



## Ohio Revised Code

### Section 109.362 Investigation as to whether action was manifestly outside scope of duties or with malicious purpose or in bad faith.

Effective: March 13, 1980

Legislation: Senate Bill 76 - 113th General Assembly

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(A) Prior to undertaking any defense under section 109.361 of the Revised Code, the attorney general shall conduct an investigation of the facts to determine whether the requirements of this section have been met. If the attorney general determines that any officer who holds an elective state office was acting manifestly outside the scope of his official responsibilities or that any other officer or employee was acting manifestly outside the scope of his employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner, the attorney general shall not represent and defend the officer or employee. An initial determination to represent and defend the officer or employee does not prohibit a later determination that the requirements of this section have not been met.

(B) The attorney general shall also deny a request for representation upon a determination that the requesting officer or employee is covered by a policy of insurance purchased by the state requiring the insurer to provide counsel in the action and that the amount of the claim against the officer or employee is not in excess of the amount of coverage under the policy of insurance. If the amount of the claim against the officer or employee is in excess of the amount of coverage under the policy of insurance, the state is not the plaintiff, and the officer or employee is not otherwise prohibited by this section from being represented and defended by the attorney general, the attorney general shall represent and defend the officer or employee for the amount of the claim in excess of the amount of coverage.

(C) If the attorney general denies representation to an employee or officer who makes a request in accordance with the provisions of section 109.361 of the Revised Code, the attorney general shall notify the requesting officer or employee in writing of the denial setting forth the reasons for the denial within a reasonable time after the attorney general's receipt of the written request from the officer or employee.