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**NEW MEXICO  
STATUTES  
1978**

**ANNOTATED**

**Chapter 8  
Elected Officials**

**Pamphlet 24**



**1989 CUMULATIVE SUPPLEMENT**

This supplement includes laws enacted since the 1983 replacement pamphlet through the First Regular Session of the Thirty-Ninth Legislature (1989) and annotations through 767 P.2d 1019, 109 S. Ct. 851, 865 F.2d 277, 702 F. Supp. 284, 123 F.R.D. 398, and 94 Bankr. 784.

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CHARLOTTESVILLE, VIRGINIA

## 8-5-2. Duties of attorney general.

### I. GENERAL CONSIDERATION.

**Attorney general's prosecution of state officer he formerly represented.** — The appointment of the New Mexico attorney general, and a deputy attorney general, to act as special assistant United States attorneys for prosecution of criminal charges against the state investment officer and an assistant state treasurer alleging a conspiracy to extort a

political contribution involved no inherent or actual conflict of interest under the rules of professional responsibility or this section. An inherent conflict of interest does not arise merely because a state attorney general prosecutes a state officer whom he formerly represented. *United States v. Troutman*, 814 F.2d 1428 (10th Cir. 1987).

## 8-5-5. Assistant attorneys general; other employees; appointment.

A. The attorney general may appoint a deputy attorney general and as many other assistant attorneys general together with stenographic, clerical and other necessary employees on a full- or part-time basis, at salaries to be fixed by him within budget allowances and appropriation limits, as the business of the department shall require and who shall hold office at the pleasure of the attorney general. The deputy attorney general and the assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general.

B. Within legislative appropriations, the attorney general may appoint full-time salaried members of his staff as peace officers for the full-time investigation of violations of, and, and the full-time enforcement of, the criminal laws of the state. These employees shall comply with the certification provisions of Section 29-7-8 NMSA 1978.

**History:** Laws 1933, ch. 21, § 5; 1941 Comp., § 3-305; 1953 Comp., § 4-3-5; Laws 1955, ch. 119, § 1; 1965, ch. 214, § 1; 1979, ch. 356, § 1; 1988, ch. 92, § 1.

**The 1988 amendment,** effective May 18, 1988, made a minor stylistic change in Subsection A and rewrote Subsection B.

## ARTICLE 6

# State Auditor, Treasurer and Secretary of Finance and Administration

Sec.

8-6-7. Wrongful drawing or payment of warrant by secretary or treasurer; penalty.

## 8-6-3. Duties of treasurer; receipts.

**Temporary provisions.** — Laws 1987, ch. 339, § 4, effective July 1, 1987, provides that the seventy-sixth fiscal year appropriation for the cash manager will be distributed equally between the state treasurer and the board of finance and further provides that all files and two full time equivalent positions will be transferred to the treasurer and two full time

positions will be transferred to the board of finance and the remaining full time positions will be deleted.

Laws 1987, ch. 339, § 3, effective July 1, 1987, provides that all references in law to the "state cash manager" shall be deemed to be references to the state treasurer.

## 8-6-7. Wrongful drawing or payment of warrant by secretary or treasurer; penalty.

A. If the secretary of finance and administration draws any warrant on the state treasurer when he knows or with the use of available accounting information should reasonably know there is an insufficient unexpended and unencumbered balance available for the purpose for which the warrant is drawn, he shall be in violation of this section.

B. If the state treasurer pays any warrant when he knows or, with the use of available accounting information, should reasonably know there are insufficient funds available in the treasury for the purpose to pay the warrant, he shall be in violation of this section.

Pamphlet 24  
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**1983 REPLACEMENT PAMPHLET**

Pamphlet 24 includes laws enacted through the First Regular Session of the Thirty-Sixth Legislature (1983) and annotations through 658 F.2d 372, 511 F.2d 841, 698 F.2d 1238, 554 F. Supp. 446, 96 F.R.D. 243, 26 B.R. 199 and 1982 Op. Atty. Gen. No. 32, 35.

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assigned by the secretary of state and which are pursuant to the election laws of the state. Such duties shall include the conduct of schools, instruction and training pertaining to election administration and the preparation of instruction materials and manuals to promote uniformity of the administration of election laws in the state. There is created in the bureau of elections the position of state voting machine supervisor. The state voting machine supervisor shall be knowledgeable in the mechanical operation, repair and maintenance of voting machines used in this state. The state voting machine supervisor shall provide assistance to counties in the repair, maintenance, care and proper use of voting machines owned by the counties.

**History:** 1953 Comp., § 4-2-7, enacted by Laws 1969, ch. 191, § 1.

**Emergency clauses.** — Laws 1969, ch. 191, § 2, makes the act effective immediately. Approved April 2, 1969.

**County voting machine technicians are trained by state voting machine supervisor.** 1973 Op. Att'y Gen. No. 73-13.

## ARTICLE 5

### Attorney General

Sec.

- 8-5-1. Creation of department of justice.
- 8-5-2. Duties of attorney general.
- 8-5-2.1. Attorney general; legal service fees for state agencies.
- 8-5-3. Action in civil and criminal cases.
- 8-5-4. Employment of legal assistance for departments.
- 8-5-5. Assistant attorneys general; other employees; appointment.

Sec.

- 8-5-6. Opinions and report; sale.
- 8-5-7. Proceeds of sale; credit to New Mexico compilation fund.
- 8-5-8 to 8-5-13. Repealed.
- 8-5-14. Cumulative supplemental index; publication; distribution.
- 8-5-15. Representation of officer, deputy, assistant, agent or employee of state or state institution.

#### 8-5-1. [Creation of department of justice.]

That the department of justice be, and same is hereby created, with the attorney general as head thereof, which shall be located at the seat of government.

**History:** Laws 1933, ch. 21, § 1; 1941 Comp., § 3-301; 1953 Comp., § 4-3-1.

#### 8-5-2. Duties of attorney general.

Except as otherwise provided by law, the attorney general shall:

- A. prosecute and defend all causes in the supreme court and court of appeals in which the state is a party or interested;
- B. prosecute and defend in any other court or tribunal all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action or when requested to do so by the governor;
- C. prosecute and defend all actions and proceedings brought by or against any state officer or head of a state department, board or commission, or any employee of the state in his official capacity;
- D. give his opinion in writing upon any question of law submitted to him by the legislature or any branch thereof, any state official, elective or appointive, or any district attorney on any subject pending before them or under their control with which they have to deal officially or with reference to their duty in office;
- E. prepare drafts for contracts, bonds and other instruments of writing which may be required for the use of the state whenever requested to do so by any state officer;
- F. promptly account to the state treasurer for all state funds received by him;
- G. report to the governor and legislature the condition of his office, the text of all opinions rendered and a summary of business transacted of public interest, which report shall be submitted each year;

H. keep a register of all opinions rendered and all actions prosecuted and defended by him, and of all proceedings in relation thereto;

I. attend and assist in the trial of any indictment or information in any county on direction of the governor;

J. appear before local, state and federal courts and regulatory officers, agencies and bodies, to represent and to be heard on behalf of the state when, in his judgment, the public interest of the state requires such action or when requested to do so by the governor; and

K. perform all other duties required by law.

**History:** Laws 1933, ch. 21, § 2; 1941 Comp., § 3-302; 1953 Comp., § 4-3-2; Laws 1966, ch. 28, § 15; 1975, ch. 327, § 1.

- I. General Consideration.
- II. Supreme Court and Court of Appeals.
- III. Other Courts.
- IV. State Officers and Employees.
- V. Opinions.

#### I. GENERAL CONSIDERATION.

**Cross-references.** — For the duty of the attorney general to give advice to the lieutenant governor, see 8-3-2 NMSA 1978. As to the publication and sale of the opinions and reports of the attorney general, see 8-5-6, 8-5-7 NMSA 1978. As to publication and sale of an index to the opinions, see 8-5-14 NMSA 1978. As to the duty to represent any officer, deputy, assistant, agent or employee of the state or a state institution, see 8-5-15 NMSA 1978. For the term of office of the attorney general, see N.M. Const., art. V, § 1. As to the attorney general being a member of the executive department, see N.M. Const., art. V, § 1. As to the attorney general residing and keeping books, papers, public records and seal of office at the seat of government, see N.M. Const., art. V, § 1. As to the qualifications for the office of attorney general, see N.M. Const., art. V, § 3. For the attorney general's salary, see N.M. Const., art. V, § 12, and 8-1-1 NMSA 1978. As to counsel for multistate tax commission member, see 7-5-5 NMSA 1978. As to being legal adviser to taxation and revenue department, see 9-11-11 NMSA 1978. As to representation of the state or any county by the attorney general, see 36-1-19 NMSA 1978.

**Emergency clauses.** — Laws 1975, ch. 327, § 2, makes this act effective immediately. Approved April 10, 1975.

**Appropriations.** — Laws 1980, ch. 24, § 9, appropriates \$100,000 from the general fund to the attorney general, for expenditure in the sixty-eighth and sixty-ninth fiscal years, to conduct a study to determine the cause of the events at the state penitentiary on February 2 and 3, 1980, to investigate any claims by the state against other persons and to recommend any necessary changes in the administration and facilities of the penitentiary, the findings to be reported to the first session of the thirty-fifth legislature. Any unexpended or unencumbered balance remaining at the end of the sixty-ninth fiscal year is to revert to the general fund.

Laws 1980, ch. 24, § 10, appropriates \$500,000 from the general fund to the state board of finance to be divided between the district attorney of the first judicial district and the attorney general, for expenditure in the sixty-eighth and sixty-ninth fiscal years, for prosecutions made necessary by the events at the state penitentiary on or about February 2 and 3, 1980. Any unexpended or unencumbered balance remaining at

the end of the sixty-ninth fiscal year is to revert to the general fund.

Laws 1980, ch. 24, § 12, provides that any state agency receiving funds appropriated in the act shall report on their expenditure to the legislative finance committee at the earliest possible time.

Laws 1980, ch. 24, § 22, makes the act effective immediately. Approved February 22, 1980.

**Historical.** — In the Act of 1859, the duties of the attorney general were coextensive with the territory; but by the Act of 1862, his duties were expressly limited to the supreme court and district courts of the first and second districts. In the Act of January 28, 1863, § 25, the territorial limits within which the attorney general was to exercise his duties was again reduced and restricted to the first judicial district. Territory ex rel. Wade v. Ashenfelter, 4 N.M. 93, 12 P. 879 (1887), appeal dismissed, 154 U.S. 493, 14 S. Ct. 1141, 38 L. Ed. 1079 (1893).

**Attorney general has no common-law powers or duties;** his duties are statutory. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

The office of attorney general in New Mexico was created by statute, and its powers and duties defined and limited by statute from its inception. No common-law powers were confirmed in the office of attorney general by the constitution of New Mexico. State v. Davidson, 33 N.M. 664, 275 P. 373 (1929).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Attorney General §§ 9 to 13.

Right of attorney general to intervene in divorce suit, 22 A.L.R. 1112.

Dismissal of criminal proceedings on motion to attorney general, 66 A.L.R. 1378.

Power of attorney general to compromise, settle or dismiss suit or proceeding, 81 A.L.R. 124.

Quo warranto, concurrent or conflicting powers of prosecuting attorney and attorney general as to bringing action of, 131 A.L.R. 1212.

Right of attorney general to represent or serve administrative officer or body to exclusion of attorney employed by such officer or body, 137 A.L.R. 818.

Will contest: right of attorney general to intervene in will contest case involving charitable trust, 74 A.L.R.2d 1066.

Duty of trustees of charitable trust to furnish information and records to attorney general relating to trust administration, 86 A.L.R.2d 1375.