

THE OFFICE OF THE ATTORNEY GENERAL

I. HISTORY AND ORIGIN OF THE OFFICE OF THE ATTORNEY GENERAL

The ancient and honorable office of the Attorney General is over six hundred years old, apparently coming into existence as early as 1278 A.D.¹ The term "Attorney General" appears to have first been used in 1398 when a certificate of the Duke of Norfolk was signed by four attorneys general.²

The authority of the Attorney General in England was very extensive and is set out as follows:

- (1) To prosecute all actions necessary for the protection and defense of the property and revenue of the Crown.
- (2) By information, to bring certain classes of persons accused of crimes and misdemeanors to trial.
- (3) By "scire facias", to revoke and annul grants made by the Crown improperly, or when forfeited by the grantee.
- (4) By information, to recover money and other chattels, or damages for wrongs committed on the land, or other possessions of the Crown.
- (5) By writ of mandamus, to compel the admission of an officer duly chosen to his office, and to compel his restoration when illegally ousted.

¹ Bellot, "The Origin of the Attorney General", 25 Law Quart. Rev. 400 (1909)

² Id.; at p. 405

(6) By information to chancery, to enforce trusts,
and to prevent public nuisances, and the abuse
of trust powers.³

It is evident, therefore, that by the time the Colonial Governments were established in America, the office of the Attorney General in England had well-defined powers. In the new American Colonies, the office of the Attorney General became a part of the Colonial Governments and later the State Governments.⁴

The Constitution of North Carolina provides that the Attorney General is to be elected for a term of four years by the qualified electors of the State.⁵ His term of office is to commence on the first day of January next after his election, and is to continue until his successor is elected and qualified.⁶ Any vacancy in the office of the Attorney General will be filled by the Governor.⁷

The Department of Justice, created in 1939, is presently under the supervision and direction of the Attorney General.⁸ By statute, the Attorney General must devote his

3 People v. Miner, 2 Lans. (N.Y.) 396 (1868)

4 Hammonds, "The Attorney General in the American Colonies", Anglo-American Legal History Series, V. 1, No. 3 (1939).

5 North Carolina Constitution, Article III, Sec. 1

6 Id.

7 North Carolina Constitution, Art. III, Sec. 13

8 North Carolina General Statutes 114-1

full time to that office and is prohibited by law from
engaging in the private practice of law while serving as
Attorney General.⁹ However, no statute has been found that
requires the Attorney General to be a lawyer.

The Attorney General serves on several major committees,
some of which are set out as follows:

- (1) State Armory Commission¹⁰
- (2) State Eugenics Commission¹¹
- (3) Tryon Palace Commission¹²
- (4) Judicial Council¹³

In addition, the Attorney General serves, ex officio,¹⁴
as the legal adviser of the Executive Department.

9 N. C. Gen. Stat. 114-3
10 N. C. Gen. Stat. 143-230
11 N. C. Gen. Stat. 35-40
12 N. C. Gen. Stat. 121-19
13 N. C. Gen. Stat. 7-448
14 N. C. Constitution, Art. III, Sec. 14

II. POWER OF THE ATTORNEY GENERAL TO REPRESENT STATE AGENCIES

In England the Attorney General was Chief Legal Advisor for the Crown and had charge of the management of all legal affairs and the prosecution of all suits in which the Crown was interested.¹⁵ It has been repeatedly held that the Attorney General had the exclusive right to represent the Crown.¹⁶ When the states broke away from the Crown, the sovereign became the people as represented by their governments.¹⁷ Thus, the logical conclusion in interpreting the common law was that the Attorney General had the duty and the exclusive right to represent these governments and their agencies and officers. Beginning in the 19th Century, a trend developed in a number of states to diminish the Attorney General's common law power to exclusively represent the State agencies. Legislation was passed enabling certain State agencies to hire their own attorneys or allowing the Governor to appoint the attorneys.¹⁸ Various reasons have

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7 Am. Jur. 2d., Attorney General, Sec. 6, p. 6

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Commonwealth v. Margiotti, 325 Pa. 17, 188 Atl. 524, 527 (1936); Rex v. Austin, 8 Price 142; Darling Apartment Co. v. Springer, 25 Del Ch 420, 22 A 2d 397 (1941)

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Darling Apartment Co. v. Springer, 25 Del Ch at 443, 22 A 2d at 407 (1941)

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National Association of Attorney General's Committee on the Office of Attorney General, John B. Breckinridge, Chairman, Study of the Office of Attorney General, Preliminary Draft (Unpublished) (Jan. 1970) Sec. 1.3 - 1.6, p. 1

been given for this limiting trend, among them being the distrust of centralization and the recognition of certain weaknesses in some of the Attorneys General.¹⁹

Today the states are split into several groups with some states continuing to give the Attorneys General exclusive power to represent State agencies and others allowing these agencies to hire their own attorney. In North Carolina several boards and commissions are given the express authority by statute to hire their own counsel,²⁰ some examples being the Utilities Commission,²¹ Employment Security Commission,²² and Board of Medical Examiners.

There have been numerous court decisions on this subject in jurisdictions other than North Carolina. One line of decisions has held that, since at common law the Attorney General had exclusive power of representation, any statute in degradation of this policy must be express and unambiguous.²³ Other courts have held that statutes can impliedly grant an agency the authority to hire its own attorney even though the particular jurisdiction recognizes the Common Law. Specific grants of power to an agency to sue and be sued in its own name, or to engage in litigation,

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Id.

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N. C. Gen. Stat. 62-21 (1963)

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N. C. Gen. Stat. 96-4(d) (1957)

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N. C. Gen. Stat. 90-21 (1915)

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Darling Apartment Co. v. Springer, supra; 7 Am. Jur. 2d, Attorney General, Sec. 9, p. 11

have been held to impliedly grant the authority to that
agency to hire its own counsel.²⁴

A few courts have taken the view that statutory boards
not contemplated by the Constitution of the State are not
governed by the common law rule.²⁵ In at least three states
where legal services are basically centralized in the
Attorney General, universities provide exceptions on the
grounds that the duties and functions of a university pro-
vide it with a legal personality of its own different from
a State agency or officer.²⁶

~~The rights and duties of the Attorney General of North
Carolina concerning the representation of State agencies are
somewhat unclear, especially with regard to exclusive repre-
sentation. North Carolina G. S. 114-2(2) and 114-2(3) make
it the duty of the Attorney General to prosecute and defend
all actions for the Governor, Secretary of State, Treasurer,
Auditor, Utilities Commissioner, Commissioner of Banks,
Insurance Commissioner, or Superintendent of Public In-
struction if the agency heads request it, and to represent
all State institutions if the head of the institution~~

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Watson v. Caldwell, 158 Fla. 1, 27 So 2d 524 (1946);
Saint v. Allen, 172 La 350, 134 So 246 (1931)

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Holland v. Watson, 153 Fla 178, 14 So 2d 200 (1943)

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Study of the Office of Attorney General, Preliminary
Draft, supra, note 4

" § 147-17. May employ counsel in cases wherein State is interested.--(a) No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except with the approval of the Governor. In any case or proceeding, civil or criminal, in or before any court or agency of this State or any other state or the United States, or in any other matter in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and may fix the compensation for their services.

requests it. Whether the heads of these agencies or institutions may request someone other than the Attorney General to represent them is debatable. North Carolina G. S. 143-298 makes it the duty of the Attorney General to represent all departments, institutions, and agencies of the State in connection with tort claims against them. Furthermore, North Carolina G. S. 146-70 says that the Attorney General shall bring any actions or proceedings involving lands in which the State has an interest. Thus, in these two areas the Attorney General is expressly given the duty to represent the State.

The principal statute dealing with the question of representation is North Carolina G. S. 147-17, which is set out in part as follows:

"(b) The Attorney General shall be counsel for all departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Whenever the Attorney General shall advise the Governor that it is impracticable for him to render legal services to any State agency, institution, commission, bureau or other organized activity, or to defend a State employee or former employee as authorized by article 31A of chapter 143 of the General Statutes, the Governor may authorize the employment of such counsel, as in his judgment, should be employed to render such services, and may fix the compensation for their services." [Emphasis added]

In examining the origins of this statute, it appears that subsection "a" was originally meant to confer powers on the Governor to employ private counsel without consulting the Attorney General, at least with regard to legal services-

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involving an adversary proceeding. It seems likely that subsection "b" was intended to serve as a limitation on these powers.

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N. C. Pub. Laws 1868-69, c. 270; N. C. Pub. Laws 1873-74, c. 160; N. C. Pub. Laws 1901, c. 744; N. C. Pub. Laws 1925, c. 207; See Coates, The State's Legal Business, 16 N.C. L. Rev. 119 at page 137 and 138 (1937-38)

III. POWER OF THE ATTORNEY GENERAL TO REPRESENT
THE PUBLIC INTEREST

While the existence of a common law power or duty in the Attorney General to represent the public interest has not been unquestionably established, it very likely does exist. The common law of England²⁸ is, by statute, in force in North Carolina to the extent that it has not been repealed²⁹ or abrogated nor become obsolete or repugnant to freedom. The North Carolina Constitution provides that the duties of the Attorney General shall be prescribed by law.³⁰ Other states, relying on similar constitutional and statutory provisions, have found the office of Attorney General to be clothed with common law powers and duties.³¹ In the early case of Hunt, Attorney General v. Chicago Horse and Dummy Ry. Co.,³² the Illinois Supreme Court said:

"The duties of such an office are so numerous and varied that it has not been the policy of legislatures to attempt the difficult task of enumerating them exhaustively, but they have ordinarily been content, after expressly defining such as they have

28 State Ex Rel Bruton v. Flying "W" Enterprises, Inc.
273 NC 399, 160 SE 2d 482 (1968)

29 N. C. Gen. Stat. § 4-1

30 N. C. Const. Art. III, § 13

31 Hunt, Attorney General v. Chicago Horse and Dummy Ry. Co.,
121 Ill. 638, 13 NE 176 (1887); State v. Missouri Public
Service Commission, 352 Mo 29, 175 SW 2d 857 (1943)

32 121 Ill. 638, 13 NE 176 (1887)

deemed the most important, to have the residue
as they exist at common law, so far as applicable
to our jurisprudence and system of government."³³

No North Carolina case has been found dealing specifically with the question of whether the Attorney General possesses a common law power and duty to represent the public interest. Even absent a case responding specifically to this question, there is some authority in our case law on which to assume the existence of this power and duty. In the recent case of Sternberger v. Tannenbaum,³⁴ the North Carolina Supreme Court, speaking through Chief Justice Parker, stated that the Attorney General has retained his common law power and duties regarding charitable trusts. From this statement the conclusion can be reasonably drawn that the Attorney General has retained his full common law power; it would be unreasonable to assume the retention of common law power only in the charitable trust field.

However, the existence of a common law power and duty to represent the public interest is an academic question in North Carolina due to action taken by the General Assembly in 1969. During that legislative session a bill,³⁵ codified

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Id. at 640

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272 NC 658, 161 SE 2d 116 (1968)

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Session Laws of North Carolina, Chapter 535 (1969)

as G. S. 114-2(8), was enacted which amended the list of duties of the Attorney General. As amended, that statute now reads, in pertinent part, as follows:

"[It shall be the duty of the Attorney General:]

(8) a. To intervene, when he deems it to be advisable in the public interest, in proceedings before any courts, regulatory officers, agencies and bodies, both State and federal, in a representative capacity for and on behalf of the using and consuming public of this State. He shall also have the authority to institute and originate proceedings before such courts, officers, agencies or bodies and shall have authority to appear before agencies on behalf of the State and its agencies and citizens in all matters affecting the public interest. [Emphasis supplied]

b. Upon the institution of any proceeding before any State agency by application, petition or other pleading, formal or informal, the outcome of which will affect a substantial number of residents of North Carolina, such agency or agencies shall furnish the Attorney General with copies of all such applications, petitions and pleadings so filed, and, when the Attorney General deems it advisable in the public interest to intervene in such proceedings, he is authorized to file responsive pleadings and

to appear before such agency either in a representative capacity in behalf of the using and consuming public of this State or in behalf of the State or any of its agencies.³⁶ "

It seems certain that the General Assembly intended, by this amendment, to clearly establish the power and duty of the Attorney General to represent the public interest quite separate and apart from the existence of any such power and duty at common law. The language used, particularly in the last sentence of (8)a,³⁷ provides solid statutory authority to support the existence of a broad, general power and duty to represent the public interest.

36 N. C. Gen. Stat. § 114-2(8)

37 N. C. Gen. Stat. § 114-2(8)

IV. POWER OF THE ATTORNEY GENERAL TO ABATE PUBLIC NUISANCES

As a rule the Attorney General of a state retains the common law powers of that office except where they are expressly modified by statute.³⁸ As mentioned earlier,³⁹ North Carolina has by statute declared the common law to be in full force except where repealed, obsolete, abrogated or repugnant to freedom and independence. The "common law" referred to in the General Statutes of North Carolina has been held to be the common law of England⁴⁰ at the time of the American Revolution in 1776.⁴¹

In 1939 the Attorney General was given the duty of performing "all duties now required of his office by law."⁴² The Supreme Court of North Carolina has clearly adopted the view, without expressly stating it, that the phrase "all duties now required of his office by law" includes the Attorney General's common law powers. The Court has stated that:

38 7 Am. Jur. Attorney General § 7

39 N. C. Gen. Stat. 4-1

40 State Ex rel Bruton v. Flying "W" Enterprises, Inc., 273 NC 399, 160 SE 2d 482 (1968); State v. Lackey, 271 NC 171, 155 SE 2d 465 (1967); State v. Willis, 255 NC 473, 121 SE 2d 854 (1961)

41 State Ex rel Bruton v. Flying "W" Enterprises, Inc., 273 NC 399, 417; 160 SE 2d 482, 494 (1968)

42 N. C. Gen. Stat. 114-6

"In the absence of statute and barring those instances where an individual may take action because of his special damage . . . , 'The State is the proper party of wrongs done to its citizens by a public nuisance'; . . . and we are of the opinion that this must be done, as heretofore, on the relation of its Attorney General." ⁴³ [Emphasis added]

Further, the Court, expressly relying on pre-revolutionary English case law, has very recently stated that the Attorney General retains his common law powers as to charitable trusts. ⁴⁴ As stated previously there seems to be no reason why the Attorney General's common law power to protect charitable trusts would be retained in preference to others. Therefore, it must be assumed that his full common law powers have been retained.

Under the common law the Attorney General was given broad powers to institute actions in equity, as relator, to abate ⁴⁵ purprestures and ⁴⁶ public nuisances.

43 McLean v. Townsend, 227 NC 642, 643; 44 SE 2d 36 (1947)

44 Sternberger v. Tannenbaum, 273 NC 658, 161 SE 2d 116 (1968)

45 Def. -- "An inclosure by a private party of that which belongs to . . . the public at large. . . . A public nuisance must be something which subjects the public to some degree of inconvenience or annoyance; but a purpresture may exist without putting the public to any inconvenience whatever." BLACKS LAW DICTIONARY 1401 (4th ed. 1951)

46 1 Wood, The Law of Nuisances. 107-110 (3rd ed. 1893)

Common Law actions for nuisance, trespass or any other matter affecting the people generally in the same manner as individual complainants, could only be maintained by the Attorney General.⁴⁷ Some of these cases stating the extent of these common law powers are particularly relevant to current ecological problems. At common law for example:

" . . . any invasion or encroachment on the sea shore or bed of an estuary or navigable tidal river between high and low-water mark, while the same remains in the Crown is a trespass."⁴⁸

Such invasions and encroachments were abated by the Courts of England in actions brought by the Attorney General.⁴⁹ Current problems of pollution and abuse of estuaries may well result in public demand for reassertion of these powers over the physical environment.

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Baines v. Baker, 1 Amb. 158, 27 Eng. Rep. 105 (1752);
Anon., 3 Atk. 750-751, 26 Eng. Rep. 1230 (1752)

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Attorney General v. Chamberlaine, 4 K&J 292, 70 Eng. Rep. 122 (1858)

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2 Storey's Eq. Juriss. 223, §922 (13th ed. 1886); 1 Wood, The Law of Nuisances 107-109 (3rd ed. 1893); Attorney General v. Richards, 3 Anstruther 753, 145 Eng. Rep. 1028 (1794) and cases cited; Anon., 3 Atk. 750, 26 Eng. Rep. 1230 (1752)

V. POWER OF THE ATTORNEY GENERAL TO
CHARITABLE TRUSTS

The Attorney General of North Carolina is charged by
statute⁵⁰ and by common law⁵¹ with the duty of protecting
charitable trusts. In cases of mismanagement of charitable
trusts, the clerk of the superior court is required to give
notice to the Attorney General or the solicitor who repre-
sents the county. It is then the duty of the one so notified
to bring an action, in the name of the State, for an
accounting by the grantees, executors, or trustees of the
charitable fund.⁵²

The Attorney General may enforce, by a suit for writ of
mandamus, any transfer for charitable purposes.⁵³ Should a
specific charitable purpose become illegal, impossible, or
impracticable of fulfillment, the Attorney General may,
where the settlor or testator manifested a general charitable
intent, apply to the superior court for an order requiring
administration to fulfill the general charitable intent.⁵⁴

In an action against the trustee of a charitable trust,
upon a contract within his power as trustee, the plaintiff is

50 N. C. Gen. Stat. 36-20, 36-23.1, 36-23.2, 36-35

51 Sternberger v. Tannenbaum, 273 NC 658, 678-679, 161 SE
2d 116 (1968)

52 N. C. Gen. Stat. 36-20

53 N. C. Gen. Stat. 36-23.1(c)

54 N. C. Gen. Stat. 36-23.2(a)

required to give notice by mail to the Attorney General of
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the existence and nature of the action. Failure to give
the required notice bars enforcement against the trust
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property of an ensuing judgment in the plaintiffs' favor.
The Attorney General may intervene in such actions to contest
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the right of the plaintiffs to recover.

The statutes requiring the Attorney General to perform
certain duties relative to charitable trusts should not be
construed as limitations upon his powers. He retains
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extremely broad statutory and common law powers in this
area. It seems that, at common law:

"Any question affecting a charitable trust may
be brought before the court by information in the
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name of the Attorney General."

The Supreme Court of North Carolina seems to have adopted
this broad view in its statement that, where charitable trusts
are concerned, "If the Attorney General is not a necessary
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party, he surely is a proper party."

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N. C. Gen. Stat. 35-35(b)

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N. C. Gen. Stat. 35-35(b)

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N. C. Gen. Stat. 35-35(b)

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N. C. Gen. Stat. 35-23; 114-6

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Sternberger v. Tannenbaum, 273 N.C. 658, 678-679; 161
SE 2d 116 (1968)

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Hill on Trusts 458 (1846) citing numerous English cases

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Sternberger v. Tannenbaum, 273 N.C. 658; 161 SE 2d 116 (1968)

The original common law powers of the Attorney General were based on the interest of the Crown. As the theory of the divine rights of monarchs declined, however, the interest of the sovereign came to be expressed in terms of "public interest." The power of the Attorney General to protect charitable trusts has in recent years, therefore, been found necessary:

"'Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it is generally recognized that the attorney general, in his capacity as representative of the state and of the public, is the, or at least a, proper party to institute and maintain proceedings for the enforcement of such a gift or trust.'"

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15 Am. Jur. 2d, Charities, § 119, as quoted with approval in Sternberger v. Tannenbaum, 273 NC 658; 161 SE 2d 116 (1968)

VI. POWER OF THE ATTORNEY GENERAL IN CRIMINAL ACTIONS

The common law powers of the Attorney General of England have been enumerated as: (1) To prosecute all actions necessary for the protection and defense of the property and revenues of the Crown, and (2) by information, to bring certain classes of persons accused of crimes and misdemeanors to trial.⁶³ These broad powers gave the Attorney General of England control over a criminal case from its very inception at the trial court level through the appellate procedure. During Colonial North Carolina, the duties of the Attorney General included the supervision of "all details of the King's cases from beginning to end,"⁶⁴ and "all the powers, authority, and trust that the Attorney and Solicitor of England had in that Kingdom."⁶⁵

The North Carolina constitutional provision establishing the office of Attorney General declares that, in addition to specified duties, the Attorney General shall exercise all other

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People v. Miner, 2 Lans (N.Y.) 396 (1868)

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Hammonds, "The Attorney General in the American Colonies," Anglo-American Legal History Series, V. I, No. 3 (1939), at p. 11

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North Carolina Colonial Records, Vol. 7, 1765 to 1768, at p. 486.

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duties prescribed by law. The General Assembly is authorized
to enact laws defining the authority of the Attorney General
concerning prosecution of crimes and the administration of
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the State's criminal laws.

As provided by statute, the Attorney General's duties in
the appellate courts are "[t]o defend all actions in the
appellate division in which the State shall be interested, or
is a party."⁶⁸ In all criminal cases that are appealed to
the North Carolina Supreme Court or Court of Appeals, the
Attorney General represents the State before those tribunals,
both by brief and argument.

Also, under the North Carolina Constitution, Art. III,
§16, the solicitor shall "perform such duties related to
appeals therefrom [Superior Courts of his district] as the
Attorney General may require." It would appear that under
the provision the Attorney General could require that a
solicitor assist him in preparing the State's brief or upon
argument in the appellate courts when there is an appeal from
a criminal action in the Superior Courts of the respective
solicitor's district.

It shall be the duty of the Attorney General "when
requested by the Governor or either branch of the General

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North Carolina Constitution, Art. III, Sec. 13.

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North Carolina Constitution, Art. III, Sec. 18

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N. C. Gen. Stat. 114-2(1)

Assembly to appear for the State in any other court of tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested." ⁶⁹ This appears to be the only way that the Attorney General can prosecute a criminal action in the trial courts unless a specific statute gives him power to prosecute a particular offense. At the request of a designated executive officer or the official head of a State institution, the Attorney General shall prosecute and defend suits related to matters connected with their departments or institutions. ⁷⁰ This is distinguishable from general criminal prosecutions at the trial level.

The statute that the North Carolina Supreme Court has relied heavily upon to restrict the powers of the Attorney General over local prosecutions is North Carolina General Statute 114-2(4), which provides that the duty of the Attorney General shall be "[t]o consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their offices." This language implies that if the Attorney General, upon the solicitor's request, sent an attorney from his office to assist a solicitor, it would be only in an advisory capacity. However, it is doubtful that such a request by a solicitor would be construed under this section as mandatory.

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Id.; See example in 8 N. C. Law Review 344 (1930)

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N. C. Gen. Stat. 114-2(2), (3)

The two North Carolina cases that have considered this
problem are STATE v. LOESCH,⁷¹ and N.A.A.C.P. v. EURE,
SECRETARY OF STATE.⁷² The court in STATE v. LOESCH, supra,
concluded that the several solicitors of the State, as well
as the Attorney General, are constitutional officers, so
that the Attorney General has no constitutional authority to
issue a directive to solicitors concerning their legal duties.
The Court relied on Art. III, Sec. 18, of the North Carolina
Constitution, giving the General Assembly the authority to
enact suitable laws defining the powers of the Attorney
General, and pursuant to the above authority, the General
Assembly enacted N. C. General Statute 114-2 prescribing the
Attorney General's duties. Subsection 4 provides that he
shall consult with and advise the solicitors when requested
by them. Therefore, the court reasoned, the duty of the
Attorney General insofar as it extends to the solicitors of
the State is purely advisory. The Attorney General has no
constitutional authority to issue a directive to any other
constitutional officer concerning his legal duties. The
court in N.A.A.C.P. v. EURE, SECRETARY OF STATE, supra, also
concluded that the duty of the Attorney General insofar as
it extends to the State's solicitors is purely advisory, when
the Attorney General has no specific enforcement duty in
connection with the statute under which prosecution is sought.

The trend has been from a centralized to decentralized
control of prosecutions in North Carolina by the Attorney

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237 NC 611, 75 SE 2d 654 (1953)

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245 NC 331, 95 SE 2d 893 (1957)

General. When the circuit that the Attorney General covered during Colonial North Carolina became too large, he was given the right to appoint deputies in each county. Then the General Assembly began to appoint his deputies. A Solicitor General was thereafter created with control over the solicitors, and by 1806 the Attorney General was restricted to one of six State districts in which he could prosecute at the trial level. In 1858 the General Assembly gave the solicitors power to prosecute in the trial courts, thus relieving the Attorney General of the duty of prosecuting trial dockets in any district in the State.

Perhaps the primary consideration that must be borne in mind when examining the relationship between the Attorney General and the local prosecutor is that the office of Attorney General is of common law origin while that of the local prosecutor is purely statutory. The courts of at least ⁷³ four states, although recognizing the general capacity of the Attorney General to use common law powers, have reasoned that, when the Legislature delegates duties, which were the Attorney General's function under common law, to a prosecuting attorney, the powers so delegated vest exclusively in the local prosecutor. The rationale behind these decisions is that the office of prosecuting attorney is carved out of the office of Attorney General, and vesting such duties in the

Kansas: See State v. Finch, 128 Kan. 665, 669, 280 P. 910, 912 (1929). New Jersey: See Bd. of Pub. Util. Comm'rs of N.Y. v. Lehigh U.R.R., 106 N.J. Law 411, 413, 149 A. 263, 264 (1930). Oregon: See In Re State v. Millis, 61 Ore. 244, 249, 119 Pac. 763, 765 (1912). West Virginia: See State v. Ehrlick, 65 W. Va. 700, 64 SE 935 (1909)

prosecuting attorney necessarily divests them from the
Attorney General. Yet the Minnesota,⁷⁴ New York⁷⁵ and
Pennsylvania⁷⁶ courts have held such powers to be concurrent
in like situations. It is unclear whether the North Carolina
Supreme Court is saying that the office of solicitor has been
carved out of the office of the Attorney General, or whether
they are basing their decision solely on our statute that says
the Attorney General shall advise and consult with the
solicitors, and concluding therefrom that he has no active
duties as a prosecutor.

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Various authorities have advocated centering authority
for criminal prosecutions in a central state office such as
that of the Attorney General. They contend that such cen-
tralization would be more effective than the existing patch-
work of prosecutors in combating organized crime, assuring
more uniform application and enforcement of the criminal laws,

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State Ex Rel Young, Att'y Gen., v. Village of Kent, 96
Minn. 225, 104 NW 948 (1905); State Ex Rel Young v.
Robinson, 101 Minn. 277, 112 NW 269 (1907)

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People v. Brennan, 69 Misc. 548, 127 NY Supp. 958 (1910);
People v. Tru-Sport Pub. Co., 160 Misc. 628, 291 NY
Supp. 449 (1936)

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Commonwealth Ex Rel Miner v. Margiotti, Att'y Gen.,
325 Pa. 17, 188 A. 524 (1936)

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American Bar Association, The Prosecution Function,
2.2(b), and 20 A.B.A.J. 651 (1934); The Challenge of
Crime in a Free Society, a report by the President's
Commission on Law Enforcement and Administration of
Justice, p. 149 (1967); 1952 National Conference of
Commissioners on Uniform State Laws, Model Department
of Justice Act, Section 7.

providing for better qualified and better compensated local prosecutors, and generally improving the level of administration of criminal justice. However, if the Attorney General possessed such power, he would be able to intervene only in occasional cases of great importance; he must necessarily leave to the local prosecuting officers the general task of law enforcement within their respective territories.