

ENROLLED SENATE
BILL NO. 902

BY: HENDRICK of the SENATE

and

SETTLE and JOHNSON (Rob) of
the HOUSE

AN ACT RELATING TO LEGAL SERVICES; AMENDING 56 O.S. 1991, SECTION 236, AS AMENDED BY SECTION 1 OF ENROLLED HOUSE BILL NO. 1929 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATES TO THE LEGAL DIVISION OF THE OKLAHOMA COMMISSION FOR HUMAN SERVICES; REQUIRING CERTAIN NOTIFICATION TO THE ATTORNEY GENERAL; REQUIRING COMMISSION TO REIMBURSE THE OFFICE OF THE ATTORNEY GENERAL FOR CERTAIN COSTS AND EXPENSES; ALLOWING THE ATTORNEY GENERAL TO PROVIDE CERTAIN REPRESENTATION; AMENDING 74 O.S. 1991, SECTION 20f, AS AMENDED BY SECTION 1 OF ENROLLED HOUSE BILL NO. 2461 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATES TO THE OFFICE OF THE ATTORNEY GENERAL; REQUIRING REVIEW OF CERTAIN PROPOSED SETTLEMENTS; PROVIDING PURPOSE FOR REVIEW; PROVIDING FOR RECOMMENDATIONS; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 56 O.S. 1991, Section 236, as amended by Section 1 of Enrolled House Bill No. 1929 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 236. A. The Commission for Human Services shall establish or provide for a legal division or unit in the Department of Human Services. The Director of the Department of Human Services shall employ attorneys as needed, which may be on full-time and part-time basis. Such attorneys, in addition to advising the Commission, Director and Department personnel on legal matters, may appear for and represent the Commission, Director and Department in legal actions and proceedings. Provided, that it shall continue to be the duty of the Attorney General to give his official opinion to the Commission, Director or Department, and to prosecute and defend actions therefor, if requested to do so. The Attorney General may levy and collect costs, expenses of litigation and a reasonable attorney's fee for such legal services from the Commission. Provided, however the charges which the Attorney General is authorized to levy and collect shall only include those costs and charges which exceed the costs associated with the salary and benefits of one attorney FTE position per fiscal year.

B. The Commission shall not contract for representation by private legal counsel ~~except for extraordinary situations other than normal day-to-day situations and when~~ unless approved by the Attorney General ~~that such.~~ Such contract for private legal counsel

~~is shall be in the best interests of the state to prosecute or defend actions on behalf of the Department state.~~

C. The Attorney General shall be notified by the Commission or its counsel of all lawsuits against the Commission, its officers or employees that seek injunctive relief which would impose obligations requiring the expenditure of funds in excess of unencumbered monies in the agency's appropriations or beyond the current fiscal year. The Attorney General shall review any such cases and may represent the interests of the state, if he considers it to be in the best interest of the state to do so, in which case he shall be paid as provided in subsection A of this section. Representation of multiple defendants in such actions may, at the discretion of the Attorney General, be divided with counsel for the Commission as necessary to avoid conflicts of interest.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 20f, as amended by Section 1 of Enrolled House Bill No. 2461 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 20f. A. In the event an action is brought against an employee, who for the purposes of this act shall be an elected or appointed state officer or employee of any state officer, institution, agency, board or commission of any branch of state government in any civil action or special proceeding in the courts of this state, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, it is the duty of the Attorney General or staff attorney of such person's agency where the agency is authorized by law to be represented in court by a member of its own permanent legal staff, when requested in writing by such employee, to appear and defend the action or proceeding in his behalf. Such written request shall be made within fifteen (15) days after service of summons on the employee and a copy of the request shall be transmitted by the employee to the head of his agency and the Attorney General.

B. The Attorney General or a designated legal officer shall not represent a state employee if that employee did not perform a statutorily required duty and such duty is a basis of the civil action or special proceeding.

C. The Attorney General may direct an appropriate legal officer including a staff attorney of an agency authorized by law to be represented in court by a member of its own permanent legal staff to appear and defend such action. The Attorney General may request the assistance of a district attorney in any such action. The Attorney General may intervene in any such action or proceeding and appear on behalf of the State of Oklahoma, or any of its officers or employees, where he deems the state to have an interest in the subject matter of the litigation.

D. The Attorney General shall determine the method of preparation and presentation of such defense. The Attorney General or other legal officer under his direction shall not be held civilly liable for the exercise of such discretion.

E. The employee named in the action may employ private counsel at his own expense to assist in his defense.

F. Any officer or employee who acts outside of the scope of his official authority shall be liable in damages in the same manner as any private citizen.

G. When an original action seeking either a writ of mandamus or prohibition against a district judge, associate district judge, or special judge of the district court is commenced, the Attorney General shall represent such judicial officer if, and only if, directed to do so, in writing, by the Chief Justice of the Oklahoma

Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated for services rendered.

H. A settlement involving injunctive relief which substantially impacts the operation or programs of a state agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the President Pro Tempore of the Senate or his designee, the Speaker of the House or his designee, and the Governor or his designee. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement. The President Pro Tempore of the Senate, Speaker of the House and Governor shall be given a reasonable time in which to make recommendations regarding the proposed settlement given due consideration to the time requirements of the case. Such recommendations must be considered by the state agency, such agency's counsel of record and the Attorney General in determining whether to finalize the settlement agreement.

SECTION 3. This act shall become effective July 1, 1992.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 22d day of May, 1992.

President of the Senate

Passed the House of Representatives the 22d day of May, 1992.

Speaker of the House of Representatives