

CHAPTER 8

ATTORNEY GENERAL

8.01 APPEARANCE.

The district court has discretionary power to grant leave to file an information in the nature of quo warranto at the instance of a private relator having no interest in the matter distinct from that of the general public, notwithstanding the refusal of the attorney general to institute or consent to the proceedings. In the instant case it was abuse of discretion of the court to grant the petition, because there was no indication that public interest required it. *State ex rel v Fredrickson*, 202 M 79, 277 NW 407.

The attorney general of the state under his common law power and the state statutes, has the general authority imposed upon him of enforcing the constitutional statutes of the state and is a proper party defendant to a suit brought to prevent the enforcement of a state statute on the ground of its unconstitutionality. *Ex parte Young*, 209 US 123.

Liability of attorney general to mandamus. 14 MLR 303.

8.02 DEPUTIES; ASSISTANTS.

Administrative interpretation of a statute is a canon and aid to construction, and, although not binding upon courts, should receive high respect unless found to be erroneous, and in conflict with the purpose of the act and intention of the legislature. *Mattson v Flynn*, 216 M 354, 13 NW(2d) 11.

No statutory authority is necessary for the appointment of a referee to receive and file charges and to take testimony in removal proceedings pending before an administrative board. *State ex rel v State Board of Education*. 213 M 184, 6 NW(2d) 251.

8.03 PROSECUTIONS.

When is a suit against a state officer a suit against the state? 13 MLR 135.

8.06 SPECIAL COUNSEL; STATE OFFICERS AND BOARDS.

There is nothing in our statutes which forbids a state officer from answering when sued as such, or employing attorneys to appear for him in such suits; but based upon *Peterson v District Court*, 196 M 44, 264 NW 227, attorneys so employed cannot be paid by the state, unless upon legislative appropriation, and such appropriation must be for a public purpose. 1944 OAG 249, March 19, 1943 (9).

Where, upon inquiry, the attorney general advises that a legislative act is unconstitutional, county officials may rely thereon and officially ignore the legislative mandate. OAG April 21, 1945 (629-a):

It is the county attorney and not the attorney general who must decide as to whether or not a criminal case in the county attorney's county should be prosecuted. OAG Aug. 12, 1946 (121-B-7).