General Counsel or, in the case of one of 15 named agencies defined in Section 102, p. 20, as "independent agencies," a chief counsel.<sup>8</sup> The Governor appoints the General Counsel without senatorial review to serve at his pleasure while the independent agencies are authorized to appoint their own counsel. The latter are classified as "independent" because they are at present

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7. Garrett, The Social Responsibility of Lawyers in Their Professional Capacity, 30 U. Miami L. Rev. 889, 890 (1976).

8. The Office of Attorney General is also included since it is constitutionally created as "independent." All section references, unless otherwise indicated, are to the legislation presented in the next chapter with selected source notes.

constitutionally or statutorily so designated. See Section 201 of The Administrative Code of 1929. The agencies included appear to have varying degrees of need or rationale for independence, but review of this need--a legislative policy determination--was not undertaken by the task force and advisory committee since it was considered outside the scope of their authority.<sup>9</sup>

Advice--The proposed legislation places initial responsibility for "in-house" or "on-going" legal advice with the attorneys serving the executive departments or independent agencies who are selected by and responsible to either the General Counsel or to the agencies. See Sections 301 and 402, pp. 33 and 36.

However, upon the written request of a department or independent agency, the Attorney General has the responsibility to review such advice and issue legally binding opinions (Section 204(a), p. 24). This power to render opinions binding upon the executive and independent agencies is circumscribed by various statutory cautions. As noted above, opinions may only be rendered upon request. Furthermore, the provision reiterates the long-standing duty to "uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction." The foregoing is intended to incorporate the concept strongly presented in Hetherington v. McHale, 10 Pa. Commonwealth Ct. 501, 508-511 (1973); reversed, 458 Pa. 479 (1974) (issue not reached, see at 483, fn. 3). In Hetherington, President Judge James S. Bowman, writing for a unanimous court, said:

Since the Attorney General is a member of the executive branch of government, it would be inconsistent with Article I, Section 12, and the doctrine of separation of powers to permit the suspension of

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9. Similarly, other agencies which may have "independent" status pursuant to statutes other than The Administrative Code of 1929, e.g., Pennsylvania Board of Probation and Parole--see 1941, August 6, P.L. 861, No. 323, § 2--were not included for this purpose. The Joint State Government Commission has been directed by 1978 House Concurrent Resolution No. 176, adopted June 19, 1978, to organize a separate task force to undertake a comprehensive review of all executive departments and independent agencies "directed to the modernization and codification of the laws affecting the powers, duties, functions and operations of the government of Pennsylvania."

a statute by way of a unilateral action by the Attorney General predicated upon his opinion of unconstitutionality. If the Attorney General had this power, he would seriously evade and encroach upon this area of judicial responsibility and possess an effective veto over legislation greater than that enjoyed by the Governor, which is clearly evident under the facts of this case.

If the Attorney General in his opinion believes that a statute is unconstitutional, he has the right and indeed the duty to either cause to be initiated an action in the courts of this Commonwealth and thus obtain judicial determination of the issue or he may prepare, for submission to the General Assembly, such revision of the statute as he may deem advisable. [Citation omitted]

There may exist an exception in those instances wherein the Supreme Court of the United States has declared unconstitutional a statute of another jurisdiction, which statute is the same as or similar to the Pennsylvania statute in all important aspects. In such instances, the Attorney General being of the opinion that a United States Supreme Court decision is controlling as to a Pennsylvania statute, he may implement that judicial decision. We do not mean to suggest that in all cases the Attorney General should enjoy this latitude, only in those cases when the applicability of the U.S. Supreme Court decision to a Pennsylvania statute is clear and unequivocal.

We conclude, therefore, that the Attorney General is without power or authority, even though he is of the opinion that a statute is unconstitutional, to implement his opinion in such a manner as to effectively abrogate or suspend such statute which is presumptively constitutional until declared otherwise by the Judiciary. [at 511, 512]

In cases where an opinion would interpret an appropriation act or an act authorizing the expenditure of money, Section 204(a) continues the existing requirement that the opinions of the Auditor General and State Treasurer be solicited. See Section 512 of The Administrative Code of 1929.



Finally, Section 204(a) recognizes that the Governor may wish the independent advice of the Attorney General to aid in the exercise of his legislative power to approve or veto legislation as required by Article IV, Section 15, of the Constitution. Since the Constitution places this authority exclusively in the Governor, any advice given by the Attorney General could not be binding as that would effectuate an unconstitutional result.

Documents--In rendering legal services in civil matters, various documents and instruments must be prepared. As in the case of "on-going" legal advice, the initial responsibility for the preparation of rules and regulations, deeds, leases, contracts and fidelity bonds is placed upon the General Counsel and his assistants and, in the case of independent agencies, their chief counsel.

On the other hand, these documents, including proposed rules and regulations, must be submitted to the Attorney General for review as to form and legal validity. Section 204(b), p. 25, continues the prior practice set forth in Section 205 of the Commonwealth Documents Law, 1968, July 31, P.L. 769, No. 240, under which the Attorney General approves regulations for legality. The proposed provision differs in that it explicitly confines review to form, statutory authorization and constitutionality. Accordingly, rejection of any proposed regulation may not be based upon disagreement on policy issues. The Attorney General's review of proposed regulations must be completed within 30 days of their receipt; if the Attorney General fails to act within that time, the documents are "deemed to have been approved."

The existing right to appeal the disapproval of any proposed regulation set forth in Section 205 of the Commonwealth Documents Law for independent agencies is extended to executive agencies. Also, a procedure is specifically provided for Commonwealth agencies to revise proposed regulations to meet the objections of the Attorney General.

The authority in Section 204(f), p. 27, to review Commonwealth deeds, leases, contracts and fidelity bonds is derived from current law<sup>10</sup> and practice as an adjunct to the

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10. See, for example, Section 1 of the act of May 28, 1923, P.L. 458, No. 250, relating to utility lines over forest lands; Sections 512, 902, 1903, 1906 and 2403 of The Administrative Code of 1929; and Section 2 of authorizing lease of certain Project 70 land for development, the act of July 25, 1967, P.L. 183, No. 55.

Attorney General's status as chief legal officer for the Commonwealth. As in Section 204(b) relating to the approval of regulations, the scope of the Attorney General's review is specifically limited to a determination of whether the documents are in proper form, statutorily authorized and constitutional. This scope of review is essentially consistent with the intent of current law and practice. However, Section 204(f), p. 27, also draws upon the procedure set forth in Section 204(b) for resolving disputes between the Attorney General and Commonwealth agencies. This procedure for resolving disputes in these matters is new and considered necessary in light of the Attorney General's independent status.

Section 204(f) specifically provides that the Attorney General may prepare uniform instrument forms and preapprove such documents. This provision is intended to aid in the administration of this function by removing the necessity for detailed review of repetitive or routine transactions.

#### Civil Litigation

It was determined that the Attorney General as the chief law officer is to be given the exclusive primary responsibility to conduct all litigation (Section 204). However, three major qualifications are established. First, if the Attorney General fails or refuses to litigate a matter, the Governor (or the independent agency) may instruct the General Counsel (or its chief counsel in the case of an independent agency) to appear to assure that the executive department's legal position is heard by the court. Secondly, and corollary to the foregoing, the Governor may authorize the General Counsel to defend any litigation brought by the Attorney General against an executive agency. Thirdly, and possibly the most significant, the Attorney General is authorized to delegate the responsibility for conducting litigation when it is most efficient or otherwise in the best interests of the Commonwealth. This authority suggests, as do other similar provisions, the Legislature's desire that the attorneys servicing the Commonwealth cooperate professionally to the fullest extent to provide the best possible legal services.

The Attorney General is specifically empowered to intervene in litigation when any State statute is in question.

This power has traditionally been afforded to Attorneys General as the legal representative of government and the public at large. See Pa.R.C.P. No. 235. Similarly, the Attorney General is empowered to intervene in any litigation involving charitable bequests or trusts. The power to intervene in such cases has been historically afforded to Attorneys General as parens patriae to protect property devoted to public usage. Commonwealth v. The Barnes Foundation, 398 Pa. 458, (1960); also see Section 14 of the Solicitation of Charitable Funds Act, August 9, 1963, P.L. 628, No. 337.

Authority of the Attorney General to bring antitrust actions has been specifically referenced. Such authority is presently provided by amendments to the federal antitrust laws empowering Attorneys General to bring civil actions thereunder as parens patriae (§ 4C, Pub.L. 94-435, 15 U.S.C. § 15c); the General Assembly now has before it 1977 House Bill 845 which would create intrastate antitrust enforcement authority for the Attorney General.

The Attorney General will continue to be responsible for collection of debts, accounts and taxes due the Commonwealth. See, for example, Section 903(a) of The Administrative Code of 1929; Section 243, Tax Reform Code of 1971, March 4, P.L. 6, No. 2; Section 1405 of The Fiscal Code, April 9, 1929, P.L. 343, No. 176.

Consistent with 1978 House Bill 2437, Printer's No. 3321,<sup>11</sup> which provides for a limited waiver of sovereign immunity, the proposed legislation delegates to the Attorney General responsibility to approve the settlement of claims; under the broad grant of authority to conduct litigation that office would defend suits brought against Commonwealth agencies, unless this responsibility was delegated under Section 204(c).

The Attorney General may not agree to the entry of a consent decree in an action against the Commonwealth without the approval of the Governor and notice to the General Assembly. The term "consent decree" (Section 204(e), p. 26)

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11. See Joint State Government Commission, Sovereign Immunity, May 1978.

was construed in Commonwealth v. U.S. Steel Corp., 15 Pa. Commonwealth Ct. 184, 191 (1974), quoting from Commonwealth v. Rozman, 10 Pa. Commonwealth Ct. 133, 137 (1973):

A consent decree is not a legal determination by the court of the matters in controversy but is merely an agreement between the parties. It is in essence a contract binding the parties thereto. Universal Builders Supply, Inc. v. Shaler Highlands Corporation, 405 Pa. 259, 175 A. 2d 58 (1961).

. . . The consent decree derives its efficacy from the agreement of the parties and the approval of the chancellor. It bound the parties with the same force and effect as if a final decree had been rendered after a full hearing upon the merits.

This provision is deemed particularly appropriate because the termination of certain cases against the Commonwealth may have significant fiscal impact; the executive branch of government must be afforded participation before such funds are committed without trial. Similarly, the power to appropriate funds is constitutionally placed in the General Assembly by Article III, Section 24.

The approval of the Governor and notice to the General Assembly, however, are not intended to apply in the settlement of ordinary cases, particularly when the result has no significant precedential or fiscal impact--e.g., tort claims and tax refunds--or when the constitutionality or construction of a statute is not at issue, or to consent decrees entered in actions brought by the Commonwealth, e.g., consumer and environmental protection cases.

#### Consumer Protection and Consumer Advocate

The Attorney General is given primary responsibility to administer and enforce the recently enacted programs to serve the needs of consumers. Specifically, the administration of the consumer protection provisions in Sections 917 through 922 of The Administrative Code of 1929 are retained in Section 204(d), p. 26. The Attorney General is given the sole authority to appoint the advisory committee established under Section 922. The Attorney General also continues to administer and enforce the provisions of the Unfair Trade Practices and Consumer Protection Law, act of December 17, 1968, P.L. 1224, No. 387, Sections 3.1, 4, 5, 8 and 9.

The consumer advocate is placed under the administrative supervision of the Attorney General. To assure independence of the office, Section 201(b), p. 22, provides for appointment of the consumer advocate by the Attorney General subject to a majority vote of the Senate and retains the power of the consumer advocate to appoint staff, as now provided by Section 903-A of The Administrative Code of 1929.

## CRIMINAL LAW FUNCTIONS

### Prosecution

Section 205, p. 27, is intended to establish the Office of Attorney General as a vigorous prosecutorial arm of State Government.<sup>12</sup> In Section 205(a), p. 27, the Attorney General is given authority to prosecute cases in eight enumerated areas which, taken together, represent a significant expansion of the criminal law-enforcement duties of the Attorney General.

The proposed legislation empowers the Attorney General to prosecute:

--Criminal cases against State officials and employees which arise from performance of their official duties and criminal cases against persons attempting to influence State officials. This specific authority in Section 205(a)(1), p. 27, is new and intended to implement the intentions of the electorate that the Attorney General function as a "watchdog" of State Government to prevent official corruption.

--Criminal cases which relate to organized crime (Section 205(a)(2), p. 27). The Crimes Code, 18 Pa.C.S., § 911(e)(2), (f), grants the Attorney General substantial investigative powers--consistent with Section 205(b), p. 29 --and concurrent prosecutorial authority. These powers were specifically continued by the proposed statute; combating the growing complexity of organized crime

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12. Separate pending legislation also considers this prosecutorial function, e.g., see 1978 House Bill 2611. Also see 1978 Senate Bill 1487, a proposed "Witness Immunity Law," a subject not addressed by the task force and advisory committee.

often necessitates substantial resources, sophisticated training and central coordination not possessed by many of the district attorneys' offices. Also, see Section 206, p. 30, relating to multicounty investigative grand juries, where many of the same considerations apply.

--Criminality investigated by and referred to the Attorney General by Commonwealth agencies when such referral arises from the administration of statutorily created enforcement duties on the part of the agency (Section 205(a)(6) p. 29). The prosecution of these cases by the Attorney General is particularly appropriate because such crimes are either essentially State matters or require administrative expertise to efficiently prosecute. This provision differs from Section 205(a)(1) and (a)(2) in that charges of criminality must be referred to the Attorney General by the Commonwealth agency involved before jurisdiction to prosecute attaches. In many instances the prosecutorial resources of the Attorney General will be better preserved by a continuance of the present practice of referring certain of these matters directly to the district attorney's office.

The Attorney General's prosecutorial duties described above are made concurrent with existing prosecutorial powers of district attorneys (Section 205(b), p. 29). The legislation sets forth five other areas in which the Attorney General may prosecute:

--Cases referred by the district attorney when the district attorney does not have the resources to adequately investigate or prosecute or when the district attorney indicates that there is a potential for an actual or apparent conflict of interest (Section 205(a)(3), p. 28). The Attorney General is not required to prosecute all cases referred by district attorneys. His discretion is considered necessary to preclude the Attorney General from becoming inundated with such prosecutions.

--Instances in which the Attorney General determines that a district attorney has abused his discretion by failing or refusing to prosecute a case. Under Section 205(a)(4), p. 28, the Attorney General's petition is forwarded to the Supreme Court for the assignment of a judge to hear the

matter. The Attorney General has the burden of establishing the abuse of discretion by a preponderance of the evidence, and the district attorney is empowered to participate to rebut the allegation. The preponderance-of-evidence test was chosen to protect the traditional prosecutorial discretion afforded district attorneys, while providing a check upon abuse of that discretion. Commonwealth v. Schab, \_\_Pa.\_\_, 383 A.2d 819, 828 fn. 6 (1978).

--Instances in which the president judge of a judicial district requests the Attorney General to supersede the district attorney to bring criminal proceedings (Section 205(a)(5), p. 28). If the Attorney General agrees that the case is a proper one for supersession, he files a petition with the president judge and proceeds under the requirements of Section 205(a)(4). This discretion continues existing law: "Even if it is at the request of a President Judge that the Attorney General appoints a special prosecuting attorney, he does so, not because of any mandatory duty, but in the exercise of his own discretion and ultimate judgment." Pipa v. Kemberling, 326 Pa. 498, 505 (1937).

Paragraphs (4) and (5) of Section 205(a) reflect Sections 904 and 907 of The Administrative Code of 1929 and take into account the plurality and concurring opinions of Commonwealth v. Schab, supra.

--Cases arising from indictments of statewide investigative grand juries created under Section 206 (Section 205(a)(7), p. 29).

--Cases of Medicare and Medicaid fraud which arise out of the investigations and activities of the State Medicaid fraud control unit established pursuant to Section 17(c) of the Federal Medicare-Medicaid Antifraud and Abuse Amendments of October 25, 1977, Pub.L. 95-142, 91 Stat. 1201, 42 U.S.C. § 1396b(q). This program provides reimbursement to states which in compliance with the act actively investigate and prosecute Medicare and Medicaid fraud. In addition to confirming compliance with the federal act, the prosecution of such cases by the Attorney General (Section 205(a)(8), p. 29) is appropriate because such crimes relate to misuse of public funds and require sophisticated prosecutorial techniques not always available to district attorneys.

Criminal Appeals--Section 205(c), p. 30, empowers the Attorney General to participate in criminal appeals. In addition to appeals of cases he prosecuted, the Attorney

General may participate in other appeals upon request of the district attorney. The latter provision is intended to permit the Attorney General to aid district attorneys whose resources are insufficient to properly handle certain cases; however, the Attorney General may refuse to participate if his staff would be overburdened.

The Attorney General is given the authority to intervene in other appeals as permitted by law or rules of court. See Pa.R.A.P. Nos. 521, 531.

### Investigation and Investigative Grand Juries

Under Section 206, p. 30, the Attorney General is specifically given the authority to investigate any crime which he has the power to prosecute under Section 205. The Pennsylvania State Police is directed to cooperate by furnishing investigative services upon request. This provision also specifically continues investigative authority pursuant to The Controlled Substance, Drug, Device and Cosmetic Act, April 14, 1972, P.L. 233, No. 64.<sup>13</sup>

Section 206(b), p. 31, would introduce to Pennsylvania law the authority of the Attorney General to impanel special investigative grand juries. Such power is currently given to Attorneys General in at least seven states.<sup>14</sup> To impanel a grand jury, the Attorney General must petition the Supreme Court to appoint a hearing judge to decide whether to grant the petition.

Petitions may be granted only when, based upon direct knowledge gained from reliable sources, one of two conditions are satisfied. The first is that a systematic multi-county organization is perpetrating crimes that a district attorney cannot effectively investigate and prosecute. This confines statewide grand jury investigations to instances

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13. The substantive issues presented in 1978 Senate Bill 148, which would create a division of drug law enforcement in the Pennsylvania State Police were considered to be outside the jurisdiction of the task force and advisory committee.

14. Powers, Duties and Operations of State Attorneys General, National Association of Attorneys General, 1977, p. 149. Further, separate legislation authorizing investigative grand juries at both the State and local levels are before the General Assembly: 1978 Senate Bill 1484 and House Bill 2603.



where statewide authority and resources are required. Merely similar criminal activities--e.g., unrelated burglaries in two or more counties--would not be sufficient to warrant a grand jury. The second condition is widespread crime and corruption perpetrated by State officers and employees, over which the Attorney General is intended to function as a "watchdog."

When a statewide grand jury is impaneled, it possesses the same powers as any county investigative grand jury. In addition, the judge assigned by the Supreme Court is given authority to determine which counties shall supply jurors and other incidental matters required to conduct the investigation. The Supreme Court is specifically empowered to promulgate procedural rules governing the convening of statewide investigative grand juries; such rules were adopted for county investigative grand juries on June 26, 1978: Pa.R.Crim.P. Nos. 250-266.

#### SERVICE TO COMMONWEALTH AGENCIES

The present Attorney General serves as administrator for 7 statutorily created agencies and for 2 created by executive order. Under statute or executive order he serves as a member of 11 agencies. Following review of these functions, the advisory committee recommended and the task force concluded that the elected Attorney General should continue only those administrative and policymaking functions which relate to his specific powers and duties. It was agreed that the General Counsel should serve in some policy positions now held by the Attorney General and that some administrative functions should be transferred to the General Counsel or, in the case of the constitutionally created Board of Pardons, to the Lieutenant Governor.

Under the legislation, Section 207, p. 32, the Attorney General continues to serve as a member of three agencies: the Board of Pardons as provided by Article IV, Section 9(b), of the Constitution; the Joint Committee on Documents; and the Hazardous Substances Transportation Board. The Attorney General's membership will lapse without replacement on the Board of Finance and Revenue, the Board of Property, the Commission on Charitable Organizations, the Local Government Records Committee, the Medical Advisory Board, the Municipal Police Officers' Education and Training Commission and the

Pennsylvania Civil Disorder Authority. The pertinent provisions of existing law are repealed by Section 504, p. 45, to the extent that they place the Attorney General on the foregoing agencies. In the case of the Board of Commissioners on Uniform State Laws, the General Counsel is substituted for the Attorney General. See Sections 302 and 503, pp. 36 and 44.

Existing functions relating to the "election law panel concerning subversives" and regulating magazine subscriptions are recommended for repeal since they have never been utilized. See Section 503, p. 44.

Administration of the Board of Pardons is transferred to the Lieutenant Governor who is constitutionally the chairman, while the statutorily provided programs--health-care malpractice claims, the Crime Commission, crime victim's compensation, corrections, Juvenile Court Judges' Commission and uniform state laws--are transferred to the General Counsel's jurisdiction.<sup>15</sup> In each of these cases the statutory provisions indicate that the Attorney General's role involves either administrative or policymaking functions that are more appropriately fulfilled under the Governor's direction through the Office of General Counsel. This decision does not foreclose future revisions if more detailed review suggests alternative disposition of these functions.

No determination was made as to the extent of the Attorney General's or the General Counsel's role on the Crime Commission. The General Assembly currently is considering separate legislation, 1977 Senate Bill 823 and House Bill 1609 and 1978 House Bill 2605, which address the policy considerations in detail.

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15. Other major functions of the present Attorney General are provided for by executive order only. He may be designated a member of the Executive Board under Section 204 of The Administrative Code of 1929. The Attorney General presently chairs the Governor's Justice Commission and administers the community advocate program, both pursuant to executive order. A Governor could continue the Attorney General in these capacities, or the General Assembly could statutorily provide these programs. See, for example, 1977 House Bill 1333 and 1978 Senate Bill 1576 which would statutorily create a substitute agency for the Governor's Justice Commission. In view of existing gubernatorial discretion, these programs are not dealt with in the proposed legislation.

## The Bill with Notes

PREFILED FOR INTRODUCTION ON SEPTEMBER 11, 1978  
AS SENATE BILL 1595 AND HOUSE BILL 2663. ALL  
SENATE MEMBERS AND ALL BUT TWO HOUSE MEMBERS OF  
THE TASK FORCE SPONSORED THE LEGISLATION.

### AN ACT

Implementing the addition of section 4.1 to Article IV of the Constitution of Pennsylvania; establishing the Office of Attorney General elected by the citizens and setting forth powers and duties of the Attorney General; creating an Office of General Counsel and providing for legal services for Commonwealth agencies; transferring, reorganizing or reconstituting certain boards, commissions and agencies; placing certain duties upon the courts and district attorneys; and repealing certain acts and parts of acts.

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Section 506. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1

GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Commonwealth Attorneys Act."

Section 102. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Action." Any action at law or in equity.

"Commonwealth agency." Any executive agency or independent

agency.

"Executive agency." The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth government, but the term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, or any independent agency.

"Independent agency." The departments of the Auditor General, State Treasury and Attorney General, the Pennsylvania Public Utility Commission, the Pennsylvania Fish Commission, the Pennsylvania Game Commission, the Historical and Museum Commission, the State Civil Service Commission, the Pennsylvania Turnpike Commission, the Milk Marketing Board, the Pennsylvania Liquor Control Board, the Pennsylvania Human Relations Commission, the Pennsylvania Labor Relations Board, the Pennsylvania Securities Commission, the State Tax Equalization Board and the Brandywine Battlefield Park Commission.

"Matter." Action, proceeding or appeal.

NOTE: These definitions, with the exception of "independent agency," are identical to those contained in the Judicial Code, 42 Pa.C.S. § 102. Also see 2 Pa.C.S. 101. For discussion of "independent agency," see text, supra, at 6, 7.

## CHAPTER 2

### OFFICE OF ATTORNEY GENERAL

Section 201. Established as an independent department.

(a) General provisions.--The Office of Attorney General shall be an independent department and shall be headed by the Attorney General. The Attorney General shall exercise such

powers and perform such duties as are hereinafter set forth. As an independent administrative department the Office of Attorney General shall be subject to the same limitations contained in the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and all other acts as are applicable to the independent Department of Auditor General or State Treasury.

NOTE: For provisions applicable to the Auditor General or State Treasurer, see Sections 212-214, 605, 701 and 709 of The Administrative Code of 1929.

(b) Consumer Advocate.--The Attorney General shall appoint a Consumer Advocate which appointment shall be subject to the approval of a majority of the members elected to the Senate. The Consumer Advocate shall perform the duties and have the powers set forth in Article IX-A of "The Administrative Code of 1929."

(c) Bureaus, divisions and personnel.--The Attorney General shall appoint and fix the compensation of a first deputy attorney general, a director of the Bureau of Consumer Protection and such other deputies, officers and employees who may, at any time, exercise such powers and perform such duties as may be prescribed by the Attorney General. The Attorney General may establish such bureaus or divisions as may be required for the proper conduct of the office.

NOTE: The first deputy would fill a vacancy until a successor is appointed. See Section 202. This provision does not prevent the continuance of bureaus previously established, including those specifically referred to in the act--consumer protection (Section 201(c)), State Medicaid fraud control

(Section 205(a)(8)) and drug law enforcement (Section 206(a)) --and those not specifically referenced--e.g., the community advocate program created by executive order. Furthermore, it does not prohibit the establishment of new bureaus such as a unit on public integrity, which was suggested for consideration.

Section 202. Vacancy in office.

In the event of a vacancy in the position of Attorney General, the Governor shall nominate, in accordance with the provisions of the Constitution of Pennsylvania and, by and with the advice and consent of two-thirds of the members elected to the Senate, appoint a person to fill the position for the balance of the unexpired term of the Attorney General. Whenever there shall be a vacancy in the position of Attorney General, the first deputy shall exercise the powers and perform the duties of the Attorney General until the vacancy is filled.

NOTE: This provision authorizes the filling of a vacancy consistent with the procedure established for vacancies in the offices of Auditor General and State Treasurer, which are the other constitutionally independent departments. See The Administrative Code of 1929, § 207.1(c)(1). Article IV, Section 8(b) of the Constitution provides, in part: "In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the first day of the vacancy is within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office." This suggests the necessity for a "special" election to fill the balance of the four-year term if the vacancy occurs between "the third Tuesday of January next ensuing his election" (Art. IV, Section 4.1) and two months prior to the next "general election." However, see Etter v. McAfee, 229 Pa. 315 (1910).

Section 203. Salary.

The Attorney General shall receive a salary which shall be the same as the salary provided for an associate justice of the Supreme Court.

NOTE: The salary established for an associate justice of the Supreme Court in effect on the third Tuesday of January 1981 will constitute the elected Attorney General's salary. Unlike an associate justice, however, an incumbent would not receive an increase granted during the term for which he was elected or appointed: Pa. Const., Art. III, § 27; Commonwealth ex rel. Attorney General v. Mathues, 210 Pa. 372 (1904).

Section 204. Legal advice and civil matters.

(a) Legal advice.--Upon the request of the Governor or the head of any Commonwealth agency, the Attorney General shall furnish legal advice concerning any matter or issue arising in connection with the exercise of the official powers or the performance of the official duties of the Governor or agency. The Governor may request the advice of the Attorney General concerning the constitutionality of legislation presented to him for approval in order to aid him in the exercise of his approval and veto powers and the advice, if given, shall not be binding upon the Governor. In all other cases the advice when received shall be followed and, when followed, the recipient shall not in any way be liable for doing so, upon his official bond or otherwise. It shall be the duty of the Attorney General to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction. Before the Attorney General shall render any opinion interpreting any appropriation act, or any act authorizing the expenditure of money, he shall notify the Departments of the Auditor General and the State Treasury of the question upon which his opinion has been requested, and afford to these departments an opportunity to present any views which they may have upon such question.



(b) Commonwealth agencies; rules and regulations.--The Attorney General shall review for form and legality, all proposed rules and regulations of Commonwealth agencies before they are deposited with the Legislative Reference Bureau as required by section 207 of the act of July 31, 1968 (P.L. 769, No.240), known as the "Commonwealth Documents Law." If the Attorney General determines that a rule or regulation is in improper form, not statutorily authorized or unconstitutional, he shall notify the agency affected, the Office of General Counsel, and the General Assembly through the offices of the chief clerks of the Senate and the House of Representatives. The Commonwealth agency may revise a rule or regulation to meet the objections of the Attorney General and submit the revised version for his review; if the agency disagrees with the opinion of the Attorney General, it may appeal the decision of the Attorney General by filing a Petition for Review with the Commonwealth Court in such manner as is provided for appeals from final orders of government agencies pursuant to 42 Pa.C.S. § 763 (relating to direct appeals from government agencies). If a rule or regulation has been submitted to the Attorney General and he has not approved it or objected to it within 30 days after submission, the rule or regulation shall be deemed to have been approved.

(c) Civil litigation; collection of debts.--The Attorney General shall represent the Commonwealth and all Commonwealth agencies in any litigation brought by or against the Commonwealth, and may intervene in any other action, including those involving charitable bequests and trusts or the constitutionality of any statute. The Attorney General shall

represent the Commonwealth and its citizens in any action brought for violation of the antitrust laws of the United States and the Commonwealth. The Attorney General shall collect, by suit or otherwise, all debts, taxes and accounts due the Commonwealth which shall be referred to and placed with the Attorney General for collection by any Commonwealth agency; the Attorney General shall keep a proper docket or dockets, duly indexed, of all such claims, showing whether they are in litigation and their nature and condition. The Attorney General may, upon determining that it is more efficient or otherwise is in the best interest of the Commonwealth, authorize the General Counsel or the counsel for an independent agency to initiate, conduct or defend any particular litigation or category of litigation in his stead. The Attorney General shall approve all settlements over such maximum amounts as he shall determine arising out of claims brought against the Commonwealth pursuant to 42 Pa.C.S. § 5110.

(d) Administration of consumer affairs programs.--The Attorney General shall administer the provisions relating to consumer protection set forth in sections 917 through 922 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929," and appoint the advisory committee established under section 922.

(e) Limitations in civil litigations.--The Attorney General shall not agree to the entry of a consent decree in any action against the Commonwealth or any agency without the approval of the Governor and notice to the General Assembly through the offices of the chief clerks of the Senate and the House of Representatives.

(f) Deeds, leases, contracts and fidelity bonds.--The Attorney General shall review for form and legality, all Commonwealth deeds, leases and contracts to be executed by Commonwealth agencies; if the Attorney General determines that a deed, lease, or contract is in improper form, not statutorily authorized or unconstitutional, he shall notify the agency affected, the offices of General Counsel and the General Assembly and the procedures set forth in subsection (b) shall apply. If an instrument has been submitted to the Attorney General and he has not approved it or submitted his objection within 30 days after submission, the instrument shall be deemed to have been approved; the Attorney General may prepare uniform instrument forms and preapprove all such documents which are prepared in accordance with such forms and applicable instructions. The Attorney General shall likewise continue to approve all fidelity, surety, performance and similar bonds as required by law to be submitted to the Attorney General or the former Department of Justice.

Section 205. Criminal prosecutions.

(a) Prosecutions.--The Attorney General shall have the power to prosecute in any county criminal court the following cases:

(1) Criminal charges against State officials or employees affecting the performance of their public duties or the maintenance of the public trust and criminal charges against persons attempting to influence such State officials or employees or benefit from such influence or attempt to influence.

(2) Criminal charges involving corrupt organizations as provided for in 18 Pa.C.S. § 911 (relating to corrupt organizations).

(3) Upon the request of a district attorney who lacks the resources to conduct an adequate investigation or the prosecution of the criminal case or matter or who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office.

(4) The Attorney General may petition the court having jurisdiction over any criminal proceeding to permit the Attorney General to supersede the district attorney in order to prosecute a criminal action or to institute criminal proceedings. Upon the filing of the petition, the president judge shall request the Supreme Court to assign a judge to hear the matter. The judge assigned shall hear the matter within 30 days after appointment and make a determination as to whether to allow supersession within 60 days after the hearing. The district attorney shall be given notice of the hearing and may appear and oppose the granting of the petition. Supersession shall be ordered if the Attorney General establishes by a preponderance of the evidence that the district attorney has failed or refused to prosecute and such failure or refusal constitutes abuse of discretion. Either party may appeal to the Supreme Court which appeal shall be heard and determined within 45 days after filing.

(5) When the president judge in the district having jurisdiction of any criminal proceeding has reason to believe that the case is a proper one for the intervention of the Commonwealth, he shall request the Attorney General to represent the Commonwealth in the proceeding and to investigate charges and prosecute the defendant. If the

Attorney General agrees that the case is a proper one for intervention, he shall file a petition with the court and proceed as provided in paragraph (4). If the Attorney General determines that the case is not a proper case for intervention, he shall notify the president judge accordingly.

(6) Criminal charges investigated by and referred to him by a Commonwealth agency arising out of enforcement provisions of the statute charging the agency with a duty to enforce its provision.

(7) Indictments returned by a Statewide special investigating grand jury.

(8) Criminal charges arising out of activities as the State Medicaid Fraud Control Unit as authorized by the Federal law known as the "Medicare-Medicaid Antifraud and Abuse Amendments."

(b) Concurrent jurisdiction to prosecute.--The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a) (1), (2) and (6) and may refer to the district attorney with his consent any violation or alleged violation of the criminal laws of the Commonwealth which may come to his notice.

NOTE: This provision is substantially derived from Section 205 of the Commonwealth Documents Law, July 31, 1968, P.L. 769, No. 240; its scope is not intended to be any broader than the requirements of that act: Section 102 of the Commonwealth Documents Law defines regulation to mean "any rule or regulation, or order in the nature of a rule or regulation, promulgated by an agency under statutory authority in the administration of any statute administered by or relating to the agency, or prescribing the practice or procedure before such agency." Section 204 excerpts certain matters from the requirements of the act, e.g., regulations relating to military affairs, agency organization, management, personnel.

(c) Criminal appeals.--In any criminal action in which there is an appeal, the Attorney General may in his discretion, upon the request of the district attorney, prosecute the appeal; he may intervene in such other appeals as provided by law or rules of court.

NOTE: This provision is consistent with Section 903 of The Administrative Code of 1929.

(d) Powers when prosecuting.--Whenever the Attorney General prosecutes a criminal action, or appeal, he may employ such special deputies as are necessary for that purpose; such deputies shall take the oath of office and be clothed with all the powers, and subject to all the liabilities imposed by law upon district attorneys, including the power to sign informations or indictments. Whenever the Attorney General intervenes in a criminal action, the costs incurred as a result of the intervention shall be paid by the Commonwealth.

NOTE: This provision continues existing authority first provided in the act of May 2, 1905, P.L. 351, No. 225, and codified, in part, in Section 907 of The Administrative Code of 1929; for its interpretation, in particular with reference to payment by the Commonwealth of costs: see Pipa v. Kemberling, 326 Pa. 498 (1937).

Section 206. Law enforcement and criminal investigations;  
Statewide investigating grand juries.

(a) Law enforcement; criminal investigations.--The Attorney General shall be the chief law enforcement officer of the Commonwealth; the district attorney shall be the chief law enforcement officer for the county in which he is elected. The

Attorney General shall have the power to investigate any criminal offense which he has the power to prosecute under section 205; he shall continue the existing programs relating to drug law enforcement. The Pennsylvania State Police shall cooperate with the Attorney General and furnish such services as the Attorney General shall request.

NOTE: The reference to drug law enforcement is intended to authorize statutorily the continuance of the special bureau and program created by executive order.

(b) Statewide investigating grand juries.--

(1) The Attorney General shall have the right to petition the Supreme Court to impanel a special investigating grand jury; the Supreme Court shall within 30 days after the petition is filed appoint a hearing judge who within 60 days after appointment shall determine whether to grant the petition. The petition shall be granted only upon a showing by the Attorney General, based upon direct knowledge gained from reliable sources, that:

(i) a widespread and systematic organization exists for the purpose of perpetrating crime, racketeering or other violations of the law which occur in two or more counties and which violations may not be discovered, investigated and effectively prosecuted by a district attorney in a particular county; or

(ii) widespread instances of crime or corruption have been perpetrated by State officers or employees. Upon a granting of the petition, the Supreme Court shall

within 10 days appoint a judge to administer the Statewide grand jury; upon a denial of the petition, the Attorney General may appeal directly to the Supreme Court which appeal shall be decided within 45 days.

(2) A Statewide grand jury shall have the same powers and duties and function in the same manner as a county investigative grand jury except that its jurisdiction shall extend throughout this Commonwealth. The judge assigned by the Supreme Court, upon granting the petition, shall set forth in his order:

(i) The counties which shall supply jurors and in what ratios.

(ii) A location or locations for the grand jury proceeding.

(iii) The length of time the grand jury shall be in session.

(iv) Such other incidental arrangements as may be necessary. The Supreme Court may adopt rules, consistent with the provisions of this section, establishing standard procedures for the convening of Statewide investigative grand juries. Upon the completion of its work, the grand jury shall issue its report to the judge.

Section 207. Membership on agencies.

The Attorney General shall serve as a member of the Board of Pardons and he, or his designated deputy, shall serve as a member of the Joint Committee on Documents and Hazardous Substances Transportation Board.



Section 208. Access to books and papers.

The Office of Attorney General shall have the right to access at all times to the books and papers of any Commonwealth agency necessary to carry out his duties under this act.

NOTE: This provision, derived from Section 908 of The Administrative Code of 1929, is not intended to effect existing limitations--e.g., the privacy provisions contained in Section 731 of The Fiscal Code and Sections 274 and 361 of the Tax Reform Code of 1971.

### CHAPTER 3

#### OFFICE OF GENERAL COUNSEL

Section 301. General Counsel.

There is hereby established the Office of General Counsel which shall be headed by a General Counsel, appointed by the Governor to serve at his pleasure, who shall be the legal advisor to the Governor and shall:

(1) Appoint assistant general counsel, and such chief counsel and assistant counsel as are necessary for the operation of each executive agency.

(2) Supervise, coordinate and administer the legal services provided by the assistant general counsel, the chief counsel and assistant counsel for each executive agency and, except as otherwise provided by law, each independent agency.

(3) Render such legal advice, and such representation prior to litigation, as are required concerning every matter and issue arising in connection with the exercise of the official powers and duties, and performance thereof, in the operation of such executive agency and, upon request, each independent agency.

(4) Upon request, assist and cooperate fully with the Attorney General and the counsel of each independent agency in the furtherance of the performance of their duties.

(5) Perform any and all legal services required with respect to the issuance of general obligation bonds or tax anticipation notes of the Commonwealth which legal services shall be performed by one or more salaried assistant general counsels. Under no circumstances shall these legal services be performed by the retaining of outside bond counsel.

NOTE: In addition to transferring the power to serve as legal counsel in Commonwealth bond and note matters, the prohibition against the employment of outside private counsel contained in 1978 House Bill 1891 was inserted by the task force.

(6) Until otherwise provided by law, serve as chief administrative officer of the following agencies which are hereby placed and made administrative agencies of the Office of General Counsel:

(i) The Bureau of Corrections under sections 911, 912, 913, 914, 914.1, 915 and 916 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(ii) The Juvenile Court Judges' Commission under sections 905.1 and 905.2 of "The Administrative Code of 1929."

(iii) The administrator and the office of Administrator for Arbitration Panels for Health Care under section 301 of the act of October 15, 1975

(P.L.390, No. 111), known as the "Health Care Services Malpractice Act."

(iv) The Crime Victim's Compensation Board under sections 477.6, 477.7 and 477.12 of "The Administrative Code of 1929."

(v) The Board of Commissioners on Uniform State Laws under section 404 of "The Administrative Code of 1929."

(7) Until otherwise provided by law, render appropriate administrative and similar services to the Pennsylvania Crime Commission, which shall continue to exercise the powers and perform the duties required by sections 469, 924 and 925 of "The Administrative Code of 1929," and the transfer of this function from the former Department of Justice to the Office of General Counsel shall not be construed to diminish the law enforcement responsibilities of the commission or to hinder the acquisition by it from any source of information relating to criminal activity.

(8) Upon the request of the Governor:

(i) initiate appropriate proceedings or defend the Commonwealth or any executive agency when an action or matter has been referred to the Attorney General and the Attorney General refuses or fails to initiate appropriate proceedings or defend the Commonwealth or executive agency; and

(ii) represent the Governor or the executive agency if the Attorney General has initiated litigation against him or it.

(9) Upon the request of the Governor, appeal any decisions adverse to an executive agency rendered by the Attorney General under section 204 (b) or (f).

(10) Issue such rules, guidelines, standards and regulations as are necessary to carry out the duties of the General Counsel provided for in this act.

Section 302. Membership on agencies.

The general counsel shall serve as a member of the Board of Commissioners on Uniform State Laws.

CHAPTER 4

COUNSEL FOR INDEPENDENT AGENCIES

Section 401. Counsel; appointment.

Each independent agency may appoint and fix the compensation of a chief counsel and such assistant counsel as it deems necessary to provide it with legal assistance or request such legal services from the Office of General Counsel.

Section 402. Powers and duties of counsel.

The chief counsel:

(1) Shall furnish legal advice to the independent agency concerning any legal matter or issue arising in connection with the exercise of the official powers or performance of the official duties of the agency.

(2) May request the assistance of the General Counsel or the Attorney General, or both of them, in any matter or action involving the agency. If advice is requested from the Attorney General, such advice when received shall be followed by the agency, and, when followed, the agency shall not in any way be liable for doing so, upon an official bond or otherwise.

(3) Upon the instructions of the independent agency:

(i) initiate appropriate proceedings or defend the agency when an action or matter has been referred to the

Attorney General and the Attorney General refuses or fails to initiate appropriate proceedings or defend the agency; and

(ii) represent the agency if the Attorney General has initiated litigation against it.

(4) Upon the instructions of the independent agency, appeal any decisions adverse to it rendered by the Attorney General under subsection (b) or (f) of section 204.

#### CHAPTER 5

##### MISCELLANEOUS PROVISIONS

Section 501. General transfer of personnel, appropriations, records, equipment, etc.

(a) Transfers to the Attorney General.--All personnel, allocations, equipment, files, records, contracts, agreements, obligations and other materials which are used, employed or expended in connection with the powers, duties or functions transferred by this act to the Office of Attorney General are hereby transferred to the Office of Attorney General with the same force and effect as if the appropriations had been made to and said items had been the property of the Office of Attorney General in the first instance and as if said contracts, agreements and obligations had been incurred or entered into by said Office of Attorney General.

(b) Transfers to the Office of General Counsel.--All personnel, allocations, appropriations, equipment, files, records, contracts, agreements, obligations and other materials which are used, employed or expended in connection with the powers, duties or functions transferred by this act to the Office of General Counsel are hereby transferred to the Office of General Counsel with the same force and effect as if the

appropriations had been made to and said items had been the property of the Office of General Counsel in the first instance and as if said contracts, agreements and obligations had been incurred or entered into by said Office of General Counsel.

(c) Transfers of administrative functions of the Board of Pardons to the Lieutenant Governor.--The administrative functions of the Board of Pardons are hereby transferred to the Lieutenant Governor. All personnel, allocations, appropriations, equipment, files, records, contracts, agreements, obligations and other materials which are used, employed or expended in connection with the powers, duties or functions transferred by this act to the Lieutenant Governor are hereby transferred to the Lieutenant Governor with the same force and effect as if the appropriations had been made to and said items had been the property of the Lieutenant Governor in the first instance and as if said contracts, agreements and obligations had been incurred or entered into by said Lieutenant Governor.

(d) Division of general administrative personnel and materials.--The personnel, appropriations, equipment and other items and materials transferred by this section shall include an appropriate portion of the general administrative, overhead and supporting personnel, appropriations, equipment and other materials of the agency and shall also include, where applicable, Federal grants and funds and other benefits from any Federal program.

(e) Retention of civil service status.--All personnel transferred pursuant to this act shall retain any civil service employment status assigned to said personnel.

Section 502. Specific transfers of certain powers and duties to  
the Office of General Counsel.

The powers and duties of the Attorney General and/or the  
Department of Justice contained in the following acts or parts  
of acts are transferred to the Office of General Counsel:

Section 3 of the act of June 8, 1907 (P.L.496, No.322),  
entitled "An act to establish a Board of Commissioners of  
Navigation for the river Delaware and its navigable tributaries;  
regulating their jurisdiction over ships, vessels, and boats,  
and wharves, piers, bulkheads, docks, slips, and basins; and  
exempting cities of the first class from certain of its  
provisions; and making an appropriation therefor."

Section 9 of the act of July 9, 1919 (P.L.814, No.338),  
entitled "An act providing for the erection and construction by  
the Commonwealth of Pennsylvania and the State of New Jersey of  
a bridge over the Delaware River, connecting the city of  
Philadelphia and the city of Camden, and the approaches thereto;  
providing for a joint commission for that purpose, and defining  
its powers and duties; providing for an independent commission  
in this Commonwealth in relation thereto, and defining its  
powers and duties; providing for the payment of a part of the  
cost thereof by the city of Philadelphia; and providing for the  
acquiring, taking, and condemnation of the real estate for the  
site and approaches thereof; providing for the turning over of  
said bridge upon its completion; and making an appropriation for  
the purposes of this act."

Section 1 of the act of March 24, 1921 (P.L.48, No.23),  
entitled, as amended, "An act providing for the transfer of  
convicts from the State penitentiaries and their imprisonment in  
the penitentiary to which transferred; imposing costs for such

transfers upon the Commonwealth; imposing the cost of the maintenance of convicts so transferred upon the counties in which they were convicted; directing that certain notice of such transfer of a convict be given; and making appropriations."

Section 2 of the act of May 27, 1921 (P.L. 1191, No. 443), entitled "An act creating a State Fair Commission for the Commonwealth of Pennsylvania; defining its duties; and making an appropriation therefor."

Sections 1 and 6 of the act of July 11, 1923 (P.L. 1044, No. 425), entitled, as amended, "An act to authorize and provide for the transfer and retransfer of person or persons confined in any penitentiary, prison, workhouse, house of correction, or any other institution for adult prisoners, under sentence of law, convicted but awaiting sentence, awaiting trial, or confined for any other purpose to some other prison, penitentiary, workhouse, house of correction, or other institution for adult prisoners."

Sections 404, 477 through 477.16, 905.1, 905.2, 911, 912, 913, 914, 914.1, 915 and 916 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929."

Sections 1 and 2 of the act of June 21, 1939 (P.L. 660, No. 307), entitled, as amended, "An act providing for the return of escaped prisoners and convicts after apprehension, to the penitentiary or state institution from which they escape, by the agents of the Department of Justice or the Pennsylvania State Police, and requiring the penitentiary or state institution to defray the expenses thereof."

Section 21.1 of the act of August 6, 1941 (P.L. 861, No. 323), referred to as Pennsylvania Board of Probation and Parole Law.



Section 4 of the act of May 15, 1945 (P.L.547, No.217), known as the "Soil Conservation Law."

Section 774 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law."

Sections 1, 2 and 3 of the act of July 29, 1953 (P.L.1433, No.410), entitled "An act creating certain penal and correctional institutions and boards of trustees; abolishing certain penal institutions; imposing duties upon the Commissioner of Correction of the Department of Justice; and providing for the costs of transportation and maintenance of inmates."

Sections 2, 4, 5, 6 and 8 of the act of July 29, 1953 (P.L.1435, No.411), entitled "An act relating to the more effective treatment of persons convicted of crime or committed as defective delinquents; creating in the Department of Justice correctional diagnostic and classification centers; providing for the diagnosis and classification of persons sentenced or committed by the courts of a State institution; fixing the responsibility for costs of transportation and maintenance of such persons; prescribing duties of the courts and the powers and duties of the Department of Justice relative thereto; making civil and criminal laws applicable to penitentiaries and persons therein or responsible therefor applicable in the case of the said institutions."

Section 1, 2, 3, 4, 5 and 6 of the act of July 19, 1953 (P.L.1440, No.414), entitled "An act providing for the construction and equipping of the Pennsylvania Institution for Defective Delinquents; providing for the acquisition of land; providing for the reception, confinement, treatment, care, maintenance and control of inmates; imposing duties and

conferring powers on the Department of Justice, Department of Property and Supplies and the General State Authority."

Section 1 of the act of December 8, 1959 (P.L.1718, No.632), entitled, as amended, "An act providing for the payment of the salary, medical and hospital expenses of employes of State penal and correctional institutions, State mental hospitals, Youth Development Centers, County Boards of Assistance, and under certain conditions other employes of the Department of Public Welfare, who are injured in the performance of their duties; and providing benefit to their widows and dependents in certain cases."

Sections 1 and 6 of the act of December 21, 1959 (P.L.1962, No.717), entitled "An act providing for the creation and operation of the Juvenile Court Judges' Commission in the Department of Justice; prescribing its powers and duties; and making an appropriation."

Section 23 of the act of August 23, 1961 (P.L.1068, No.484), entitled, as amended, "An act to provide for the creation and administration of a Coal Mine Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation."

Section 604-A of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code."

Sections 2, 3 and 5 of the act of December 22, 1965 (P.L.1189, No.472), entitled "An act establishing a correctional facility for criminological diagnosis, classification, social and psychological treatment and research, medical treatment and staff training."

Sections 2 and 3 of the act of December 27, 1965 (P.L.1237, No.502), entitled "An act establishing regional correctional facilities administered by the Bureau of Correction as part of the State correctional system; establishing standards for county jails, and providing for inspection and classification of county jails and for commitment to State correctional facilities and county jails."

Sections 412 and 415 of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966."

Section 208 of the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

Sections 1 and 2 of the act of July 16, 1968 (P.L.351, No.173), entitled, as amended, "An act authorizing the establishment of prisoner pre-release centers and release plans under the jurisdiction of the Department of Justice and defining its powers and duties."

Sections 2, 3 and 7 of the act of October 16, 1972 (P.L.913, No.218), entitled "An act establishing regional community treatment centers for women administered by the Bureau of Correction of the Department of Justice as part of the State Correctional System, providing for the commitment of females to such centers and their temporary release therefrom for certain purposes, restricting confinement of females in county jails and conferring powers and duties upon the Department of Justice and the Bureau of Correction."

Section 104(10) of the act of February 1, 1974 (P.L.34, No.15), known as the "Pennsylvania Municipal Retirement Law."

18 Pa.C.S. §§ 1355 and 1356

24 Pa.C.S. §§ 8501(e), 8502(h) and 8503

42 Pa.C.S. §§ 5974, 5977 and 6352

71 Pa.C.S. §§ 5102, 5901(e) and 5902(h)

Section 503. Absolute repeals.

The following acts or parts of acts are repealed absolutely:

Section 6 of the act of March 22, 1817 (P.L.122, No.98),  
entitled "An act pertaining to horse racing on public roads in  
Philadelphia."

The act of April 21, 1857 (P.L.266, No.308), entitled "An act  
relating to the Office and Duties of Attorney General."

Section 1 of the act of April 8, 1861 (P.L.258, No.260),  
entitled "An act relative to the Board of Property."

Section 1 of the act of April 8, 1869 (P.L.19, No.19),  
entitled "An act relating to the settlement of public accounts."

The act of April 12, 1875 (P.L.43, No.48), entitled "An act  
to provide for the election and appointment of trustees for the  
state normal schools, and to further regulate their management."

The act of June 3, 1885 (P.L.71, No.44), entitled "An act to  
provide that all moneys received from policies of insurance upon  
buildings of the State normal schools shall be held in trust for  
the repairing and rebuilding of said buildings, and for the  
payment of the proceeds of said insurance policies for that  
purpose."

The act of May 2, 1905 (P.L.351, No.225), entitled "An act  
authorizing the Attorney General to retain and employ attorneys  
to represent the Commonwealth, in criminal proceedings, in the  
various courts of oyer and terminer, general jail delivery, and  
quarter sessions, if requested to do so by the president judge  
of the district having jurisdiction thereof; providing for the  
compensation of such attorneys, and defining their duties and  
powers."

Sections 512, 704, 901 and 902, the first sentence of subsection (b) of section 902-A, sections 903, 904, 905, 906, 907 and 908 and clause (c) of section 1003 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

The last paragraph of section 976 of the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code."

Section 204 of the act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

The act of November 25, 1970 (P.L.744, No.241), entitled "An act regulating the solicitation of magazine subscriptions in certain cases and providing penalties."

The act of April 18, 1978 (No.25), entitled "An act implementing the provision of section 4.1 and related sections of Article IV of the Constitution of Pennsylvania as added or amended to provide for the election of the Attorney General; providing for the continuation of the powers and duties of the Attorney General through interim gubernatorial appointments to ensure an orderly and efficient transition in the office of Attorney General and the Department of Justice."

Section 504. Inconsistent repeals.

The following acts or parts of acts are repealed insofar as they are inconsistent with the provisions of this act:

Section 2 of the act of March 30, 1897 (P.L.11, No.10), entitled "An act authorizing the purchase by the Commonwealth of unseated lands for the non-payment of taxes for the purpose of creating a State Forest Reservation."

Sections 208, 502, 503 and 660 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one."

Section 29 of the act of May 25, 1921 (P.L. 1144, No. 425), entitled "An act creating a Department of Public Welfare; defining its powers and duties; abolishing the Board of Public Charities, the Committee on Lunacy, and the Prison Labor Commission, and all offices thereunder, and vesting all the powers of said board, committee, and commission in the Department of Public Welfare; requiring all reports, notices, statements, or matters, heretofore required to be made, given, or submitted to the Board of Public Charities or the Committee on Lunacy, to be made, given, or submitted to the Department of Public Welfare; and providing penalties."

Section 201, to the extent that it creates a Department of Justice, sections 404, 405 and 406, to the extent that they designate the Attorney General as a member of the Board of Commissioners on Uniform State Laws, the Board of Property and the Board of Finance and Revenue, and section 922, to the extent that it provides for the appointment of an advisory committee by the Governor, of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929."

Section 203, 204 (A), 702 and 1006 of the act of May 15, 1933 (P.L. 565, No. 111), known as the "Department of Banking Code."

Section 1102 of the act of April 28, 1937 (P.L. 417, No. 105), known as the "Milk Marketing Law."

Section 1401 of the act of June 3, 1937 (P.L. 1225, No. 316), known as "The Game Law."

Section 3(c) (5) of the act of August 5, 1941 (P.L. 752, No. 286), known as the "Civil Service Act."

Section 1(b) of the act of June 30, 1947 (P.L. 1183, No. 492), entitled "An act relating to strikes by public employes; prohibiting such strikes; providing that such employes by

striking terminate their employment; providing for reinstatement under certain conditions; providing for a grievance procedure; and providing for hearings before civil service and tenure authorities, and in certain cases before the Pennsylvania Labor Relations Board."

Section 1 of the act of April 18, 1949 (P.L.492, No.106), entitled, "An act enabling and authorizing the Department of Public Instruction or any of its departmental administrative boards, commissions, or officers to proceed by injunction or any other process in the court of common pleas in any county where the alleged unauthorized practice was committed, to prohibit and restrain any unlicensed person, association, copartnership, or corporation from engaging in an activity for which a license is required to be issued by the Department of Public Instruction, and to set out the method and procedure therefor."

Section 12(c) of the act of January 14, 1952 (1951 P.L.1898, No.522), known as the "Funeral Director Law."

Section 7 of the act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act."

Section 13 of the act of June 1, 1956 (1955 P.L.1959, No.657), entitled, as amended, "An act fixing the salaries and compensation of the Chief Justice and judges of the Supreme Court, the President Judge and judges of the Superior Court, the judges of the courts of common pleas, the judges of the orphans' courts, the judges of the County Court of Philadelphia and the judges of the County Court and Juvenile Court of Allegheny County, certain associate judges not learned in the law, certain state officers, and the salary and expenses of the members of the General Assembly, and repealing certain inconsistent acts."

Section 290 of the act of December 15, 1959 (P.L.1779, No.673), known as "The Fish Law of 1959."

Section 1 of the act of September 26, 1961 (P.L.1661, No.692), entitled "An act providing for group life insurance for State employes; establishing a schedule; providing for payment; providing for reduction of insurance upon retirement; authorizing the Secretary of Property and Supplies to act as exclusive agent for the purpose of contracting for insurance; and providing for administration and advisory services by the Department of Property and Supplies."

Section 6(g) (7) of the act of September 27, 1961 (P.L.1700, No.699), known as the "Pharmacy Act."

Sections 2 and 3 of the act of August 8, 1963 (P.L.595, No.314), entitled "An act relating to private institutions licensed by the Department of Public Welfare or Department of Health; providing remedies against persons operating without a license or violating the laws or rules or regulations made, thereunder; and prescribing procedures to be followed."

Section 1 of the act of August 8, 1963 (P.L.622, No.330), entitled "An act enabling and authorizing the Commissioner of Professional and Occupational Affairs or any of the administrative boards, commissions or officers within the Department of State or otherwise under his supervision to proceed by injunction or any other process in the court of common pleas in any county where the alleged unauthorized practice was committed to prohibit and restrain any unlicensed person, association, copartnership or corporation from engaging in an activity for which a license is required to be issued by the Commissioner of Professional and Occupational Affairs, and to set out the method and procedure therefor."



Section 5(a) of the act of August 9, 1963 (P.L. 628, No. 337), known as the "Solicitation of Charitable Funds Act," to the extent that the Attorney General is made a member of the Commission on Charitable Organizations.

Sections 208, 1052 and 1053 of the act of June 13, 1967 (P.L. 31, No. 21), known as the "Public Welfare Code."

Section 5 of the act of January 18, 1968 (1967 P.L. 961, No. 428), known as the "Municipal Records Act," to the extent that the Attorney General is made a member of the Local Government Records Committee.

Section 302 of the act of July 31, 1968 (P.L. 738, No. 233), known as "The Pennsylvania Fair Plan Act," to the extent that the Attorney General is made a member of the board.

Section 205 of the act of July 31, 1968 (P.L. 769, No. 240), known as the "Commonwealth Documents Law."

Sections 1001 and 1003 of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employee Relations Act."

Section 28 of the act of December 3, 1970 (P.L. 834, No. 275), entitled "An act amending the act of April 9, 1929 (P.L. 177, No. 175), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the

salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,\* creating the Department of Environmental Resources and defining its functions, powers and duties, transferring certain boards and commissions to such department, abolishing the Sanitary Water Board, the Air Pollution Commission and certain other boards and commissions; placing the Navigation Commission for the Delaware River and its navigable tributaries in the Department of Transportation; transferring the functions of the Geographic Board to the Pennsylvania Historical and Museum Commission placing the Valley Forge Park Commission and the Washington Crossing Park Commission in the Pennsylvania Historical and Museum Commission and repealing inconsistent acts."

Section 509 of the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972."

Section 4(a) (2) of the act of June 18, 1974 (P.L.359, No.120), referred to as the Municipal Police Education and Training Law, to the extent that the Attorney General is a member of the Municipal Police Officers Education and Training Commission.

Section 3 of the act of December 30, 1974 (P.L. 1075, No. 348), known as the "Interstate Corrections Compact."

Section 505. Limited repeals.

So much of sections 202 and 206 as relates to the Department of Justice and so much of sections 206, 207.1(d)(1) and 208(a) as relates to the Attorney General of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," are repealed.

Section 1517(a) of Title 75 (Vehicles), act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is repealed to the extent that the Attorney General is made a member of the Medical Advisory Board.

Section 506. Effective date.

Except for the provisions of section 203 which shall take effect on the third Tuesday of January 1981, this act shall take effect upon the confirmation by the Senate of the Attorney General first occurring on or after the third Tuesday in January 1979.



## Appendix

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### INDIVIDUALS WHO TESTIFIED\* OR PROVIDED WRITTEN STATEMENTS

#### Public Hearing, Pittsburgh, July 17, 1978

RICHARD L. THORNBURGH, Esquire, Republican candidate for  
Governor of Pennsylvania

HONORABLE PETER F. FLAHERTY, Democratic candidate for  
Governor of Pennsylvania

COLONEL JOHN G. BROSKY, Staff Judge Advocate, Pennsylvania  
National Guard

HERBERT L. CAPLAN, Esquire, First Assistant Attorney General,  
State of Illinois

FLORENCE BRIDGES, Community worker

ELLEN SICILIANO, Private citizen

#### Public Hearing, Wilkes-Barre, July 19, 1978

HONORABLE ERNEST D. PREATE JR., District Attorney of  
Lackawanna County

HONORABLE PATRICK J. TOOLE JR.

HONORABLE CHESTER B. MUROSKI, District Attorney of Luzerne  
County

JOHN P. MOSES, Esquire, Moses & Gelso; Member, Luzerne  
County Bar Association

J. JUSTIN BLEWITT JR., Esquire, Director, Office of Civil  
Law, Department of Justice

WILBUR TROY, Private citizen

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\*Listed in order of appearance.

Public Hearing, Philadelphia, July 20, 1978

LOUIS J. GOFFMAN, Esquire, President, Pennsylvania Bar  
Association

HONORABLE WILLIAM T. NICHOLAS, District Attorney of  
Montgomery County

WALTER M. PHILLIPS JR., Esquire, Former State Special  
Prosecutor in Philadelphia

CATHY DURHAM, Schoolteacher, Delaware County

HONORABLE VINCENT J. FUMO, State Senator, Philadelphia  
County

DONALD BARNHOUSE, Independent free-lance writer and  
broadcaster

HONORABLE EDWARD G. RENDELL, District Attorney of  
Philadelphia

INDIVIDUALS WHO SUBMITTED WRITTEN COMMENTS

HONORABLE FRED P. ANTHONY, Chairman, Juvenile Court Judges'  
Commission

HONORABLE AL BENEDICT, Auditor General of the Commonwealth

JOHN W. INGRAM, Director, Pennsylvania Economy League, Inc.

JAMES M. MARSH, Esquire, LaBrum and Doak Law Offices

CHARLES P. McINTOSH, Budget Secretary, Governor's Office

RONALD SHARP, Executive Director, Juvenile Court Judges'  
Commission

ANNE VALSING, Vice President, League of Women Voters  
of Pennsylvania

JOAN WEINER, Executive Director, Pennsylvania Crime Commission



