

TENNESSEE ATTORNEY GENERAL AND REPORTER

CONSTITUTIONAL OFFICER

“An Attorney General and Reporter for the State, shall be appointed by the Judges of the Supreme Court and shall hold his office for a term of eight years.” *Tenn. Const. art. VI, § 5*; *see also Tenn. Code Ann. § 8-6-101 (2011)* (“The attorney general and reporter for the state is appointed by the judges of the supreme court. The term of office is eight (8) years. A certificate of appointment, signed by all the judges, shall be entered upon the minutes of the court at the first session thereafter at Knoxville, Nashville, and Jackson, respectively. The attorney general and reporter shall qualify and perform the duties of the office as required by law, and subject to the penalties imposed by law.”).

OVERVIEW OF DUTIES OF THE ATTORNEY GENERAL AND REPORTER AS DESCRIBED BY STATUTE¹

- Serves as the chief executive officer of the legal department of state government, *see Tenn. Code Ann. § 8-6-102 (2011)*; *id.* §§ 4-3-1502, -1503 (2011); *id.* §§ 4-3-101(25), -111(1) (2013 Supp.);
- Manages the office of the Attorney General and Reporter, *see Tenn. Code Ann. § 8-6-103 (2011)* (submits a report to the General Assembly on July 1 of each year reporting any increase and decrease in the number of assistants to the attorney general during the prior fiscal year); *id.* § 8-6-104 (fixes the salary of assistant attorneys general within the parameters of the budget); *id.* § 8-6-105 (approves expense claim forms of assistant attorneys general);
- Directs all civil litigated matters and administrative proceedings in which the state of Tennessee or any officer, department, agency, board, commission or instrumentality of the state may be interested, *Tenn. Code Ann. § 8-6-109(b)(1) (2011)*; *see also id.* § 2-10-109(a)(3) (2003) (legal representation for registry of election finance); *id.* § 2-12-101 (2003) (legal representation for county election commissioners under certain circumstances); *id.* § 3-6-308(b) (2013 Supp.) (legal representation to the ethics commission); *id.* § 3-10-105 (2013 Supp.) (renders opinions and gives counsel to the office of legal services, the office of legislative administration, and the offices of legislative information systems upon request of the directors); *id.* § 4-15-101(b) (2011) (legal counsel to the state building commission); *id.* §§ 4-8-303 and 4-23-204 (2011) (reviews contracts of the state capital and the Tennessee residence commissions); *id.* § 4-56-102 (2013 Supp.) (legal counsel to the procurement commission); *id.* §§ 8-34-308 and 8-37-115 (2011) (legal counsel to the board of trustees of the Tennessee consolidated retirement system and the investment advisory council); *id.* § 9-8-406 (2012) (represents the state before the claims commission); *id.* § 37-5-106(b) (2013 Supp.) (advises the department of children’s services on matters of law); *id.* § 49-2-1104 (2013) (renders advice and assistance upon

¹This summary of the relevant constitutional and statutory provisions is being provided solely as information, for the convenience of applicants for the position.

request to county, city, or special school districts or their boards of education regarding contracts); *id.* § 50-3-905(2008) (provides assistance to the commissioner of labor and workforce development); *id.* § 62-6-106 (2009) (legal services to the contractors' licensing board); *id.* § 62-13-203(d) (legal services to the real estate commission); *id.* § 62-19-105(b) (legal services to the auctioneer commission); *id.* § 62-26-303(d) (legal services to the private investigation and polygraph commission); *id.* § 63-9-111(f) (legal services to the board of osteopathic examination); *id.* § 67-4-215 (2013) (legal advice and representation to the department of health in court proceedings involving the Tuberculosis Control Act of 1971);

- Attends to all business of the state, both civil and criminal in the court of appeals, the court of criminal appeals and the supreme court, *Tenn. Code Ann.* § 8-6-109(b)(2) (2011); *id.* § 54-10-210 (2008) (represents counties before appellate courts in certain circumstances);
- Attends to all legal business connected with the management of the state treasury, or debts due and owing to the state, or debts and liabilities claimed against the treasury of the state, or suits brought against the comptroller of the treasury before any court where such litigation may be pending, *Tenn. Code Ann.* § 8-6-109(b)(3) (2011); *see also id.* § 7-51-1903 (2013 Supp.) (reviews and approves local government grant programs); *id.* § 7-68-101 (2011) (seeks to recoup from the federal government money spent by the state enforcing federal immigration laws); *id.* § 9-8-109(d) (2012) (provides an annual report to the state board of claims regarding the use of risk management funds in defending actions against the state and state employees); *id.* § 12-4-603 (2011) (provides state agencies notice of persons or businesses ineligible to solicit state let or state-funded contracts); *id.* § 41-21-905(b) (2010) (seeks to obtain for the State reimbursement from certain inmates who can afford to pay a percentage of the costs of their care); *id.* § 67-4-215 (2013) (enforces a monetary penalty against a sheriff's official bond in certain circumstances);
- Attends to any other legal duty that the comptroller of the treasury and the state treasurer may require the attorney general and reporter or such assistants to perform, connected with the state treasury, *Tenn. Code Ann.* § 8-6-109(b)(4) (2011);
- Provides the governor, secretary of state, state treasurer, comptroller of the treasury, members of the general assembly and other state officials, when called upon, any legal advice required in the discharge of their official duties, *Tenn. Code Ann.* § 8-6-109(b)(5) (2011);
- Provides the governor, secretary of state, state treasurer, comptroller of the treasury, members of the general assembly and other state officials, when called upon, written legal opinions on all matters submitted by them in the discharge of their official duties, and makes such written opinions available for public inspection. When a member of the general assembly requests a written legal opinion concerning pending legislation, "it is the legislative intent ... [that] such request shall be replied to as expeditiously as possible," *Tenn. Code Ann.* § 8-6-109(b)(6) (2011); *see also id.* § 2-10-109(a)(2) (2003); § 3-6-106(b) (2013 Supp.) (provides opinions to state legislators, district attorneys general, the state and county election commissions, the ethics commission, and certain other officials);

- Reports the decisions of the court of appeals, the court of criminal appeals and the supreme court of Tennessee in the manner prescribed by law, *Tenn. Code Ann. § 8-6-109(b)(7) (2011)*; *id. § 8-6-202-6*;
- Examines and certifies all bills of cost in the appellate courts of the state in which the state of Tennessee is interested before they are ordered to be paid by the state, *Tenn. Code Ann. § 8-6-109(b)(8) (2011)*;
- Defends the constitutionality and validity of all legislation of statewide applicability enacted by the general assembly, except in as provided in Tennessee Code Annotated section 8-6-109(b)(10), and “except in those instances where the attorney general and reporter is of the opinion that such legislation is not constitutional, in which event the attorney general and reporter shall so certify to the speaker of each house of the general assembly[.]” *Tenn. Code Ann. § 8-6-109(b)(9) (2011)*; *see also id. §§ 4-5-211; 12-1-203 (2011)* (reviews the legality and constitutionality of administrative rules and develops for publication guidelines to identify and evaluate government actions that may result in unconstitutional takings);
- Exercises discretion to defend the constitutionality and validity of all private acts and general laws of local application enacted by the general assembly and of administrative rules or regulations of this state. However, a sufficient adversary relationship must exist before the discretion not to defend the constitutionality of all legislation of local application may be exercised. If such discretion not to defend is exercised, such decision shall be certified to the speaker of each house of the general assembly, in the same manner as provided in subdivision Tennessee Code Annotated section 8-6-109(b)(9), *Tenn. Code Ann. § 8-6-109(b)(10) (2011)*;
- Notifies the director of the fiscal review committee of any lawsuit filed in state or federal court, in which the state is a named party and the attorney general and reporter or assistants are representing the state, which contains as part of the pleadings an allegation which would raise an issue: (A) Of insufficient funding of a law as enacted or amended, including any regulation authorized by such act; or (B) That the implementation by a department, agency, or governmental entity of a law as enacted or amended, including any regulation authorized by such act, was accomplished in a manner which resulted in insufficient funding; which lawsuit, if adjudicated in the plaintiff’s favor, would result in a mandated increase in state expenditures, *Tenn. Code Ann. § 8-6-109(b)(11) (2011)*;
- Confers with the speaker of each house of the general assembly upon notification by the director of the fiscal review committee under Tennessee Code Annotated section 3-7-109, *Tenn. Code Ann. § 8-6-109(b)(12) (2011)*;
- Defends local education agencies and/or their present or past superintendents, board members, teachers, or nonprofessional staff members, hereinafter referred to as employees, upon the formal request in writing of any such employee in any case involving a claim of injury or damage alleged to have been proximately caused by acts or omissions of such employees within their scope of employment with the local education agency in detecting,

managing or removing asbestos from any building or structure owned or controlled by the local education agency when the local education agency has complied with the United States environmental protection agency regulations relative to asbestos in schools. In the event that the attorney general and reporter determines that the best interest of the state or employee requires private counsel, the employee shall be notified, and shall have the right to file for reimbursement of defense cost in accordance with chapter 42 of this title in the same manner as state employees, *Tenn. Code Ann. § 8-6-109(b)(13) (2011)*;

- Brings suit upon behalf of the state, local government units or local education agencies to recover public funds from entities financed by the funds and their directors or officers when the funds through the improper actions of the directors or officers have been used for unauthorized purposes, misapplied or misappropriated, *Tenn. Code Ann. § 8-6-109(b)(14) (2011)*;
- Attends to any other duty which may devolve upon, or be imposed upon, the attorney general and reporter by law, *Tenn. Code Ann. § 8-6-109(b)(4) (2011)*; *see, e.g., id. § 2-8-110(a) (2003)* (calculates and certifies election results along with certain other state officials); *§ 29-13-401 et seq.* (assists with administering the Victim Compensation from the Proceeds of the Crime Act of 1994); *id. § 55-24-106 (2012)* (issues a determination of whether a manufacturer's informal dispute settlement procedure complies with federal and state law); *id. § 68-11-1303 (2013)* (oversees cooperative agreements hospitals enter into pursuant to statute);
- Attends in person, or by assistant, and prosecutes or defends, as the case may be, any and all suits, civil or criminal, in the supreme court of the United States, in the United States court of appeals for the judicial circuit of the United States comprising the state of Tennessee, or in any of the district courts of the United States held in the state of Tennessee, in which suit or suits the state may be a party, or in which the state has or may have interests of a pecuniary nature, *Tenn. Code Ann. § 8-6-110 (2011)*;
- Conducts investigations, criminal prosecutions, and ouster proceedings of certain public officials under certain circumstances as specified by statute, *Tenn. Code Ann. § 8-6-112 (2011)*; *see also id. § 2-10-109(b)(1)-(2) (2003)*; *id. §§ 8-47-103, -108, -111 (2011)*;
- Serves on various legislatively created boards, commissions, and groups, *see e.g. Tenn. Code Ann. § 1-1-101(a) (2003)* (Code Commission); *id. § 4-3-3003(a)(2)(A) (Supp. 2013)* (Human Trafficking Task Force); *id. § 4-48-109(b)(2011)* (Commission on Holocaust Education); *id. § 5-3-101 (2011)* (Consolidation Commission); *id. § 8-4-602(b)(2) (2013 Supp.)* (Advisory Committee on Open Government); *id. § 12-1-103 (2012)* (Commission to Purchase Federal Property); *id. § 16-3-818(a)(1) (2013 Supp.)* (Integrated Criminal Justice Steering Committee); *id. § 38-8-102(b)(1)(A) (2013 Supp.)* (Peace Officer Standards and Training Commission); *id. §§ 8-7-301(2011); 8-14-301 (2011); 17-3-102 (2009)* (Ex officio member of and legal advisor to the District Attorneys General Conference, the District Public Defenders Conference, and the Judicial Conference).