The position of attorney general in state government is firmly rooted in 700 years of Anglo-American history. Since at least the mid-13th century, specially designated lawyers have represented the legal interest of the king in England’s courts of law. The position was brought to the New World with the English colonists and since has grown and developed in uniquely American ways. As the chief legal officer of the state, commonwealth or territory, the attorney general is the legal adviser to state government branches and agencies and the principal legal representative of the public interest for all state residents. The responsibilities of the attorney general are described in greater or lesser detail, depending on the state, in constitutional or statutory provision, which shape the attorney general’s relationship to the executive, legislative and judicial branches of state government. Although the attorney general serves as legal adviser to both the legislative and executive branches, the office is part of neither branch.

The trend is toward the expansion of the powers and duties of the attorney general as state legislatures have prescribed new responsibilities and functions for state governments, and attorneys general have used traditional causes of action to address new issues. New responsibilities for attorneys general include such diverse tasks as investigation and prosecution of cybercrime and securities fraud, review of nonprofit health care provider mergers, ethics, insurance, statewide investigations, organized crime prosecution, crime victims’ assistance, tobacco regulation and protection of vulnerable populations, including children and the elderly. Both program responsibilities and civil enforcement obligations have expanded in virtually every state. Many attorneys general have established specialized units or officewide task forces to handle these varied responsibilities.

In addition to these new responsibilities, attorneys general have also expanded their role in the traditional areas of law enforcement and have become more active in consumer protection, antitrust and environmental law, often bringing multistate actions to protect the public interest.

Common Law Powers

The office of attorney general throughout the centuries of its development has maintained broad common law authority, stemming from its roots as chief legal officer to the crown. Although courts in the United States have not specifically defined every aspect of this authority, preservation and protection of the public interest is the principle that typically governs a court’s decision to recognize an attorney general’s exercise of common law powers. The common law is thus the origin of the attorney general’s authority to represent, defend and enforce the legal interests of state government and the public. The workings of the common law principle are evident in cases broadly construing the traditional role to authorize a wide variety of enforcement activities, ranging from enforcement of professional licensing laws to the exercise of “common law powers of the attorney general to protect the environment.”

In most states, the modern office of attorney general retains common law authority, as well as the powers and duties specifically assigned by constitutions and statutes, although attorneys general in a few states expressly lack common law authority. In general terms, courts have interpreted the common

The National Association of Attorneys General recently published the second edition of “State Attorneys General Powers and Responsibilities,” edited by Emily Myers and Lynne Ross. This book is the only publication of its kind that fully explores the office of the attorney general, including its many responsibilities, authority and relationship with other parts of state government. It also discusses the many areas in which attorneys general work together on a multistate basis to address nationwide problems, as well as current trends and research. The excerpts below offer a small snapshot of the contributions of attorneys general to state government and the American legal system.
The law authority of the attorney general to include the following powers and duties:

- The duty to appear for and to defend the state and its agencies;
- The right to control litigation and appeals;
- The right to initiate or intervene in legal proceedings on behalf of the public interest;
- The power to determine the state’s legal policy; and
- The authority to prosecute criminal activity in the absence of express legislative restriction.

Within these broad parameters, the specific functions of the office of attorney general vary greatly from state to state, as do the priorities of individual attorneys general. The most common and most important functions identified with the office of attorney general include the following:

**Control of Litigation Concerning the State**

One aspect of the attorney general’s unique role in state government is his or her authority to represent the state in civil litigation. In fact, several state supreme courts prohibit or limit the use of counsel other than the attorney general in civil litigation. State statutes also limit the ability of executive branch agencies to employ counsel other than the attorney general. Even when an agency is authorized by statute to employ outside counsel, the attorney general may still have a voice in deciding who will provide these legal services.

Attorney general authority to control litigation obviously furthers the major objective of statewide consistency in the development of legal policy. In recent years, strong case authority has been developed in a number of states, which re-emphasizes the litigation control prerogative of the attorney general. For example, the attorney general in most states has discretion to decide whether to defend state agencies and officers. Attorneys general typically have even greater authority over the state’s appellate litigation. By virtue of controlling litigation, the attorney general is in a major strategic position to shape the long-term development of the law through careful case selection and consistent appellate advocacy over an extended period.

The trend over the past several decades has been toward consolidation of legal services for the state in the attorney general’s office. A single source of state legal services maintains consistent policy on state legal issues and encourages efficient use of state resources. Several factors favor consolidation of legal services within the attorney general’s office, including consistent application of statutory and case law, increased efficiency in the delivery of legal services, reduced duplication of legal and technical expertise, greater collaboration among attorneys, better procedures than state agencies for review of legal work and more consistency in fiscal planning for legal services.

**Chief Legal Officer**

The attorney general is chief legal officer of each state or jurisdiction. As such, the attorney general provides legal advice to the executive branch, including the governor and state agencies, as well as to the legislature in some states. Through this advice, the attorney general is able to establish consistency and uniformity in the state’s legal policy. As chief legal officer, the attorney general can offer preventive legal advice and ensure the legality of state government action.

**Opinions**

The opinions function is one of the most important responsibilities of the attorney general. Not only does this function clarify the law for the executive branch—and sometimes the judicial and legislative branches as well—but it also provides, in many states, an “advice of counsel” defense, in the absence of which state officials could be personally liable for their actions or for the inappropriate expenditure of state funds. In addition, the opinions function allows the attorney general to identify areas of legislative oversight that need correction and to resolve issues that are unlikely to become the subject of litigation.

**Public Advocacy**

Attorneys general now administer a wide range of major outreach and public advocacy programs, distinct from the provision of traditional legal services to client agencies that characterized the office until the late 20th century. These programs include child support enforcement, consumer protection, antitrust, utility rate regulation and the provision of services to crime victims. The public advocacy programs place the state and the attorney general in the position of initiator or plaintiff in litigation, a role reversal that provides an opportunity for major public policy initiatives.

**Criminal Law Enforcement**

Most attorneys general are not their state’s top cop, although this is a commonly held public perception of the office. The extent to which the attorney gen-
eral may actually exercise this role depends on the statutory or constitutional allocations of authority to state or local prosecuting attorneys. In many states, for example, the attorney general has no, or only limited authority to initiate criminal prosecutions. In virtually all such cases, however, the attorney general is responsible for those cases at the appellate level. One emerging criminal law enforcement role is that of the statewide officer in charge of the prosecution of organized crime efforts. These developments have been accentuated by the passage in many states of the Racketeer Influenced and Corrupt Organizations Act—or RICO laws—giving the attorney general statewide authority to institute civil or criminal anti-racketeering actions against organized crime and racketeering enterprises.

**Law Reform and Legislative Advocacy**

In some jurisdictions, the attorney general is an official member of law reform or law improvement commissions. In many jurisdictions, the attorney general may propose legislation and hence, participate in shaping the legislative agenda. In addition, the attorney general’s opinion function often reveals areas of statutory inconsistency or inadequacy and thereby makes the office of attorney general a pre-eminent source of law reform ideas.

**Investigative Authority**

The attorney general’s power to investigate may be focused on issues of government misconduct, malfeasance or individual criminal activity. In addition, the attorney general may focus on issues of substantial public interest and may issue reports with recommendations as to public needs and possible solutions.

**Policymaker**

By virtue of holding a statewide office, the attorney general can act as a statewide leader with ideas and programs that address the many issues confronting residents of their states. The attorney general can speak with authority and influence on major questions involving systems of law and justice. In many jurisdictions, for example, the attorney general’s authority to give opinions on issues such as election reform, public corruption and open government provides an opportunity to address issues crucial to the maintenance of “good government.”

**Conclusion**

Dramatic political, economic and technological developments in the last 50 years have continued to reshape the traditional office of state attorney general. While the modern office of attorney general continues to perform its traditional role of providing legal advice and legal representation in matters affecting the state’s interests, those state interests now include an infinitely broader range of social and economic policies and protection of the public interest.

---

**About the National Association of Attorneys General**

The National Association of Attorneys General (NAAG) was founded in 1907 to help attorneys general fulfill the responsibilities of their office and to assist in the delivery of high quality legal services to the states and territorial jurisdictions. NAAG’s mission is: “To facilitate interaction among attorneys general as peers. To facilitate the enhanced performance of attorneys general and their staffs.” NAAG fosters an environment of “cooperative leadership,” helping attorneys general respond effectively—individually and collectively—to emerging state and federal issues. The association fosters interstate cooperation on legal and law enforcement issues, conducts policy research and analysis of issues, and facilitates communication between the states’ chief legal officers and all levels of government. The association’s members are the attorneys general of the 50 states and the District of Columbia and the chief legal officers of the commonwealths of Puerto Rico (secretary of justice) and the Northern Mariana Islands, and the territories of American Samoa, Guam and the Virgin Islands. The U.S. attorney general is an honorary member.

These excerpts were submitted by Angelita Plemmer, director of communications for the National Association of Attorneys General.