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Functions of the Office of Attorney General of Ohio

Hon. William A. Saxbe*

THE OFFICE OF THE ATTORNEY GENERAL of Ohio was established by the Constitution of 1851 in Article XII, Section 1. The duties of the Attorney General and the functions of the Office are prescribed by statute.

That places the Attorney General as the last of our statutory officers in Ohio. The Attorney General, if there was any before the Constitution of 1851, served at the pleasure of the Governor as a legal advisor. And some of the things I shall say later reflect the importance of making this a Constitutional office, thus putting a different light on the function of the Office.

Briefly, the Office acts as does any law office in representing its client as both Solicitor and Barrister; the client being, of course, the State of Ohio. The Office gives legal advice and represents the State in Court when civil litigation becomes necessary. Because of the sheer size of the client and because of the great volume of legal matters in which the State is concerned, the law office for the State is necessarily large.

We have 61 lawyers on our staff in Columbus and located outside of Columbus. And like everything else in government the office is expanding to meet increased needs.

So this is our primary responsibility, to advise our client and to represent the State of Ohio as defense attorney in a sense, and as plaintiff's lawyer in countless actions of varying kinds and of different degrees of importance. Several examples will serve to indicate the wide variety of matters with which we are involved:

In the field of Workmen's Compensation, the Attorney General defends the State Fund and represents the State before the Commission and in the Courts.

The Highway Department of the State calls upon our office to try appropriation cases before juries whose job it is to establish the value of land condemned. The expansion of our highway program today requires that more and more cases be tried, as land values fluctuate and people's ideas vary about such values.

* Attorney General of the State of Ohio.

[*Editor's Note:* This is an excerpt from an address delivered on Feb. 27, 1957 at a luncheon meeting of the Alumni Association of Cleveland-Marshall Law School.]

Often the only way to resolve the difference is in court. And in order to keep up with this fast moving highway program we must try these cases as speedily as we can. The Attorney General has the right to advance these cases on the docket, and we exercise that right in order to help in the highway program.

Another section of the Office is devoted to taxation, sales and use tax cases, personal property and inheritance tax cases, and in general defending the State where the validity of its tax laws is challenged. In other words, if a constitutional problem is raised concerning the tax law, the Attorney General must defend.

We also have a Claims Section. If someone owes the State \$50.00 for a 50 day delay in a sales tax return, we have the job of suing him for the \$50.00. This is the unceremonious part of the Attorney General's Office, and one that requires, as you can imagine, a large staff devoted to this work. We have the responsibility then to collect the many claims that are certified to us by the various State Departments, whether they be taxation matters, liquor matters, highway matters, or only a matter of \$25.00 from a careless driver who knocks down a guard rail along the highway. The truth is there are so many of these cases that our staff is not large enough to try all of them in the 88 counties of the State, and we are authorized to send them out to special counsel in the various counties for collection on a contingent fee basis.

Determination of who will be selected as special counsel on a contingent fee basis is, I suppose, an opportunity for political manipulation, and is, of course, an object of much interest to local lawyers. And so we try to handle that as unpolitically and as wisely and justly and equitably as we can.

With respect to claims—we act like any other law office in the complete representation of a client. The story does not end there, however, because the Legislature has created additional areas in which the Office must operate. The Attorney General by law is an actual voting member of many important boards of the State, and as such is responsible, along with the other members, for a wide variety of purely administrative decisions.

These boards include the Sinking Fund Commission, which administers the State debt obligations; the Emergency Board and the Controlling Board, which allocate and control expenditures of State funds. Recently, at a meeting of the Sinking Fund Commission, we authorized the issuance of bonds for both

highways and the veterans' bonus in a sum something over one hundred million dollars.

We also are a voting member of the Sundry Claims Board. As you all know, the State is immune from suit. The only way a person can recover for injury or damage by the State is through filing a "sundry claim."

We have a like function with the trustee boards of the various retirement funds. Would you believe it that we have over one hundred million dollars in the various retirement funds in the State of Ohio at the present time? And the investment of this money is a very serious problem. Usually ten to twenty million dollars is invested annually on behalf of these various funds.

Then, of course, we are a member of the State Board of Deposit, which, as the name implies, is charged with the selection of the depositories of State funds.

In these varying respects the responsibility is not that of merely rendering legal advice, but of taking a part in the administrative decisions.

The Office has still a third function, possibly its most important: Lawyers are generally familiar with the Opinions of the Attorney General. By statute the Office advises the boards, commissions, bureaus and officers of the State government, as well as the prosecuting attorneys of the 88 counties, giving Opinions that are formal and informal depending rather largely upon how general the question involved may be. These Opinions, some of which find their way into the bound volumes of the Attorney General's Opinions, represent important interpretations of the statutes of our State, and stand as authority on matters which have not been the subject of judicial determination.

Like Hydra in Greek mythology, the Office of the Attorney General is many-headed. The detailed list and brief description that I have attempted here is not all-inclusive, but is a kind of rough, over-all, rather cursory view of some of the problems and matters with which we deal.

Sometimes, in the popular mind the things the Office does are confused with the functions of the United States Department of Justice. And I find this is true with attorneys. It is inaccurate to compare the two, and a brief explanation of why this is so may serve to explain the real nature of the Attorney General's Office.

In the first place, the Justice Department is precisely that, a *department* of the executive branch of the Federal Government, responsible to the Chief Executive and active in implementing the program of the administration. In Ohio, the Office of the Attorney General is itself a separate branch of government. The Office holder is elected directly by the people, and is accountable to them. The Office has certain powers, as we have outlined, which make it a kind of fourth check or balance in addition to the purely legislative, executive and judicial branches of State government. This gives the Office a highly responsible place in our State-wide community, and this direct responsibility to the people is not to be taken lightly.

It is essential that we bear in mind that we do not, in a legal sense, represent the administration, nor, in a strict sense, the State as an entity, but in a broad sense, the people from whom we derive our powers.

So I have instructed the Assistants in the Office that, in their functions as trial lawyers, or in rendering opinions to State government, they shall temper legal partisanship with the knowledge that our true responsibility is to the individual. For example, an Assistant in the *Workmen's Compensation Section* should defend the State fund with vigor and with legal scholarship, but at the same time he should remain objective. He should seek to *find the law*, in the best sense of that expression, not to create law by legalistic artifice, and never to hide or distort the law by courtroom pranks or hijinks. The claimant-citizen of our community is entitled to a strict but fair view of the law from the Office of the Attorney General—a somewhat more open-minded approach than he might encounter in opposing counsel in a private matter.

I should add that I expect our Assistants to remain lawyers in the litigation of cases, and not to act as judges, and that I appreciate the proper role of the courts. The fact is, however, that we do have a difficult kind of responsibility as lawyers. This stems from the fact that we represent and defend the State, which is, in turn, the creature of society; and often we do so in opposition to individual members of the society.

In this matter perhaps we vary little from the Justice Department. There is one further difference, however, that perhaps is worthy of comment: The Justice Department is very distinctly a law enforcement agency. It prosecutes the offender who has violated rules and laws pertaining to the Internal Revenue Serv-

ice, for example. Anti-trust cases are another example. And generally it has to do with prosecution of all criminal matters, through the Federal District Attorneys, themselves a part of the Department. Its litigation then is largely of a criminal nature, as it directly touches the lives of the people.

On the other hand the Office of the Attorney General is almost exclusively a civil law office, involved on behalf of the State in cases in which no criminal statutes usually are involved. In Ohio the prosecution of cases is left, except in very rare instances, to the prosecuting attorneys in our 88 counties, and to municipal officials. They are, of course, elected by the people in their respective areas, and are not subject to the jurisdiction of our Office. They may be required to file reports with us, and they may turn to us for opinions on matters involving interpretation of statutes. In addition the Governor and the Legislature may call upon the Office from time to time to exercise investigative and law enforcement functions. This does not, however, change the basic function of the Office, which is the practice of the civil side of the law.

The Office holds an enormous challenge for me as Attorney General, and, I should imagine, for the Assistant Attorneys General who work with me. The matters that come before us are important economically to the participants and sociologically to the community. For a lawyer there is no place in government more rewarding, no place where his talents as a professional man are put to a greater test, and no place where his service to the people of the State is greater.

In the Office of the Attorney General, you quickly appreciate the volume of the work and the importance of the work. It is a challenge—to handle the affairs of the State in such a manner that will best represent the individual's rights, and at the same time to give to the State and to the various officials of the State the legal advice which will enable them to best perform the functions of their offices.