State Attorneys General Powers and Responsibilities

Edited by
Emily Myers
National Association of Attorneys General

Fourth Edition
National Association of Attorneys General

Published by
National Association of Attorneys General
1850 M Street, NW, 12th Floor
Washington, DC 20036
(202) 326-6000

State Attorneys General Powers and Responsibilities
Fourth Edition

Library of Congress Control Number: 2018960580

ISBN 978-1-946357-00-7
ISBN 978-1-946357-01-4 (Softcover)

State Attorneys General Powers and Responsibilities

Fourth Edition

Edited By
Emily Myers

National Association of Attorneys General

This book is dedicated to Attorneys General and the men and women who work for them in the 56 jurisdictions. They continue to make an important contribution to state govenment and the American legal system. Without them, there would be no book to write.

Acknowledgments

The editor would like to acknowledge the many individuals who contributed to the preparation of this book.

This book builds on previous editions, which were edited by Lynne Ross. We gratefully acknowledge her hard work and dedication to this project in its early years.

This book is a collaborative effort, in which different authors with expertise in each substantive area contribute their time and talent. The principal authors are noted on each chapter, but we would like to thank them again here for their hard work and dedication. Many thanks to the following authors:

Caitlin Calder
Bob Carlson
Chris Coppin
Karen Cordry
Adam Eisenstein
Amie Ely
Micheline N. Fairbank
Denise Fjordbeck
Ed Hamrick
Michael Hering
David Jacobs
Zachary T. Knepper
Hedda Litwin
Stephen R. McAllister
Judith McKee
A. Valerie Mirko
Ann Mines-Bailey
Salini Nandipati
Joe Panesko
Chalia Stallings-Ala'ilima
Dan Schweitzer
Abigail Stempson
Clive Strong
Marjorie Tharp
Sean Towles
Chris Toth
Barbara Zelner

Chapter 5

Opinions

By Emily Myers, Antitrust Chief Counsel, NAAG

Providing legal opinions to government officials was one of the original functions of the office of attorney general[1] and it remains a key function today. The Illinois Supreme Court has held that the attorney general's opinion writing function is an inherent part of the attorney general's duty to represent public bodies.[2] It is such an important aspect of the offices' duties that many state statutes and office policies are devoted to the issuance of opinions. Although each state attorney general issues opinions, no two offices do so in exactly the same way. Statutes, policies and procedures vary from state to state, although there are many common features.

Attorney General Opinions and Their Purpose

Most public officials are not lawyers. Sometimes it is difficult to determine the meaning of a law without the application of legal training. Attorney general offices provide legal opinions to their clients every day in a variety of ways. Oral advice is given through telephone calls or meetings between a state agency employee and a lawyer in the attorney general's office. Letters and memoranda containing legal advice are written to client agencies or officials. That advice may be privileged, and typically is not disclosed publicly.[3]

---

1 Heiser, Jr., *The Opinion Writing Function of Attorneys General*, 18 IDAHO L. REV. 10 (1982).

2 *Illinois Education Association v. Illinois State Board of Education*, 204 Ill. 2d 456, 466, 791 N.E.2d 522, 529 (Ill. 2003).

3 *See, e.g.*, *Paff v. Division of Law,* 988 A.2d 1239 (N.J. Super. 2010) (unpublished Administrative Agency Advice (AAA) letters issued by the New Jersey attorney general which interpret the

Advice is also given in more formal written opinions prepared by and reviewed by attorneys in the office, including the attorney general, through an established process. These are the opinions commonly known as Attorney General Opinions, which have the authority of the office behind them.[4]

Formal written legal opinions of the attorney general answer questions of law from state agencies or officials. Generally these questions are about the agency's or official's legal duties. Often the question is posed simply because an answer is needed in order to determine a future course of action. For example, there may be disagreements within the agency about the course of action required by law due to the ambiguity of a statute.[5] Policy choices have to be made and advice on the legality of those choices is desired. Sometimes the question is asked not because the answer is unclear but because the clear answer is unpopular. The agency or official wants the "cover" of legal support from the state's chief legal officer for the agency's action.

Guidelines for Issuing Opinions

All states have some guidelines for issuing opinions. Most include the following:

Appropriate requester. Many statutes governing opinions state that the opinions are rendered to state officials. Some also require the attorney general to provide opinions to certain local officials.[6] Some expressly state that opinions are not to be rendered to private persons.

---

statutes and regulations the attorney general's administrative agency clients are required to apply and enforce are not disclosable government records for purposes of the state open records act because they are protected by the attorney-client privilege.)

4 Some attorney general offices also issue informal opinions, which are more formal than client advice, but less so than a formal opinion.

5 *See, e.g., Anonymous v. Delaware,* 2000 Del. Ch. LEXIS 84 (Del. Ch. 2000) (attorney general opinion that statute was unconstitutional was basis for plaintiff's suit seeking declaratory judgment).

6 For example, Mississippi statutes require the attorney general to provide opinions to a long list of officials: "to the Legislature, or either house or any committee thereof, and to the Governor, the Secretary of State, the Auditor of Public Accounts, the State Treasurer, the Superintendent of Public Education, the Insurance Commissioner, the Commissioner of Agriculture and Commerce, the State Geologist, the State Librarian, the Director of Archives and History, the Adjutant General, the State Board of Health, the Commissioner of Corrections, the Public Service Commission, Chairman of the State Tax Commission, the State Forestry Commission, the Transportation

Appropriate topic. Despite a lack of exceptions in the statutes, most offices have determined that the subject of the request must be one which is appropriate to discuss in an opinion. Common topics deemed inappropriate by many offices include: issues in litigation before a court or administrative tribunal[7]; issues that are not really legal issues but rather matters of policy; issues involving the interpretation of a local ordinance; hypothetical issues; issues unrelated to the requester's duties; and moot issues.[8]

Writing. Requests for opinions must typically be in writing.[9]

The Opinion Process

When an opinion request has been received and it has been determined that the office should answer it, the opinion is assigned to the appropriate division in the office. The assignment depends on how opinion writing is handled within the particular attorney general's office. Some offices take a decentralized approach under which the opinion is assigned to a division of the office that handles the substantive area at issue. The supervisor of the division then assigns it to an attorney for preparation. Other offices centralize the preparation of opinions in a unit

Commission, and any other state officer, department or commission operating under the law, or which may be hereafter created; the trustees and heads of any state institution, the trustees and heads of the universities and the state colleges, the district attorneys, the boards of supervisors of the several counties, the sheriffs, the chancery clerks, the circuit clerks, the superintendents of education, the tax assessors, county surveyors, the county attorneys, the attorneys for the boards of supervisors, mayor or council or board of aldermen of any municipality of this state, and all other county officers (and no others)," Miss. Code Ann. § 7-5-25; Ala. Code § 36-15-1 (attorney general to give opinions to "certain enumerated local, county, and municipal officials and bodies"); Fl. Stat. § 16.01 (attorney general may in his discretion give opinion to "officer of a county, municipality, other unit of local government, or political subdivision"). *But see* 29 Del.C. § 2504 (attorney general to provide legal advice, counsel and services for administrative offices, agencies, departments, boards, commissions and officers of the state government; courts, counties and incorporated municipalities specifically excepted).

7 Under Mississippi law, the attorney general may not issue an opinion on a matter in litigation. Miss. Code Ann. § 7-5-2.

8 For example, the Illinois attorney general's office has a Policy Relating to Written Opinions, which states that no opinion will be issued "regarding the exercise of executive judgment or discretion nor on questions of fact," nor where the question is scheduled for determination by the courts. Statement of Policy of the Illinois Attorney General Relating to Furnishing Written Opinions (March 29, 1962).

9 *But see,* Ga. Code Ann. § 45-15-3 (opinions "in writing, or otherwise").

or division to which all opinion requests are assigned no matter the topic. Each approach has advantages and disadvantages. The decentralized approach assigns opinions to attorneys who are already familiar with the area of law involved in the opinion. Although this specialization enables the attorney to prepare the opinion more efficiently, the attorney must also deal with litigation deadlines and other matters that often take precedence over preparation of an opinion. The centralized approach reduces the likelihood that the attorney will be diverted to other litigation or projects. The attorneys in the opinion unit become particularly adept at research and writing. On the other hand, the attorney must often deal with unfamiliar subject areas and therefore spend more time researching than would an attorney specializing in the area.

The research conducted for an opinion depends on the question asked. It may be as simple as locating a statute that answers the question. However, complicated questions can involve case law from other states, state or federal legislative history or even historical research concerning state constitutional provisions. Generally research begins with an examination of prior opinions. This review helps the researcher find statutes and case law as well as ensuring that whatever is finally written does not contradict prior opinions unless the intent is to overrule them. Attorney general's offices do occasionally overrule prior opinions, usually when subsequent statutes or case law affects the reasoning or result of the opinion.

Many offices have time limits within which a draft of the opinion must be ready for review. Most time limits are internal guidelines. Montana's statute, for example, states: "The attorney general shall give the opinion within 3 months following the date that it is requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient complexity to require additional time."[10] Texas law contains a 180 day period for issuing the opinion unless the requesting party is notified it will be delayed or not rendered and the reason.[11] Tennessee law requires that questions from legislators concerning pending legislation be answered as expeditiously as possible.[12]

The review process is different in each office, but typically the draft is reviewed by the supervisor of the preparer. Then the draft may go for further review to an opinion review committee or it may proceed on to the chief deputy and/or solicitor general. The draft may be edited or returned to the assistant attorney general for more research and revision at any step along this process. The final

10 Mont. Code Ann. § 2-15-501(7).
11 Tex. Gov't Code Ann. § 402.042(c)(2).
12 Tenn. Code Ann. § 8-6-109(b)(6).

reviewer is the attorney general. Once the attorney general has approved it, the opinion is ready for issuance and distribution.

The distribution and maintenance of attorney general opinions is different in each state. Idaho law, for example, requires a copy of the opinions be furnished to the state supreme court and the state librarian.[13] North Dakota and Washington are expressly required to keep books in which all official opinions are recorded,[14] And the Illinois attorney general must keep official opinions issued and deliver them to his or her successor.[15] All attorneys general keep copies of their opinions for their own reference. Some states are statutorily required to make their opinions open to public inspection.[16] All state attorneys general now place their opinions on their office web sites.

Legal Effect of Attorney General Opinions

The legal effect of an attorney general's opinion upon the recipient varies from state to state. The general rule seems to be that the recipient "is free to follow it or not as he or she chooses."[17] The rationale often given is that if state officers were bound by an attorney general's opinion, "any executive office of the state could be controlled by the opinion of the attorney general specifying what the law requires to be done in that office."[18] This rationale, however, does not prevail in every state. States that take the opposite view stress the fact that the attorney general is the chief legal officer of the state and the legal adviser for state officers and agencies. In *State ex rel. Johnson v. Baker*[19] the court stated, "[I]f such officers may disregard the provision made by the legislature for obtaining advice from the attorney general on constitutional questions and presume to pass upon such questions themselves, they will supplant that officer." After observing that many public officials are not lawyers, the Oklahoma Supreme Court held that an attorney general opinion was binding on the officials affected by it. In *Grand River Dam Authority v. State*[20] the Court determined that "an official who has sought

13 Idaho Code § 67-1401(6).
14 N.D.Cent.Code § 54-12-01;Wash. Rev. Code Ann § 3.10.030(10).
15 15 Ill. Comp. Stat. 205/4(11).
16 Idaho Code § 67-1401(6); Tenn. Code Ann. § 8-6-109(b)(6).
17 7 Am. Jur. 2d *Attorney General* § 11 at 14 (1997).
18 *Follmer v. State*, 142 N.W. 908, 910 (Neb. 1913).
19 21 N.W.2d 355, 372 (Neb. 1945).
20 645 P.2d 1011, 1016 (Okla.1982).

an opinion from the attorney general should, even though not compelled to do so by statute, follow the advice which is given to him." A similar view is found in *Cummings v. Beeler*,[21] which concerned the constitutionality of a Tennessee law requiring the expenditure of funds. The attorney general of Tennessee had issued an opinion that the law was unconstitutional. The Tennessee Supreme Court did not speak in terms of whether state officials are bound by the attorney general's opinion. Rather, the Court spoke in terms of duty:

> State officials are presumed to do their duty and we feel sure and have no hesitancy in saying that they will and do do their duty as they see it. Would it not be the duty of the Comptroller to refuse to approve these warrants when he knows that his official legal advisor has held that the act under which these warrants were to be issued was illegal, invalid and unconstitutional?[22]

Only a few state statutes have made the attorney general's opinion binding on state agencies.[23] In some states, acting in accord with the opinion of the attorney general grants a state official immunity. A Mississippi statute declares:

> there shall be no liability, civil or criminal, accruing to or against any such officer, board, commission, department or person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support.[24]

Similarly, the North Dakota Supreme Court has said that if officials follow the attorney general's opinion, "they will perform their duty, and even though the opinion thus given them be later held to be erroneous, they will be protected by it. If they do not follow this course, they will be derelict to their duty and act at

21 *Cummings v. Beeler,* 223 S.W.2d 913 (Tenn. 1949).

22 223 S.W.2d at 916.

23 *In re I/M/O Town of Harrison and Fraternal Order of Police, Lodge No. 116*, 440 N.J. Super. 268 (App.Div. Apr. 15, 2015) (opinions are binding on state agencies and officers); *Michigan Beer & Wine Wholesalers Ass'n v. Attorney Gen.,* 370 N.W.2d 328 (Mich. Ct. App. 1985) (same); 71 Pa. Cons. Stat. § 732-204 (opinion binding on state agencies, excepting governor).

24 Miss. Code Ann. § 7-5-25. *See also* Ala. Code § 36-15-19; Ariz. Rev. Stat. Ann. § 38-446; 71 Pa. Cons. Stat. § 732-204.

their peril."[25] Officers should have a right to rely on the attorney general's opinion "as he is the officer designated by law to render such service for their guidance and protection."[26]

Challenges to Attorney General Opinions

Because in many states, attorney general opinions are not binding on the courts or on the state officers receiving the opinion, they are not subject to challenge in the courts in those states. For example, plaintiffs in a Tennessee case sought to remove a peace officer because he had been convicted of criminal contempt. The attorney general had issued an opinion that such convictions were not offenses that required removal from office under the relevant statutes. Plaintiffs sought a declaratory judgment. Tennessee law allows parties to seek declaratory judgment against the state when their rights are affected by "a statute, municipal ordinance, contract, or franchise." The court held that attorney general opinions are advisory, do not carry the weight of law, and are thus not similar to the legal rulings outlined in the statute. The court also determined that in Tennessee there is "no cause of action under which a party can sue the attorney general on the basis of disagreement with an opinion issued by the attorney general."[27]

Similarly, Arizona voters unhappy with the attorney general's opinion on the interpretation of immigration legislation filed a mandamus action against the attorney general, alleging that he had abused his discretion by issuing an erroneous legal opinion. The court of appeals first described the difference between the function of courts, to "declare the existing law" and the function of the attorney general, "not to decide what the law is but merely opine about the law." Because of this difference, permitting *mandamus* actions in this situation would "be an inappropriate usurpation by the courts of responsibility assigned to the attorney general and, in our view, a violation of the separation of powers."

The plaintiffs also asked the court to direct the attorney general to withdraw his opinion. The court declined to do so, because a mandamus action can

25 *State ex rel. Johnson v. Baker*, 21 N.W.2d at 364 (N.D. 1945). The North Dakota Supreme Court has also held that attorney general opinions "guide state officers until superseded by judicial opinions." *Werlinger v. Champion Healthcare Corp., 1999 ND 173* N.D. 1999).

26 *State ex rel. Moltzner v. Mott*, 97 P.2d 950, 954 (Or. 1940).

27 *State ex rel. Deselm v. Tennessee Peace Officers Standards Commission,* 2008 Tenn. App. LEXIS 625 (Tenn. Ct. App. 2008).

only compel an action that an official is required to perform. There is no state constitutional or statutory obligation on the part of the attorney general to withdraw an opinion.[28]

On the other hand, California courts allow a challenge to an attorney general opinion by a petition for extraordinary writ. This proceeding is available because the attorney general's opinion is given great weight by the courts, and because the state agency to whom the opinion was issued was acting in accordance with the opinion and in violation of the state constitution. Because declaratory actions and/or a test case would take too long, the court held that the extraordinary writ was the appropriate means to challenge the attorney general's opinion.[29]

In Oklahoma, a writ of mandamus is not appropriate to compel the attorney general to revise or withdraw an opinion, although it may be appropriate to require him to issue an opinion:

> Mandamus will lie to compel the Attorney General to exercise his discretion, but it does not lie to control his action regarding matters within his discretion, unless his discretion has been clearly abused. . . . A difference of opinion is not an abuse of discretion. Where there is room for two opinions, the action is not arbitrary or capricious when it is exercised honestly upon due consideration even though it may be believed that an erroneous conclusion has been reached.[30]

However, the Oklahoma Supreme Court has held that attorney general opinions, if followed by the administrative agency, become *de facto* rules, and may therefore be challenged under the state's Administrative Procedures Act.[31]

Parties challenging the attorney general's opinion have used the fact that state officers relying on the opinion are protected from liability as an argument supporting a judicial order to withdraw the opinion. For example, in an Arizona case, plaintiffs argued that the opinion should be withdrawn because an attorney general's opinion would provide immunity from criminal liability to any state

28 *Yes on Prop 200 v. Napolitano*, 160 P.3d 1216 (Ariz. App. Div. 1, 2007); s*ee also, O'Neal v. Board of Chiropractic Examiners,* 2004 Tex. App. LEXIS 8254 (Tex. App. Ct. 2004).

29 *Planned Parenthood Affiliates of California v. Van de Kamp*, 181 Cal. App. 3d 245 (Cal. Ct. App. 1986).

30 *Oklahoma City News Broadcasters Association v. Nigh*, 683 P.2d 72 (Okla. 1984).

31 *Independent School District No. I-20 of Muskogee County v. Oklahoma State Dept. of Educ.,* 65 P.3d 612 (Okla. 2003).

employee who complied with the attorney general's opinion. The court noted that protection from liability is only available if the government official acts "in good faith" and if there were a judicial decision that rejected the attorney general's opinion, there could be no reliance on it.[32]

Attorney General Opinions and the Courts

The giving of advisory opinions is an executive, rather than a judicial function.[33] Attorney general opinions are not binding on courts[34] because they are "neither statutes nor municipal ordinances, [and] do not carry the weight of law."[35] How they are treated, however, varies with the state and with the circumstances. They are frequently given a certain level of respect by the courts which is phrased in many different ways, such as "entitled to respect,"[36] "given respectful attention,[37]" "entitled to considerable deference,"[38] entitled to considerable weight,"[39] "persuasive,"[40] or "instructive."[41] The Washington Supreme Court articulated three reasons for giving weight to attorney general opinions:

> First, such opinions represent the considered legal opinion of the constitutionally designated "legal adviser of the state officers." Second, we presume that the legislature is aware of formal opinions issued by the attorney general and a failure to amend the statute in response to the formal opinion may, in appropriate circumstances, be treated as a form of legislative acquiescence in that interpretation. The weight of this factor increases over time and decreases where the opinion is inconsistent with previous formal opinions,

32 *Yes on Prop 200 v. Napolitano*, 160 P.3d 1216 (Ariz. App. Div. 1, 2007).

33 *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 885 (Kan. 2008).

34 7 Am. Jur. 2d *Attorney General* § 11 and cases cited therein; *State v. Black,* 897 S.W.2d 680, 683 (Tenn. 1995).

35 *City of Cleveland v. Bradley County*, 1999 Tenn. App. LEXIS 261, (Tenn. Ct. App. Apr. 16, 1999).

36 *North Dakota Fair Housing Council, Inc. v. Peterson*, 625 N.W.2d 551, 557-58 (N.D. 2001), quoting *North Dakota Fair Housing Council, Inc. v. Haider*, No. A1-98-077 (D.N.D. 1999).

37 *Schwartzenberger v. McKenzie County Board of County Comm'rs, 2017 ND 211 (N.D. 2017).*

38 *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1985).

39 *Burris v. White*, 232 Ill. 2d 1, 8, 901 N.E. 2d 895, 899 (Ill. 2009).

40 *Whaley v. Holly Hills Mem. Park, Inc*., 490 S.W.2d 532, 533 (Tenn. Ct. App. 1972).

41 *Abrahamson v. St. Louis County Sch. Dist.*, 802 N.W.2d 393, 401 (Minn. Ct. App. 2011).

> administrative interpretations, or court opinions. Third, where the opinion is issued in close temporal proximity to the passage of the statute in question, it may shed light on the intent of the legislature, keeping in mind, of course, that the attorney general is a member of a separate branch of government.[42]

As described in the Washington Supreme Court's opinion, the particular circumstances can affect how an attorney general opinion is viewed. For example, it has been said that administrative interpretations of statutes made pursuant to attorney general opinions are entitled to great weight in statutory interpretation cases.[43] Similarly, "opinions of the Attorney General are entitled to great weight when the legislature has failed over a long period of time to make any change in the statute. Such failure is some indication of an acquiescence by the legislature to … the opinion of the Attorney General."[44] In other words, a court "may give additional weight to an attorney general's opinion implicitly approved by the Legislature."[45] In a decision in Wisconsin, the state supreme court further refined this idea: "[S]tatutory interpretation by the Attorney General is accorded even greater weight, and is regarded as presumptively correct, when the legislature later amends the statute but makes no changes in response to the attorney general's opinion."[46]

Other criteria cited by courts for stronger reliance on attorney general opinions include the consistency of Attorney General opinions over time,[47] the

42 *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308 (Wash. 2011).

43 *Coble Systems, Inc. v. Armstrong*, 660 S.W.2d 802 (Tenn. Ct. App. 1983).

44 *Pub. Serv. Comm'n v. Formal Complaint of WWZ, Co.*, 641 P.2d 183, 186 (Wyo. 1982). *See, also Gomez v. Jackson Hewitt, Inc*., 427 Md. 128 (Md. 2012) ("The Legislature is presumed to be aware of the Attorney General's statutory interpretation and, in the absence of enacting any change to the statutory language, to acquiesce in the Attorney General's construction."); *Napa Valley Educators' Ass'n v. Napa Valley Unified School Dist*., 194 Cal. App. 3d 243, 251 (Cal. Ct. App. 1987) (Opinions entitled to great weight and in the absence of controlling authority, are persuasive 'since the legislature is presumed to be cognizant of that construction of the statute.')

45 *Hilton v. North Dakota Education Ass'n*, 655 N.W.2d 60, 65 (N.D. 2002). *See also Travis v. Board of Trustees of California State University*, 161 Cal. App. 4th 335, 345 (Cal. App. 2d Dist. 2008) ("Those opinions, while not binding on us, are entitled to great weight, especially when the Legislature either amends a statute to conform to such an opinion, or fails to pass an amendment that is contrary to an earlier Attorney General's opinion.")

46 *Schill v. Wis. Rapids Sch. Dist.,* 2010 WI 86, P126 (Wis. 2010) (internal quotations omitted).

47 *Browning v. Fla. Prosecuting Attys. Ass'n,* 56 So. 3d 873, 876 (Fla. Dist. Ct. App. 1st Dist. 2011) (fact that two different attorneys general have reached the same conclusion with respect to the exact issue lends "considerable persuasive influence to their opinions and weighs heavily in favor of our conclusion herein.").

fact that it is an opinion of long standing[48] or "no clear case authority exists and the factual context of the opinions is closely parallel to that under review.[49]

On the other hand, a Missouri case held that the attorney general's opinion was entitled to no more weight than the opinion of any other competent attorney.[50]

Perhaps the most accurate expression of the value of an attorney general's opinion to a court has been provided by the New Mexico Supreme Court, which said, "If we think them right, we follow and approve, and if convinced they are wrong . . . we reject and decline to feel ourselves bound."[51]

48 *Minn. Voters Alliance v. Anoka-Hennepin Sch. Dist.*, 868 N.W.2d 703 (Minn. Ct. App. 2015).

49 *Orange County Water Dist. v. Public Employment Relations Bd.*, 8 Cal. App. 5th 52 (Cal. App. 4th Dist. 2017).

50 *Gershman Investment Corp. v. Danforth*, 517 S.W.2d 33 (Mo. 1974).

51 *First Thrift & Loan Ass'n v. State of New Mexico ex rel. Robinson*, 304 P.2d 582, 588 (N.M. 1956). See *also, De La Trinidad v. Capitol Indem. Corp.*, 2009 WI 8, P16 (Wis. 2009) ("An Attorney General's opinion is only entitled to such persuasive effect as the court deems the opinion warrants.")