



Commissioners Handbook

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Chapter 5: Legal Representation

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1 Prosecuting Attorney as Chief Legal Advisor – R.C. 309.09

While the criminal duties of the County Prosecuting Attorney are most apparent to members of the public, the civil duties of the office are extremely important to county commissioners. 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 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.

Furthermore, the prosecuting attorney has the permissive authority to contract with other entities for legal services, subject to approval from the board of commissioners (these entities are discussed in the next section). That being said, the prosecuting attorney **has not been required** by statute or the attorney general, through the issuance of opinions, to represent the following agencies/entities:

1. A single county or multi-county regional planning commission (OAG 58-2736 & OAG 61-2383).
2. A joint county airport facility (OAG 63-95).
3. A joint vocational school district (OAG 80-064).
4. A joint county community mental health board (OAG 75-014).

5. A multi-county felony bureau (OAG 79-019).
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 R.C. 505.71 (OAG 2018-020).
11. Township zoning commissions and township boards of zoning appeals (OAG 92-080 & OAG 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 R.C. 505.37 and R.C. 505.371.

2 Prosecuting Attorney and Other Local Government Entities – R.C. 309.09 (D-L)

While the R.C. does not mandate that the prosecuting attorney provide legal services to the entities above, the prosecuting attorney has the permissive authority to contact for legal services with some of the entities listed above as well as others enumerated in the code. The contract between the prosecuting attorney and the local government entity is discretionary and subject to approval by the board of commissioners. The prosecuting attorney may provide legal services for the following entities:

1. A board of park commissioners organized under R.C. 1545.07.
2. A joint fire district organized under R.C. 505.371.
3. A joint ambulance district organized under R.C. 505.71.
4. A joint medical services district organized under R.C. 307.052.
5. A fire and ambulance district organized under R.C. 505.375.
6. A board of trustees of a regional airport authority created under Chapter 308.
7. A regional planning commission organized under R.C. 713.21.
8. A regional council of governments created under Chapter 167.

9. A metropolitan planning organization.

If a contract is entered into with one of the aforementioned entities, all monies received pursuant to the contract must be deposited into the prosecuting attorney's legal service fund, which shall be established in the county treasury of each county in which such a contract exists (R.C. 309.09(M)). Monies in that fund may be used only for the purpose of providing legal services to the local government entities as provided in the contract.

3 Employment of Legal Counsel, Generally – R.C. 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 for instances 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*, 66 Ohio St. 2d 459, 423 N.E.2d 105).

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 (R.C. 305.14(A)).

There is no requirement that the application to the court be made before counsel has been hired and work commenced (OAG 88-055). 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 R.C. 305.14(A) for a prosecuting attorney and a board of county commissioners to jointly seek the approval of the court of common pleas when hiring additional legal counsel, a county board of developmental disabilities (DD) or a public children's service agency (PCSA) may employ legal counsel without the authorization of the court of common pleas.

However, a DD board or a PCSA 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 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 R.C. 305.14(D)(1-2).

4 Employment of Legal Counsel Without Court Approval – R.C. 305.14(B) & R.C. 309.09(C)

In addition to the appointment of additional legal counsel as outlined in the prior section, R.C. 305.14(B) and R.C. 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 Commissioners Handbook Chapter 32 and R.C. 343.01(E)(1).

5 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 a 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.