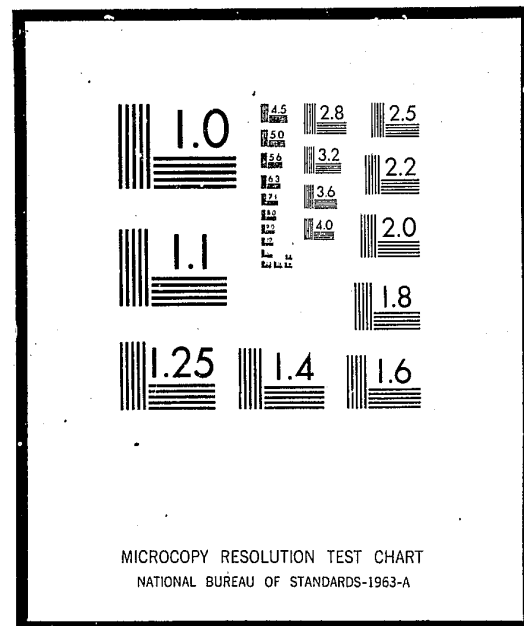


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National Association of Attorneys General
Committee on the Office of Attorney General

FORMER ATTORNEYS GENERAL

ANALYZE THE OFFICE

September, 1970

National Association of Attorneys General
Committee on the Office of Attorney General

FORMER ATTORNEYS GENERAL

ANALYZE THE OFFICE

* * * * *

This booklet contains the results of a survey of one hundred and fifteen former Attorneys General. Their cooperation in completing the Committee's questionnaire has made it possible, for the first time, to bring the collective experience and judgment of former Attorneys General to bear on the office. Mr. William Thompson of the Commission staff had primary responsibility for analyzing questionnaire returns.

This study is financed by a grant from the National Institute of Law Enforcement and Criminal Justice. The fact that the Institute is furnishing financial support for the project does not necessarily indicate its concurrence in the statements or conclusions herein.

* * * * *

John B. Breckinridge, Chairman
Attorney General, Commonwealth of Kentucky

Patton G. Wheeler
Project Director

September, 1970

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INTRODUCTION

The Committee on the Office of Attorney General was created by the National Association of Attorneys General to conduct a comprehensive study of the powers, duties and operations of the office. The two-year project is funded by a grant from the National Institute of Law Enforcement and Criminal Justice. It will culminate in conclusions and recommendations for improving the administration of justice by strengthening the role of the Attorney General.

The study is relying primarily on data submitted by Attorneys General's offices. A series of questionnaires concerning various aspects of the office, have been mailed to Attorneys General and have provided an unprecedented amount of primary data. It became apparent, however, that factual data were not enough. The Committee and its staff needed Attorneys General's evaluations of the office and their opinions as to how it best could be improved. It was decided to survey former Attorneys General to obtain the benefit of their thought and experience.

The Survey Process

A problem arose in identifying former Attorneys General, since no list of such persons was maintained. A list was, therefore, compiled from past editions of The Book of the States, supplemented by lists in Attorneys General's reports, state bluebooks and other sources.

Only those persons serving as Attorney General since 1930 were considered. Their addresses were sought in the Martindale Hubbel Law Directory. Some were not located, either because they were not listed, or they were listed under states other than those in which they served. It may be assumed that about 10 to 15 former Attorneys General did not receive the COAG questionnaire; while this omission is regretted, the time required to find their addresses would have been prohibitive.

Questionnaires were mailed to approximately 180 former Attorneys General, with a cover letter from the COAG Chairman asking for cooperation and assuring respondents that the answers would be treated as confidential. A follow-up letter was sent later to those who had not returned the questionnaire.

A copy of the Questionnaire is included in the Appendix to this report. It comprises 40 questions, some of which call for comment and some of which merely require a yes or no answer. The questions were developed primarily to correspond with the proposed Table of Contents for the COAG study, so that all major areas of consideration would be included.

One respondent remarked that: "it was difficult to answer many of the questions with a simple yes or no answer. However, I did so as I realize the importance of getting direct answers to tabulate from so many people."

Another commented cogently that:

As my reply will certainly indicate, I favor a "strong" Attorney General. But I want to enter this broad caveat. I think that the Association must give very real consideration to the pluralism which our fifty states represent. What is or would be a masterful scheme in [his state] might be totally unsuited for Alaska or Arkansas.

These limitations on a survey of this nature are recognized, but the questionnaires were designed to allow room for comment as well as offer multiple choice questions.

The response was excellent. Of the approximately 180 addresses, about 10 had died or moved without leaving an address. Of the remainder, 116 returned the questionnaire, or over 60 percent. One of the replies was not received in time to be included in the tabulations. This rate of return from a mail-out questionnaire is higher than normally would be anticipated, which indicates that former Attorneys General continue to be interested in

the office. A list of persons returning the questionnaires is included in the Appendix.

The responses were coded and transferred to I.B.M. punch cards, so that they could be analyzed on data processing equipment. Other information, such as the respondent's region, number of years in office, and age, was also put on the cards. This made it possible to relate replies to other factors.

Almost identical questionnaires have been sent to incumbent Attorneys General and responses have already been received from over half of them. These replies will eventually be compared to those of former Attorneys General. Many of the same questions are also included in a COAG questionnaire that has been sent to all local prosecutors in the Nation, so their answers can be compared to those of former and incumbent Attorneys General.

Characteristics of Respondents

The 115 Attorneys General who returned questionnaires in time to be tabulated appear to be a representative group. When replies were classified according to regional groupings used by the National Association of Attorneys General, 32 were from the East, 31 from the Midwest, 22 from the South and 30 from the West. At least one response was received from each of the 54 jurisdictions in NAAG except Guam, Mississippi, Montana, Oregon, Samoa, South Carolina, Tennessee and the Virgin Islands. The number of respondents per jurisdiction ranged from one in 15 jurisdictions to 6 or 7 in states which have a two-year term and, consequently, a more rapid turnover in office.

Politically, the group includes 62 Democrats, 51 Republicans, and 2 from other parties.

Respondents served an average of 4.61 years, or a median of 4 years as Attorney General. They came to office at an average age of 43 years and now average 62 years of age. Forty-one were originally appointed to office and 74 were originally elected.

Prior to becoming Attorney General, 52 served as local government attorneys; 24 served as legislators; and 34 served on the Attorney General's staff. After serving as Attorney General, 10 became Governors; 2 became U. S. Senators and 2 became members of the U. S. House of Representatives; 19 became state supreme court justices; and 12 became judges of other courts. Thus, they bring experience in other areas of government to bear on their analysis of the office of Attorney General.

ANALYSIS OF THE OFFICE

Questionnaire answers ranged from nearly unanimous on some questions to almost even divisions on others. Some answers have been correlated with other information, to assist in interpreting results. All percentages are based on 115 replies, unless otherwise noted.

Selection of the Attorney General

Attorneys General are now appointed in 12 jurisdictions and elected in 42. This ratio is reflected in former Attorneys General's answers to a question on the selection process: 36 said that he should be appointed and 76 that he should be elected. Replies were correlated with the way the respondents themselves were selected. This revealed that 74 of the 95 former Attorneys General who were from states where the office was elective favored that method, while 20 favored appointment and one did not reply. Of the 20 respondents who were from jurisdictions where the office was appointive, only 2 favored the elective method. Several of the Attorneys General from elective states, it should be noted, were originally appointed to office to fill vacancies.

The great majority, 79 percent, said that the Governor should appoint a new Attorney General when the office becomes vacant. Seven thought that the legislature should name a replacement, 7 that the Supreme Court should, 4 thought an Assistant Attorney General should be promoted, while 2 mentioned other methods and 4 did not respond. Those who had been appointed to office tended to favor gubernatorial appointment to fill vacancies more than did those who were elected, but the differences were not significant.

Private Practice

Only 9 respondents believed that the Attorney General should be allowed to continue private practice, although almost half the jurisdictions currently allow the Attorney General to continue some private practice. A slightly larger number believed that Assistant Attorneys General should be allowed such activity, although several specified that this depended on salary levels. Twenty-two said that Assistants should be allowed private practice, while 88 said that they should not.

Administration and Personnel

The importance of office administration and personnel is apparent in the fact that this ranked second in a list of activities to which Attorneys General devoted their time. Recognizing this, 66 respondents said that administrative aides who are not lawyers should be employed in Attorneys General's offices to handle administrative matters, although 40 opposed this practice.

Former Attorneys General generally do not favor merit systems which would make assistants not subject to removal by the Attorney General. Only 30 percent favored a merit system, while 64 percent opposed it, and the rest did not reply.

When queried as to the ideal location for an Attorney General's office, 16 said that it should be located in separate quarters away from the Governor, legislature and courts, 52 that it should be in close proximity to the Governor and legislature, and 24 that it should be in the Supreme Court building. Fourteen listed other locations, and 9 made no reply.

Special Counsel

All but 2 jurisdictions give the Attorney General authority to hire special or part-time counsel, although the approval of another officer may be required. Seventeen Attorneys General have reported to COAG that such counsel is used often. The overwhelming majority, 90 percent, of former

Attorneys General thought the Attorney General should be allowed to hire special, temporary counsel, while 7 percent said that he should not and the others did not say. Twenty-four percent thought the Governor's approval of such employment should be required, 70 thought it should not, and the others did not reply or gave other answers. Only 21 percent, however, believed that such counsel should be utilized frequently, while 68 percent said it should not.

Representation of State Agencies

Sections 1.3-1.6 of this study describe the different arrangements for providing legal services to state agencies. Of the fifty jurisdictions for which data were available, legal services were centralized under the Attorney General in 21 and were mostly under him in 22. In the remaining 7 jurisdictions, only a minority of state government attorneys were responsible to the Attorney General.

Former Attorneys General believed that such services should be more centralized. Of the 110 responding, 83 thought that the Attorney General should appoint and control all of the attorneys working for state government, 12 that he should control most, and 5 that he should control only some. If the Attorney General did control all lawyers, 73 respondents felt he should assign them permanently to specific agencies, while 32 felt he should not. Sixty-two believed, however, that all Assistant Attorneys General should work out of the central office, and only 40 said they should be quartered with various agencies.

These replies show a slight relationship to the existing organization of legal services in the respondent's state. Three-fourths of those from jurisdictions where the Attorney General controlled all or most attorneys believed that legal services should be centralized, compared to half of those from jurisdictions where most lawyers were not under the Attorney General.

Former Attorneys General were asked to specify which agencies, if any, should be permitted to have house counsel. Answers ranged from any which required the services of a full-time attorney to none. At least one said that agencies should be allowed to have counsel, but only the Attorney General's staff should be allowed to handle litigation. Another respondent, conversely, argued that agencies should not employ attorneys because they tend to become administrators, rather than serve as counsel. Five respondents believed that the legislature should be allowed to employ counsel, and several thought that the Governor should be so authorized. Several more believed that regulatory agencies should have their own legal staffs. At least 2 said that agencies should be entitled to house counsel if their work was sufficiently technical or specialized.

One question explored the Attorney General's relationship to regulatory boards. When asked whether Attorneys General who represent the public before regulatory boards should also provide counsel for the boards, 67 said yes and 39 said no. When asked whether Attorneys General should defend the action of the boards in appeals, 88 said yes and 10 said no. A total of 37 believed such boards should have separate counsel, while 57 said they should not. The others did not answer or gave replies that could not be classified.

Powers in Local Prosecutions

One series of questions explored the Attorney General's relationship to local prosecutors. Only 26 of the respondents thought that the Attorney General should appoint local prosecutors, whereas 82 did not. Only 17 felt that the Attorney General should have complete removal powers, but an additional 45 believed the Attorney General should be able to remove the prosecutor for specific causes.

Former Attorneys General favor greater consolidation of prosecutions. Of 103 respondents, 42 thought that prosecutorial functions should be organized on a county basis, 41 on a district basis, and 20 on a state-wide basis. Three-fifths of the jurisdictions still retain the office of county prosecutor. A large majority of respondents thought that local prosecutors should be required to report to the Attorney General; 76 said that they should, and 29 that they should not.

These answers were related to geographical regions, but no correlation was apparent. Some correlation was apparent when they were compared to former Attorneys General's service as local prosecutors. Of the 52 former Attorneys General who had served as local prosecutors, 7 thought they should be appointed, 41 that they should not, and 4 did not respond. Of the 63 who had not so served, 19 thought the Attorney General should appoint local prosecutors, 41 that he should not, and 3 did not reply.

In an effort to relate replies to existing powers, the jurisdictions were grouped into three categories, according to the Attorney General's authority to initiate or intervene in local prosecutions. Of the former Attorneys General from those jurisdictions with the least powers over prosecutors, 6 thought that the Attorney General should appoint prosecutors, 16 thought he should not, and 4 did not answer. Of those from the middle group of jurisdictions, 6 thought the Attorney General should appoint prosecutors, 44 that he should not, and 3 did not respond. Of those from the jurisdictions which give the Attorney General most power in this area, 13 thought he should appoint prosecutors and 22 that he should not. Thus, the former Attorneys General who had the most or least power over prosecutors were most receptive to the idea of appointment.

There was significant disagreement as to the Attorney General's role in prosecutions. The figures below show respondents' views as to whether the Attorney General should be able to initiate, intervene in, or take over local prosecutions.

	Yes	No	N. A.
The Attorney General should be authorized to:			
Initiate prosecutions	89	15	11
Intervene on own initiative	78	30	7
Intervene only with approval of another authority	23	74	18
Take over on request of local prosecutor	96	13	6

The large majority thus indicated that the Attorney General should be able to intervene in or initiate local prosecutions; Attorneys General in about half the jurisdictions may not now intervene on their own initiative, so these responses indicate a desire for more authority. A large majority also stated that The Attorney General should handle all criminal appeals: 27 said he should not, 7 did not respond, and 81 said he should.

Police and Investigative Functions

Section 5.7 of the COAG study discusses subpoena powers and notes that Attorneys General in 17 jurisdictions have no subpoena powers and only 12 give him broad subpoena powers. Surprisingly, many former Attorneys General do not consider such powers necessary. Of those responding, 48 said the Attorney General should have broad subpoena powers, 44 that he should have limited powers, and 19 that he should have none.

There is definite reluctance to give the Attorney General authority over the state police or highway patrol, although such authority exists in a few

jurisdictions. Fifty-two respondents, or 45 percent, felt that the Attorney General should have no authority over state police, 15 that he should have complete authority, 37 that he should have limited authority, and 11 did not respond.

On the other hand, 78 respondents, or 68 percent, said that a state bureau of investigation should be under the Attorney General's jurisdiction. Twenty-six disagreed or gave other answers.

Advisory Opinions

A function common to all Attorneys General is the issuing of advisory opinions on questions of law. As is noted elsewhere, respondents indicated that this was the activity to which they devoted most time while in office. Chapter 4 of the COAG report describes this function in detail.

There is great variation in former Attorneys General's views as to whom official opinions should be rendered; the chart below shows the number of respondents who felt opinions should or should not be issued to different categories of recipients:

	Should	Should Not	N. A.
Governor	112	1	2
State Officials	109	1	5
Legislature	100	9	6
Individual Legislators	42	64	9
Local Prosecutors	88	21	6
Local Officials	45	64	6
Universities	69	40	6
Federal Officials	23	86	6
Judges	29	80	6
Private Individuals	1	108	6

This corresponds fairly closely with actual practice. For example, all jurisdictions render official opinions to the Governor, but only 2 report that

they give opinions to individuals. A clear relationship to actual practice was apparent in answers to a question concerning appropriate subjects for opinions. Of the 115 respondents, 75 percent felt the Attorney General should render opinions on the constitutionality of legislative bills, 20 percent that he should not, and the remainder did not reply. The response to his issuing opinions on the constitutionality of statutes was about the same. Only 35 percent, however, felt that he should render opinions on the constitutionality of local ordinances, and only 7 percent that he should on matters pending before the court. Forty percent felt that the Attorney General should issue opinions on his own initiative.

A very few states have statutes making opinions binding; a few more have case law to this effect. However, 82 former Attorneys General believed that opinions should be binding until superseded by the courts, and only 29 disagreed. An even larger number, 96 respondents, thought that officials who follow opinions should be immunized from criminal liability.

Review of Legislation

The Attorney General's bill drafting function has gradually been transferred to legislative agencies, but he is playing an increasing role in reviewing bills for form and constitutionality. He now reviews at least some bills at some stage of enactment in a majority of jurisdictions. Most former Attorneys General believed that he should not review bills before passage, but should review them before signing by the Governor. Forty-five felt he should review bills before enactment, 58 that he should not, and 12 did not reply. A large majority, 79 respondents, said he should review acts before signing by the Governor, 25 that he should not, and 11 did not respond.

A related duty is that of reviewing administrative rules and regulations. Only 13 respondents felt that the Attorney General should not review such

rules, while 36 felt he should review some and 56 that he should review all. Several specified, however, that review should be limited to form and constitutionality, not content.

Membership on Boards and Commissions

Attorneys General serve on a wide variety of boards and commissions; these are listed in Table 6.8 of this report. The number of such memberships range from two or over thirty, and the boards are concerned with almost every function of government.

Former Attorneys General were asked whether ex officio service on many state boards and commissions constitutes a worthwhile expenditure of an Attorney General's time. A significant majority, 63 percent or 72 respondents, said that it did not, while 36 said that it did and 7 did not reply. Sixty-four of those answering said that membership on certain boards was more important than others, while 17 did not make such a distinction.

Respondents were asked to specify which boards are the most important, but their answers were so diverse as to defy classification. About 9 said that the most important service would be on boards relating to law enforcement and criminal justice and an equal number specified pardon and parole boards. Several mentioned boards concerned with consumer affairs or land matters. Revenue and tax was another function mentioned by several respondents. Some former Attorneys General specified only "certain important boards", or "boards composed of state officers". One said that the Attorney General should be able to delegate membership duties to an assistant.

There was a sharp difference of opinion as to whether there is any incompatibility if the Attorney General both serves on a board and serves as its legal counsel. Of the 115 former Attorneys General, 47 percent felt there was such incompatibility, 43 percent that there was not, and 10 percent did not reply.

Relationship to Bar

In Great Britain, the Attorney General is head of the bar, but no such position attaches to American Attorneys General. Most former Attorneys General do not feel this role should be strengthened. Fifty said that the Attorney General should serve on the judicial council, 54 that he should not, and 11 had no opinion. Only 12 said that the Attorney General should review petitions for entrance to the bar, while 94 said he should not. Forty believed that he should institute disbarment proceedings, but 66 believed he should not. Only 27 thought the Attorney General should be an ex officio member of the Bar Association, while 79 disagreed.

These replies were related to former Attorneys General's service as judges. Those who had been judges were much more likely to think the Attorney General should serve on the judicial council than were those without such service. Of those who had been judges, about 60 percent believed that the Attorney General should serve on the judicial council, while only 37 percent of those who had not been judges concur. The correlation is reversed when membership on the Bar Association board was considered: 16 percent of those who had been judges favor this, while 26 percent of those who had not been judges concur.

Definition of Duties

Attorneys General's powers, duties and operations vary greatly. Their activities are governed by personal preferences and aims as well as by the statutes and customs of their jurisdiction. The survey included questions designed to ascertain the attitudes of former Attorneys General concerning the nature of the office and the relative importance of their many duties.

One question asked which of certain functions of the Attorney General were the most important. Of the functions listed, 46 respondents

specified representation of state agencies, 18 serving as the people's attorney, and 6 serving as an officer of the court. Six listed other functions, while 31 said the question could not be answered and 8 did not respond.

Those surveyed tended to believe that the Attorney General should take leadership in consumer protection, but not in environmental control activities. Of those responding, 69 said that the state's consumer protection activities should be primarily under the Attorney General's jurisdiction, and 39 said they should not. Only 31 said that the Attorney General should be the principal officer initiating actions to control environmental pollution, while 58 said he should not. Sixty-seven percent of those queried believed that he should act primarily as attorney for other state officers who initiate pollution actions, 8 percent believed he should not, and the rest did not say.

Conflicts may arise in the Attorney General's role as the state's chief legal advisor. Former Attorneys General were asked whether the Attorney General has an obligation to defend state law when it is challenged on the basis of federal constitutional law. One hundred respondents believed that he does, while 10 said he does not. If the Attorney General believes the position of the state is wrong, 67 respondents thought he is still obligated to defend it, although 37 disagreed.

Former Attorneys General were asked to rank certain activities in terms of the amount of time they devoted to them while in office. The results are shown here, with 1 being the highest ranking.

	1	2	3	4	5	6 & 7	N.A.
Rendering Advisory Opinions	57	27	8	6	11	1	5
Office Administration & Personnel	23	13	31	21	8	1	18
Litigation	21	49	12	12	15	0	6
Legislative Relations	3	6	29	30	17	2	28
Private Practice	2	0	4	4	8	10	87
Public Relations & Politics	0	9	11	11	40	8	36

Obviously, these activities are all interrelated and no clear-cut classification is possible, but this does indicate how Attorneys General view the office.

Strengthening the Administration of Justice

Former Attorneys General were asked whether they considered that their state's system for the administration of justice needed improvement. Seven percent did not reply, 24 percent said it needed much improvement, 61 percent said it needed some, and 8 percent said it did not need improvement. They were asked to suggest specific ways of strengthening the system and 58 offered suggestions. It is not possible to classify these responses, but they may be discussed generally.

At least 4 indicated that the entire system needs improvement. One former Attorney General said that "more of everything is needed--both personnel and plant, including prosecutors, courts and corrections systems." Another suggested "bringing bright, dedicated, imaginative young people into all aspects of the legal system," and one concurred by calling for "selection of well-qualified individuals to serve the state." One former Attorney General noted that "several so-called reorganization attempts leave the present and future course in a state of flux. The system needs a chance to become adapted to recent changes."

Several suggestions concerned court procedure. One said to "do away with requirement of unanimous jury verdict, overhaul appellate practice and rules." Another criticized "dilatatory tactics of attorneys." Several mentioned the need for less delay in bringing cases to trial, and less delay between trial and appeal. One called for a public defender system, while another believed the state should have the closing argument in all criminal cases. One called for "better juries--the system is very bad."

Two respondents criticized the United States Supreme Court, but they were not specific in their criticisms.

The largest group of suggestions concerned the judicial system, with 22 former Attorneys General specifying improvements they thought were needed in this area. There was little consensus within this group, however. Several respondents, for example, called for election of judges, while others said that judges should be appointed. Two respondents said to "take the election of judges out of politics." Another felt that judges should be appointed by the Governor for a one-year term, then run for the position. Several mentioned the need for court administrators.

Several said that court consolidation was needed while others favored the establishment of additional courts. One former Attorney General thought there was a need for "more or better local courts for trials of misdemeanors, and limited jurisdiction in civil matters." Another, however, said to "reduce hodge-podge of trial courts to one trial court system," and another called for "one judicial system under the Supreme Court." Several called for modernizing the judicial system, without making specific suggestions.

The other area about which many former Attorneys General made suggestions was local prosecutions; 15 made specific recommendations concerning this subject. The most frequent recommendations were that prosecutors serve full-time, and that salaries be raised and districts be consolidated to make this possible. Only 3 suggested that local prosecutors should be appointed by the Attorney General, while another said that the Attorney General should be authorized to act where the local prosecutors fail to do so. One respondent said that "the Attorney General should have some additional statutory authority for coordinating and to some extent supervising the county and prosecuting attorneys."

The other recommendations were too varied to classify. Three specified more training for peace officers. Three others said that the Attorney General's office should have adequate investigative capability. Two spoke of needed changes in the corrections system. One recommended improving the state's revenue collection system, and one favored revision of the criminal code. Several thought the Attorney General should have more control over state legal services. One former Attorney General merely called for "continued research and new legislation."

A related question asked what changes in the constitution, statutes or administrative procedures would most strengthen the office of Attorney General. Of 42 former Attorneys General answering this question, 5 said that no change was needed. Another said only that no change in the constitution was needed, and one did "not think there is a medium for change." The rest suggested changes ranging from "more of everything" to creating a Department of Justice. One said that "all they need is personnel and facilities to carry out duties."

The most frequent suggestion was to give the Attorney General more authority over local prosecutors and prosecutions; 7 favored such a change. Four former Attorneys General said that more common law powers should be restored to the office. Five thought the Attorney General should have greater authority over state legal services. Four respondents recommended that the Attorney General's term be increased to four years; ten jurisdictions still limit the Attorney General to a two-year term. One respondent said that the Attorney General should be allowed to succeed himself, which he can now do in all but a few states.

Some recommendations were in conflict. Two former Attorneys General said that the office should be made appointive, and 2 said that it should be made elective. Two favored a civil service system, while one thought civil

service should be eliminated. Generally, however, former Attorneys General agree, on the basis of their experience, that the powers, duties and operations of the office should be strengthened.

Sources of Information

Attorneys General need to be informed on a current basis about federal activity which relates to their duties. Of 95 respondents, 56 felt that they were adequately concerned about federal activity which concerned their operations, while 39 felt that they were not. They were asked to specify which of certain sources were most helpful in keeping them informed about federal activity when they were in office. Of 103 responding, 70 named NAAG and the Council of State Governments; 20 said other state agencies; 9 said federal agencies and 4 named other sources of information.

All but 3 respondents felt that the conferences and publications of NAAG were helpful to them as Attorney General. Fifty-six considered them very helpful, while 56 said they were of some help.

Interest in COAG Study

Interest in the office of Attorney General apparently continues after incumbents move on to other positions. Almost three-fourths of those queried said they would like to receive a copy of the Committee on the Office of Attorney General study when it is published: 84 said they wanted a copy, 24 said they did not, and 7 did not reply. About 40 said they were willing to review and comment on drafts of the COAG report, and most of these said they would like to review drafts of all chapters. Drafts will be sent, and this should help assure that the final draft of the study is a realistic analysis of the powers, duties, and operations of the office of Attorney General.

National Association of Attorneys General
Committee on the Office of Attorney General

QUESTIONNAIRE FOR FORMER ATTORNEYS GENERAL

Name: _____

Address: _____

Please complete and return to:

Mrs. Patton G. Wheeler, Project Director
Committee on the Office of Attorney General
320 West Jones Street
Raleigh, North Carolina 27603

1. Should the Attorney General be: Elected? ____; Appointed? ____; If appointed, by whom? _____.
2. Who should appoint a new Attorney General when the office becomes vacant?
The Governor ____; The Legislature ____; The Supreme Court ____; Promotion of Assistant Attorney General ____; Other _____.
3. Should the Attorney General be allowed to engage in private law practice?
Yes ____; No ____.
4. Should Assistant Attorneys General be allowed to engage in private practice?
Yes ____; No ____.
5. Should the Attorney General appoint local prosecutors? Yes ____; No ____.
Should the Attorney General be able to remove local prosecutors from office?
Yes ____; No ____; For specified causes only _____.

6. Should the Attorney General be authorized to intervene in local prosecutions on his own initiative? Yes ____; No _____. If yes, should intervention be limited to certain statutes? Yes ____; No _____.
Should approval of another authority be required? Yes ____; No _____. If yes, what authority? _____.
7. Should the Attorney General be permitted to take over a prosecution if asked to by the local prosecutor? Yes ____; No ____.
8. Should the Attorney General be able to initiate prosecutions? Yes ____; No _____. If yes, should initiation be limited to certain statutes? Yes ____; No ____.
9. Should the Attorney General handle all criminal appeals? Yes ____; No ____.
10. Should prosecutorial functions be organized on a county ____; district ____; or state-wide ____ basis?
Should local prosecutors be required to report to Attorney General? Yes ____; No ____.
11. Should the Attorney General appoint and control all ____; most ____ or some ____ of the attorneys working for state government? Which agencies, if any, should be permitted to have house counsel? _____

12. If the Attorney General controls all lawyers in the government, should he assign them permanently to specific agencies? Yes ____; No ____.
13. Should all Assistant Attorneys General work out of the central office (and branches, if in other cities) or should their quarters be with various state agencies? In central office ____; with agencies ____.
14. Should most Assistant Attorneys General be under a merit system, not subject to removal by the Attorney General? Yes ____; No ____.

15. Should Attorneys General employ administrative aides who are not attorneys to handle organizational matters? Yes ___; No ___.
16. If Attorneys General represent the public before regulatory boards, should they also provide counsel for the boards? Yes ___; No ___.
Should they defend the action of the boards in appeals? Yes ___; No ___.
Should such boards have separate counsel? Yes ___; No ___.
17. Ideally, should an Attorney General's office be located: in separate quarters away from other departments of the government, that is, away from the governor and legislature, and courts? ___; in close proximity to governor and legislature? ___; near the Supreme Court (in Supreme Court Building)? ___.
18. Should the Attorney General be permitted to employ special, temporary counsel? Yes ___; No ___.
Should such counsel be utilized frequently? Yes ___; No ___.
Should the Governor be required to approve employment of special counsel? Yes ___; No ___.
19. To whom should official opinions of the Attorney General be rendered?
- | | |
|------------------------|-----------------|
| Legislature | Yes ___; No ___ |
| Individual Legislators | Yes ___; No ___ |
| Governor | Yes ___; No ___ |
| State Officials | Yes ___; No ___ |
| Local Officials | Yes ___; No ___ |
| Local Prosecutors | Yes ___; No ___ |
| Universities | Yes ___; No ___ |
| Federal Officials | Yes ___; No ___ |
| Judges | Yes ___; No ___ |
| Private Individuals | Yes ___; No ___ |

20. Should the Attorney General render opinions:
On the constitutionality of legislative bills? Yes ___; No ___.
On the constitutionality of statutes? Yes ___; No ___.
On the constitutionality of local ordinances? Yes ___; No ___.
On matters pending before a court? Yes ___; No ___.
On his own initiative? Yes ___; No ___.
21. Should opinions be binding upon recipients until superceded by courts? Yes ___; No ___.
Should officials who follow opinions be immunized from criminal liability? Yes ___; No ___.
22. Should the Attorney General have subpoena powers? Broad powers ___; Limited powers ___; None ___.
23. Does service, *ex officio*, on many state boards and commissions constitute a worthwhile expenditure of the Attorney General's time? Yes ___; No ___.
Is membership on certain boards more important than others? Yes ___; No ___.
Which boards are most important? _____
24. Is there any incompatibility if the Attorney General both serves on a board and serves as its legal counsel? Yes ___; No ___.
25. Should the Attorney General review legislative bills for form and constitutionality before their passage by legislature? Yes ___; No ___, before signing by the Governor? Yes ___; No ___.
26. Should the Attorney General review administrative rules and regulations? Some ___; All ___; None ___.

27. Should the Attorney General have authority to direct the state police (or highway patrol)? Complete authority___; Limited authority___; None___.
28. Should a state bureau of investigation be under the Attorney General's jurisdiction? Yes___; No___.
29. Should the Attorney General serve on a judicial council? Yes___; No___.
Review petitions for entrance to Bar? Yes___; No___.
Institute disbarment proceedings? Yes___; No___.
Should he serve on the executive board, ex officio, of the Bar Association? Yes___; No___.
30. Which functions of the Attorney General do you believe to be the most important?
Representing the agencies of state government _____
Serving as the people's attorney _____
Serving as an officer of the court _____
Other(s) _____
Cannot be answered _____
31. Where state law is challenged on the basis of federal constitutional law, does the Attorney General have an obligation to defend the state law? Yes___; No___.
Is this obligation binding even if the Attorney General believes the position of the state is wrong? Yes___; No___.
32. Should the state's consumer protection activities be primarily under the Attorney General's jurisdiction? Yes___; No___.
33. Should the Attorney General be the principal officer initiating actions to control environmental pollution? Yes___; No___; or, should he act primarily as attorney for other state officials who initiate the actions? Yes___; No___.

34. Do you consider that your state's system for the administration of justice needs improvement? Much ___; Some ___; None ___.
Can you suggest specific ways of strengthening the system? _____

35. What changes in the constitution, statutes or administrative procedures would most strengthen the office of Attorney General? _____

36. Rank the following activities in terms of the amount of time you devoted to the activity while you were Attorney General. (1 - Most; 2 - Second most; etc.)
- _____ Rendering Advisory Opinions
_____ Litigation
_____ Office Administration and Personnel
_____ Legislative Relations
_____ Public Relations and Political Activities
_____ Private Practice
_____ Others (specify) _____

37. Which of the following were most helpful in keeping you informed about federal programs and legislation when you were Attorney General?

- _____ Other State Agencies
 _____ Federal Agencies
 _____ Other Attorneys General
 _____ National Association of Attorneys General and the Council of State Governments
 _____ Other(s) (specify) _____

Were you adequately informed about federal activity which concerned your duties and operations? Yes ____; No ____.

38. Were the conferences and publications of NAAG helpful to you as Attorney General? Some help ____; very helpful ____; no help ____.

39. Do you want to receive a copy of the NAAG study of the Office of Attorney General when it is published next year? Yes ____; No ____.

40. Would you be willing to review drafts of chapters of this report as they are released? Yes ____; No ____.

If yes, what aspects of the Attorneys General's powers, duties and operations would be of most interest to you?

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END

* Questionnaire not received in time to be included in tabulation.