

## What is the Legal Effect of a Michigan Attorney General Opinion?

From time to time, the Michigan Attorney General issues an opinion in response to a question raised, most frequently, by a legislator. The opinion is published and distributed among legal, governmental, and political circles. The opinion may be well reasoned and persuasive. As such, those who believe that the analysis and outcome of the opinion will help support a given position will cite the opinion as evidence and authority for their position.

It then becomes important to ask—what effect does a Michigan Attorney General opinion (OAG) have on Michigan local units of government and, for that matter, on state agencies and the courts? The questions generally raised are the following:

1. What authority does the Attorney General have to issue an opinion?
2. Is an OAG binding on Michigan courts?
3. What legal effect does an OAG have on Michigan state agencies?
4. What legal effect does an OAG have on local governmental bodies?
5. Does an OAG have the effect of law unless overturned by a court?

Before we begin addressing the questions, it's necessary to take a step back and answer a preliminary question: **Who gets to decide these questions?** This one is easy. As with all questions of constitutional and statutory interpretation, the Michigan Supreme Court is the final arbiter. Article VI of the Michigan Constitution vests the judicial power of state in "one court of justice." As a result, many of our questions will be answered by specific Michigan Supreme Court decisions.



### 1. What authority does the Attorney General have to issue an opinion?

MCL 14.32 is clear that the Legislature has authorized that it is "the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the Legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer. . . ."

### 2. Is an OAG binding on Michigan courts?

No. The Michigan Supreme Court has stated, on several occasions, that an Attorney General opinion is not binding on Michigan courts. *Frey v Dep't of Mosey and Budget*, 429 Mich 315, 338 (1987). See also, *MONY v Insurance Bureau*, 121 Mich App 386 (1982); *People v Waterman*, 137 Mich App 429, 432 (1984).

### 3. What legal effect does an OAG have on Michigan state agencies?

The Michigan Court of Appeals, in *Beer & Wine Ass'n v Atty General*, 142 Mich App 294, 300 (1985), cited the Michigan Supreme Court decision of *Traverse City Sch Dist v Attorney General*, 384 Mich 390 (1971) and stated: "While [attorney general] opinions do not have the force of law, and are therefore not binding on courts, they have been held to be binding on state agencies and officers." The court relied upon the language found in footnote 2 of the *Traverse City* case: "Although an opinion of the Attorney General is not a binding interpretation of law which courts must follow, it does command the allegiance of state agencies."

See comments of Michigan Supreme Court in footnotes in the following opinions: *In re Request Advisory Opinion*