



Requesting an Attorney General Opinion

I. General Nature and Purpose of Opinions

Advisory: Issuing legal opinions to governmental agencies has long been a function of the Office of the Attorney General. Attorney General Opinions serve to provide legal advice on questions of statutory interpretation and can provide guidance to public bodies as an alternative to costly litigation. Opinions of the Attorney General, however, are not law. They are advisory only and are not binding in a court of law.

Questions of Law: Attorney General Opinions are intended to address only questions of state law, not questions of federal law, questions of fact, mixed questions of fact and law, or questions of executive, legislative, or administrative policy. An Attorney General Opinion is not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day to day basis.

Declaratory Judgment: Particularly difficult or momentous questions of law should be submitted to the courts for resolution by declaratory judgment. When deemed appropriate, this office will recommend this course of action. Similarly, there may be instances when securing a declaratory statement under the Administrative Procedure Act will be appropriate and will be recommended.

II. Types of Opinions Issued

There are several types of opinions issued by the Attorney General's Office. All legal opinions issued by this office, whether formal or informal, are persuasive authority and not binding.

Formal: Formal numbered opinions are signed by the Attorney General and published in the Report of the Attorney General. These opinions address questions of law that are of statewide concern.

Informal: This office also issues a large body of informal opinions. Generally, these opinions address questions of more limited application. Informal opinions may be signed by the Attorney General or by the drafting assistant attorney general. Those signed by the Attorney General are generally issued to public officials to whom the Attorney General is required to respond. While an official or agency may request that an opinion be issued as a formal or informal, the determination of the type of opinion issued rests with this office.

III. Persons to Whom Opinions May Be Issued

Public Officials: The responsibility of the Attorney General to provide legal opinions is specified in section 16.01(3), Florida Statutes, which provides that the Attorney General:

Notwithstanding any other provision of law, shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.

Executive & Legislative Branch: The statute thus requires the Attorney General to render opinions to the Governor, a Cabinet member, the head of a department in the executive branch, the Speaker of the House, the President of the Senate, the Minority Leader of the House, or the Minority Leader of the Senate.

State & Local Government: The Attorney General may issue opinions to a Legislator, another state officer, or an officer of a county, municipality, other unit of local government, or political subdivision. If an Attorney General Opinion is being requested by a member of the Legislature, the member must certify on the Certification form (below) that the member has attempted to obtain an opinion on the issue from the general counsel of the member's chamber, provide a copy of any written opinion obtained, and submit a copy of the opinion request to the presiding officer of his or her chamber at the time the request is provided to this office. In addition, the Attorney General is authorized to provide legal advice to state attorneys pursuant to section 16.08, Florida Statutes, and to the representatives from Florida in Congress regarding matters within the scope of section 16.52(1), Florida Statutes.

Boards and Commissions: Questions relating to the powers and duties of officials who sit on a public board or commission (or other collegial public body) should be requested by a majority of the members of that body and not merely by a dissenting member or faction. A request from a board should, therefore, clearly indicate that the opinion is being sought by a majority of its members. An opinion request on behalf of a board or commission should be accompanied by a resolution, minutes, or transcript reflecting a vote to seek the opinion. If the board or commission is represented by counsel, the board or commission must obtain a written opinion of counsel and include that opinion with the request.

IV. When Opinions Will Not Be Issued

Private Citizens: Section 16.01(3), Florida Statutes, does not authorize the Attorney General to render opinions to private individuals or entities, whether their requests are submitted directly or through governmental officials. An Attorney General Opinion will not, therefore, be issued when the requesting party is not among the officers specified in section 16.01(3), Florida Statutes.

Non-Official Duties: An opinion request must relate to the requesting officer's own official duties. An Attorney General Opinion will not, therefore, be issued when an officer falling within section 16.01(3) asks a question that does not relate to his or her own official duties.

Disputes: Opinions should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought as a weapon by one side in a dispute between agencies.

Court Matters: In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance.

Local Codes, Ordinances, or Charters: Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances, or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question.

Other Agencies: In addition, when an opinion request is received on a question falling within the statutory jurisdiction of some other state agency, the Attorney General may, in the exercise of discretion, transfer the request to that agency or advise the requesting party to contact the other agency. For example, questions concerning:

- the Code of Ethics for Public Officers and Employees may be referred to the Florida Commission on Ethics;
- the Florida Election Code may be directed to the Division of Elections in the Department of State; or
- the interpretation of any agency's rules may be referred to the agency

Discretion: As quoted above, section 16.01(3), Florida Statutes, provides for the Attorney General's authority to issue opinions "[n]otwithstanding any other provision of law," thus recognizing the Attorney General's discretion to issue opinions in such instances.

The following are examples of the kinds of questions the Attorney General may decline to address:

- questions of a speculative nature;
- questions from private individuals or entities;
- questions requiring factual determinations;
- questions which cannot be resolved due to an irreconcilable conflict in the laws (although the Attorney General may attempt to provide general assistance);
- questions of executive, legislative, or administrative policy;
- questions on matters that are addressed in proposed legislation currently before the Legislature;
- matters involving intergovernmental disputes unless all governmental agencies concerned have joined in the request;
- moot questions;
- questions pending before a court or administrative forum;
- questions involving an interpretation only of local codes, charters, ordinances, or regulations; or
- questions the official or agency has already acted on and is seeking to justify (such as the expenditure of public funds or the adoption of an ordinance).

V. Form In Which Request Should Be Submitted

Before submitting an opinion request, it is important that you read all of the information in Parts I through VI of this web page, explaining how to comply with the relevant statutes and the policies of the Attorney General.

Requests for opinions must be submitted in writing on official agency letterhead or by the attorney representing the agency. Requests should be addressed to:

Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

Questions of Law: The request should clearly and concisely state the question of law to be answered. Sufficient elaboration should be provided so that it is not necessary to infer any aspect of the question or the situation on which it is based.

Description of Facts and Circumstances: If the question is predicated on a particular set of facts or circumstances, all material facts should be set out. If there is existing litigation before the courts involving the requesting party concerning the same subject matter, the nature of the litigation should be fully discussed. If litigation has been threatened, any documents evidencing the threat should be disclosed. If litigation develops during the pendency of the opinion request, staff in this office should be advised and all material documents disclosed with the opinion request.

Memorandum of Law: In order to facilitate a timely response to opinion requests, this office requires that the attorneys for government and other public entities requesting an opinion provide this office with a memorandum of law to accompany the request. The memorandum should include or attach the opinion of the requesting party's legal counsel, a discussion of the legal issues involved, and references and citations to relevant constitutional provisions, statutes, charters, administrative rules, judicial decisions, Attorney General Opinions, etc. Copies of any court decisions unavailable from online legal research databases should be attached to the memorandum of law. When counsel has previously provided a written legal opinion on the issue(s) to the party requesting the opinion or the board, commission, agency, or public body of which the requesting party is a member, a copy of the opinion must be included with the opinion request.

Interested Parties: Input from other public officials, organizations, or associations representing public officials may be requested by this office prior to issuing an opinion. Interested parties may also submit a memorandum of law and other written material or statements for consideration. Any such material will be attached to and made a part of the permanent file of the opinion request to which it relates.

Certification: For any request other than from the Governor, a Cabinet member, the head of a department in the executive branch, the Speaker of the House, the President of the Senate, the Minority Leader of the House, or the Minority Leader of the Senate, this office requires that an opinion request be accompanied by a certification that he or she has complied with the requirements of section 16.01(3) and the policies of the Attorney General as stated herein. The Certification shall be completed, signed, and submitted with the opinion request.

VI. Miscellaneous

Formal Opinions Database: This office provides access to formal Attorney General Opinions through a [searchable database](#) from the Attorney General's website. Opinions issued between 1895 and 1981 may be found in the [Attorney General Opinion Indexes - 1895 to 1981](#).

Informal Opinions: Copies of informal opinions may be obtained from the Opinions Division of the Attorney General's Office at 850-245-0140.

Updating Opinions: The Attorney General's Office does not routinely update previously issued opinions. Thus, older opinions of the Attorney General may not reflect current statutes or case law. Before relying on an opinion from the Attorney General's Office, a search should be undertaken for changes in the law upon which the opinion is based.

Dual Officeholding: As an alternative to requesting an opinion, officials may wish to use the [informational pamphlet](#) prepared by this office on dual officeholding for public officials.

Sunshine Manual: The Attorney General prepares the Government in the Sunshine Manual, which explains the laws under which Florida ensures public access to the meetings and records of state and local government. The manual is available [here](#) or through the [First Amendment Foundation](#).

Attorney General Reports may be ordered [here](#).

Additional information may be obtained by contacting the Opinions Section of the Attorney General's Office at 850-245-0140.

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226

- Lemon Law 1-800-321-5366

