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Changes in the State's Law Firm: The Powers, Duties and Operations of the Office of the Attorney General

The Honorable Lacy H. Thornburg

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ARTICLES

CHANGES IN THE STATE'S LAW FIRM: THE POWERS, DUTIES AND OPERATIONS OF THE OFFICE OF THE ATTORNEY GENERAL

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The majority of the research for this article was performed in conjunction with North Carolina's participation in the National Association of Attorney's Generals most recent publication: *The Office of Attorney General: Powers and Duties*. This Article follows the general format of that publication.

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I. INTRODUCTION

During my years in the North Carolina General Assembly and on the Superior Court bench, I witnessed many of the issues facing the State of North Carolina as they developed and were brought before our legislature and the courts. I came to realize that attorneys practicing with the Office of the Attorney General were not only given the privilege of performing public service while developing and honing their legal skills, they were also challenged with confronting important issues that affected all the citizens of North Carolina. The Office of the Attorney General, and the entire Department of Justice, has seen many changes. I have observed this evolution with both amazement and fascination while serving this state over the past thirty years.

The greatest changes began taking place in the late 1960's and early 1970's under then Attorney General, Robert Morgan. Those changes have continued. My two immediate predecessors have commented on these changes in law review articles during their respective administrations.¹ Considering the reorganization of the office I undertook when I assumed this position, a major state supreme court case directly addressing the powers of this office, and the continuing changes faced by this office due to legislative, legal, and governmental progression, I see it as fitting that I comment on the current status of this office and what I see as some related issues and emerging trends. As much as possible, I will refrain from repeating the scholarly work done by my predecessors, and instead build upon their work by updating the evolutionary aspect of the Attorney General's Office. This Article discusses the powers and

1. Morgan, *The Office of the Attorney General*, 2 N.C. CENT. L.J. 165 (1970)[hereinafter Morgan]; Edmisten, *The Common Law Powers of the Attorney General of North Carolina*, 9 N.C. CENT. L.J. 1 (1977)[hereinafter Edmisten].

duties of the Office of Attorney General. In addition, the Article enumerates specific changes in the powers of the Attorney General.

The Attorney General is the administrative head of the Department of Justice. The functions of the department can be divided into three basic areas: law enforcement and law enforcement services, law enforcement training, and legal services. Our legal services divisions advise and represent state and local governmental agencies, entities, and officials. Included in this function is the duty of protecting and representing the public at large—our citizens—under the responsibility of protecting the public interest and welfare. When referring to the Office of the Attorney General proper, I am referring to the legal services function we provide this state.

Our law enforcement services include the State Bureau of Investigation which provides assistance to various law enforcement agencies in the investigation of crimes, in the scientific analysis of evidence of crimes, and in the preparation of evidence to be used in the criminal courts. The State Bureau of Investigation (SBI) has original jurisdiction in narcotics violations, arson, State election law violations, State security law violations, and crimes involving State property. In addition, the SBI and law enforcement services also oversee the Division of Criminal Information. The Training and Standards Division includes those sections of the Department of Justice that provide instruction, advice, and technical assistance to local law enforcement agencies and related boards and commissions. Although these two areas of the Department have seen as much change as the legal services function, this Article will not delve into these areas except when necessary to comment on the legal services aspects of the Office. In no way should this be considered as diminishing the role of these two vital areas of the North Carolina Department of Justice.

I. THE ATTORNEY GENERAL AND THE STATUS OF THE OFFICE IN STATE GOVERNMENT

A. *Constitutional and Statutory Basis*

The Attorney General of North Carolina is both a constitutional² and a statutory officer.³ Numerous sources provide an excellent overview of the origin and development of the Office in North

2. N.C. CONST. art. III, § 7(1).

3. See N.C. GEN. STAT. ch. 114 (1987).

Carolina, not the least of which are the articles written by my predecessors.⁴ In reading these various sources you will find that the position of Attorney General in state government is deeply rooted in seven hundred years of Anglo-American history. From the mid-thirteenth century until today, specially designated lawyers have represented the legal interests of the sovereign. Although the sovereign has changed from the King of England to the people of the State as a whole body, the modern office of the Attorney General continues to perform its traditional roles of providing legal advice and legal representation in matters affecting the State's interests.

Consistent with the idea that the Attorney General is the lawyer for the sovereign people, Article III, Section 7 (1) of the Constitution of North Carolina provides for the election of an Attorney General by the qualified voters of the State in 1972 and every four years thereafter. Section 7 is also the applicable section for the election of other members of the Council of State. Subsection two of Section 7 provides that "their respective duties shall be prescribed by law." Section 8 of Article III sets forth that the "Council of State shall consist of the officers whose offices are established by this Article." Section 9 of Article III provides that the Council of State shall receive compensation and allowances prescribed by law, which shall not be diminished "during the time for which they have been chosen."⁵

Clearly, the North Carolina Constitution provides that the Attorney General's duty shall be prescribed by law, and this law includes both common law and statutory powers and duties.

The most significant statutory grouping of powers and duties of the Attorney General is set forth in Chapter 114 of the North Carolina General Statutes. That chapter is entitled "Department of Justice." N.C. GEN. STAT. § 114-1 provides:

"There is hereby created a Department of Justice which shall be under the supervision and direction of the Attorney General, as authorized by Article III, Sec. 7, of the Constitution of North

4. Morgan, *supra* note 1; Edmisten, *supra* note 1; North Carolina Manual 618-31 (J. Cheney ed., 1987-88); See generally 7 AM. JUR. 2D Attorney General §§ 1-4, 9-27 (1980); Nat'l Ass'n of Att'ys Gen., *Powers, Duties and Operations of State Attorneys General* 17-25 (1977); Nat'l Ass'n of Att'ys Gen., *The Office of Attorney General: Powers and Duties* 3-13 (1988).

5. The salary of the Attorney General shall be set by the General Assembly in the Current Operations Appropriations Act, N.C. GEN. STAT. (the current salary is \$70,992.00).

Carolina.”

N.C. GEN. STAT. § 114-2 sets forth the major duties of the Attorney General. Those duties can be summarized as follows; 1)to defend all actions in the appellate division in which the State shall be interested, or a party;⁶ 2)to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested;⁷ 3)to represent all state departments, agencies, institutions, commissions, bureaus, or other organized activities of the State which receive support in whole or in part from the State;⁸ 4)to give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other state officer;⁹ 5)to consult with and advise prosecutors, when requested by them, in all matters pertaining to the duties of their office;¹⁰ 6)to pay all moneys received for debts due or penalties to the State after receipt into the treasury and to compare all warrants drawn on the state treasury with the laws under which they purport to be drawn.¹¹

The Attorney General is also given the statutory power or duty to intervene, when he deems it advisable in the public interest, in proceedings before any courts, regulatory offices, agencies, and bodies, both state and federal, in a representative capacity for and on behalf of the using and consuming public.¹² The Attorney General also has the power to institute and originate proceedings before such bodies listed above and shall have the power to appear before agencies on behalf of the State and its agencies and citizens in all matters affecting the public interest.¹³ It should be noted that N.C. GEN. STAT. § 114-2(8)b provides that upon the institution of any proceeding before any state agency by application, petition or other pleading “the outcome of which will affect a substantial number of residents of North Carolina”, such agency shall furnish the Attorney General with copies of such pleadings and the Attorney General is authorized to intervene either in a representative

6. N.C. GEN. STAT. § 114-2(1)(1987).

7. *Id.* at § 114-7(1987).

8. *Id.* at § 114-2(2).

9. *Id.* at § 114-2(5).

10. *Id.* at § 114-2(4)(1987).

11. *Id.* at § 114-2(6),(7).

12. *Id.* at § 114-2(8)a.

13. *Id.*

capacity on behalf of the citizens or on behalf of the State or any of its agencies.¹⁴

One statute provides that the Attorney General shall devote his whole time to the duties of his office and is not allowed to engage in the private practice of law.¹⁵ This statute has been in force and effect since 1929, but it has only been since the general election of 1984 that the North Carolina Constitution was amended to require the Attorney General to be licensed as an attorney.¹⁶

Numerous other statutes scattered about the General Statutes give the Attorney General a wide array of additional powers and duties. These powers include authority in the areas of revenue,¹⁷ corporations,¹⁸ and the wrongful diversion of state funds;¹⁹ the investigatory powers and services to local law enforcement by the State Bureau of Investigation and the Division of Criminal Information;²⁰ the Private Protective Services Act; the Alarm Systems Licensing Act;²¹ and the two commissions governing the certification of law enforcement officers.²² The many other statutes affecting this office will be mentioned as the applicable section is discussed.

B. Origin and Development of the Office

Even though the Attorney General has a wide array of statutory powers, duties, and responsibilities, the common law is the

14. N.C. GEN. STAT. § 114-2(8)B (1987). It should be noted that with respect to several of the duties noted above, the appellate courts have been called on to interpret these provisions. In *Lawrence v. Shaw*, 210 N.C. 352, 186 S.E. 504 (1936), *rev'd on other grds.*, 300 U.S. 245 (the Supreme Court of North Carolina held that an opinion of the Attorney General, given in performance of his statutory duty, is advisory only). In *State v. Loesch*, 237 N.C. 611, 75 S.E. 2d 654 (1953), the supreme court noted that the Attorney General has no constitutional authority to issue a directive to any other constitutional officer concerning his legal duties. His duty as to district attorneys is purely advisory.

15. N.C. GEN. STAT. § 114-3 (1987).

16. N.C. CONST. art. III, § 7(7). *See, e.g., Morgan, supra* note 1, at 166.

17. *E.g.*, N.C. GEN. STAT. §§ 105-237.1, 140, 140.1, 243, 244, 251.1, 259, 267.1 (1989).

18. *E.g.*, N.C. GEN. STAT. § 55-10 (1982); N.C. GEN. STAT. § 55-122, *et seq.* (1982); N.C. GEN. STAT. § 55A-50.

19. N.C. GEN. STAT. § 143-32 (1989).

20. N.C. GEN. STAT. §§ 114-10, *et seq.* (1987).

21. N.C. GEN. STAT. ch. 74C (1989); N.C. GEN. STAT. ch. 74d (1989).

22. *E.g.*, N.C. GEN. STAT. ch. 17 (1989); N.C. GEN. STAT. ch. 17E (1983); N.C. GEN. STAT. ch. 74A (1989).

fountainhead of the Attorney General's authority to represent, defend, and enforce the legal interests of State government and the citizens of our state. During the period of Attorney General Morgan's²³ administration, and with the expanding role of the National Association of Attorneys General (N.A.A.G.), scholarly study began regarding the extent of the common law powers of the Office of Attorney General in this state and nationwide.²⁴ This research has continued.²⁵ Numerous scholars have commented on the powers in individual states, including North Carolina.²⁶ These studies, and the many individual cases cited therein, convincingly demonstrate that the common law is a vital source of power for Attorneys General who seek to protect the public interest in recently developing areas of the law.²⁷

The General Assembly of North Carolina reaffirmed the Attorney General's common law powers in our state in 1985.²⁸ Two important North Carolina appellate court cases have expounded on those powers.²⁹ An appellate court case from one of our southern sister states further sets forth the vitality of the common law powers, and that court's analysis is noteworthy for anyone interested in further scholarly research on this topic.³⁰

In North Carolina, one of the most recent surveys of the historical development of the Office of Attorney General is contained in *Tice v. Department of Transportation*.³¹ This case decided the question of whether the Attorney General, without the approval of an agency vested with the discretionary authority under law which

23. 1969-1974.

24. Nat'l Ass'n Att'ys Gen., Comm. on the Office of Att'y Gen., John B. Breckinridge, Chairman, *Report on the Office of Attorney General* 32-57 (1971).

25. Nat'l Ass'n Att'ys Gen., *Common Law Powers of State Attorneys General* (1977); Nat'l Ass'n Att'ys Gen., *Common Law Powers of State Attorneys General* (rev. ed., 1980); Nat'l Ass'n of Att'ys Gen., *Powers, Duties and Operations of State Attorneys General* 67-76 (1977) [hereinafter N.A.A.G. (1977)]; Nat'l Ass'n of Att'ys Gen., *The Office of Attorney General: Powers and Duties* 29-39 (1988) [hereinafter N.A.A.G. (1988)].

26. Edmisten, *supra* note 1, at n. 30.

27. For an exhaustive look at cases involving the Attorney General's common law powers see 7 AM. JUR. 2D, *supra* note 4.

28. N.C. GEN. STAT. § 114-1.1 (1987).

29. *Tice v. Department of Transp.*, 67 N.C. App. 48, 312 S.E.2d 241 (1984); *Martin v. Thornburg*, 320 N.C. 533, 359 S.E.2d 472 (1987).

30. *State of Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

31. 67 N.C. App. 48, 312 S.E.2d 241 (1984).

he represented, could consent to a judgment which would forever decide certain substantive rights of the agency without its knowledge and consent. *Tice* involved a technical aspect of the attorney-client relationship in representation of a state agency. The case is important to any discussion of the powers of the Attorney General because of the discussion of the common law powers possessed by this Office. In this opinion, Judge (now Justice) Whichard observed:

As the office evolved in England, the Attorney General became the Chief Legal Advisor for the Crown and had charge of all the management of all legal affairs and the prosecution of all suits in which the Crown was interested.³²

Perhaps the best and most concise presentation of the historical development of the Office of Attorney General in England is contained in the 1987-1988 edition of the North Carolina Manual. There it is noted:

It is not until the seventeenth century that the office [of Attorney General] assumed its modern form and the Attorney General became, at least in practice, the preeminent legal representative of the Sovereign. Although the early attorneys and other legal representatives of the Crown occupied much the same position as comparable legal representatives of individuals, their development soon diverged from that of private counsel because of the peculiar role of the Crown in legal proceedings. The King was 'praerogative' and in theory was always present in his courts. As the King could not appear in his own court personally, the function of the Attorney General and his predecessors was to protect the King's interests. Consequently, the King's counsel had superior status to that of attorneys for individuals. Unlike an attorney representing a private party, the Attorney General or King's Attorney was not an officer of the courts, but as a representative of the Crown was subject to the control only of the Crown, not to the usual disciplinary authority of the courts over attorney[s]. The Office of Attorney General was transported from the parent country of England to the American colonies. There, the Attorneys General of the various colonies in effect served as delegates or representatives of the Attorney General of England. Not surprisingly, these colonial Attorneys General were viewed as possessing the common law powers or then current powers of the Attorney General in England Certainly, by 1767, North Carolina did have an Attor-

32. 67 N.C. App. at 52, 312 S.E.2d at 243 (citing *Morgan, supra* note 1, at 166).

ney General . . . possessed [of] all the powers, authority and trusts within the colony that the Attorney General and Solicitor General possessed in England. Thus, when the American Revolution brought this country into being, the Office of Attorney General was firmly established in the American states as part of the heritage brought over from England and continued in the colonial period.³³

C. *The Common Law Powers*

In 1715, and again in 1778, the General Assembly enacted a statute that is now codified as N.C. GEN. STAT. § 4-1. This statutory provision provides:

All such parts of the common law as were heretofore in force and use within this State, or so much of the common law as is not destructive of or repugnant to, or inconsistent with, the freedom and independence of this State and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become absolute, are hereby declared to be in full force within this State.

The term common law as used in the statute quoted above refers to the common law of England.³⁴ Thus, for example, the concept of sovereign immunity, extant in the English common law, remains in force today.³⁵

As stated earlier, Chapter 114 of the General Statutes of North Carolina, N.C. GEN. STAT. §§ 114-1 through 114-20.1, authorizes the creation of a Department of Justice under the supervision and direction of the Attorney General. In addition, this chapter defines the powers and duties of the Attorney General. Specifically, N.C. GEN. STAT. § 114-1.1, enacted June 27, 1985, by Session Laws 1985, Chapter 479, Section 137, provides:

33. North Carolina Manual, *supra* note 4 at 621-22. See also A. Coates, *The State's Legal Business*, 16 N.C.L. REV. 282 (1938); Comment, *Open Court*, part IV, *The Office of Attorney General in North Carolina*, 8 N.C.L. REV. 328, 344 (1930); Edmisten, *supra* note 1 at 2 (citing Morgan); 6 W. HOLDSWORTH, *A HISTORY OF ENGLISH ON LAW*, 467-68; Nat'l Ass'n Att'ys Gen., *Report on the Office of Attorney General*, *supra* note 24 at 11-19; Cooley, *Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies*, 2 AM. J. LEGAL HIST. 304 (1958).

34. North Carolina *ex. rel* Burton v. Flying "W" Enters., Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

35. Teachy v. Coble Dairies, Inc., 306 N.C. 324, 293 S.E.2d 182 (1982).

The General Assembly reaffirms that the Attorney General has had and continues to be vested with those powers of the Attorney General that existed at the common law, that are not repugnant to or inconsistent with the Constitution or laws of North Carolina.

N.C. GEN. STAT. § 114-2 entitled "Duties" provides in pertinent part:

It shall be the duty of the Attorney General: (1) to . . . appear for the State in any . . . court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

Based on the above, therefore, this statutory provision seems to establish beyond any serious dispute that the Office of the Attorney General of North Carolina retains the traditional common law powers of that office as it evolved in England as well as the specific statutory powers granted later. In *Tice*, Judge Whichard noted that among the duties of the Attorney General in England was the following: "(1) To prosecute all actions necessary for the protection and defense of the property and revenue of the Crown."³⁶

In North Carolina the sovereign is no longer the King or Crown but, rather, the people.³⁷ Therefore, this quotation should be amended for modern times to read as follows: "(1) To prosecute all actions necessary for the protection and defense of the property and revenue of the [sovereign people of North Carolina.]"

The word prosecute has been defined to mean:

To follow up; to carry on an action or other judicial proceeding. . . . To 'prosecute' an action is not merely to commence it but includes following it to an ultimate conclusion.³⁸

This same source defines prosecution to mean "A criminal action. . . . The term is also used respecting civil litigation, and includes every step in action, from its commencement to its final determination."³⁹ A prosecutor is "[o]ne who prosecutes another for a crime in the name of the government A 'prosecutor' is one who takes charge of a case and performs the function of a trial lawyer for the people, as does a district attorney."⁴⁰

36. *Tice v. Department Transp.*, 67 N.C. App. at 52, 312 S.E.2d at 243 (1984).

37. N.C. CONST., art I, § 2.

38. BLACK'S LAW DICTIONARY 1099 (5th ed., 1979).

39. *Id.*

40. *Id.*

Consistent with the definitions set forth above, it has been said by one authority:

In the absence of explicit legislative expression to the contrary, the Attorney General possesses entire dominion over every civil suit instituted by him in his official capacity . . . , and his authority extends as well to control of defense of civil suits against the State, its agencies, and officers.⁴¹

In regard to the conduct and control of litigation by any attorney, the following comments appear to be appropriate:

The general employment of an attorney to . . . defend a cause or proceeding ordinarily vests in a . . . defendant's attorney the power to take such steps as he deems necessary to defend the suit and protect the interests of the defendant, in so far as they affect only the remedy. . . .

However, the powers of an attorney chosen to conduct litigation are not unlimited; they are confined to the conduct and management of the litigation, and to matters which relate only to the procedure or remedy. The employment of itself confers upon the attorney no implied or apparent power or authority over the subject matter of the cause of action or defense, and unless the attorney has expressly been granted authority with respect thereto, the power to deal with or surrender these matters is regarded as remaining exclusively with the client.⁴²

These propositions are in accord with the North Carolina cases.⁴³

The *Tice* case, and its look at the historical and present day powers of the Attorney General, played a key role in the most recent North Carolina case that looked at the common law powers of this Office.

In *Martin v. Thornburg*,⁴⁴ the North Carolina Supreme Court held that the North Carolina Attorney General has common law powers. Both the appellees and the appellants relied heavily upon *Tice*. The court recognized that just as the Attorney General of England had the duty to prosecute all actions necessary for the protection and defense of the property and revenue of the Crown,

41. 7A C.J.S. *Attorney Generals* § 12 (1980).

42. *Id.* at § 193.

43. *E.g.*, *Dietz v. Bolch*, 209 N.C. 202, 183 S.E. 384 (1936); *Harrington v. Buchanan*, 222 N.C. 698, 24 S.E.2d 534 (1943); *Coker v. Coker*, 224 N.C. 450, 31 S.E.2d 364 (1944); *Chatham Lumber Co. v. Parsons Lumber Co.*, 172 N.C. 320, 90 S.E. 241 (1916); *North Carolina v. Barley*, 240 N.C. 253, 81 S.E.2d 772 (1954).

44. 320 N.C. 533, 359 S.E.2d 472 (1987).

the North Carolina Attorney General has "the common law duty to prosecute all actions necessary for the protection and defense of the property and revenue of the sovereign people of North Carolina."⁴⁵ The court reasoned that this duty included "the duty to appear for and to defend the State or its agencies in all actions in which the State may be a party or interested."⁴⁶

This case resulted from a suit brought by the Governor against the other nine members of the Council of State.⁴⁷ The suit was brought against the Attorney General in his role as Attorney General and also as a member of the Council of State. The defendants also included Mrs. Berry, the original leaseholder of office space leased by the State for a state agency's use. The lease was up for renewal. *Martin* was heard on discretionary review prior to a determination by the court of appeals. The plaintiffs had appealed from an entry of summary judgment in favor of the defendants.⁴⁸

In *Martin*, the plaintiffs, Governor James G. Martin and Secretary of the Department of Administration, Grace J. Roher, brought a declaratory judgment action to determine the rights and duties of the Governor and the other members of the Council of State. The case evolved around the extent of the rights and duties of the Governor and Attorney General in connection with lawsuits filed against the State.⁴⁹

The court determined that once the Department of Administration has submitted the lowest lease proposal to the Council of State, the Council does not have the authority to examine all the proposals and require the Department to negotiate and enter a lease other than the proposed lease. The peripheral issue in the case however regarding the duty of the Attorney General to appear for the State makes this case very pertinent to any discussion of the Attorney General's powers and duties.

The issue questioning the powers of the Attorney General re-

45. *Id.* at 546, 359 S.E.2d at 479.

46. *Id.*

47. The Council of State in North Carolina consists of the ten statewide elected Executive Branch positions: Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Attorney General, Commissioner of Labor, and Commissioner of Insurance. In existence since Colonial times, one of the Council of State's primary remaining functions is to approve leases for property by the State.

48. *Martin*, 320 N.C. at 534, 359 S.E.2d at 473.

49. *Id.* at 535, 359 S.E.2d at 473.

sulted from the primary lawsuit in which Berry, the original leaseholder, brought suit against the Secretary of the Department of Administration (but not the Governor). The Attorney General was required by law to defend the Department. In that capacity, the Attorney General successfully sought a temporary restraining order (TRO). At the TRO hearing the court granted the Attorney General a 60 day extension of time to file an answer to the complaint. The court also extended the duration of the TRO to 60 days.

In their suit for a declaratory judgment, the plaintiff-appellants (Governor Martin and Secretary Roher) focused their attack on the action of the Attorney General in moving for an order from the court allowing the TRO to remain in effect. In *Martin*, the North Carolina Supreme Court considered whether the duty of the Attorney General to appear for the State in any proceeding in which the State may be a party as provided for in N.C. GEN. STAT. § 114-2(1) violated Article III, Section 1 of the North Carolina Constitution.⁵⁰

The plaintiff-appellants argued that all executive power is vested in the Governor by the constitution; that no specific duties are given to the Attorney General by the constitution gives to the Attorney General are those prescribed by law; and that N.C. GEN. STAT. § 147-12(1) gives the Governor the power and duty to supervise the official conduct of all executive officers.⁵¹ From this they argued that the vesting of executive power in the Governor gave that person implied, prerogative powers over and above the other constitutional officers so that the Governor becomes, in the words of George Orwell in his famous novel *Animal Farm*, "more equal" than the others. The plaintiff appellants coupled this argument with the provision N.C. GEN. STAT. § 147-12(1). This provision gives the Governor supervisory power over all "executive" officers. The plaintiff appellants further argued that both the people through their constitution and the Legislature through its statutes intended the Governor to be the sole authority in the Executive Branch to declare both the procedural and the substantive position to be taken in litigation involving the State. This notion, they argued, is buttressed by the traditional attorney-client rules. These

50. Article III, § 1, of the North Carolina Constitution provides that "[t]he executive power of the State shall be vested in the Governor."

51. N.C. Gen. Stat. § 147-12(1) states, in pertinent part, that: "[i]n addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections. . . (1) He is to supervise the official conduct of all executive and ministerial officers. . .".

rules traditionally give the client the final right of decision in all aspects of litigation. The rationale is that the attorney is merely the representative of the client. To hold otherwise would, the plaintiff appellant argued, fly in the face of the Constitution, the statutes and the traditional attorney-client relationship. Further, the plaintiff appellant suggested that the dual role of the Attorney General as a member of the Council of State and chief lawyer for the State, placed the Attorney General in an ethical dilemma.

Citing *Tice*,⁵² and numerous other authorities cited in this Article, the court held that "the duty of the Attorney General to appear for and defend the State or its agencies in actions in which the State may be a party or interested is not in derogation of or inconsistent with the executive power vested by the Constitution in the Governor."⁵³ In so doing, the court also further reaffirmed the common law powers of North Carolina's Attorney General.⁵⁴

The law is not so clear in all jurisdictions or with respect to every claim of common law authority. However, cases recognizing an Attorney General's common law powers in other jurisdictions are numerous.⁵⁵ In most states, as in North Carolina, the modern Attorney General's office retains common law authority, as well as the powers and duties that specifically are assigned by constitutions and statutes. Like North Carolina, the codification of an Attorney General's common law authority has resolved conflicts in judicial opinions on the question of the Attorney General's historical prerogatives.⁵⁶

D. Status in State Government

Clearly, the Attorney General holds a very unique position in State Government. As the chief legal officer of the State, the Attorney General's Office is the legal advisor to Executive branch agencies and officials and local government, the legislature and judiciary upon request, and the principal legal representative of the

52. 67 N.C. App. 48, 312 S.E.2d 241.

53. *Martin*, 320 N.C. at 546, 359 S.E.2d at 480.

54. *Id.* at 545-46, 359 S.E.2d at 479.

55. See, Nat'l Ass'n Att'ys Gen., *Common Law Powers of State Attorneys General* (rev. ed., 1980); 7 AM. JUR. 2D *Attorney General* § 1-4, 9-27 (1980) *Memorial Hosp., Inc. v. Knutson*, 239 Kan. 663, 722 P. 2d 1093 (1986); *State ex. rel. Allain v. Mississippi Pub. Serv. Comm.*, 418 So. 2d 779 (Miss. 1982); *State v. Jiminez*, 588 P. 2d 707 (Utah 1978); *United States v. Ottati & Goss, Inc.*, 630 F. Supp. 1361 (D.N.H. 1985).

56. See *supra* note 28; see *Martin*, 320 N.C. at 545, 359 S.E.2d at 479.

public interest for all citizens. The responsibilities are outlined expressly in constitutional and statutory provisions. These responsibilities by necessity continually shape the Attorney General's relationship to the executive, legislative, and judicial branch of state government. Although the Attorney General's authority is firmly rooted in the common law, the trend is toward legislative expansion of the duties and powers of the Office. This trend is evident from the fact that our Legislature has prescribed new responsibilities and functions for state and local government. This trend will only continue as our state faces the effects of the so-called "new-federalism."

Since the late 1960's and early 1970's, new statutory responsibilities for North Carolina's Attorney General have included such diverse tasks as antitrust enforcement and consumer protection,⁵⁷ utilities ratemaking intervention,⁵⁸ medicaid fraud detection and prosecution,⁵⁹ and increased statewide investigatory authority,⁶⁰ among others.⁶¹ The creation and implementation of these and other responsibilities have brought activism to the role of Attorney General as a "public interest lawyer." The modern day Attorney General is uniquely qualified for this role because of his position, powers, and perspective in state government. I have found that the "public interest lawyer" aspect of this job provides many opportunities to protect and improve the quality of life for the citizens of our state.

To explain more about this unique perspective, it is necessary to discuss the relationship of the Attorney General to the institutions of state government: The executive, legislative and judicial branches, the various attendant state agencies, and the private bar.

Clearly, the Attorney General occupies a special place within the framework of state government. Although a member of the executive branch, he is required to give legal advice to both the legislative and judicial branches upon request. Although many of the

57. N.C. GEN. STAT. ch. 75 (1988).

58. N.C. GEN. STAT. § 62-20 (1988); N.C. GEN. STAT. § 114-2(8)a (1987).

59. By contract with the federal government. *See generally*, Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. Law. No. 95-142, 91 Stat. 1175 (1977).

60. *See, e.g.*, N.C. GEN. STAT. § 75-85 (1988); numerous derivative functions for the State Bureau of Investigation.

61. Other state Attorney General's specific statutory responsibilities have been expanded to include ethics, insurance, child support enforcement, crime victims assistance, organized crime prosecution, and hazardous waste enforcement.

duties have been transferred directly to that branch, the North Carolina Attorney General has traditionally had, and continues to have, numerous legislative related functions. The Attorney General also is considered to have some judicial branch functions in light of his power to prosecute a criminal case upon the request of the District Attorney, and other quasi-prosecutorial functions.

To a greater extent than most other executive branch officials, the Attorney General is required to make strategic decisions at the critical points of any challenge to the state government system as a whole. His advice and services are essential to the effective exercise of the duties of his fellow government officials and to the consistent administration of state policy. More so than any other official, the Attorney General can serve as the balancing force—or pivot point—for the policy-making system in our state.

As stated earlier, the Governor and Attorney General are members of the Council of State, but the Attorney General is not a member of the Governor's Cabinet. Even so, the Attorney General has the duty of representing the state officers and agencies that make up the Governor's Cabinet, as well as those departments that make up the remaining officers and agencies of the Council of State.

This requirement, and the duty owed the public to defend and interpret the outer limits of state policy, sometimes provides for a tenuous relationship with the agency-client. This is especially so when the Attorney General and the agency-client are headed by policy makers of different partisan persuasions.

As a result, the practice of having a legal advisor or in-house legal counsel within the agency-client represented by the Attorney General has become widespread.⁶² This fact has complicated the role of the Attorney General as much as, or more so, than any other one factor during the evolutionary process of this Office over the past twenty years. These attorneys cannot represent their officials or agencies in any legal proceedings. The Governor has traditionally had at least one person who serves as legal counsel, but that counsel has usually been limited to policy advice, executive orders, review of legislation, clemency and extraditions, personnel appointments, and as a liaison with the Attorney General on matters of great importance to the Governor. This legal counsel, however, still cannot represent the Governor in an official matter in any court proceeding. However, the Governor is given the power to

62. This situation will be discussed in detail in Part II of this article.

seek private counsel to so represent him or his interests.⁶³

The Attorney General plays a major role in articulating the respective powers and duties of the various agencies of state government through appropriate legal representation. Because of this, it is imperative that the Attorney General simultaneously represent both the state agency and the public interest. Although the ultimate duty is to the citizens of North Carolina, the statutory duty of the Attorney General is, of course, to represent and defend state agencies. I will discuss this in more detail a little later. These duties have the potential to become very complex in their arrangement. So far, however, this Office has managed to avoid any major conflicts with the exception of the *Martin v. Thornburg* case discussed earlier.

If a situation were to arise where a state agency were to take an action which the Attorney General considers to be legally improper or against the public law, the prevailing view is that the Attorney General has the primary duty to attempt to prevent the agency from violating the law, or in the alternative, protecting the public interest. The Attorney General can, of course, represent the agency if it is acting within the arguable range of its legal discretion. A number of Attorneys General in other states have resorted to litigation to stop certain actions of an agency that would otherwise have been their clients.⁶⁴

In his Article, *The Office of Attorney General*, Attorney General Morgan comments on the "several major committees" upon which the Attorney General serves.⁶⁵ The N.A.A.G. (1977) publication listed numerous others under the Edmisten administration.⁶⁶ Over the years these boards have gone out of existence. Their functions have been taken over by other agencies.⁶⁷ According to the

63. N.C. GEN. STAT. § 114-2.3 (1987). The same is true for any other official or agency represented by the Attorney General. See *infra*, note 105.

64. See, e.g., *Fronmayer v. State Accident Ins. Fund*, 294 Or. 570, 660 P.2d 1061 (1983); *Bowers, Att'y Gen. v. State Bar, Civ. Action*, No. 87-90 32-2 Sup. Ct. of Dekalb County, Georgia (Dec. 23, 1987), *vacated as moot*, Ga. Sup. Ct. (Mar 10, 1988).

65. Morgan, *supra* note 1, at 166.

66. N.A.A.G. (1977), *supra* note 25, at 52-53.

67. The Armory Commission, N.C. GEN. STAT. § 143-230 (repealed 1975); Governor's Committee on Law and Order, N.C. GEN. § 143-400 (repealed 1969)(duties and functions transferred to Dept. of Local Affairs, N.C. GEN. STAT. § 143-326); Judicial Council, N.C. GEN. STAT. § 7-448 (repealed 1971)(transferred by N.C. GEN. STAT. § 7A-400 (repealed 1983)); N.C. GEN. STAT. § 129-40 (repealed 1989)(though no authority for the Attorney General's membership is found, this

most recent N.A.A.G. (1988) publication on this office, the trend is toward reducing statutorily mandated participation of Attorneys General on state boards and commissions. This trend reduces the potential for conflicts when the Attorney General is required to render an opinion to a board or commission on which they serve.⁶⁸ The reduction in North Carolina is possibly due more to happenstance rather than to any conscientious effort. I still serve as an *ex officio* member of the Board of Directors of the Roanoke Island Historical Association,⁶⁹ the Tryon Palace Commission, as a full voting member of the Governor's Crime Commission,⁷⁰ the Criminal Justice Education and Training Standards Commission,⁷¹ the Private Protective Services Board,⁷² the Alarm Systems Licensing Board,⁷³ and the Crime Victims Compensation Commission.⁷⁴

An example of a board or commission on which the Attorney General does not sit, but has significant duties and input, is the General Statutes Commission.⁷⁵ Article 2 of Chapter 114 creates and establishes within the Department of Justice the Division of Legislative Drafting and Codification which is required to staff this commission.⁷⁶

The function of the Office of Attorney General will be discussed later. However, in discussing the status of the office in state government, it is important to review the function of the office at this point. At one time, the Attorney General's Office in North Carolina was deeply involved with the legislative process through bill-drafting. Now, North Carolina's General Assembly, like those of most other states, has its own legal staff. The Attorney General's bill-drafting functions are largely confined to his own legislative proposals or proposals of executive branch agencies which he represents. Individual legislators do, however, still call upon this Office to draft bills. The Office is still statutorily required to, and

provision creates the N.C. Capital Building Authority); Tryon Place Commission, N.C. GEN. STAT. § 121-19 (repealed 1973)(however, Attorney General continues to sit as an *ex officio* member.

68. N.A.A.G. (1988), *supra* note 25 at 43-44.

69. N.C. GEN. STAT. § 143-200 (1987).

70. N.C. GEN. STAT. § 143-B-478(a)(1)(a) (1987).

71. *Id.* § 17C-3(a) (1983).

72. *Id.* § 74D-4(b) (1984).

73. *Id.* § 74D-4D-4(b) (1989).

74. *Id.* § 15B-3(4) (1989).

75. See N.C. GEN. STAT. § 164-12, *et seq.* (1987).

76. N.C. GEN. STAT. §§ 114-9-114-9.1 (1987).

does in fact, give legal opinions to individual legislators upon request.

Although the rendering of advisory opinions in general is "quasi-judicial" in nature and, as mentioned earlier, some other functions could be considered quasi-judicial, it is generally agreed that the Attorney General is not a judicial officer. The opinions of the Attorney General in our state, whether formal or informal, do not have the force and effect of law.

Other than the normal relationship of a member of the bar before a member of the judiciary, the only unique relationship the North Carolina Attorney General has to the judiciary is through his representation of judges who are sued in their official capacity. The Attorney General also provides legal counsel (through our Criminal Division) and investigators (through the State Bureau of Investigation) to the Judicial Standards Commission.⁷⁷ As stated earlier, the Attorney General was a part of what once was the Judicial Council, but it is no longer in existence.

The Attorney General has no direct or explicit statutory relationship to the private bar, other than his representation of the Board of Law Examiners as a state agency. He does, though, have a vested interest in any activity of the private bar, not only because he is a member, but because of the role his office has in our governmental, legal and judicial systems.

As you can see, the Attorney General's role in state government is a very unique one, as is his special relationship to the other institutions of state government and the private bar. While the Attorney General's powers and duties continue to evolve as the General Assembly adds additional responsibilities, it is clear that the present powers include not only those found in the statutory and case law, but also the significant powers found in the common law.

III. THE PRESENT OFFICE OF THE ATTORNEY GENERAL AND THE STRUCTURE OF STATE LEGAL SERVICES

A. *Organization and Management*

When I first came into the office of North Carolina Attorney General, I frequently joked that I was the senior managing partner in the State of North Carolina's largest law firm. Well, with all the mergers that have taken place in the last three to five years, I can no longer brag on that distinction. I can, however, attest to having

77. N.C. GEN. STAT. § 7A-377(b) (1989).

the same honor, but in the State's largest "public interest" law firm.

The greatest challenge for any Attorney General is to provide the highest quality legal services for state agency-clients and our citizens and taxpayers. I realized upon becoming Attorney General that before I could attain the goals and priorities I had set, I would have to be successful in managing state legal resources. Upon entering this Office I felt that effective management was the key and developed a new organizational system for the Department.⁷⁸

In reorganizing the Office, I consolidated our legal services functions into four major divisions made up of various existing sections. I divided some previously combined sections, created one new section, and created a single additional division just to handle the most complicated and protracted cases in the Office. Three of the four major divisions fall within the area of representation of state agencies, entities, or officials and local government. The fourth major division combined those sections of the Office that do predominately public interest type law and is the division that most directly represents the citizens of our state.

The first three areas are the Criminal Division, Civil Division, and the Administrative Division. The Civil and Administrative Division's functions are very similar in that they provide the majority of the service my office performs for state agencies. The clearest way to explain the distinction between the two is that the Administrative Division handles more administrative and regulatory law and practice than the sections within the Civil Division. It is within these two divisions that we represent entities ranging from the Department of Human Resources, the Department of Transportation and the Department of Labor, to the Milk Commission and the Real Estate Commission.

In the Criminal Division we also represent a state agency—the Department of Correction—but this is also the Division that handles all state criminal appeals and the federal *habeas* petitions. This division also encompasses our Special Prosecutions Section which steps in to prosecute for, or assist in prosecuting, very complicated cases or cases where the District Attorney's Office may have a professional conflict. This is certainly one of the most active sections of the Department.

78. Although organizational changes were also made at the State Bureau of Investigation and in our Training and Standards Division, my discussion will be limited to the legal services functions of the Attorney General's Office.

I am particularly proud of the Appellate Section. This was a new section I created when I developed the reorganization plan. Once a case is tried by the District Attorney's Office and appealed, the Attorney General's Office must handle the appeal. Prior to the time I created this section, criminal appeals were handled by our staff attorneys on a rotating basis regardless of the staff attorney's area of practice. Although this is still necessary, the Office is slowly adding attorneys to the Appellate Section in the hope that some day all criminal briefs will be handled by one section.

The fourth division is the Trade and Commerce Division. This division most directly represents the citizens of our State. Within this division are sections which predominately handled cases involving the consuming public, the interests of business in maintaining a free, fair and competitive market place, and the protection of the natural environment.

As stated earlier, one of the statutory duties of the Attorney General is to advise and represent state government officials and agencies and local governments. As a result, the Attorney General cannot represent an individual private citizen. But the Attorney General can, and in fact has both the common law and statutory duty to, protect certain groups of citizens and the public as a whole. This is the true public interest law aspect of the Office.

The fourth division contains our Consumer and Business Protection Section. This section includes our antitrust function, our Utilities and Energy Section, our Insurance Section, and our Environmental Protection Section. Two of these sections, Insurance and Environmental Protection, also represent state agencies. Insurance, obviously, represents the Department of Insurance, and Environmental Protection represents the Department of Environment, Health, and Natural Resources, a newly reorganized department created after many of the the State's environmental protection functions were redefined.

Each of these four divisions is headed by a Senior Deputy Attorney General who answers to the Chief Deputy Attorney General; each section under these divisions is headed by a supervising attorney with the title of Special Deputy Attorney General.

The last substantive change I made in the organization of the Office of Attorney General was the creation of the Special Litigation Division (or Special Projects Division). This Division is headed by a Senior Deputy who answers directly to me, as Attorney General. This division has no other sections under it and each of the trial attorneys is the equivalent of a Special Deputy. I cre-

ated this unit or division to handle particularly complicated and protracted litigation or projects originating from any of the other legal divisions as assigned by me. Such cases or projects generally involve matters that are complex, controversial, novel, or that have the potential to impact significantly sums of tax dollars. The most recent special project undertaken by this division involves coordinating and handling the RICO (Racketeering and Corrupt Organizations) forfeiture cases for the Office of Attorney General. Many of these sections will be discussed in the latter part of this Article.

B. Personnel

The General Statutes of North Carolina authorize the Attorney General "to appoint from among his staff such number of assistant Attorneys General as he shall deem advisable. . .".⁷⁹ Although the title "Assistant Attorney General" was for many years the only designation for any other attorney within the Office, that title is now reserved for non-supervisory attorneys with greater than two years experience. In 1963, the General Assembly created the designation of Deputy Attorney General, for the same purpose.⁸⁰ Both designations remain. Now, supervisory attorneys and project attorneys are referred to as "Special Deputy Attorney General." The Deputy Attorney General designation is now reserved for administrative personnel who may, or may not, be attorneys.⁸¹

Many of the attorney positions in our office were mandated by statute, while others were created merely through the budget process. Those positions created by statute are those assigned to the Department of Revenue,⁸² Department of Transportation,⁸³ Department of Insurance,⁸⁴ Memorial Hospital in Chapel Hill,⁸⁵ Real Estate Commission,⁸⁶ and Energy Division of the Department of Commerce.⁸⁷ Other statutes provide that the Attorney General appoint certain attorneys to perform specific tasks within an agency

79. N.C. GEN. STAT. § 114-4 (1987).

80. N.C. GEN. STAT. § 114-4.4 (1987).

81. *E.g.*, Administrative Deputy Attorney General, Deputy Attorney General for Policy and Planning, and Deputy Attorney General for Training and Standards.

82. N.C. GEN. STAT. § 114-4 (1987).

83. N.C. GEN. STAT. § 114-4.2 (1987).

84. *Id.* at § 114-4.2A (1987).

85. *Id.* at § 114-4.2B.

86. *Id.* at § 114-4.2C.

87. *Id.* at § 114-4.2D.

or in addition to other duties such as, an attorney specializing in the law of the handicapped,⁸⁸ attorneys to perform commitment hearings at regional psychiatric facilities,⁸⁹ legal advisor to the Local Government Finance Commission,⁹⁰ legal advisor to the retirement system for counties and cities,⁹¹ and teachers and state employees,⁹² the enforcement of safety rules and regulations of the Department of Labor,⁹³ defense of the Highway Patrol⁹⁴ and furnishing counsel to the Judicial Standards Commission.⁹⁵

It should be noted that the Attorney General may still assign additional duties to these attorneys as he deems advisable.⁹⁶ Many of these attorneys are compensated out of revenues from their client-agency.⁹⁷

A couple of other statutes provide for the creation of particular sections (or divisions) of the Office such as the Legislative Drafting and Codification Section⁹⁸ and the Special Prosecutions Section.⁹⁹

C. Appropriations, Expenditures, and the Preservation of State Fiscal Resources

Since before coming into this office, I have believed that the professional staff is the most important factor in building a first-rate public law office to deliver the highest quality legal services to the State and its citizens. During 1988, the Department of Justice employed slightly less than one thousand people, over 25 percent of whom worked in the legal services area. The budget for the entire Department exceeded \$56 million. \$16 million of the total budget was devoted to the legal services functions. Although I feel I have an excellent group of attorneys in my office, the recruitment

88. *Id.* at § 114-4.2F.

89. *Id.* at § 122C-270(f) (1989).

90. *Id.* at § 159-3(d) (1987).

91. *Id.* at § 128-28(b) (1986).

92. *Id.* at § 135-6(j) (1988).

93. *Id.* at § 95-13 (1985).

94. *Id.* at § 20-194 (1989).

95. *Id.* at ch. 7A, art. 30.

96. *See, e.g.*, N.C. GEN. STAT. § 114-4.2 (1987).

97. *Id.* (The State Highway Fund compensates all attorneys who are assigned to the Department of Transportation and two attorneys in the Tort Claims Section).

98. N.C. GEN. STAT. § 114-9 (1987).

99. *Id.* at N.C. GEN. STAT. § 114-11.6 (1987).

and retention of well qualified, dedicated attorneys is of vital concern. Competition with the private bar is eroding the development of experienced attorneys in the Department. In time, if this trend continues, this will greatly effect the representation of the State and the public interest.

Two major ideas I have incorporated to streamline the Office and create greater efficiency, in addition to the reorganization, have been the increased utilization of paralegals and the installation of an office automation system throughout the Department. Both of these innovations are now widely found in even the smallest law firms.

Also, with the mandating of continuing legal education by the State Bar, we have developed an approved "in-house" CLE program to provide our attorneys with the necessary credit hours while making the most efficient use of our budget tax dollars. Additionally, computer training on both the Barrister system (our office automation system) and Westlaw are widely available to all professional staff, both attorneys and clerical support staff.

One final area worthy of note when discussing the Office of the Attorney General and its services to state agencies is the consolidation of state legal services. In our discussions to this point, it is clear that new legislation, both state and federal, as well as new conceptions of this Office have dramatically expanded the scope of the Attorney General's powers and duties over the past twenty years. Constitutional and statutory mandates, as well as a more defined role based on the common law, have conferred new powers and delegated more authority and responsibilities upon this Office. But, as the number of attorneys in this Office has grown, so too has the number of attorneys within other state agencies and outside the direct control of the Attorney General. While many of these attorneys serve as hearing officers and in other quasi-judicial capacities, the majority of them serve in a counsel or legal advisor type capacity in a particular agency. Frequently referred to as Agency Legal Specialists, these attorneys are not allowed to represent their respective agencies in litigation.

During its 1987 session the General Assembly authorized a study of legal services to state agencies with an eye towards either decentralization or consolidation.¹⁰⁰ The Legislative Research Commission conducted this study and reported back to the Gen-

100. The Study Commissions & Committees Act, ch. 873, Part II, Sec. 2.1(26) (1987).

eral Assembly on December 14, 1988.¹⁰¹ At the time of the study, it was determined that there were almost as many legal positions outside the direct control of the Attorney General as there were within his control (i.e. 155 versus 161) and that of the twenty-one state departments and agencies, only the Department of Cultural Resources and the Department of Labor exclusively utilized the legal services of the Attorney General's Office.

Chapter 26 of the 1989 Session Laws requires the Attorney General to report to the General Assembly "with a plan for the consolidation of legal services provided to the various departments and agencies of State government taking into consideration the recommendations of" the L.R.C. The General Assembly required, based upon my recommendation to the study commission, that the report not include legal positions in the Employment Security Commission, the Office of Administrative Hearings, the legal staff of the Industrial Commission, the Legislative Staff, the University of North Carolina (except for North Carolina Memorial Hospital), the Administrative Office of the Courts, the Office of the Governor, the Administrative Rules Review Commission, or any other legal position involving a quasi-judicial function in which the State may be an adverse party. Also, one legal position provided that each agency or department head to act as legal counsel and serve as liaison with my office. A total of fifty-seven positions remained, which were to be transferred to the Department of Justice and allocated to our agency clients.

No legislative action has been taken, to date, on this report.

IV. REPRESENTATION OF THE STATE AND ITS PEOPLE AND SPECIFIC AREAS OF FUNCTIONAL RESPONSIBILITY

A. *Conflicts and Representing Multiple Agencies*

Of the many reasons cited by the National Association of Attorneys General to bolster the argument for greater consolidation, one of the most prudent and practical is the lessening of the potential for legal conflicts between agencies and a more consistent application of legal policy. By the pure nature of the office alone, there is a great potential for conflicts, not only between agencies,

101. L.R.C., *Attorney General's Staff, Report to the 1989 General Assembly of North Carolina*, (1989 Session). This report is available from the Legislative Library, Rooms 2126, 2226, State Legislative building, Raleigh, North Carolina 27611.

but also between the agency-client and the office.

It is the predominate view, and rule in many states, that the right to represent the state in litigation involving a subject matter of statewide interest is the exclusive province of the state Attorney General.¹⁰² Such a policy protects the interests of the state as a whole as a unitary client, rather than any one of the many potential manifestations of the state. In North Carolina, this view or rule has been modified to a small degree.

Corpus Juris Secundum reports the general proposition that "[i]n the absence of explicit legislative expression to the contrary, the Attorney General possesses entire dominion over every civil suit instituted by him in his official capacity . . . and his authority extends as well to control of defense of civil suits against the State, its agencies, and officers."¹⁰³ In *Martin v. Thornberg* the North Carolina Supreme Court cited this legal encyclopedia as a general statement of the law in North Carolina.¹⁰⁴ However, the court concluded such "explicit legislative expression" existed, and therefore, held that in the matter before them the Governor could employ independent special counsel "as he may deem necessary to represent the interest of the State"¹⁰⁵ Conflicts of major proportions can be avoided by the retention of private, outside counsel by the person or entity, but minor conflicts will still occur.

Since non-Attorney General's Office attorneys cannot represent an agency-client in any legal proceeding, consolidation of legal services will not have a major effect on this problem of multiple representation. It would, however, allow the attorney who will potentially be trying the case to be a part of the essential, fundamental legal decisions that are made prior to the instituting of the litigation. Problems can clearly arise, however, where two agencies represented by the Attorney General are on opposite sides of a legal argument. This opposition may be evident from the facts, or public policy. The Attorney General may sue or be the attempted subject of a suit by an agency or its director, who claims status as a client. The Attorney General may represent both a state board and an agency appearing before it. In addition, the Attorney General may represent or advocate the position of agency staff in a pro-

102. See, e.g., *Mountain States Legal Found. v. Costle*, 630 F.2d 754 (10th Cir. 1980); *Frohnmayr v. State Acc. Ins. Fund*, 294 Or. 570, 660 P.2d 1061 (1983); and *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262 (1977).

103. 7A C.J.S. *Attorneys General* 12 (1980).

104. 320 N.C. 533, 359 S.E.2d 472 (1987).

105. *Id.* at 548, 359 S.E.2d at 480 (quoting N.C. GEN. STAT. § 147-17(a)).

ceeding, such as an occupational license revocation, where the agency also, in its adjudicatory authority, requires legal advice from the Attorney General or other counsel. The Attorney General may intervene in an action or be joined as a defendant before a board or commission which he or she also represents or of which he or she is a member.¹⁰⁶ Generally though, conflicts of representation that are ultimately unavoidable and not so irreconcilable that outside counsel is necessitated, are solved by the guarantee of independent legal judgment created by the administrative insulating barrier or "wall" of the organizational structure of the Office. In no way does a "conflict" or potential for conflict prevent the Attorney General from representing both interests.

The vast majority of cases nationwide concerning the power or authority of the Attorney General, as chief legal officer of the state, to bring suit where an apparent conflict of interests exists have recognized the unique position and role of the Attorney General in state government. In fact, the American Bar Association Model Rules of Professional Conduct recognize that government lawyers sometimes face unavoidable conflicts of interest in the performance of their duties and that the rule of imputed disqualification does not apply to an attorney in the Attorney General's Office.¹⁰⁷

Regardless, irreconcilable conflicts are occasionally going to occur. As a result of these conflicts, outside counsel must be employed. The question then arises as to which agency the Attorney General is going to represent. As stated earlier in this Article, in North Carolina, the Attorney General can exercise the full scope of traditional common law powers and duties. With those duties comes the responsibility to determine and represent the "public interest". Therein lies the true "client" of the Attorney General, the sovereign people of North Carolina.

B. Opinions

Many times these conflicts arise in the form of the advisory opinions of our attorneys to their various clients. Like all human beings, and especially lawyers, opinions can, and do, differ. The opinions of the attorneys in the Attorney General's Office, however, do not have the force and effect of law as in some other jurisdictions.

The Office does, of course, render advisory opinions on ques-

106. N.A.A.G. (1988), *supra* note 25 at 69.

107. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.10 (1989).

tions of law. This power is inherent to the role of the State's chief legal advisor and is mandated by statute.¹⁰⁸ Our opinions cover a range of subjects as wide as our areas of functional responsibility. These opinions however are generally limited to questions of law connected with the performance of official duties. The statutes in North Carolina identify the persons and entities entitled to Attorney General opinions. These include not only those listed in N.C. GEN. STAT. § 114-2(4) and (5), but opinions rendered to individual legislators and local government officers and their legal representatives. While the Attorney General does have the power to render an opinion on the constitutionality of a state statute, North Carolina Department of Justice attorneys generally apply the customary presumption in favor of the constitutionality of legislation.

The term "advisory opinion" embraces both formal (i.e. published) and informal opinions (i.e. letters, memoranda, and oral advice). It has long been established in North Carolina that the opinions of the Attorney General's Office are advisory only¹⁰⁹ and that the Office has no constitutional officer (e.g., a district attorney) concerning his legal duties.¹¹⁰

Obviously, the Attorney General's Office gives many opinions, but the vast majority are of the "informal" variety. Formal opinions, or "official opinions", are those opinions that are compiled for publication. These opinions are usually on questions of law that are of statewide interest, major importance, or the question posed is likely to recur.

C. *Protecting the Public Interest*

In addition to the vast number of legal opinions on non-policy matters, this office is continually involved in litigation matters. I have mentioned numerous times the Attorney General's responsibility and duty to protect the public interest. Nowhere is this more evident than in the collective work of those sections of the office within the Trade and Commerce Division. This area of the office could just as easily be named the "Public Interest Division", but such a designation may tend to over-shadow the overall philosophy within the office of always seeking to protect the public interest regardless of the area of law. This division was created to handle cases and establish policy in areas where, by law, responsibility for

108. N.C. GEN. STAT. § 114-2 (4)(5)(1987).

109. *Lawrence*, 210 N.C. 352, 186 S.E. 504.

110. *State*, 237 N.C. 611, 75 S.E. 2d 654.

establishment or enforcement of a public policy is placed directly on the Attorney General.¹¹¹

Unlike the other role of the Attorney General wherein he cannot represent a private individual, or non-governmental entity, the theory here is that he is representing a group of citizens as a whole, similar to a class action type lawsuit. Each of the areas under the Trade and Commerce Division operates to some extent under this theory. It is easiest to explain while looking first at our Utilities and Energy Section. Since many people have not given much thought about exactly how our utility rate system works, it is necessary to explain it before discussing the Attorney General's role.

As you are aware, the law generally prohibits acquiring monopoly positions in the market place except by exclusive government franchise.¹¹² The law does, therefore, provide for limited areas of monopolistic business in the area of utilities (*e.g.*, power, telephone, and water companies, and railroads). This is the case because of the great expense in erecting and maintaining such a utility. As a consequence, only one utility serves a designated area and without competition.

Through regulation,¹¹³ an adversary hearing, and intervention by the Public Staff of the Utilities Commission and the Attorney General's Office, the equivalent of competition is created. An appearance before the commission by these two advocates is a professional adversarial relationship with the utility. The Public Staff and the Attorney General are the advocates for the using and consuming public with the purpose of keeping the rates as reasonable as feasible while maintaining high quality utility service.

The commission is required to set rates in a public hearing making its decision on the basis of the reasonable cost of providing the service, including a fair profit for the utility.¹¹⁴ Usually, the utility will support a request for a desired rate with data from its own operations, showing what it claims the cost of service to be. Generally, the Public Staff will develop and present its own position. In major cases, or cases of particular interest, the Attorney

111. This is contrasted with a "derivative duty" which is to represent another state agency which makes policy and has direct responsibility for enforcement of a state law, or laws, *e.g.* the Department of Revenue or the Division of Motor Vehicles of the Department of Transportation.

112. N.C. Const., art. I, § 34.

113. *See generally*, N.C. GEN. STAT. ch. 62(1989); N.C. GEN. STAT. § 62-20 (1989).

114. N.C. GEN. STAT. § 62-133 (1989).

General will present an independent case.

The Attorney General's duties can include reviewing utility company filings for rate changes, initiating complaints against utilities seeking reduction of rates or investigation of any aspect of service delivery; cross-examining company and intervenor witnesses in administrative proceedings; filing briefs and comments urging public positions on behalf of consumers; and taking judicial appeals from adverse rulings of the commission.¹¹⁵ As a capable advocate for the utility consumer, the Attorney General appears in his capacity as protector of the public interest.

The same is true in our consumer protection and antitrust functions. This Office represents groups of individuals (*e.g.*, users and consumers of a particular product or service) or the state as a whole.

Chapter 75 of the North Carolina General Statutes sets forth, among other things, the definitions, elements and penalties for unfair competition. This includes both antitrust¹¹⁶ and unfair trade practices.¹¹⁷ N.C. GEN. STAT. § 75-9 empowers the Attorney General to investigate the affairs of all corporations, or others, doing business in this state in violation of the law. Further, N.C. GEN. STAT. §75-13 authorizes the Attorney General to send bills of indictment and prosecute all cases coming within the purview of this chapter. More frequently, the Attorney General will file civil actions to obtain a mandatory order, in carrying out the provisions of Chapter 75.¹¹⁸ While not frequently utilized, N.C. Gen. Stat. § 75-10 provides authority for the Attorney General to compel examination of any person in conducting his duties under N.C. Gen. Stat. § 75-9. The Attorney General is also given explicit authority to prosecute by civil action any violation of the law by any trust or public service corporation.¹¹⁹

Certain other acts set forth conduct which is defined to be an unfair or deceptive trade practice and, as such, comes under the enforcement power of the Attorney General. For example, Part 3 of Chapter 66, prohibits certain practices by collection agencies engaged in the collection of debts from consumers. Improper conduct thereunder is defined as constituting an unfair or deceptive act or

115. N.C. GEN. STAT. § 62-20.

116. N.C. GEN. STAT. § 75-1.

117. N.C. GEN. STAT. § 75-1.1. (1988).

118. This is authorized by N.C. GEN. STAT. § 75-14 (1988).

119. N.C. GEN. STAT. § 75-15 (1988).

practice and, thus, violates N.C. Gen. Stat. § 75-1.1.¹²⁰ While no specific reference is made to the Attorney General, obviously such enforcement power exists.¹²¹ The enforcement of other consumer protection statutes is similar. Additionally, the Attorney General has the common law power to protect the public interest in general and can intervene in or prosecute any perceived threat to the welfare of the people of the state as a whole.

The "Lemon Law," enacted in 1987 by the General Assembly, is an excellent example of consumer protection legislation. The "Lemon Law" was widely supported by this office.¹²² This law gives North Carolina consumers specific protections for new cars for which they buy or lease. This new law clearly defines when a car is a lemon,¹²³ spells out clearly what a car buyer can do if he or she buys a lemon car,¹²⁴ and provides that a manufacturer who unreasonably refuses to provide a lemon owner relief must pay the buyer triple damages and attorneys fees.¹²⁵

The "Lemon Law" became effective October 1, 1987. It applies to any car purchased in North Carolina on or after October 1, 1987. Cars purchased prior to that date are covered under old North Carolina law but the remedies may not be as extensive.

The new law applies to more than just passenger cars, it covers any new motor vehicle, other than a house trailer, which does not have a gross vehicle weight of ten thousand pounds or more.¹²⁶ The law includes pickup trucks, motorcycles and most vans. The law provides that a manufacturer must replace or buy back at the consumer's option any seriously defective car which can't be repaired after a reasonable number of attempts.¹²⁷ The defects must have appeared within a period of twelve months or twelve thousand miles.¹²⁸ The consumer's rights to a replacement or refund is limited to defects which first occur no later than 24 months or 24,000 miles after delivery.¹²⁹ A reasonable number of attempts to repair has occurred when the same defect has been presented for

120. See N.C. GEN. STAT. § 66-49.43 (1985).

121. See N.C. GEN. STAT. § 66-49.50(c) (1985).

122. See N.C. GEN. STAT. § 20-351, *et seq.* (1989).

123. N.C. GEN. STAT. § 20-351.3 (1989).

124. *Id.* at §§ 20-351.3, 20-351.7 (1989).

125. *Id.* at § 20-351.8 (1989).

126. *Id.* at § 20-351.

127. *Id.* at § 20-351.3 (1989).

128. *Id.* at § 20-351.2 (1989).

129. *Id.* at § 20-351.3 (1989).

repair four or more times without success, or that the vehicle has been out of service during repairs or due to the defect for cumulative total of 20 or more business days during any 12 month period.¹³⁰

The office's consumer protection and antitrust effort not only encompasses civil and criminal litigation, but also dispute resolution, mediation, public education, and cooperative enforcement ventures with other state and federal enforcement agencies. In fact, the trend is toward multistate activity among the Attorneys General.

Two other areas, the Environmental Protection Section and the Insurance Section, which were mentioned earlier, are worthy of further note. The public interest aspect of the office is also prevalent in these two functions. Both are similar in this way, but they are also similar in that they represent state agencies that have been given duties and responsibilities by the legislature which would normally fall within the Attorney General's common law powers.

The Environmental Protection Section has the dual function of advising and representing the Department of Health, Environment, and Natural Resources and the citizens of the State as a whole body. The General Assembly has placed some, but not all, of the Attorney General's common law and historical responsibilities on the Secretary of that department.¹³¹ This section handles not only matters regarding our natural environment, but also public land and water related matters.

Environmental law as a specialized area of the law is a relatively new field. Most major federal and state statutes were enacted within the last 25 years. "Environmental law" includes a wide range of statutes and regulations addressing air and water pollution, hazardous waste disposal, natural resource development, and noise emissions. It is without a doubt the fastest growing single area of the law and becoming increasingly complex. Because of the potential danger to public health, environmental cases cause a great deal of public concern. They often involve millions of dollars, either in public tax dollars or the resulting fees and fines to the private polluter. With the passage of federal and state hazard-

130. *Id.* at § 20-351.5 (1989).

131. *See generally* 1989 Session Laws, ch. 727, for an overview of this recently reorganized department and the numerous related changes in the various state laws within its area of functional responsibility.

ous waste laws, this field of law is even more complex and politically delicate in the State of North Carolina.

The Environmental Protection Section represents the Department of Health, Environment, and Natural Resources as the state regulatory agency in civil judicial enforcement actions. The section develops regulations by representing the agency in administrative hearings, and participating in settlement negotiations. To give you some idea of how fast this area of the law has grown, the legal and professional staff in this section has doubled in the last seven years.

Three sources of legal authority are used in the prosecution of environmental cases: federal statutes, state statutes, and the common law. The basic enforcement authority for the Attorney General as legal counsel and representative to the department is found in state statutes. The independent authority is found in the common law. The administration and enforcement of environmental laws involve an intricate set of relationships among the Attorney General, the Department of Environment, Health, and Natural Resources (and other regulatory agencies), and the federal government. Many federal environmental statutes authorize the federal government to transfer primary authority for the administration of those statutes to states with approved environmental programs.¹³²

These programs are in such various areas as hazardous waste, air and water. Once the state program is approved by the federal government, the Attorney General is responsible for enforcing the laws that form the basis of the program.

North Carolina also has a variety of laws in place designed to protect the environment.¹³³ Many of these laws closely parallel the federal statutes.¹³⁴ But the greatest powers obviously lie in the common law.

132. Six major federal statutes contain specific provisions authorizing a significant role for state participation: The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-75 (Law. Co-op. 1989); The Resource Conservation Recovery Act, 42 U.S.C. §§ 6901, *et seq.* (Law. Co-op. 1989); The Federal Water Pollution Controls Act, 33 U.S.C. § 1251-1376 (Law. Co-op. 1987 & Supp. 1990); The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, *et seq.* (Law. Co-op. 1978 & Supp. 1990); The National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370a (Law. Co-op. 1989 & Supp. 1990).

133. *See supra* note 131.

134. *See, e.g.*, N.C. GEN. STAT. § 130A-306 which is comparable to CERCLA, 42 U.S.C. § 9601, *supra* note 132.

Even before the turn of this century, Attorneys General from around the nation were litigating certain types of issues that are now considered to be within the realm of environmental law.¹³⁵ Because of the absence of statutory authority, the Attorneys General had to rely on common law theories. Although the federal and state statutes cited herein are used as the primary authority for enforcement cases, the common law could still serve as a useful tool in certain cases, especially where state statutory authority is not directly applicable.

Clearly, the Attorney General of North Carolina is given the authority to exercise his broad common law authority by statute.¹³⁶ N.C. GEN. STAT. § 114-2(8) gives the Attorney General the power:

[T]o 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 added).

Also, the laws relating to natural resources may be used as methods to further environmental goals. An example would be land law, which is usually involved with issues of title, but may also involve use issues with substantial impact on the environment.¹³⁷ The same is true for the law of water resources.¹³⁸

The theory regarding the common law powers can equally be applied to the area of insurance industry regulation. The Insurance Section of this office advises and represents the Department of In-

135. N.A.A.G. (1988), *supra* note 25, at 267-68.

136. N.C. GEN. STAT. § 114-1-1(1987).

137. For an excellent discussion of the Attorney General's multi-faceted role in land law, see N.A.A.G., *supra* note 25, at 283-95. The Environmental Protection Section of the Attorney General's Office has a subsection that concentrates on just the issue of submerged lands. Additionally, both the Property Control Section of the Office (which primarily represents the Department of Administration) and the Highway Section (which represents the Department of Transportation) are heavily involved in representing the various entities that acquire, dispose of, manage, and use state-owned lands.

138. See, e.g., *State ex rel. Rohrer v. Credle*, 322 N.C. 522, 369 S.E.2d 825 (1988); Earnhardt, *Defining Navigable Waters and the Application of the Public-Trust Doctrine in North Carolina: A History and Analysis*, 49 N.C.L. REV. 888 (1971); and N.A.A.G. (1988), *supra* note 25, at 297-303.

surance.¹³⁹ The Department of Insurance regulates the insurance industry in our state. The duty of this office is to represent the consuming public in insurance matters to ensure quality services at fair costs. To date, there has not been a need for the Attorney General to exercise his independent power to initiate insurance related consumer protection litigation, or intervene in administrative hearings.

D. Some Administrative Division Areas of Note

Two areas within the Administrative Division are worthy of note because of their unique, particular roles: The Tort Claims Section (which could just as easily have been placed under the Civil Division) and the Election Section.

The Tort Claims Section is unique in that it does not represent any single state official, agency, or entity. The duty of this section is to represent the state, and all its agencies, in claims involving personal injury and property damage brought under the State Tort Claims Act. The State Tort Claims Act is a statutory modification of the doctrine of sovereign immunity. The Act places a limit on monetary damages¹⁴⁰ in workers' compensation cases heard before the Industrial Commission and the various courts of our state.¹⁴¹

The other area is the Elections Section. A dramatic increase in cases involving the electoral process has occurred over the last five years in North Carolina. The Elections Section acts as legal counsel to the state Board of Elections. In this capacity many written legal opinions are issued to the state board and local boards. Informal advice is provided on a day-to-day basis to these groups. Additionally, the Attorney General acts as defense counsel when election laws are questioned on constitutional or other grounds. This has been a frequent occurrence lately as North Carolina has rapidly moved towards being a true two-party state.¹⁴² More litigation

139. N.C. GEN. STAT. § 58-16-50 (1989).

140. See N.C. GEN. STAT. § 143-291, *et seq.* (1987); N.C. GEN. STAT. § 143-298 (1987).

141. *Id.* See N.C. GEN. STAT. § 97-7 (1985).

142. *Gingles v. Edmisten*, 590 F.Supp. 345 (E.D.N.C. 1984), *aff'd in part, rev'd in part, sub. nom.*, *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Haigh v. Martin*, 618 F. Supp. 410 (E.D.N.C. 1985), *aff'd*, 477 U.S. 901 (1986); *Alexander v. Martin*, No. 86-1048-CIV-5 (E.D.N.C. Oct. 1986); *Britt v. N.C. State Bd. of Elections*, 86-CBS10456 (1986); *N.C. v. U.S.A.*, No. 86-1490 (D.D.C. Oct. 1987); *N.C. Republican Party v. Martin*, 88-263-CIV-5 (1988); *State ex rel. Martin v. Preston*,

in this area can be expected in the near future as our state undergoes reapportionment in the next General Assembly.

The Legislative Drafting and Codification Section is a third area under the Administrative Division.¹⁴³ This section now performs research and drafting functions for, and provides staff support to, the General Statutes Commission in the work of keeping our state laws clear and concise. This section also supervises the codification and publication of the General Statutes.¹⁴⁴

E. The Office's Role in the Criminal Justice System

I stated in the introduction to this Article that I did not intend to delve into the law enforcement or law enforcement related services aspects of this office except when necessary. The many areas of this office are so tightly intertwined it is difficult not to discuss, at least in passing, these essential areas of the office when discussing some of the many criminal justice functions of the Attorney General's Office.

The North Carolina Attorney General does have many functions directly related to the criminal justice system, not only through the State Bureau of Investigation and its many agents and laboratory facilities, the S.B.I.'s Division of Criminal Information and its many information assimilation and dissemination systems, and our entire Training and Standards Division, including the Justice Academy, the Law Enforcement Liaison Section, and the Law Enforcement Associations Presidents (L.E.A.P.) group, but also those areas of the Attorney General's Office proper that I have organized within the Criminal Division. The Attorney General plays a pivotal role in law enforcement. He is the most visible and influential state official in the fight against crime.

The emerging role of the Attorney General as a leader in the criminal justice area has expanded from the traditional duty of handling criminal appeals.¹⁴⁵ The office still performs this duty (by

325 N.C. 438, 385 S.E.2d 473 (1989). Also, there are myriad other administrative and judicial hearings related to contested elections and the administration of the electoral process.

143. N.C. GEN. STAT. §§ 114-9 to 114-9.1 (1987).

144. See *supra* note 75; *id.* For anyone interested in historic scholarly research in this area, Survey, *A Survey of Statutory Changes in North Carolina in 1939*, 17 N.C.L. REV. 327 (1939); Adams, *Recodification of the North Carolina Statutes*, 19 N.C.L. REV. 27 (1940); Survey, *A Survey of Statutory Changes in North Carolina in 1947*, 25 N.C.L. REV. 376 (1947).

145. N.A.A.G. (1988), *supra* note 25, at 435.

a special Appellate Section and other staff attorneys on a rotating basis), but other duties have been given to allow limited prosecutorial authority.¹⁴⁶

Although somewhat uncommon at one time, post conviction collateral attacks are main concerns of the two appellate sections.¹⁴⁷ The most typical collateral attack is a petition for writ of *habeas corpus*. These are handled in the federal courts by the Federal Habeas Section. A particularly significant and growing number of these *habeas* appeals are in the area of capital appeals. As Attorney General, I recently designated a special team of attorneys in my office to coordinate and manage these important cases.

While organized under the Criminal Division, it is worthy of note that the Corrections Section does not practice "criminal" law in the same sense as the other sections in this division. The vast majority of their work is in the area of Department of Correction and representing the department, and the state, in civil litigation.¹⁴⁸ This section was placed in this division because of its overall impact on our criminal justice system.

The field of correction law has taken on new importance as the prison population in our state (and nationwide) has undergone unprecedented growth in recent years. Inmates are continually challenging the conditions of their confinement. North Carolina has been involved in numerous cases regarding access to legal assistance, prison population, medical service and other conditions. Numerous other cases are pending.¹⁴⁹

146. N.C. GEN. STAT. § 114-11.6 provides for the creation of the Special Prosecutions Division. The attorneys so assigned shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and when approved by the Attorney General. In addition, attorneys assigned to this division serve as legal advisers to the S.B.I. and the Police Information Network (now a part of the Division of Criminal Information).

147. After the original conviction is affirmed on direct appeal, the office's role is to protect the conviction when collaterally challenged in state and federal court.

148. For an excellent discussion of institutional litigation such as faced by the Correction Section, as well as the litigation faced by our Human Resources Section with the many state medical and psychiatric facilities, see N.A.A.G. (1988), *supra* note 25, 422-33.

149. *E.g.*, *Bounds v. Smith*, 610 F. Supp. 597 (E.D.N.C. 1985), *aff'd*, 813 F.2d 1299 (4th Cir. 1987), *cert. denied*, 109 S.Ct. 176 (1988); *Hubert v. Ward*, C-C-440-M (W.D.N.C.); *Stacker v. Woodard*, 85-231-CRT (E.D.N.C.); *Epps v. Martin*, A-C-86-162 (W.D.N.C.); *Small v. Martin*, 85-987-CRT (E.D.N.C.), to name a few. These cases have been litigated and a resolution, such as a consent judgment or settlement agreement, has been reached.

A final area of interest in the Criminal Division is the Medicaid Fraud Investigations Sections. This section was created after the passage of the Federal Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977.¹⁵⁰ This division investigates and prosecutes Medicaid fraud cases. The federal government reimburses the state government for 75 percent of the operating cost of this section. The director is a Special Deputy Attorney General. Pursuant to the federal enabling legislation, this is an integrated law enforcement unit composed of a staff that includes attorneys experienced in investigating and prosecuting civil fraud and criminal cases, auditors to review financial records, a senior investigator (who serves as the Deputy Director and is a S.B.I. agent), and other financial investigators. Medicaid fraud is committed by virtually all kinds of providers. The list includes physicians, nursing homes, hospitals, laboratories, dentists, home health care agencies, and durable medical equipment companies. Provider fraud far surpasses recipient fraud and is estimated to be in the billions of dollars nationwide.¹⁵¹

During 1989, nine providers were convicted on 102 counts related to Medicaid fraud. There was a total of \$1,067,398.46 recovered as restitution in both criminal and non-criminal recoveries. It is no wonder that North Carolina's Medicaid Fraud Control Unit was selected as the outstanding unit in the nation last year.

V. CONCLUSION

The past five years have taught me much about the problems and challenges facing state government and the people of our state and nation as a whole. Clearly, the role of the Attorney General's Office is increasing in importance as North Carolina, like other states, assumes greater responsibility in shaping our nation's domestic policy. As our state officials search for solutions to the complex problems of modern society, they look increasingly to this office for legal advice and representation. The office, as the law firm for the entire state, is in the unique position to see the overall picture.

As I hope this Article demonstrates, this office has a vast array of powers, duties and responsibilities that equip it to handle the myriad of legal subjects and issues that daily face us as a state.

150. Pub. Law 95-142, 91 Stat. 1175 (1977).

151. These offenses are also in violation of state law. See N.C. GEN. STAT. § 108A-63, 64 (1988).

The constitutional, statutory, and common law powers of this office put the Attorney General in a special role that allows him to impact state policy as a whole. Because of this unique role, the Attorney General can take a leadership role in areas that are not under his direct control.¹⁵²

All of the powers of this office have not been discussed in this Article.¹⁵³ Only those responsibilities that are most significant to the operations and functions of the office have been addressed. As this Article shows, these powers and duties have changed as the needs of the state have changed. They will continue to do so.

152. *E.g.*, greater control over the practices of professional, for-profit fundraiser, 1985 Session Laws, Chap. 497, and the related amendments to the General Statutes; *National Fed. of Blind of North Carolina, Inc. v. Riley*, 635 F. Supp. 256 (E.D.N.C. 1986), *aff'd per curiam*, 817 F.2d 102 (4th Cir. 1987), *aff'd*, 108 S.Ct. 2667 (1988); N.C. GEN. STAT. ch. 15B, regarding crime victims rights and compensation, an area I continue to have a strong interest in promoting.

153. *E.g.*, see note 17; N.C. GEN. STAT. §§ 105-237.1, 240, 240.1, 243, 244, 251.1, 259, 267.1 (1989) (all relating to revenue and the Department of Revenue); N.C. GEN. STAT. § 1-515 (1983) (the Attorney General's quo warranto powers); N.C. GEN. STAT. § 143-32 (1987) (regarding the wrongful diversion of state funds); N.C. GEN. STAT. § 55-10(1990); N.C. GEN. STAT. § 55-122, *et seq.* (1990); N.C. GEN. STAT. § 55A-50, *et seq.* (1990) (regarding involuntary dissolution of a for profit or non-profit corporation and actions to restrain); N.C. GEN. STAT. § 58-297(1989) (regarding the dissolution of fraternal orders and societies); N.C. GEN. STAT. § 58-155 (1989) (regarding enforcement of Art. 17 as it relates to foreign or alien insurance companies); N.C. GEN. STAT. § 141-6(c) (1983), N.C. GEN. STAT. § 146-70 (1983), (regarding actions by the state in relation to its littoral waters and public lands, to name a few).