

§ 114-2.3. Use of private counsel limited.

(a) Every agency, institution, department, bureau, board, or commission of the State, authorized by law to retain private counsel, shall obtain written permission from the Attorney General prior to employing private counsel. This section does not apply to counties, cities, towns, other municipal corporations or political subdivisions of the State, or any agencies of these municipal corporations or political subdivisions, or to county or city boards of education.

(b) Article 2A of this Chapter applies to any contract to retain private counsel authorized by the Attorney General under this section. (1985, c. 479, s. 135; 2014-110, s. 1.2.)

§ 120-32.6. Certain employment authority.

(a) Use of Private Counsel. – G.S. 114-2.3 and G.S. 147-17 (a) through (c) shall not apply to the General Assembly.

(b) General Assembly as Client of Attorney General by Operation of Law. – Whenever the validity or constitutionality of an act of the General Assembly or a provision of the Constitution of North Carolina is the subject of an action in any court, if the General Assembly hires outside counsel to represent the General Assembly in connection with that action, the General Assembly shall also be deemed to be a client of the Attorney General for purposes of that action as a matter of law. Nothing herein shall (i) impair or interfere with the rights of other named parties to appear in and to be represented by the Attorney General or outside counsel as authorized by law or (ii) impair the right of the Governor to employ counsel on behalf of the State pursuant to G.S. 147-17.

(c) General Assembly Counsel Shall Be Lead Counsel. – In those instances when the General Assembly employs counsel in addition to or other than the Attorney General, the Speaker of the House of Representatives and the President Pro Tempore of the Senate may jointly designate the counsel employed by the General Assembly as lead counsel for the General Assembly. The lead counsel so designated shall possess final decision-making authority with respect to the representation, counsel, or service for the General Assembly. Other counsel for the General Assembly shall, consistent with the Rules of Professional Conduct, cooperate with such designated lead counsel.

(d) The rights provided by this section shall be supplemental to those provided by any other provision of law. (2006-201, s. 3; 2011-145, s. 22.5; 2014-100, s. 17.3A(a).)

§ 147-17. May employ counsel in cases wherein State is interested.

(a) No department, officer, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except with the approval of the Governor. The Governor shall give his approval only if the Attorney General has advised him, as provided in subsection (b) of this section, that it is impracticable for the Attorney General to render the legal services. In any case or proceeding, civil or criminal, in or before any court or agency of this State or any other state or the United States, or in any other matter in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and may fix the compensation for their services.

(b) The Attorney General shall be counsel for all departments, officers, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Whenever the Attorney General shall advise the Governor that it is impracticable for him to render legal services to any State agency, officer, institution, commission, bureau or other organized activity, or to defend a State employee or former employee as authorized by Article 31A of Chapter 143 of the General Statutes, the Governor may authorize the employment of such counsel, as in his judgment, should be employed to render such services, and may fix the compensation for their services.

(c) The Governor may direct that the compensation fixed under this section for special counsel shall be paid out of appropriations or other funds credited to the appropriate department, agency, institution, commission, bureau, or other organized activity of the State or out of the Contingency and Emergency Fund.

(d) In those instances when a department, officer, agency, institution, commission, bureau, or other organized activity of the State which receives support in whole or in part from the State shall employ counsel other than the Attorney General as permitted by law, such employed counsel shall allocate authority between counsel and the State client in conformance with Rule 1.2 of the North Carolina Rules of Professional Conduct. In those instances where more than one counsel is providing legal representation, counsel, or service on a legal matter on behalf of a State client, the client shall designate in writing which of its legal counsel possesses final decision-making authority on behalf of the State client, and other co-counsel shall, consistent with the Rules of Professional Conduct, cooperate with such designated lead counsel. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C.S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009; 1967, c. 1092, s. 2; 1985, c. 479, s. 136; 2011-145, s. 22.4.)