



HANDBOOK

Ohio County Commissioners

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CHAPTER 5

LEGAL REPRESENTATION

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5.01 PROSECUTING ATTORNEY AS CHIEF LEGAL ADVISOR - ORC 309.09

While the public generally identifies the county prosecuting attorney as primarily responsible for presenting cases of individuals charged with violations of state law, from the perspective of county commissioners his civil responsibilities are extremely important. The prosecuting attorney, by statute, is the legal advisor to all county elected officials, county boards, the county board of elections, tax-supported public libraries, and township officers, boards and commissions, unless the township has adopted a limited home rule form of government under Chapter 504 of the Ohio Revised Code (ORC) and has not contracted with the prosecuting attorney to provide legal services to the township. In this instance, the township law director serves as the chief legal advisor to the limited home rule township.

It is also the prosecuting attorney's duty to prosecute and defend all suits and actions that the county commissioners direct as a board or to which the board of county commissioners is a party.

Numerous exceptions have been noted over the years to the prosecuting attorney's general mandate to act as legal advisor to county boards and offices. The prosecuting attorney has not been required by the attorney general, through the issuance of opinions, to represent the following agencies:

1. A single county or multi-county regional planning commission (OAG 58-2736 and 61-2383).

2. A joint county airport facility (OAG 63-95).
3. A joint vocational school district (OAG 64-1523).
4. A joint county community mental health board (OAG 75-014).
5. A multi-county felony bureau (OAG 79-109).
6. A joint board of county commissioners created to construct and maintain a multi-county program for the training and treatment of juveniles (OAG 83-064).
7. A county wide emergency management agency (OAG 90-107).
8. A regional sewer and water district (OAG 90-073).
9. A regional transit authority (OAG 94-082).
10. A joint ambulance district created under ORC 505.71 (OAG 94-035).
11. Township zoning commissions and township boards of zoning appeals (OAG 92-080, 98-025).
12. Joint solid waste management districts (OAG 89-102).
13. Board of governors of a joint township hospital district (OAG 2001-028).
14. A non-profit corporation recognized by a board of commissioners as a county convention and visitors bureau and that receives public funds (OAG 99-028).
15. A private entity with which a county official or entity does business (OAG 2000-008).
16. A joint fire district organized under ORC 505.37 and 505.371.
17. A regional civil defense organization created under ORC 5915.07.

5.02 PROSECUTING ATTORNEY AND BOARD OF PARK COMMISSIONERS - ORC 309.09 (D)

The ORC contains specific legal authority for the prosecuting attorney and a board of county commissioners to contract jointly for the prosecuting attorney to provide legal services to board of commissioners of a park district under Sections 309.09 and 1545.07. IF a contract is entered into, all monies received pursuant to the contract must be deposited into a newly-created fund called the prosecuting attorney's legal service

fund. Monies in that fund may be sued only for the purpose of providing legal service to the board of park commissioners as provided in the contract.

5.03 APPOINTMENT OF OTHER LEGAL COUNSEL WITH APPROVAL OF COURT - ORC 305.14

County commissioners may employ legal counsel or an attorney other than the county prosecuting attorney at the expense of the county with approval of the court of common pleas, upon the application of the prosecuting attorney and the county commissioners. A joint application to the court is required except where the prosecuting attorney has a conflict of interest and refuses to participate in making application to the court (*State ex rel. Corrigan v Seminatore 10 00 3d 388*).

The court may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county board or officer in any matter of public business. A certificate that the money is in the treasury is not necessary for the appointment or employment of additional legal counsel (ORC 305.14).

There is no requirement that the application to the court be made before counsel has been hired and work commenced (OAG 80-076). However, in such cases the court of common pleas still has nearly total discretion in granting the application. Therefore, great care should be taken before the county takes such action.

Notwithstanding the requirement in ORC 305.14 (A) for a prosecuting attorney and a board of county commissioners to seek jointly the approval of the court of common pleas when hiring additional legal counsel, a county board of mental retardation and developmental disabilities (MR/DD) or a public children's service agency (PCSA) may employ legal counsel without the authorization of the court of common pleas. However, an MR/DD board or a public children's service agency must seek the written consent of the prosecuting attorney before doing so, except if the case involves a conflict of interest for the prosecuting attorney. In that instance, the prosecuting attorney must notify the MR/DD board, which may then employ legal counsel without further permission from any other authority. If a PCSA receives money from a county general fund, it must obtain the permission of the board of county commissioners before employing legal counsel (ORC 305.14 (D)(2)).

5.04 APPOINTMENT OF LEGAL COUNSEL WITHOUT COURT APPROVAL - ORC 305.14 (B) AND 309.09 (C)

In addition to the appointment of additional legal counsel as outlined above, ORC Sections 305.14 (B) and 309.09 (C) allow a board of county commissioners to retain counsel without the approval of the court of common pleas. In order to exercise this authority, the following requirements apply:

1. The board may employ legal counsel to represent the board in any matter of public business that comes before it and in the prosecution or defense of any action in which it is a party or has an interest.
2. The board may employ an attorney without approval of the court of common pleas either on an annual basis or concerning a specific matter.
3. If the board employs an attorney without the authorization of the court of common pleas, it must adopt a resolution fixing the annual compensation for legal counsel.

Except for legal services provided to the board of a solid waste management district, when the board retains legal services without authorization of the court of common pleas, there is a limitation on the amount any board can spend in any given year for such services. The total compensation that can be spent in any year for either a staff attorney and for other attorneys to represent the board on particular cases cannot exceed the total annual compensation of the prosecuting attorney.

In the case of a solid waste management district, a board may retain legal counsel on an annual basis or on a particular matter without authorization of the common pleas court and with no limit on the amount that may be spent on outside counsel. See Chapter 32 and ORC 343.01.

5.05 DUTIES OF THE PROSECUTING ATTORNEY

The statutes make it clear that the board of county commissioners may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties, and may also require the prosecutor to prosecute and defend all suits and actions they direct or to which they are a party.

It should be noted that it is not part of the prosecuting attorney's duty to direct the county commissioners concerning the policy to be pursued by them in any transaction. It is his duty to advise them as to what their legal rights and duties are as county commissioners; having done this, it is for the commissioners to determine the policy they will pursue in the matter of bringing or defending actions, or settling actions already brought.