



KEN PAXTON
ATTORNEY GENERAL *of* TEXAS

The Role of the Attorney General in the Attorney-Client Relationship

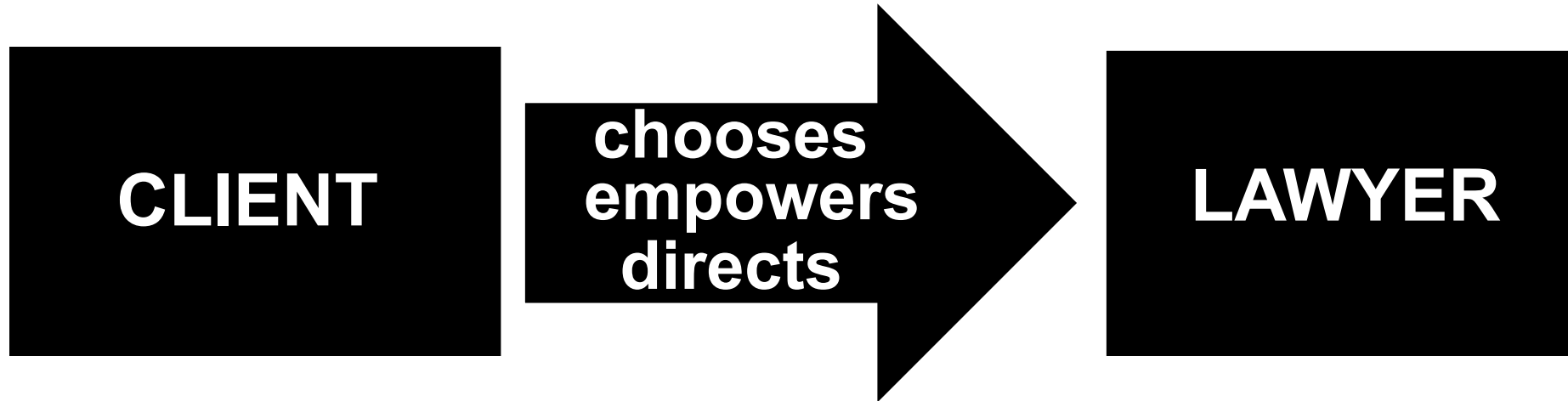
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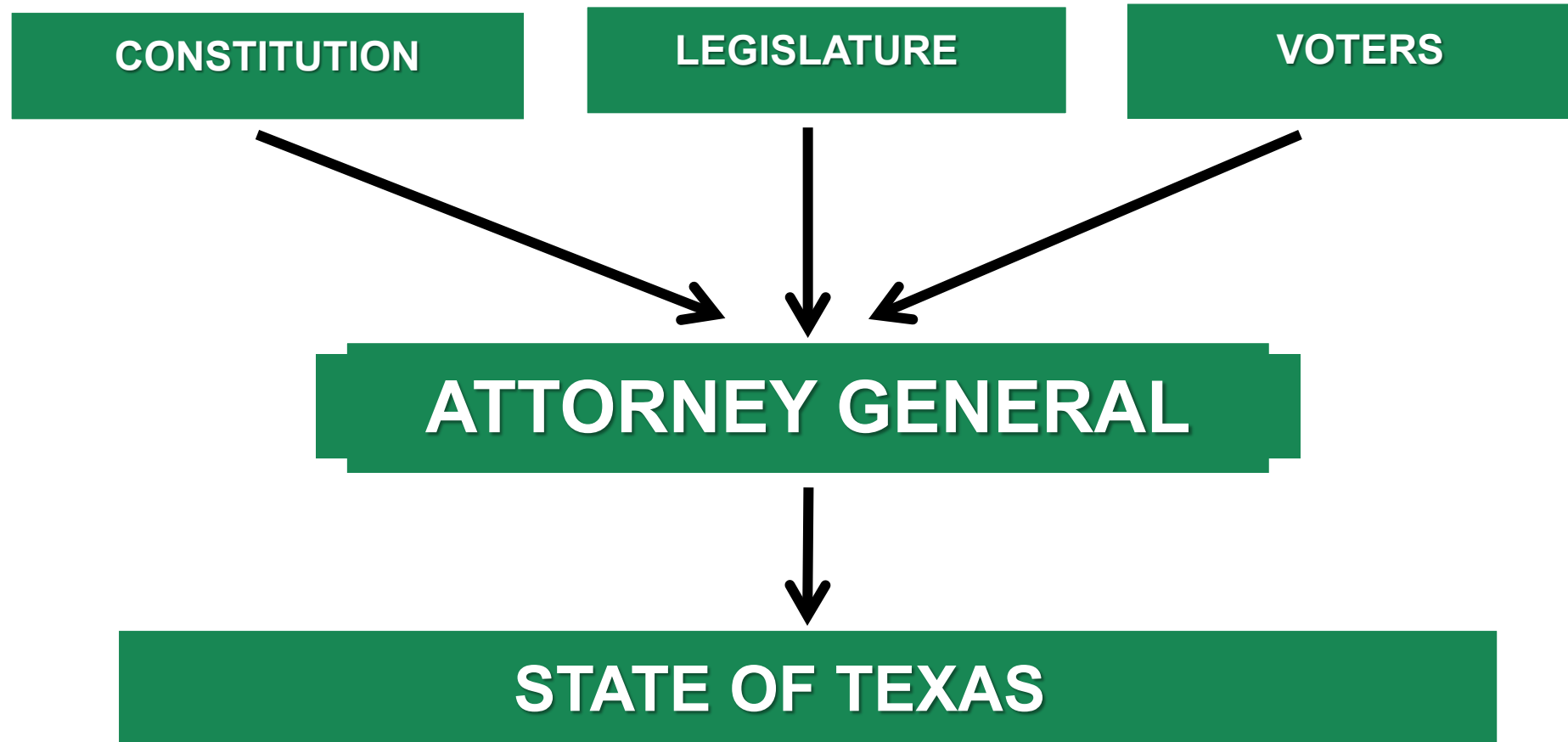
Civil Litigation Division

Office of the Attorney General

Customary Client-Attorney Relationship



Attorney General – Client Relationship



Attorney General – Client Relationship

- Texas Constitution, Article 4, § 22. ATTORNEY GENERAL.
- The Attorney General shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, ... and perform such other duties as may be required by law.

Attorney General – Client Relationship

- Government Code § 402.021. REPRESENTATION OF STATE.
- The attorney general shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals.

Attorney General as Plaintiff Lawyer

- In some cases, the Attorney General is empowered by the Legislature to:
 - determine a violation of law
 - file suit on behalf of the State of Texas to remedy the violation
 - resolve the lawsuit, typically with court approval

Attorney General as Plaintiff Lawyer

- Example: Antitrust (Tex. Bus. & Comm. Code § 15.20)
- CIVIL SUITS BY THE STATE. (a) Suit to Collect Civil Fine.
The attorney general may file suit in district court ... on behalf of the State of Texas to collect a civil fine from any person, other than a municipal corporation, whom the attorney general believes has violated any of the prohibitions in Subsection (a), (b), or (c) of Section 15.05 of this Act.

Attorney General as Plaintiff Lawyer

- Example: DTPA (Tex. Bus. & Comm. Code § 17.47)
- Sec. 17.47. RESTRAINING ORDERS. (a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

Attorney General as Plaintiff Lawyer

- Example: Improper Disposal of Business Records (Tex. Bus. & Comm. Code § 72.004)
- (d) A business that disposes of a business record without complying with Subsection (b) is liable for a civil penalty in an amount not to exceed \$500 for each business record. The attorney general may bring an action against the business to:
 - (1) recover the civil penalty;
 - (2) obtain any other remedy, including injunctive relief; and
 - (3) recover costs and reasonable attorney's fees incurred in bringing the action.

Attorney General as Defense Lawyer

- The Attorney General is empowered to defend the State of Texas when a component of the State (e.g., a state agency) is named as a defendant in litigation.
- General Appropriations Act § 16.01(a)(1)

Attorney General as Defense Lawyer

- General Appropriations Act § 16.01(a)(1)
- Except as otherwise provided by the Constitution or general or special statutes, and only as consistent with Government Code, Sec. 402.0212 and Chapter 2254, Government Code, the Attorney General shall have the primary duty of representing the State in the trial of civil cases.

Attorney General as Defense Lawyer

- The Attorney General is empowered to defend the State of Texas when a component of the State (e.g., a state agency) is named as a defendant in litigation.
 - The AG decides whether the representation is appropriate.
 - Government Code § 402.0212

Attorney General as Defense Lawyer

- Government Code § 402.0212. PROVISION OF LEGAL SERVICES – OUTSIDE COUNSEL.
- (a) ... The attorney general shall provide legal services for a state agency for which the attorney general determines those legal services are appropriate and for which the attorney general denies approval for a contract for those services under this subsection.

Attorney General as Defense Lawyer

- The Attorney General is empowered to defend the State of Texas when a component of the State (e.g., a state agency) is named as a defendant in litigation.
 - The AG decides whether the representation is appropriate.
 - The AG decides whether the agency can use outside counsel.
 - Government Code § 402.0212
 - General Appropriations Act § 16.01(a)(2)

Attorney General as Defense Lawyer

- Government Code § 402.0212. PROVISION OF LEGAL SERVICES – OUTSIDE COUNSEL.
- (a) Except as authorized by other law, a contract for legal services between an attorney, other than a full-time employee of the agency, and a state agency in the executive department, other than an agency established by the Texas Constitution, must be approved by the attorney general to be valid.

Attorney General – Client Relationship

- General Appropriations Act § 16.01(a)(2)
- Funds appropriated by this Act may not be used by a state governmental entity for retaining outside legal counsel before the state governmental entity requests the Attorney General to perform such services.

Attorney General as Defense Lawyer

- The Attorney General is empowered to defend the State of Texas when a component of the State (e.g., a state agency) is named as a defendant in litigation.
 - The AG decides whether the representation is appropriate.
 - The AG decides whether the agency can use outside counsel.
 - The agency cannot act in litigation without AG consent.
 - General Appropriations Act § 16.01(b)

Attorney General – Client Relationship

- General Appropriations Act § 16.01(b)
- Funds appropriated by this Act may not be expended by a state governmental entity to initiate a civil suit or defend itself against a legal action without the consent of the Attorney General. Absent this consent, the state governmental entity shall be represented in that particular action by the Attorney General.

Attorney General as Defense Lawyer

- The Attorney General is empowered to defend the State of Texas when a component of the State (e.g., a state agency) is named as a defendant in litigation.
 - The AG decides whether the representation is appropriate.
 - The AG decides whether the agency can use outside counsel.
 - The agency cannot act in litigation without AG consent.
- The AG can act over the objection of the agency.
 - *Bullock v. Escobedo*

Attorney General – Client Relationship

- *Bullock v. Escobedo*, 583 S.W.2d 888, 894 (Tex.App.—Austin 1979, writ refd)
- In this suit, the Comptroller obviously exercised his administrative discretion and rejected the request for a refund of taxes paid under protest; otherwise, there would have been no litigation. Thereafter, upon filing of suit, the Comptroller's statutory powers ended.

Attorney General – Client Relationship

- *Bullock v. Escobedo*, 583 S.W.2d 888, 894 (Tex.App.—Austin 1979, writ refd)
- In matters of litigation, the Attorney General is the officer authorized by law to protect the interests of the State, and even in matters of bringing suit, the Attorney General “must exercise judgment and discretion, which will not be controlled by other authorities”. (quoting *Charles Scribner’s Sons v. Marrs*, 262 S.W. 722, 727 (1924).)

Attorney General as Defense Lawyer

- The Attorney General is empowered to defend the State of Texas when a component of the State (e.g., a state agency) is named as a defendant in litigation.
 - The AG decides whether the representation is appropriate.
 - The AG decides whether the agency can use outside counsel.
 - The agency cannot act in litigation without AG consent.
 - The AG can act over the objection of the agency.
- The AG approves the content of settlements.
 - General Appropriations Act § 16.01(d)

Attorney General – Client Relationship

- General Appropriations Act § 16.01(d)
- (d) Payment of all judgments and settlements prosecuted by or defended by the Attorney General is subject to approval of the Attorney General as to form, content, and amount, and certification by the Attorney General that payment of the judgment or settlement is a legally enforceable obligation of the State.

In Attorney General Litigation It Appears That:

- The LAWYER decides whether the representation is appropriate.
- The LAWYER decides whether the CLIENT can use outside counsel.
- The CLIENT cannot act in litigation without LAWYER consent.
- The LAWYER can act over the objection of the CLIENT.
- The LAWYER approves the content of settlements.

BUT THERE IS MORE TO THE ANALYSIS.

Attorney General – Client Relationship

- The Attorney General protects the interest of the State. (the client)
- Defendant agencies are typically the State's delegate for managing the state program or state action that is subject of the lawsuit.
- Thus, agencies are important in determining the State's interests in the future management of the state program or state action.
- Plus, as to settlement of a lawsuit against an agency, the Governor, Comptroller and Legislature have a role.

Reasons the Attorney General's Role is Different from Private Attorneys

- An elected Attorney General is part of governmental checks and balances.
- The AG utilizes finite resources for the litigation needs of over 200 state agencies, boards and commissions.
- Payment of all judgments and settlements is subject to approval of the Attorney General as to form, content, and amount.
- Thus, as a general rule, the AG must be a gatekeeper for decisions in litigation to fulfill the AG's governmental purpose

THE ROLE OF THE ATTORNEY GENERAL IN THE ATTORNEY-CLIENT RELATIONSHIP