

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3016 Session of
1994

INTRODUCED BY SAURMAN, HENNESSEY, CAWLEY, MERRY, TRELLO, ROHRER,
LAUB AND TULLI, SEPTEMBER 27, 1994

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 27, 1994

AN ACT

1 Amending the act of October 15, 1980 (P.L.950, No.164), entitled
2 "A supplement to the act of April 9, 1929 (P.L.177, No.175),
3 entitled 'An act providing for and reorganizing the conduct
4 of the executive and administrative work of the Commonwealth
5 by the Executive Department thereof and the administrative
6 departments, boards, commissions, and officers thereof,
7 including the boards of trustees of State Normal Schools, or
8 Teachers Colleges; abolishing, creating, reorganizing or
9 authorizing the reorganization of certain administrative
10 departments, boards, and commissions; defining the powers and
11 duties of the Governor and other executive and administrative
12 officers, and of the several administrative departments,
13 boards, commissions, and officers; fixing the salaries of the
14 Governor, Lieutenant Governor, and certain other executive
15 and administrative officers; providing for the appointment of
16 certain administrative officers, and of all deputies and
17 other assistants and employes in certain departments, boards,
18 and commissions; and prescribing the manner in which the
19 number and compensation of the deputies and all other
20 assistants and employes of certain departments, boards and
21 commissions shall be determined,' implementing the addition
22 of section 4.1 to Article IV of the Constitution of
23 Pennsylvania; establishing the Office of Attorney General
24 elected by the citizens and setting forth powers and duties
25 of the Attorney General; creating an Office of General
26 Counsel and providing for legal services for Commonwealth
27 agencies; transferring, reorganizing or reconstituting
28 certain boards, commissions and agencies; placing certain
29 duties upon the courts and district attorneys; repealing
30 certain acts and parts of acts and making appropriations,"
31 further providing for legal advice and civil matters and for
32 criminal prosecutions.

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Sections 204(a) and 205(a) of the act of October
3 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys
4 Act, are amended to read:

5 Section 204. Legal advice and civil matters.

6 (a) Legal advice.--

7 (1) Upon the request of the Governor [or], the head of
8 any Commonwealth agency or a member of the General Assembly,
9 the Attorney General shall furnish legal advice concerning
10 any matter or issue arising in connection with the exercise
11 of the official powers or the performance of the official
12 duties of the Governor [or], agency or the General Assembly.
13 The Governor may request the advice of the Attorney General
14 concerning the constitutionality of legislation presented to
15 him for approval in order to aid him in the exercise of his
16 approval and veto powers and the advice, if given, shall not
17 be binding upon the Governor. In all other cases the advice
18 when received shall be followed and, when followed, the
19 recipient shall not in any way be liable for doing so, upon
20 his official bond or otherwise.

21 (2) If the Governor or the head of any Commonwealth
22 agency disagrees with the legal advice rendered by the
23 Attorney General, the Governor or the head of the
24 Commonwealth agency may seek a declaratory judgment in the
25 Commonwealth Court pursuant to 42 Pa.C.S. Ch.75 Subch. C
26 (relating to declaratory judgments). The legal advice of the
27 Attorney General shall be binding until the Commonwealth
28 Court issues a final order on the petition requesting the
29 declaratory judgment.

30 (3) If a member of the General Assembly requests legal

1 advice pursuant to paragraph (1), the member may then request
2 that the Attorney General supersede a district attorney who
3 fails to conduct a prosecution within six months pursuant to
4 the advice. The supersession shall be made without first
5 petitioning the court having jurisdiction under section
6 205(a)(4).

7 [(3)] (4) It shall be the duty of the Attorney General
8 to uphold and defend the constitutionality of all statutes so
9 as to prevent their suspension or abrogation in the absence
10 of a controlling decision by a court of competent
11 jurisdiction.

12 [(4)] (5) Before the Attorney General shall render any
13 opinion interpreting any appropriation act, or any act
14 authorizing the expenditure of money, he shall notify the
15 Departments of the Auditor General, the State Treasury and
16 the Secretary of Budget and Administration of the question
17 upon which his opinion has been requested, and afford to
18 these departments an opportunity to present any views which
19 they may have upon such question.

20 * * *

21 Section 205. Criminal prosecutions.

22 (a) Prosecutions.--The Attorney General shall have the power
23 to prosecute in any county criminal court the following cases:

24 (1) Criminal charges against State officials or
25 employees affecting the performance of their public duties or
26 the maintenance of the public trust and criminal charges
27 against persons attempting to influence such State officials
28 or employees or benefit from such influence or attempt to
29 influence.

30 (2) Criminal charges involving corrupt organizations as

1 provided for in 18 Pa.C.S. § 911 (relating to corrupt
2 organizations).

3 (3) Upon the request of a district attorney who lacks
4 the resources to conduct an adequate investigation or the
5 prosecution of the criminal case or matter or who represents
6 that there is the potential for an actual or apparent
7 conflict of interest on the part of the district attorney or
8 his office.

9 (4) The Attorney General may petition the court having
10 jurisdiction over any criminal proceeding to permit the
11 Attorney General to supersede the district attorney in order
12 to prosecute a criminal action or to institute criminal
13 proceedings. Upon the filing of the petition, the president
14 judge shall request the Supreme Court to assign a judge to
15 hear the matter. The judge assigned shall hear the matter
16 within 30 days after appointment and make a determination as
17 to whether to allow supersession within 60 days after the
18 hearing. The district attorney shall be given notice of the
19 hearing and may appear and oppose the granting of the
20 petition. Supersession shall be ordered if the Attorney
21 General establishes by a preponderance of the evidence that
22 the district attorney has failed or refused to prosecute and
23 such failure or refusal constitutes abuse of discretion.

24 (5) When the president judge in the district having
25 jurisdiction of any criminal proceeding has reason to believe
26 that the case is a proper one for the intervention of the
27 Commonwealth, he shall request the Attorney General to
28 represent the Commonwealth in the proceeding and to
29 investigate charges and prosecute the defendant. If the
30 Attorney General agrees that the case is a proper one for

1 intervention, he shall file a petition with the court and
2 proceed as provided in paragraph (4). If the Attorney General
3 determines that the case is not a proper case for
4 intervention, he shall notify the president judge
5 accordingly.

6 (6) Criminal charges investigated by and referred to him
7 by a Commonwealth agency arising out of enforcement
8 provisions of the statute charging the agency with a duty to
9 enforce its provision.

10 (7) Indictments returned by an investigating grand jury
11 obtained by the Attorney General.

12 (8) Criminal charges arising out of activities of the
13 State Medicaid Fraud Control Unit as authorized by Article
14 XIV (relating to fraud and abuse control), act of June 13,
15 1967 (P.L.31, No.21), known as the "Public Welfare Code," and
16 the Federal law known as the "Medicare-Medicaid Antifraud and
17 Abuse Amendments."

18 (9) Requests by members of the General Assembly under
19 section 204(a)(3).

20 * * *

21 Section 2. This act shall take effect in 60 days.