

(As of February 20, 2001)

Section 8-104. Powers, Duties and Functions³² --

The prosecuting attorney shall:

(a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city.³³

(b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state.³⁴

(c) Appear in every criminal case where there is a change of venue from the courts in the city and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the city.

(d) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges either in person or by a deputy or by such other prosecuting officer or in such other manner as the prosecuting attorney shall designate with approval of the district court or in accordance with statute; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration;³⁵ and investigate all matters which may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.³⁶

(Reso. 78-279, 83-357 and 84-197)

³²Subpoena powers of prosecuting attorney are a matter of statewide concern and are limited to those authorized in HRS Section 28-2.5. Marsland v. First Hawaiian Bank, 70 Haw. 126, 764 P.2d 1228 (1988).

³³Prosecuting attorney is not authorized by law to bring a civil action to abate a nuisance. Marsland v. Pang, 5 Haw. App. 463, 701 P.2d 175 (1985).

³⁴The phrase "under the authority of the attorney general" is a recognition of the attorney general's status as the State's chief law enforcement officer and cannot sensibly be construed as a reservation of power to usurp, at the attorney general's sole discretion, the functions of the public prosecutor. The attorney general may supersede the public prosecutor in the event of serious dereliction of duty to act or in the unusual case of serious impropriety should the prosecutor choose to act. Amemiya v. Sapienza, 63 Haw. 424, 629 P.2d 1126 (1981).

³⁵The term "attend before and give advice to the grand jury" merely describes a general function and does not affect the manner in which the grand jury investigatory and indictment process is to be conducted, or require instruction on such items as the availability of defenses. State v. Freedle, 1 Haw. App. 396, 620 P.2d 740 (1980). See also State v. Bell, 60 Haw. 241, 589 P.2d 517 (1978).

³⁶Private counsel retained by prosecuting attorney may be supervised by a duly appointed deputy. Okuda v. Ching, 71 Haw. 140, 785 P.2d 943 (1990).