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## United States Department of Justice

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## THE UNITED STATES DEPARTMENT OF JUSTICE

THE Department of Justice has been developed from the English office of Attorney-General, with important features added in the course of American experience. As early as the reign of Edward I, almost contemporaneous with the appearance of a special legal profession in England, we find Crown Attorneys (*Attornati Regis*) employed for guarding the royal privileges in the courts. By the time of Edward IV the official title of Attorney-General appears for the first time. A little later, as the distinction between barristers and solicitors became established, the Crown lawyers are distinguished as the King's Attorney and the King's Solicitor.<sup>1</sup>

These law officers acted as the legal advisers of the King and his ministers, and also conducted public prosecutions in important criminal cases. But there was not developed, and has not yet developed in England any system of local public prosecutors. Nor has the English Attorney-General become one of the leading political officials with a seat in the cabinet, since political and administrative functions, which have become attached to the office in this country, are there performed by the Lord Chancellor and other officials.<sup>2</sup>

Most of the colonies had Attorneys-General; and these officers were continued under the State governments. In the national government the office of Attorney-General was provided for in the Judiciary Act of 1789. For a good many years the work of the office did not require the entire time of the Attorney-General and he was permitted, if not expected, to continue in private practice. The salary was only \$1,500 a year, less than that of the other cabinet secretaries; and not until 1814 was he required to reside in Washington. From the first the Attorney-General was a member of the President's cabinet; but his office was not formally recognized as an executive department until in 1870 the Department of Justice was established.

The functions of the Attorney-General and the Department of Justice may be considered in four main divisions: (1) as legal adviser to the President and the executive departments; (2) as attorney for the United States before the courts, either as prosecutor or defendant; (3) administrative supervision over officers of United States courts and over United States penal and reformatory institutions; and (4) as adviser to the President in the exercise of his pardoning power.

It is the duty of the Attorney-General to give his advice and

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<sup>1</sup> Gneist: History of the English Constitution, ch. 22.

<sup>2</sup> Anson: Law and Custom of the Constitution, II, 201.

opinion upon questions of law when required by the President or by the heads of departments on any matter concerning their departments. Questions not involving the construction of the Constitution of the United States may be referred to subordinates; and their opinions when approved by the Attorney-General have the same force and effect as the opinions of the Attorney-General himself. Officers in the Department of Justice must give opinions and render legal services to the President or officers of other departments.

In the discharge of these duties the action of the Attorney-General is quasi-judicial. "His opinions officially define the law in a multitude of cases, where his decision is in practice final and conclusive—not only as respects the action of public officers in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts,—but also in question of private right, inasmuch as parties, having concerns with the government, possess in general no means of bringing a controverted matter before the courts of law, and can obtain a purely legal decision of the controversy, as distinguished from an administrative one, only by reference to the Attorney-General. Accordingly, the opinions of successive Attorneys-General \* \* \* have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice."<sup>3</sup> "The Supreme Court will not entertain an appeal from his decision, nor revise his judgment in any case where the law authorized him to exercise his discretion or judgment."<sup>4</sup>

But the Attorney-General is under no obligation to render an award, or determine a question of fact in cases referred to him; nor does an appeal to him lie from another department by any party assuming to be aggrieved by its action, and seeking to have it reviewed; nor is he to give advice to heads of departments on matters which do not concern their departments, and in which the United States have no interest; nor is he authorized to give official opinions not falling within the scope of his duties, so as to connect the government with individual controversies, in which it has no concern; nor is he in general to give official opinions to subordinate officers of the government; nor in cases not actually presented for action by an executive department.<sup>5</sup> He will not answer abstract or hypothetical questions of law;<sup>6</sup> nor purely judicial questions in con-

<sup>3</sup> 6 Opinions Attorney-General 326; American Law Register, 5:72.

<sup>4</sup> 6 Op. Atty.-Gen. 346.

<sup>5</sup> 6 Opp. Atty.-Gen. 333; 10 *Ibid*, 50, 458; 11 *Ibid*, 189, 431.

<sup>6</sup> 13 *Ibid*, 568.

<sup>7</sup> 20 *Ibid*, 539; 23 *Ibid*, 221, 558.

trovsey before the courts;<sup>7</sup> nor construe department regulations. He may, like the heads of other departments, be required to furnish information to Congress; but he does not furnish legal opinions to Congress, or its committees.<sup>8</sup>

More specifically, it is the duty of the Attorney-General and his assistants to examine all titles to land purchased by the United States for the purpose of erecting public buildings; and no money can be expended for land until the title has been approved.

As chief advocate for the government, the Attorney-General has supervision over all actions at law or suits in equity to which the United States is a party or in which the United States has an interest. Suits begun by the government are brought before a District, Circuit or Supreme Court of the United States under the provisions of the statutes regulating the jurisdiction of these courts. Criminal cases include only crimes in violation of the statutes of the national government. The largest number of prosecutions are for violation of the internal revenue laws; a considerable number are for violation of postal laws, custom laws and pension laws; while a great variety of other statutes are involved in other cases. Civil suits are brought most largely in connection with customs and internal revenue administration; but all of the departments are involved in some cases. Besides cases in which the United States is itself a party, it has been held that in a suit between States where the United States has an interest, the Attorney-General may appear and introduce evidence and argument without making the United States a party for or against whom judgment may be rendered.<sup>9</sup>

Following the rule of English law, suits against the United States government are not allowed as a matter of right.<sup>10</sup> But provision has been made for trying some kinds of claims against the government by the creation of a Court of Claims and a Court of Private Land Claims;\* while claims for small amounts may be brought before the District and Circuit Courts of the United States, and claims under treaty stipulations are investigated by special commissions. In all these cases the officers of the Department of Justice act as attorneys for the defense on the part of the government.

According to the statutes the Attorney-General is to conduct and argue cases before the Supreme Court and the Court of Claims, except where other provision is made for particular cases. In part,

<sup>7</sup> 14 *Ibid*, 17, 177; 15 *Ibid*, 138, 475; 18 *Ibid*, 87, 107.

<sup>8</sup> *The State of Florida v. The State of Georgia*, 17 How. (U. S.) 478.

<sup>9</sup> Not even the Attorney-General can waive the exemption of the United States from judicial process or submit United States property to the jurisdiction of the court in a suit brought against its officers. *Stanley v. Schwalby*, 162 U. S., 255.

\*The Court of Private Land Claims was abolished June 30, 1904.

cases in the Court of Claims are now placed in the hands of one of the Assistant Attorneys-General; and even before the Supreme Court many cases are conducted without the personal appearance of the Attorney-General. In the subordinate courts the Attorney-General very seldom appears in person.

In the countries of continental Europe the Minister of Justice appoints, or at least selects, the judges; and exercises through his department a large administrative control over the judiciary. Even in England, the Lord Chancellor selects most of the judges and has disciplinary powers over the judges in the lower courts, as well as some minor supervision over the higher courts. Compared to the practice of foreign countries the powers of the Attorney-General over the judicial administration are very limited. He has no power of appointing judges; and while he may be consulted by the President in reference to a judicial appointment, there is no established custom of asking his advice, still less of accepting his recommendations. And the position of the judiciary as an independent branch of the government, coördinate with the legislative and the executive, prevents any control over their judicial acts. Nevertheless the Attorney-General has some powers of administrative supervision over the executive officers of the courts, similar to those of a European Minister of Justice, which serve to make his position of more importance in the national administration than that of the Attorneys-General in the States.

Commissions to judges and other officers of the United States courts are now made out and recorded in the Department of Justice.<sup>11</sup> The Attorney-General has general superintendence over the district attorneys and marshals of the United States and Territorial courts, who must submit reports of their official proceedings; and also has supervision over the accounts of district attorneys, marshals and clerks, and over expenditure for supplies for the United States courts.<sup>12</sup>

In addition to this supervision over the executive officers of the United States courts the Attorney-General has general direction over United States prisoners and the penal and reformatory institutions of the United States. These include national penitentiaries at Leavenworth, Kansas, and Atlanta, Georgia, and the jail and two reform schools in the District of Columbia. Many prisoners convicted in the national courts are sentenced to these reform schools and also to the State penal and reformatory institutions.

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<sup>11</sup> Act of Aug. 8, 1888, C. 786.

<sup>12</sup> Revised Statutes, §§ 362, 368; Act of Mch. 3, 1899.

As the power to pardon is specifically conferred on the President by the Constitution, it is not possible to delegate this power to any subordinate officer or department. But in practice petitions for pardon (except in army and navy cases) are referred to the Department of Justice for investigation; and the President usually acts in accordance with the recommendation of the Attorney-General.

Next to the Department of State, the Department of Justice has the smallest staff of any of the executive departments. The whole number of persons in the offices at Washington is now about 250. On the other hand, on account of the large number of attorneys employed, the average salary in the Department of Justice is higher than in any other department.

After the Attorney-General himself, the most important official is the Solicitor-General, who assists the Attorney-General in the performance of his general duties, and in his absence or in case of vacancy exercises all the duties of the Attorney-General. The Solicitor-General ordinarily acts mainly in connection with suits before the courts. He coöperates with the Attorney-General in cases before the Supreme Court and the Court of Claims; but may also be directed to conduct cases where the United States has an interest in the lower courts of the United States or in any State court.

Other important law officers are: The Assistant to the Attorney-General, the Assistant Attorneys-General and the Solicitors for various executive departments. There are six Assistant Attorneys-General with general duties. These assist in the preparation and argument of cases before the Supreme Court and in the preparation of legal opinions; one is charged with the conduct of the defense of the United States in the Court of Claims; one with the defense of Indian depredation claims; one with the defense of claims before the Spanish Treaty Claims Commission; and one with matters relating to insular and Territorial affairs, and with the defense of French spoliation claims. Special Assistants to the Attorney-General are also engaged from time to time, for particular purposes, as in the enforcement of the anti-trust laws.

Other Assistant Attorneys-General and Solicitors deal with cases and legal questions affecting particular executive departments. Since 1870 these law officers for the other departments exercise their functions under the supervision and control of the Attorney-General.\*

The Solicitor for the Department of State gives advice upon questions of municipal and international law referred to him; and

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\*But the Judge Advocates-General of the Army and Navy, who are the legal advisers of the War and Navy departments, are not connected with the department of Justice.

passes upon claims of citizens of the United States against foreign governments and claims of citizens or subjects of foreign governments against the United States, and upon applications for the extradition of criminals.

The Solicitor of the Treasury deals with law matters affecting all the bureaus of the Department of the Treasury except that of the internal revenue laws. He has cognizance of frauds on the customs revenue and the collection of moneys due the United States; he must approve the bonds of treasury officials; and he has supervision over suits brought under the national banking law.

The Solicitor of Internal Revenue is the law officer and legal adviser of the Commissioner of Internal Revenue.

The Assistant Attorney-General for the Post-Office Department gives legal opinions on questions relating to the work of the department. He considers claims from postmasters for loss caused by fire, burglary or other casualty; all cases of alleged violation of the fraud and lottery law; and applications for pardons for crimes against the postal laws.

The Assistant Attorney-General for the Department of the Interior gives legal advice to the Secretary of the department on appeals from the Land Office and on other legal questions arising in the administration of the department.

All of these officers are assisted by a number of assistant attorneys, law clerks, stenographers, clerks and interpreters. One attorney is given charge of applications for pardon referred to the department. Another has charge of questions connected with the title to land owned or sought to be acquired by the government.

The Chief Clerk supervises the work of the clerks and minor employees of the department; and has charge of the mail and supplies. The General Agent has charge of matters relating to United States prisoners, directs the special agents who examine the offices and records of United States court officials, and has supervision over the division of accounts. The division of accounts, examines and audits the accounts of the officers of the United States courts, and compiles estimates for annual appropriations. The disbursing clerk disburses the funds for paying the salaries in the United States judicial service, and in the Department of Justice. The appointment clerk has charge of applications and recommendations for appointments and the preparation of commissions.

The executive and administrative officers of the courts of the United States must be considered as the local agents of the Department of Justice. These officers are the district attorneys and marshals of the courts.

Local government attorneys were unknown both in England and the American colonies. Criminal prosecutions were ordinarily begun by private individuals; while the specially important criminal cases and civil cases requiring a government attorney were attended to by the Attorneys-General and his immediate staff. But the Judiciary Act of 1789, organizing the United States courts, provided that in each district there should be an attorney of the United States appointed to conduct government business in the courts. At first these district attorneys were paid by fees, and probably gave only a part of their time to government matters. But with the development of public prosecutions in criminal cases, they have become permanent salaried officials; while a corresponding class of officials has also been developed in the States.

District attorneys are now appointed, by the President and Senate, for each of the eighty-six judicial districts of the United States. Their terms are four years, and their salaries vary from \$2,000 to \$6,000. In most districts there are one or more assistant attorneys and clerks.

It is the duty of each district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned. In certain cases he must act as attorney in suits where officers of the United States are parties; unless otherwise instructed by the Secretary of the Treasury, he must appear in behalf of the defendants in all suits against collectors, or other revenue officers in connection with their official duties; and he must conduct suits and proceedings under the national banking law which involve United States officers.<sup>13</sup>

From this statement it will be seen that the duties of the district attorney are analagous to the court functions of the Attorney-General. The district attorneys in fact stand in much the same relation to the District and Circuit Courts as does the Attorney-General to the Supreme Court. They are, as has been noted, under the general superintendence of the Attorney-General; but it has been held that this does not authorize him to control the actions of the district attorneys by general regulations.<sup>14</sup>

One of the most important branches of the work of district attorneys is their control over criminal prosecutions. Limited as they are to crimes against the authority of the United States, this function is of less importance than that of the prosecuting attorneys in the

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<sup>13</sup> Revised Statutes, §§ 380, 381, 771.

<sup>14</sup> *Fish v. U. S.*, 36 Fed. 677.



States; but within their own field they have the same influence. It depends to a large extent on their action to secure an indictment, and to carry on the prosecution so as to secure conviction.<sup>15</sup> But in case of neglect of duty, the supervision of the Attorney-General is more likely to secure the removal of the delinquent official than in the States.

United States Marshals were also a new creation of the Judiciary Act of 1789; but their functions correspond to those of the old English office of sheriff. Marshals are appointed by the President and Senate for each judicial district of the United States for a term of four years. Each marshal has a number of deputies to assist in the duties of the office.

It is the duty of each marshal to attend the District and Circuit Courts of the United States when sitting in his district; and to execute throughout the district all lawful precepts directed to him and issued under the authority of the United States. The marshals and their deputies have in each State the same powers in executing the laws of the United States as the sheriffs in such State have in executing its laws.<sup>16</sup> They make arrests and carry out the judgments of the courts, seizing and selling property under civil judgments, and transferring convicted prisoners to the place of confinement. They stand in the same relation to the peace of the United States as a sheriff to the peace of the State.<sup>17</sup> Under the Act of 1789 it was considered that they had implied power to summon the military forces of the United States as a *posse comitatus*; but the Act of 1878 prohibited the use of the army in this way except when expressly authorized by the Constitution or Acts of Congress.<sup>18</sup>

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<sup>15</sup> Cf. U. S. v. Schumann, 7 Sawy. 439.

<sup>16</sup> Revised Statutes, §§ 787, 788.

<sup>17</sup> In re Neagle, 135 U. S. 63, 69.

<sup>18</sup> 16 Op. Atty.-Gen. 162.