

CHAPTER 94

GOVERNMENT - STATE

HOUSE BILL 16-1094

BY REPRESENTATIVE(S) Dore, Wist, Van Winkle, Wilson, Hulinghorst, Foote, Nordberg, Rankin, Lundeen, Becker K., Court, Conti, Hamner, Kagan, Landgraf, Lawrence, Roupe, Windholz, Esgar, Fields, Garnett, Ginal, Kraft-Tharp, Lee, Lontine, McCann, Melton, Mitsch Bush, Moreno, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Singer, Tyler, Winter, Young;
also SENATOR(S) Roberts, Aguilar, Carroll, Crowder, Donovan, Grantham, Heath, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Scheffel, Steadman, Todd, Ulibarri.

AN ACT**CONCERNING MAKING REFERENCES TO THE ATTORNEY GENERAL IN THE COLORADO REVISED STATUTES GENDER NEUTRAL.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-31-101, **amend** (1) (a), (1) (b), (1) (c), (1) (d), (3), and (4) as follows:

24-31-101. Powers and duties of attorney general. (1)(a) The attorney general of the state shall be the legal counsel and advisor of each department, division, board, bureau, and agency of the state government other than the legislative branch. ~~He~~ THE ATTORNEY GENERAL shall attend in person at the seat of government during the session of the general assembly and term of the supreme court and shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor, and he OR SHE shall prosecute and defend for the state all causes in the appellate courts in which the state is a party or interested.

(b) It is the duty of the attorney general, at the request of the governor, the secretary of state, the state treasurer, the executive director of the department of revenue, or the commissioner of education, to prosecute and defend all suits relating to matters connected with their departments. When requested, ~~so to do, he~~ THE ATTORNEY GENERAL shall give his OR HER opinion in writing upon all questions of law submitted to ~~him~~ THE ATTORNEY GENERAL by the general assembly or BY either THE house ~~thereof~~ OF REPRESENTATIVES OR THE SENATE or by the governor, lieutenant governor, secretary of state, executive director of the department of

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

revenue, state treasurer, state auditor, or commissioner of education.

(c) When required, ~~he~~ THE ATTORNEY GENERAL shall prepare drafts for contracts, forms, and other writings which may be required for the use of the state. ~~He~~ THE ATTORNEY GENERAL shall keep in proper books a record of all official opinions and a register of all actions prosecuted or defended by him OR HER and of all proceedings had in relation thereto and the status of pending matters in his OR HER office, which books or registers shall be delivered to his OR HER successor. Publication of opinions or other material circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(d) Any moneys received by ~~him~~ THE ATTORNEY GENERAL belonging to the state or received in his OR HER official capacity ~~shall~~ MUST be paid ~~forthwith~~ AS SOON AS PRACTICABLE to the department of the treasury and, generally, ~~he~~ THE ATTORNEY GENERAL shall have such legal duties in regard to the activities of the state and its various departments, boards, bureaus, and agencies as are imposed by law.

(3) The attorney general may appoint such deputies and assistants as are necessary for the efficient operation of his OR HER office within the limitations of appropriations made therefor by the general assembly.

(4) Upon the request of any employee in the state personnel system, it is the duty of the attorney general to represent such employee in any civil action or administrative proceeding instituted against such employee, either in his OR HER official or individual capacity if the action or proceeding arises out of performance of ~~such~~ THE employee's official duties as determined by the attorney general and if the action or proceeding has not been brought by the state personnel director or the appointing authority of ~~such~~ THE employee seeking dismissal or other disciplinary action; except that the attorney general shall not represent any such employee in an action brought under section 24-50.5-105.

SECTION 2. In Colorado Revised Statutes, 24-31-203, **amend** (4) as follows:

24-31-203. State solicitor - qualifications - appointment - duties. (4) The state solicitor may make such rules, ~~and regulations,~~ pursuant to the provisions of section 24-4-103, as may be necessary to carry out the duties imposed upon him OR HER by law or by the attorney general.

SECTION 3. In Colorado Revised Statutes, 6-1-108, **amend** (1) as follows:

6-1-108. Subpoenas - hearings - rules. (1) The attorney general or a district attorney, in addition to other powers conferred upon him OR HER by this article, may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and promulgate such rules as may be necessary to administer the provisions of this article.

SECTION 4. In Colorado Revised Statutes, 6-2-111, **amend** (2), (3), (4), and (6) as follows:

6-2-111. Unlawful acts - remedy - license. (2) Without prejudice to the rights

of any person, firm, private corporation, municipal corporation, public corporation, or trade association to bring an action, the attorney general of the state of Colorado, as an incident to and power of his OR HER office, has like powers to those provided in subsection (1) of this section, and it is his OR HER duty, upon showing by any person, firm, private corporation, municipal corporation, public corporation, or trade association that there is reason to believe that any person subject to the terms of this article is violating any term of sections 6-2-103 to 6-2-108 or section 6-2-110, to prosecute actions for violation of any provisions of this article, and to seek injunctions or restraining orders to enjoin the continuance thereof by any defendant.

(3) If any person, firm, private corporation, municipal corporation, public corporation, or trade association, in writing and under oath, submits to the attorney general a statement setting forth facts sufficient to constitute a prima facie case of violation of any of the provisions of sections 6-2-103 to 6-2-108 or any other provisions of this article, it ~~shall be~~ IS mandatory upon the attorney general to seek injunctive relief or restraining orders to enjoin the continuance of such violation by any person, firm, private corporation, or other organization so charged; and to this end, and for this purpose, the attorney general has the power to appear in his OR HER official capacity in any court in the state of Colorado, having jurisdiction in the premises, to seek relief.

(4) It is the duty of any district attorney in and for each of the judicial districts of the state of Colorado, when requested in writing by the attorney general, to advise and consult with the attorney general concerning the institution and prosecution of such actions, and to act for the attorney general in prosecution of any such action; but the attorney general has the power in his OR HER discretion to choose, select, appoint, and recompense from funds provided for the purposes of enforcement of the provisions of this article any attorney-at-law admitted to practice in the state of Colorado as a special prosecutor who has full and complete power to act for the attorney general.

(6) The attorney general ~~is empowered to~~ MAY appoint such personnel as may reasonably be required to carry out the functions prescribed for his OR HER office.

SECTION 5. In Colorado Revised Statutes, 8-81-103, **amend** (2) as follows:

8-81-103. Representation in court. (2) All criminal actions for violation of any provision of articles 70 to 82 of this title, or of any rules ~~or regulations~~ issued pursuant ~~thereto~~ TO THOSE ARTICLES, ~~shall~~ MUST be prosecuted by the attorney general of the state or, at his OR HER request and under his OR HER direction, by the district attorney of the judicial district in which the employer has a place of business or the violator resides.

SECTION 6. In Colorado Revised Statutes, **amend** 11-40-109 as follows:

11-40-109. Suits interfering with business of association. No order, judgment, or decree providing for an accounting of, or enjoining, restraining, or interfering with the transaction of, the business of any savings and loan association organized or doing business under the provisions of articles 40 to 46 of this title shall be made or granted otherwise than upon the application of the attorney general, after his OR HER approval of a written request therefor by the commissioner, except in an action

by a judgment creditor or in proceedings supplementary to execution.

SECTION 7. In Colorado Revised Statutes, 12-36-118, **amend** (5) (h) as follows:

12-36-118. Disciplinary action by board - immunity - rules. (5) (h) The attorney general shall prosecute those charges which have been referred to him OR HER by the inquiry panel pursuant to subparagraph (IV) of paragraph (c) of subsection (4) of this section. The board may direct the attorney general to perfect an appeal.

SECTION 8. In Colorado Revised Statutes, **amend** 13-73-106 as follows:

13-73-106. Presentation of evidence. The presentation of the evidence ~~shall~~ MUST be made to the state grand jury by the attorney general or his OR HER designee.

SECTION 9. In Colorado Revised Statutes, **amend** 15-1-1001 as follows:

15-1-1001. Legislative declaration. It is the purpose of this part 10 to preserve the intent of testators and grantors of testamentary and inter vivos trusts created prior to and after June 2, 1971, for charitable, educational, religious, and benevolent purposes, by minimizing the imposition of federal income and excise taxes, and federal estate and gift taxes, imposed upon the assets of such trusts, and thereby preserving the maximum amount of the trust assets for the charitable, educational, religious, and benevolent purposes for which they were intended. The attorney general of this state shall perform such acts as, in his OR HER opinion, will result in the effectuation of this declaration of purpose.

SECTION 10. In Colorado Revised Statutes, 15-1-1002, **amend** (3) as follows:

15-1-1002. Prohibition of certain acts - amendment of governing instrument. (3) Notwithstanding any provisions to the contrary in the governing instrument or in any other law of this state, the trustee of any charitable trust as defined in section 4947 (a) (1) or 4947 (a) (2) of the federal "Internal Revenue Code of 1986", with the consent of all the beneficiaries under the governing instrument, may, without application to any court and either before or after the funding of such trust, amend the governing instrument to conform to the provisions of sections 508 (e), 664, 2055 (e), and 2522 (c) of the federal "Internal Revenue Code of 1986", to the extent applicable, by executing a written amendment to the trust for that purpose. Consent shall not be required as to individual beneficiaries not living at the time of amendment or as to charitable beneficiaries not named or not in existence at the time of amendment. The possibility of beneficial interests arising after the amendment of the governing instruments shall not defeat the ability to amend. In the case of an individual beneficiary not competent to give consent, the consent of such beneficiary's guardian or conservator, if any, or the consent of a guardian ad litem appointed by a court of competent jurisdiction ~~shall be~~ IS treated as the consent of the beneficiary. A copy of the proposed amendment, executed by the trustee and consented to by all beneficiaries whose consent is required under this subsection (3), ~~shall~~ MUST be delivered in person or by registered mail to the attorney general. The attorney general may, within sixty days after such receipt, indicate by registered mail to the trustee his OR HER specific objections to such proposed amendment, in

which event the provisions of subsection (4) of this section ~~shall~~ apply if he OR SHE does not withdraw his OR HER objections. In the case of any amendment to a trust created by will or to a trust created by inter vivos instrument, unless otherwise provided, the amendment ~~shall be deemed to apply~~ APPLIES AS OF THE DATE OF DEATH OF THE DECEDENT OR AS OF THE DATE OF GIFT.

SECTION 11. In Colorado Revised Statutes, 15-12-914, **amend** (4) as follows:

15-12-914. Disposition of unclaimed assets. (4) At the time any personal representative or other fiduciary pays into the state treasury any moneys, he OR SHE shall make a written report thereof to the attorney general of the state, giving ~~him~~ THE ATTORNEY GENERAL such information as he OR SHE may have, under oath or affirmation, touching the identity and antecedents of the deceased, as well as of any person supposed to be entitled to said moneys, to the end that fictitious claims ~~thereto~~ TO THE MONEYS may be forestalled. The attorney general shall file such reports in his OR HER office and keep the index thereof, and ~~no order shall be made by a court SHALL NOT MAKE AN ORDER~~ for the repayment of any moneys so paid into the state treasury without the attorney general having first been served with written notice thirty days before the time of making application therefor. Upon the serving of such notice, the attorney general ~~shall be~~ IS classified as an interested person under this code and may appear and take all steps for and on behalf of the state that any person who might be a defendant to such action might take. The reasonable expense of any such action taken by the attorney general ~~shall~~ MUST be initially paid out of the attorney general's contingent fund; but, with the approval, order, and direction of the court having jurisdiction of the estate, any such reasonable expense incurred by the attorney general in conserving the estate and in investigating and litigating the claim of any alleged heir, devisee, distributee, or creditor ~~shall~~ MUST be repaid to said contingent fund out of the moneys in the estate or fund in controversy before final settlement thereof.

SECTION 12. In Colorado Revised Statutes, 24-4-103, **amend** (8) (b) as follows:

24-4-103. Rule-making - procedure - definitions - repeal. (8) (b) On and after July 1, 1967, no rule ~~shall~~ MAY be issued nor existing rule amended by any agency unless it is first submitted by the issuing agency to the attorney general for his OR HER opinion as to its constitutionality and legality. Any rule or amendment to an existing rule issued by any agency without being so submitted to the attorney general ~~shall be~~ IS void.

SECTION 13. In Colorado Revised Statutes, **amend** 24-35-112 as follows:

24-35-112. Legal adviser. The attorney general ~~shall be~~ IS the legal adviser for the department of revenue and ~~shall have~~ HAS control of all matters relating to the interpretation of law, commencement of legal proceedings, and conduct of legal actions for the enforcement and collection of delinquent taxes, assessments, and licenses referred to him OR HER for collection. ~~No~~ A member of the attorney general's staff shall NOT receive any payment of state taxes, assessments, or licenses.

SECTION 14. In Colorado Revised Statutes, 24-82-302, **amend** (1) as follows:

24-82-302. Acquisition and conveyance. (1) At the direction of the governor, the attorney general is further authorized to acquire fee simple title, or lesser interest therein, to said lands and rights pertaining or appurtenant thereto, or other interests therein, in the name of the state of Colorado, by donation, purchase, or by the exercise of the power of eminent domain through condemnation proceedings in accordance with law. ~~He~~ THE ATTORNEY GENERAL is further authorized to receive and apply gifts of money to be used in the acquisition of such lands and to contract for such services as may be required and to institute other types of legal proceedings and take such further action as may be necessary to fully accomplish his OR HER duties as prescribed in this part 3.

SECTION 15. In Colorado Revised Statutes, 25-7-115, **amend** (11) as follows:

25-7-115. Enforcement. (11) The division or the commission may request the district attorney for the district in which the alleged violation or noncompliance, or any part thereof, occurred or may request the attorney general to bring, and if so requested it is his OR HER duty to bring, a suit for recovery of any penalty or nonpayment penalty, with interest, imposed pursuant to subsection (5) of this section if the penalty is not paid when due.

SECTION 16. In Colorado Revised Statutes, 25-7-121, **amend** (1) as follows:

25-7-121. Injunctions. (1) In the event any person fails to comply with a final order of the division, or the commission, that is not subject to stay pending administrative or judicial review, or in the event any person violates any emission control regulation of the commission, the requirements of the state implementation plan, or any provision of parts 1 to 4 of this article, including any term or condition contained in any permit required under this article, the division or the commission, as the case may be, may request the district attorney for the district in which the alleged violation occurs or the attorney general to bring, and if so requested it is his OR HER duty to bring, a suit for an injunction to prevent any further or continued violation.

SECTION 17. In Colorado Revised Statutes, 32-11-706, **amend** (4) as follows:

32-11-706. General provisions about annexations. (4) If an order is so entered annexing real property to the urban district, such order ~~shall be~~ is deemed final. The entry of such order ~~shall~~ finally and conclusively ~~establish~~ ESTABLISHES the annexation of the real property to the district against all persons except the state, in a proceeding in the nature of quo warranto, commenced by the attorney general within thirty days after the resolution entering such order is filed with him OR HER and not otherwise. Such an annexation shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (4).

SECTION 18. In Colorado Revised Statutes, 34-60-105, **amend** (3) as follows:

34-60-105. Powers of commission. (3) The attorney general ~~shall be~~ is the legal advisor of the commission, and it is his OR HER duty to represent the commission in all court proceedings and in all proceedings before it and in any proceedings to which the commission may be a party before any department of the federal

government.

SECTION 19. In Colorado Revised Statutes, **amend** 36-4-112 as follows:

36-4-112. Attorney general to enforce. The attorney general of the state is directed to give prompt and special attention to the enforcement of sections 36-4-104 to 36-4-112 and shall, when so requested by the board, give advice and take such legal action as in his OR HER judgment is necessary or proper and ~~to that end~~, may, if necessary, with the approval of the board and governor, employ not to exceed one lawyer or firm of lawyers to assist him ~~therein~~, OR HER IN SUCH LEGAL ACTION, but ~~no~~ A retainer shall NOT be paid or other payment for such services made until after the ~~same~~ SERVICES have been rendered or concurrently MAY BE PAID with ~~such~~ THE rendition OF THE SERVICES.

SECTION 20. In Colorado Revised Statutes, **amend** 37-60-114 as follows:

37-60-114. Attorney general as legal advisor. The attorney general ~~shall act as~~ IS THE legal advisor for the board, and with his OR HER consent the board may employ additional legal counsel.

SECTION 21. In Colorado Revised Statutes, 37-80-116, **amend** (1) as follows:

37-80-116. Legal services authorized. (1) (a) The attorney general shall assign an assistant from his OR HER office to act as an advisor to the state engineer and to the various employees of the state who are subject to the administrative authority of the state engineer. The state engineer shall ~~avail himself of~~ USE the services of ~~such~~ THE assistant to whatever extent the performance of his OR HER duties can be facilitated by legal consultation.

(b) To whatever extent additional legal services are required, they ~~shall~~ MUST be procured at the request of the state engineer, but the cost of their services ~~shall~~ MUST be paid for out of funds budgeted to the state engineer for professional services, and in preparing budgets the state engineer shall anticipate his OR HER probable requirements for such additional assistants. All such assistants ~~shall be~~ ARE selected by and serve at the pleasure of the attorney general and may include attorneys employed for special areas of the state or for the performance of specific duties on a fee rather than salary basis.

SECTION 22. In Colorado Revised Statutes, **amend** 37-85-111 as follows:

37-85-111. Action when corporation refuses to deliver water. When any corporation, in defiance or by attempted evasion of the provisions of sections 37-85-101 and 37-85-108 to 37-85-111, after tender of the compensation, refuses to deliver water, such as is mentioned in section 37-85-110, to any person lawfully entitled to apply ~~therefor~~ FOR WATER, it is the duty of the attorney general, upon request of the board of county commissioners of the proper county or upon his OR HER otherwise receiving due notice thereof, to institute and prosecute to judgment and final determination proceedings in the nature of quo warranto for the forfeiture of the corporate rights, privileges, and franchises of any such corporation so offending or by mandamus or other proper proceedings to compel it to do its duty in that behalf.

SECTION 23. In Colorado Revised Statutes, 18-17-107, **amend** (1) and (6) (a) as follows:

18-17-107. Civil investigative demand. (1) Whenever the attorney general or the district attorney has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he OR SHE may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(6) (a) The attorney general or district attorney shall designate an investigator to serve as racketeer document custodian and such racketeering investigators as he OR SHE shall determine to be necessary to serve as deputies to such officer.

SECTION 24. In Colorado Revised Statutes, **amend** 23-20-110 as follows:

23-20-110. Attorney general legal advisor. The attorney general of the state ~~shall be~~ is the legal advisor of the president and board of regents of the university, and he OR SHE shall institute and prosecute or defend all suits in behalf of the same.

SECTION 25. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 14, 2016