

CHAPTER 91

Senate Bill 221

AN ACT

RELATING TO STATE GOVERNMENT; PROVIDING THAT ATTORNEY GENERAL MAY EMPLOY COUNSEL FOR ANTITRUST ENFORCEMENT; CREATING AN ANTITRUST ENFORCEMENT REVOLVING FUND; PROVIDING FOR RECEIPTS AND DISBURSEMENTS; AUTHORIZING ATTORNEY GENERAL TO REPRESENT POLITICAL SUBDIVISIONS IN ANTITRUST ENFORCEMENT SUITS; AUTHORIZING ATTORNEY GENERAL TO ACT JOINTLY WITH THE UNITED STATES, OTHER STATES, AND OTHER POLITICAL SUBDIVISIONS IN THE PROSECUTION OF ANTITRUST ENFORCEMENT SUITS; AMENDING SEC-

TION 41-191, ARIZONA REVISED STATUTES, AMENDING TITLE 41, CHAPTER 1, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-191.01 AND 41-191.02; AND AMENDING SECTION 41-192, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 41-191, Arizona Revised Statutes, is amended to read:

41-191. ATTORNEY GENERAL; QUALIFICATIONS; SALARY; ASSISTANTS; FEES; EXCEPTIONS

A. The attorney general shall have been for not less than five years immediately preceding the date of taking office a practicing attorney before the supreme court of the state. He shall receive an annual salary of twenty thousand dollars.

B. The attorney general and his assistants shall devote full time to the duties of the office and shall not directly or indirectly engage in private practice of law or in an occupation conflicting with such duties, but such prohibition shall not apply to special assistants except that in no instance shall special assistants engage in any private litigation in which the state or an officer thereof in his official capacity is a party.

C. The attorney general may also, within the limits of appropriations made therefor, employ attorneys for particular cases upon a fixed fee basis who shall be exempt from the restrictions imposed by this section upon regular or special assistants.

D. The attorney general may also, in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies, employ counsel on a fixed fee basis, not to exceed an hourly rate of fifty dollars per hour, such fee to be contingent upon and payable solely out of the recovery obtained in suits so instituted, except that where the court in which the case is pending has the authority to set a fee in conjunction with a given case, and does so set a fee, the court awarded fee shall be paid in lieu of the fee provided in this section. Employment and payment of counsel under this subsection shall not be subject to the limitations imposed by title 35, nor shall counsel so employed be subject to the limitations on private practice or litigation imposed upon regular or special assistants.

Sec. 2. Title 41, chapter 1, article 5, Arizona Revised Statutes, is amended by adding sections 41-191.01 and 41-191.02, to read:

41-191.01. PROCEDURE UPON RECOVERY OF MONEY FOR ANTITRUST VIOLATIONS

A. When money is recovered for the state, its agencies, its departments, commissions or subdivisions by the attorney general as a result of the enforcement of either state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies, whether by final judgment, settlement or otherwise, the funds shall be deposited in the fund created in section 41-191.02.

B. After the payment of any attorney's fee provided for by subsection D of section 41-191 and the crediting to the revolving fund established by section 41-191.02 of an amount equal to ten per cent of the monies so deposited or the actual costs and expenses expended to recover the particular money so deposited, whichever is greater, the remainder of the recovery shall be deposited in the general fund of the state, unless the recovery or a portion thereof, was on behalf of a special or trust fund, in which event the money should be deposited in such special or trust fund or unless the recovery was on behalf of a political subdivision of the state, in which event the remainder of the recovery shall be transmitted to the treasurer of such political subdivision for deposit in its general fund.

41-191.02. **ANTITRUST ENFORCEMENT REVOLVING FUND; RECEIPTS AND DISBURSEMENTS; EXEMPTIONS; REPORT**

A. There is created an antitrust enforcement revolving fund to be administered by the attorney general under the conditions and for the purposes provided in this section. Monies in the fund shall be exempt from the quarterly allotments and lapsing provisions of sections 35-173 and 35-190.

B. On or before the fifteenth day of January, April, July and October, the attorney general shall cause to be filed with the governor, with copies to the director of finance, the president of the senate, and the speaker of the house of representatives, a full and complete account of the receipts and disbursements from the fund in the previous calendar quarter. The auditor general shall audit the fund once each fiscal year.

C. Monies in the fund shall be used by the attorney general for costs and expenses of antitrust enforcement undertaken by his office and may be expended for such items as filing fees, court costs, travel, depositions, transcripts, reproduction costs, expert witness fees, investigations, and like costs and expenses. Except for the attorney fees due upon the initial recovery of monies as set out in section 41-191.01, in no event shall any of the monies in the fund be used to compensate or employ attorneys or counselors at law.

Sec. 3. Sec. 41-192, Arizona Revised Statutes, is amended to read:

41-192. POWERS AND DUTIES OF ATTORNEY GENERAL; RESTRICTIONS ON STATE AGENCIES AS TO LEGAL COUNSEL; EXCEPTIONS

A. The attorney general shall have charge of and direct the department of law, and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of the state and render such legal services as the departments require.

2. Establish administrative and operational policies and procedures within his department.

3. Approve long range plans for developing departmental programs therein, and coordinate the legal services required by other departments of the state or other state agencies.

4. Represent school districts and boards of trustees in any lawsuit involving a conflict of interest with other county offices.

5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies, provided that the attorney general shall notify in writing such political subdivision, school districts and municipalities of his intention to bring any such action on its behalf. At any time within thirty days after such notification, such political subdivision, school districts and municipalities may, by formal resolution of its governing body, withdraw the authority of the attorney general to bring the intended action on its behalf.

6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by the state or any of its political subdivisions, school districts or municipalities, in addition to his other powers and authority, the attorney general on behalf of the state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel, or to obtain the legal services of special counsel from any department or agency of the United States, of this state, or any other state, or any department or agency thereof, any county, city, public corporation or public district in this state or in any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt and promulgate rules for the orderly conduct of the business of the department.

3. Employ and assign assistants and other employees necessary to perform the functions of the department.

C. Assistants and employees in any legal division subject to a merit system prior to March 6, 1953 shall remain subject thereto.

D. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

E. Notwithstanding any other provision of law to the contrary, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the interstate stream commission and the industrial commission shall be exempt from the provisions of this article.

F. Any department or agency of the state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue, or special or trust fund into the general fund of the state, to the extent such funds are available and upon a reimbursable basis for warrants drawn upon the state treasurer, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

G. Appropriations made pursuant to subsection F shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F are applicable shall be performed by special or regular assistants to the attorney general.

Approved by the Governor—April 27, 1970

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