

MEMORANDUM

To: Attorney General Butterworth  
From: Opinions Division  
Re: Common Law Powers of Attorney General  
Date: May 5, 1999

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The courts of this state have recognized that the Attorney General possesses broad common law powers in addition to those prescribed by statute. Among these powers are the authority to prosecute all actions necessary for the protection and defense of the property and revenue of the state. As chief law officer of the state, it is his duty to exercise all such power and authority as public interest may require. See, e.g., *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891 (Fla. 1972) (Ervin, J., concurring); *State ex rel. Landis v. Kress*, 155 So. 2d 823, 827 (Fla. 1934).

This authority includes the initiation of lawsuits in both state and federal court to protect the public interest. See, e.g., *State ex rel. Davis v. Love*, 126 So. 374 (Fla. 1930); and *State ex rel. Shevin v. Exxon Corporation*, 526 F.2d 266 (5th Cir. 1976), in which the court upheld the Florida Attorney General's right under the common law to institute a suit under federal law without specific authorization of the individual governmental entities which allegedly had sustained a legal injury.

The authority of the Attorney General to challenge the constitutionality of a statute has also been recognized as a common law power. See, e.g., *State ex rel. Crim v. Juvenal*, 159 So. 663 (Fla. 1935); and *State ex rel. Landis v. Kress*, 155 So. 823, 827 (Fla. 1934), in which the court stated that the rule that a person not affected by a statute cannot challenge its constitutionality did not apply to the Attorney General who was acting in the public interest. The Attorney General, however, must be acting on behalf of the public at large, or a significant portion thereof, in order to challenge the constitutionality of a statute. For example, *State ex rel. Watson v. Kirkman*, 27 So. 2d 610 (Fla. 1946), in which the court held that the Attorney General did not have the authority to challenge the constitutionality of a statute establishing a highway patrol pension fund when he was not representing the public at large or a significant portion of the public but rather a small group of individuals.

Attached are some of the more significant cases discussing this issue.