October 29, 1996

OPINION NO. 96-054

The Honorable Greg Carroll
Adams County Prosecuting Attorney
Room 112, Courthouse
West Union, Ohio 45693

Dear Prosecutor Carroll:

You have requested an opinion concerning the collection of delinquent real property taxes. Information provided indicates that the county treasurer would like to retain the services of a private attorney to collect delinquent real property taxes. The attorney would not be an employee of the county treasurer, but rather an independent contractor. As such, the county treasurer would pay the attorney a predetermined fee for each delinquent real property tax collected. In order to pay the attorney, the county treasurer would collect the legal fee of the attorney from the delinquent taxpayer. The collected legal fee would be deposited in the delinquent tax and assessment collection fund created pursuant to R.C. 321.261 and disbursed to the attorney. In light of the proposed arrangement between the county treasurer and the private attorney, you have requested a formal opinion that addresses the following issues:

1. May the county treasurer retain the services of a private attorney to collect delinquent real property taxes?

2. May the county treasurer assess and collect from a delinquent taxpayer the legal fee of a private attorney retained by the county treasurer to collect delinquent real property taxes from the taxpayer?

3. If the county treasurer may assess and collect from a delinquent taxpayer the legal fee of a private attorney retained by the county treasurer to collect delinquent real property taxes from the taxpayer, may the county treasurer deposit the legal fee in the delinquent tax and assessment collection fund created pursuant to R.C. 321.261?

In order to address your specific concerns, it is helpful to examine the statutory scheme governing the provision of legal counsel for county officers. Pursuant to R.C. 309.09(A), the county

prosecuting attorney is legal counsel for the board of county commissioners and all other county officers and boards. This section provides, in part:

> The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and *all other county officers* and boards, including all tax-supported public libraries, and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties. The prosecuting attorney shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and *no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code.* (Emphasis added.)

Accordingly, except as provided in R.C. 305.14, a county treasurer, as a county officer, is prohibited from employing any attorney other than the county prosecuting attorney. 1963 Op. Att'y Gen. No. 285, p. 349; *see State ex rel. Jefferson County Children Serv. Bd. v. Hallock*, 28 Ohio St. 3d 179, 502 N.E.2d 1036 (1986); *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981); 1983 Op. Att'y Gen. No. 83-078.

The exception provided for in R.C. 309.09(A), R.C. 305.14, states, in part:

> (A) The court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity.

Pursuant to R.C. 305.17, the compensation paid to legal counsel employed under R.C. 305.14 to assist a county officer must be fixed by the board of county commissioners and paid from the county treasury upon the allowance of the board.

The General Assembly has thus prescribed the specific means by which a county treasurer may employ and compensate an attorney other than county prosecuting attorney. In this regard, I note that 1963 Op. Att'y Gen. No. 285, p. 349, 350-51 examined the provisions of R.C. 309.09, R.C. 305.14, and R.C. 305.17 and summarized the authority of the county treasurer to employ an attorney other than the county prosecuting attorney in the collection of delinquent personal property taxes, as follows:

> Section 5719.08, Revised Code, requires the county treasurer to enforce the collection of delinquent taxes by a civil action in the name of the treasurer for the recovery of such unpaid taxes. Section 309.09, Revised Code, provides that the prosecuting attorney shall be the legal adviser to all county officers and requires the prosecuting attorney to prosecute and defend all suits in which such officer is a party. This same section further provides that no county officer may employ any other

> counsel at the expense of the county except as provided in Section 305.14, Revised Code....
> *There are no other provisions of the law which would enable the county treasurer to engage counsel for the purpose of enforcing the collection of delinquent taxes.* Section 305.17, Revised Code, provides that the board of county commissioners shall fix the compensation of legal counsel employed pursuant to Section 305.14, Revised Code, and that compensation for such services shall be paid from the county treasury upon the allowance of the board.
> *The county treasurer may therefore employ ... attorneys for the purpose of enforcing the collection of delinquent taxes when so authorized pursuant to [Section] ... 305.14, Revised Code....* (Emphasis added.)

1963 Op. Att'y Gen. No. 285 thus found that, absent a provision of law enabling the county treasurer to engage an attorney to collect delinquent personal property taxes, a county treasurer may employ an attorney to collect such taxes only in accordance with the provisions of R.C. 305.14, and R.C. 305.17 requires the compensation of the attorney be fixed by the board of county commissioners and paid out of the county treasury.

I turn now to the first issue — that is, whether the county treasurer may retain the services of a private attorney to collect delinquent real property taxes. "It is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner." 1984 Op. Att'y Gen. No. 84-050 at 2-168; *accord Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951); *City of Cincinnati v. Roettinger*, 105 Ohio St. 145, 152, 137 N.E. 6, 8 (1922). As stated above, the General Assembly through the enactment of R.C. 309.09 and R.C. 305.14 has legislatively determined the manner by which a county treasurer may retain the services of an attorney other than the county prosecuting attorney. *See* 1963 Op. Att'y Gen. No. 285. According to the provisions of these sections, a court of common pleas, upon the application of the county prosecuting attorney and the board of county commissioners, may authorize the board of county commissioners to employ an attorney to act on behalf of the county treasurer. Thus, only a board of county commissioners is authorized to employ an attorney to act on behalf of the county treasurer in the collection of delinquent real property taxes.

Neither R.C. 309.09 nor R.C. 305.14 authorizes a county treasurer to procure the services of a private attorney to act on his behalf in the collection of delinquent real property taxes. Since the provisions of R.C. 309.09 and R.C. 305.14 do not permit a county treasurer to retain the services of a private attorney to collect delinquent real property taxes, the hiring of such an attorney by the county treasurer would be different than that set out in R.C. 309.09 and R.C. 305.14 and is therefore impermissible. *See, e.g.*, 1995 Op. Att'y Gen. No. 95-028 at 2-143 ("[t]he fact that there is a statutory procedure in place for reimbursement of the costs of a person's confinement in the county jail, *i.e.*, R.C. 341.19 and R.C. 2929.15, suggests that the General Assembly intends that scheme to be the only manner in which the county may recover such costs"); 1987 Op. Att'y Gen. No. 87-050 (determining that a statute that permits township trustees to sell by public auction township property that it finds, by resolution, that it does not need does not permit the sale of such property by any

method other than by public auction). Accordingly, a county treasurer may not retain the services of a private attorney to collect delinquent real property taxes.

The remaining issues raised in your request letter concern whether the county treasurer may assess and collect from a delinquent taxpayer the legal fee of a private attorney retained by the county treasurer to collect delinquent real property taxes from the taxpayer and whether the county treasurer may deposit that legal fee in the delinquent tax and assessment collection fund created pursuant to R.C. 321.261. Because a county treasurer is not permitted to retain the services of a private attorney to collect delinquent real property taxes, it is unnecessary for me to answer the additional issues you have raised.

Based on the foregoing, it is my opinion and you are advised that a county treasurer may not retain the services of a private attorney to collect delinquent real property taxes.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

October 29, 1996

The Honorable Greg Carroll
Adams County Prosecuting Attorney
Room 112, Courthouse
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SYLLABUS: 96-054

A county treasurer may not retain the services of a private attorney to collect delinquent real property taxes.