December 2, 1993

OPINION NO. 93-050

Arnold R. Tompkins, Director
Ohio Department of Human Services
30 East Broad Street
Columbus, Ohio 43266-0423

Dear Director Tompkins:

Your predecessor requested an opinion regarding the authority of the county prosecutor pursuant to R.C. 309.09 to act as legal adviser to a local cluster established by the county pursuant to R.C. 121.37.

R.C. 121.37 Requires Each County to Establish a Local Cluster for Services to Youth

R.C. 121.37 creates the Ohio family and children first cabinet council (the cabinet council). The cabinet council is composed of the superintendent of public instruction and the directors of youth services, human services, mental health, health, alcohol and drug addiction services, and mental retardation and developmental disabilities, and budget and management. The general purpose of the cabinet council is to help families desiring government services. R.C. 121.37(A), (B).

R.C. 121.37(D) requires each county to establish a board to serve as "the local cluster for services to youth or, in the alternative, a county family and children first council which shall assume the responsibilities of the local cluster." Each local cluster or county council is comprised of

> the executive director of the county agency responsible for the administration of children services under section 5153.15 of the Revised Code, a representative of the regional office of the department of youth services, the superintendent of the county board of mental retardation and developmental disabilities, the director of the board of alcohol, drug addiction, and mental health services, and the health commissioner of the board of health of each city or general health district in the county, or their designees. The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, shall be a member of the local cluster or county council.

> The superintendent of all school districts with territory in the county, other than the city, exempted village, or local school district with the largest number of pupils residing in the county, shall meet and designate one of their number to represent them as a member of the local cluster or county council.

Additionally, "[a] local cluster or county council may invite any other local public or private agency or group that provides services to children to have a representative become a permanent or temporary member of the local cluster or county council. The local cluster or county council may also invite parents to become permanent or temporary members of the cluster or council." R.C. 121.37(D).

Each local cluster or county council makes periodic reports to the cabinet council, R.C. 121.37(E)(2), and must comply with "the policies, procedures, and activities prescribed by the rules of a state department participating on the cabinet council to the extent that the local cluster performs a function subject to those rules," R.C. 121.37(F)(1).[1] A local cluster may refer children to the cabinet council when it is unable to provide adequate services for those children R.C. 121.37(E)(1). However, "each local cluster shall be the final determinator of, and have responsibility for, the actual delivery of services." 6 Ohio Admin. Code 3301-51-27(H). Further, "[e]ach local cluster is responsible for coordination of the planning, developing and implementing of community-based programs, services, and resources to meet the needs of multineed children and their families referred to the local cluster based upon community needs and available resources." Rule 3301-51-27(I).

There are no express provisions in R.C. Chapter 121 for the funding of local clusters. R.C. 121.37 implies, however, that the agencies that constitute a local cluster will use their own resources to fulfill their statutory obligations as members of a local cluster. *See also* 16 Ohio Admin. Code 5101:2-42-12 (requiring each county department of human services with children service responsibility or children services board established under R.C. Chapter 5153 to participate in the local cluster established in its county); 17 Ohio Admin. Code 5122:2-1-10 (requiring each community mental health board to participate in the local cluster); 17 Ohio Admin. Code 5123:2-1-10 (requiring each county board of mental retardation and developmental disabilities to participate in the local cluster).[2]

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[1] R.C. 121.37(F)(2) provides that "on application of a county council, the cabinet council may grant an exemption from any rules adopted by a state department participating on the council if an exemption is necessary to implement a program for service delivery to families and children."

[2] The rules referred to in the text, 6 Ohio Admin. Code 3301-51-27, 16 Ohio Admin. Code 5101:2-42-12, 17 Ohio Admin. Code 5122:2-1-10 and 17 Ohio Admin. Code 5123:2-1-10, were adopted prior to the amendment of R.C. 121.37 by Am. Sub. H.B. 152 (120th Gen. A., eff. July 1, 1993). Prior to its amendment, R.C. 121.37 provided, in pertinent part, as follows:

> (A) There is hereby created a board which shall be known as the interdepartmental cluster for services to youth. The interdepartmental cluster shall be composed of the

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> superintendent of public instruction and the directors of youth services, human services, mental health, health, alcohol and drug addiction services, and mental retardation and developmental disabilities, or their designees.
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> ....
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> (C) Within six months after October 20, 1987, each county shall establish a board which shall serve as the local cluster for services to youth. The local cluster shall be composed of the director or the executive director of the county agency responsible for the administration of children services under section 5153.15 of the Revised Code, a representative of the regional office of the department of youth services, the superintendent of the county board of mental retardation and developmental disabilities, the director of the board of alcohol, drug addiction, and mental health services, and the health commissioner of the board of health of each city or general health district in the county, or their designees. The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, shall be a member of the cluster. The superintendents of all school districts with territory in the county, other than the city, exempted village, or local school district with the largest number of pupils residing in the county, shall meet and designate one of their number to represent them as a member of the cluster.
>
> A local cluster may invite any other local public or private agency or group that provides services to multineed children to have a representative become a permanent or temporary member of the cluster.
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> (D) The local cluster for services to youth shall do both of the following:
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> (1) Refer to the state cluster those children for whom the local cluster cannot provide adequate services;
>
> (2) Make periodic reports to the state cluster regarding the number of children referred to the local cluster and the progress made in meeting the needs of each child.
>
> (E) The local cluster shall comply with the policies, procedures, and activities prescribed by the rules of a state department participating in the interdepartmental cluster to the extent that the local cluster performs a function subject to those rules.

Accordingly, the rules cited in the text refer to the "state cluster" or the "interdepartmental cluster" rather than the Ohio family and children first cabinet council. The purpose of the Ohio family and children first cabinet council is broader than that of the former interdepartmental cluster. However, the relationship between the cabinet council and a local cluster is essentially the same as the previous relationship between the interdepartmental cluster and a local cluster, and the makeup and functions of a local cluster are essentially the same under the amendment.

R.C. 309.09 Authorizes the County Prosecutor to Act as the Legal Adviser to County Officers and County Boards

Your specific question is whether R.C. 309.09 authorizes a county prosecutor to act as the legal adviser to the local cluster. R.C. 309.09(A) provides, in part, as follows:

> The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards...and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party.

A County Board Is Essentially a Subdivision of the County or a Subordinate Department of the County

"County board" is not defined for purposes of R.C. 309.09. Although no precise definition of county board for purposes of R.C. 309.09 exists, several Attorney General Opinions have addressed this question with respect to a variety of entities. *See, e.g.*, 1989 Op. Att'y Gen. No. 89-102 (joint solid waste management district); 1989 Op. Att'y Gen. No. 89-001 (local emergency planning district); 1985 Op. Att'y Gen. No. 85-071 (joint fire district); 1985 Op. Att'y Gen. No. 85-012 (regional organization for civil defense); 1984 Op. Att'y Gen. No. 84-099 (private industry council); 1983 Op. Att'y Gen. No. 83-064 (joint board of county commissioners for the construction and maintenance of a multicounty detention and treatment facility); 1979 Op. Att'y Gen. No. 79-039 (joint ambulance district); 1979 Op. Att'y Gen. No. 79-019 (multicounty felony bureau); 1961 Op. Att'y Gen. No. 2383, p. 366 (regional planning commission); 1931 Op. Att'y Gen. No. 3015, vol. I, p. 341 (county agricultural society). In general, these opinions have approached the question of whether an entity is a county board or not by determining whether it is "essentially a subdivision of the county or a subordinate department of the county." 1961 Op. No. 2383 at 369.

There is no well articulated test for making this determination. The opinions that have considered the issue have employed, in general, an analysis based on one or more of the following factors: (1) whether the territory that comprises the entity is coextensive with the territorial limits of the county; (2) whether the county is responsible for the organization and supervision of the entity; and (3) whether the entity is funded by or through the county.

The fact that the territory over which the entity has jurisdiction is coextensive with the geographical boundaries of the county, while not conclusive, weighs heavily in favor of a determination that the entity is a county board. 1992 Op. Att'y Gen. No. 92-060. Similarly, when the territory that comprises an entity extends beyond the territorial limits of the county, prior Attorney General opinions have concluded, on that basis, that the entity is not a county board. *See* Op. No. 89-102; Op. No. 85-012; Op. No. 83-064; Op. No. 79-019. These opinions found the fact that the board in each case was created on a multicounty basis indicated that the board existed as an autonomous legal entity separate from the counties that participated in its creation. "[T]he fact that a

regional organization for civil defense...is created by two or more counties makes it clear that it is not a subordinate agency of a single county." Op. No. 85-012 at 2-45.

With respect to the issue of organization and supervision, prior Attorney General opinions have concluded that if an entity is not organized by the county, Op. No. 84-099, or is not supervised by the county, Op. No. 89-001, it is not a county board. In Op. No. 84-099, a private industry council was found not to be a county board in part because it received its authority pursuant to federal law; the county in which it was located had no responsibility for its organization. Op. No. 89-001, in determining that a local emergency planning district was not a county board, found persuasive the fact that the local district was, by express statutory provision, supervised by the Ohio Emergency Response Commission rather than the county and that the Ohio Emergency Response Commission appointed the members of the local district.

Finally, whether the entity is funded by or through the county is a relevant factor in determining whether it is a subordinate department or a subdivision of the county. In this respect, Op. No. 79-039 concluded that the board of trustees of a joint ambulance district was not a county board for purposes of R.C. 309.09 because the county had no involvement "in the organization, funding, or operation of the district." Op. No. 79-039 at 2-128.

In order to determine that a particular entity is a county board, it is not necessary to make a positive finding of all of the three factors discussed above. If an examination of these factors reveals, on balance, that the entity is a subdivision or subordinate department of the county, then it is likely that the entity is a county board.

A Local Cluster Established Pursuant to R.C. 121.37 Is a County Board for Purposes of R.C. 309.09

An examination of a local cluster established pursuant to R.C. 121.37 with respect to the above analysis reveals that it is a county board for purposes of R.C. 309.09. A local cluster or, in the alternative, a county council is established by each county. R.C. 121.37(D). Since a local cluster or county council exists in each county, the territory over which a local cluster has jurisdiction is coextensive with the geographic boundaries of the county. Moreover, the organization and supervision of a local cluster primarily occurs at the county level. The Ohio Administrative Code repeatedly refers to a local cluster established pursuant to R.C. 121.37 as a "county board." *See, e.g.*, rule 3301-51-27(A)(5) (defining "local cluster" as "the county board created by section 121.37 of the Revised Code...."); *see also* rule 5122:2-1-10; rule 5123:2-1-10; 17 Ohio Admin. Code 5139-29-01. Although a local cluster must send periodic reports to and abide by the rules of the cabinet council, R.C. 121.37(E)(2), (F)(1), each local cluster is ultimately responsible for the determination of what services are necessary for children within the county and for the delivery of those services based upon community needs and available resources. Rule 3301-51-27(H), (I).

A local cluster has no direct funding of its operations. The agencies that constitute a local cluster use their own resources to supply services. Thus, funding for the work of a local cluster

comes from the budgets of the various participating agencies.[3] The funds of a children services board, for example, are used in part to carry out the responsibilities of the local cluster. Since these agencies are, for the most part, either county agencies themselves or entities designated or selected on a countywide basis, this factor tends to reinforce the clear import of the other two factors, which is that a local cluster does constitute a county board for purposes of R.C. 309.09.

A consideration of all of these factors thus leads to the conclusion that a local cluster is a subdivision or subordinate department of the county and hence a county board, rather than a separate and autonomous political entity.[4]

Conclusion

Based on the above analysis, it is my opinion, and you are hereby advised, that a local cluster established pursuant to R.C. 121.37 is a county board entitled to the legal advice and representation of the county prosecutor pursuant to R.C. 309.09.

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[3] Am. Sub. H.B. 298, 119th Gen. A. (eff. July 26, 1991) created the "Children's Cluster Fund" to support the expenses of the interdepartmental cluster for services to youth (now known as the Ohio family and children first cabinet council pursuant to amendment by Am. Sub. H.B. 152, 120th Gen. A. (eff. July 1, 1993)) established by R.C. 121.37. A portion may be spent on direct grants to agencies participating in local clusters.

[4] In your request letter, you noted that private organizations may become members of a local cluster. This fact does not affect the public nature of a local cluster, however, since a local cluster is established pursuant to a statutory mandate. R.C. 121.37(C). *See, e.g.*, R.C. 340.02 (a community mental health board established pursuant to R.C. 340.02 includes members from the private sector).

Respectfully,

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December 2, 1993

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SYLLABUS: 93-050

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