CHAPTER 8

ATTORNEY GENERAL

8.01 APPEARANCE.

HISTORY. 1905 c. 227 s. 1; G.S. 1913 s. 100; G.S. 1923 s. 109; M.S. 1927 s. 109.

POWERS. He has, in addition to those powers expressly conferred on him by statute, those incident to his office at common law. He may act to remove municipal officers for misconduct in office although the city charter empowers the city council to do so or though a statute requires the county attorney to prosecute. State v Robinson, 101 M 277, 112 NW 269, 20 LRA (N.S.) 1127.

He may step into a cause where the state is a party despite the fact that it had been begun by the county attorney, State ex rel Goff v O'Neil, 205 M 366, 286 NW 316 and may enter and appeal any case involving the police law of the state. State ex rel v Village Council of Osakis, 112 M 365, 128 NW 295.

A statute providing for prosecution by the city attorney does not preclude prosecution by the attorney general as chief law officer of the state. State v Crombie, 107 M 166, 119 NW 658.

His discretion as to what litigation shall or shall not be instituted by him is beyond the control of any other officer or department of the state. State ex rel v City of Fraser, 191 M 427, 254 NW 776.

The courts have no control by mandamus over when a state case is to be tried. State ex rel v Youngquist, 178 M 442, 227 NW 891.

LIMITATIONS. He cannot represent both parties to a dispute brought to court by two state departmens, an officer and a department or two officers. He may espouse the side that he thinks is to the best interests of the state. The other may hire other attorneys but they cannot be paid from public funds. State ex rel Dist. Ct., 196 M 44, 264 NW 227.

In an action on relation of the county attorney to enjoin defendant from conducting a small loan business, whether the county attorney in his official capacity is empowered to institute suits of this nature is not decided, for it is conceded that the attorney general under section 8.01 has authority to institute the suit on behalf of the state. State ex rel v O'Neil, 205 M 369, 286 NW 316.

8.02 DEPUTIES; ASSISTANTS.

HISTORY. 1905 c. 227 s. 2; 1911 c. 56 s. 1; G.S. 1913 s. 101; 1917 c. 61 s. 1; 1919 c. 272 s. 1; G.S. 1923 s. 110; M.S. 1927 s. 110; 1931 c. 211 s. 1.

VETERANS PREFERENCE ACTS do not apply to the appointments of the attorney general where the position of the appointee is one of confidence. State ex rel v Peterson, 194 M 60, 259 NW 696.

Lay, legal, or expert assistants deemed "employees of the state." OAG Feb. 17, 1945 (629).

8.023 ASSISTANT ATTORNEY GENERAL TO BE ASSIGNED TO DEPARTMENT OF TAXATION HISTORY. 1945 c. 66 s. 1.

8.03 PROSECUTIONS.

HISTORY. 1905 c. 227 s. 3; G.S. 1913 s. 102; G.S. 1923 s. 111; M.S. 1927 s. 111.

INITIATIVE OF ATTORNEY GENERAL. He may begin prosecutions on his own initiative without waiting for action to be taken by the secretary of state, State ex rel Young v Standard Oil, 111 M 85, 126 NW 527; or the public examiner, State ex rel v Am. Sav, & L. Ass'n, 64 M 349, 67 NW 1.

ACTIONS AGAINST CORPORATIONS. Long-continued failure to complete the work for which it was created justifies action by the attorney general, State v Cannon River Mfgrs. Ass'n, 67 M 14, 69 NW 621; as does continuous evasion of part of the statute under which it was incorporated. State ex rel v Park & Nelson Lbr. Co. 58 M 330, 59 NW 1048, 49 Am. St. Rep. 516.

The attorney general must, however, show misuser threatening to work substantial injury to the public or amounting to a violation of the fundamental condition of the contract by which the franchise was granted. State ex rel v Minn. Thresher Mfgr. Co. 40 M 213, 41 NW 1020, 3 LRA 510.

QUO WARRANTO. When the attorney general presents an information in the nature of quo warranto, the district court must grant leave to file it as a matter of course and direct the writ to issue, but it has discretion to grant or refuse it at the instance of a private relator even though he has the consent of the attorney general. State ex rel v Village of Kent, 96 M 255, 104 NW 948.

The attorney general's refusal to file an information in the nature of quo warranto at the request of a municipality or to give his consent to the muncipality's filing one does not preclude the supreme court from permitting it. State ex rel v City of Chisholm, 196 M 285, 264 NW 798.

See discussion of quo warranto in 22 MLR 745.

8.04 PUBLIC LANDS.

HISTORY. 1905 c. 227 s. 4; G.S. 1913 s. 103; G.S. 1923 s. 112; M.S. 1927 s. 112.

8.05 FORMS PREPARED; OPINIONS.

HISTORY. 1905 c. 227 s. 5; G.S. 1913 s. 104; G. S. 1923 s. 113; M.S. 1927 s. 113.

Status of plaintiff under teachers' insurance and retirement fund. Mattson v Flynn, 216 M 354, 13 NW(2d) 11.

8.06 SPECIAL COUNSEL; STATE OFFICERS AND BOARDS.

HISTORY. 1905 c. 227 s. 6; 1911 c. 56 s. 2; G.S. 1913 s. 105; G.S. 1923 s. 114; M.S. 1927 s. 114.

LIMITATIONS. He cannot represent both parties to a dispute brought to court by two state departments, an officer and a department or two officers. He may espouse the side that he thinks is to the best interests of the state. The other may hire other attorneys but they cannot be paid from public funds. State ex rel v Dist. Ct., 196 M 44, 264 NW 227.

Under sections 8.01 and 8.06 the attorney general shall appear for the state in supreme and federal courts and in other courts when in his judgment he should do so. There are two exceptions found in section 8.06; but there is nothing in the statute which forbids a public officer, at his own expense, from employing attorneys to appear for him in a suit. State ex rel v District Court, 196 M 49, 264 NW 227.

The board of regents of the state university should employ counsel. It is not the duty of the attorney general to appoint a special assistant. OAG June 17, 1944 (618a-1).

8.07 OPINIONS TO COUNTY, CITY, VILLAGE, OR TOWN ATTORNEY; COMMISSIONER OF EDUCATION.

HISTORY. 1905 c. 227 s. 7; G.S. 1913 s. 106; G.S. 1923 s. 115; M.S. 1927 s. 115.

COUNTY OFFICERS. It is not the duty of the attorney general to advise county officers and such advice will be given only at the request of the county attorney. 1904 OAG 84.

SCHOOL MATTERS. The legislature did not confer on the attorney general the duty of making or interpreting law and therefor an opinion of the attorney general can never have the effect of foreclosing a question of statutory interpre-

tation even though rendered on a school matter. Lindquist v Abbett, 196 M 233, 265 NW 54.

In 1932 the attorney general had ruled that the superintendent was not a teacher under the terms of the tenure act. That opinion, though not binding on the courts, was, by statute law, binding on school officers until overruled by the courts. Eelkema v Board, 215 M 593, 11 NW(2d) 76.

Administrative interpretation of a statute is a canon aid to construction, and, although not binding upon the courts, should receive high respect unless found to be erroneous and in conflict with the expressed purpose of the act and the intention of the legislature. Mattson v Flynn, 216 M 354, 13 NW(2d) 11.

The attorney general will furnish official opinions when the inquiry is from the attorney for the municipality. OAG Feb 9, 1944 (624e-7).

Request for official opinions must be relative to cognate matters. The attorney general need not answer hypothetical questions. OAG Nov. 27, 1944 (218c).

8.08 REPORT.

HISTORY. 1905 c. 227 s. 8; G.S. 1913 s. 107; G.S. 1923 s. 116; M.S. 1927 s. 116.

8.09 PROSECUTION OF CLAIMS OF STATE AGAINST UNITED STATES; AGREEMENTS WITH ATTORNEYS.

HISTORY. 1927 c. 315 s. 1; M.S. 1927 s. 116-1.

8.10 COMPENSATION OF ATTORNEYS.

HISTORY. 1927 c. 315 s. 2; M.S. 1927 s. 116-2.

8.11 TO BRING ACTION TO RECOVER ON BONDS.

HISTORY. 1933 c. 399; M. Supp. s. 116-3.