OPINION NO. 2005-023

Syllabus:

1. A county prosecuting attorney who elects not to engage in the private practice of law may serve as the financial manager and office administrator of a private law firm and a licensed title insurance agent, provided that as an insurance agent he does not sell, solicit, or negotiate title insurance with respect to a governmental entity he is required to advise or represent in his capacity as county prosecuting attorney, and further provided that such service does not violate any provision of R.C. Chapter 102 or R.C. 2921.42-.43, or rule, ethical consideration, or canon of the Supreme Court Rules for the Government of the Bar of Ohio or the Code of Professional Responsibility.
2. A county prosecuting attorney who elects not to engage in the private practice of law may serve as the financial manager and office administrator of a private law firm and a licensed title insurance agent, but in his capacity as financial manager, office administrator, and licensed title insurance agent, he may not perform an activity that constitutes the ''practice of law'' as defined by the Ohio Supreme Court.

To: James F. Stevenson, Shelby County Prosecuting Attorney, Sidney, Ohio
By: Jim Petro, Attorney General, May 24, 2005

You have requested an opinion whether a county prosecuting attorney who elects not to engage in the private practice of law may serve as the financial manager and office administrator of a private law firm and a licensed title insurance agent.[1] For the reasons that follow, a county prosecuting attorney who elects not to engage in the private practice of law may also serve in these private positions, provided that

[1] R.C. 325.11 establishes the salary of a county prosecuting attorney in accordance with the population of the county and whether or not the prosecuting attorney also engages in the private practice of law. R.C. 325.11(A) divides the counties on the basis of population into eight classes and establishes salary figures, including annual increases, for the prosecuting attorneys of the various classes of counties. *See* 1998 Op. Att'y Gen. No. 98-024 at 2-129; *see also* R.C. 325.18. R.C. 325.11(A) provides higher salary figures for county prosecuting attorneys who do not engage in the private practice of law.

An election to engage in the private practice of law must be made by a county prosecuting attorney, before taking office, by notifying the board of county commissioners of his intention to engage in the private practice of law:

> A prosecuting attorney shall not engage in the private practice of law unless before taking office the prosecuting attorney notifies the board

as an insurance agent he does not sell, solicit, or negotiate title insurance with respect to a governmental entity he is required to advise or represent in his capacity as county prosecuting attorney, and further provided that such service does not violate any provision of R.C. Chapter 102 or R.C. 2921.42-.43, or rule, ethical consideration, or canon of the Supreme Court Rules for the Government of the Bar of Ohio or the Code of Professional Responsibility.

A county prosecuting attorney who elects not to engage in the private practice of law may serve as the financial manager and office administrator of a private law firm and a licensed title insurance agent, but in his capacity as financial manager, office administrator, and licensed title insurance agent, he may not perform an activity that constitutes the "practice of law" as defined by the Ohio Supreme Court.

Compatibility Test

The following five questions are used for determining whether a public and private position may be held at the same time:

1. Is the public position a classified employment within the terms of R.C. 124.57?
2. Does a constitutional provision or statute prohibit a person from serving in both positions at the same time?
3. Is there a conflict of interest between the two positions?
4. Are there local charter provisions, resolutions, or ordinances which are controlling?
5. Is there a federal, state, or local departmental regulation applicable?

See 2002 Op. Att'y Gen. No. 2002-028 at 2-185; 1995 Op. Att'y Gen. No. 95-044 at 2-234 and 2-235; 1994 Op. Att'y Gen. No. 94-035 at 2-178.

> of county commissioners of the intention to engage in the private practice of law.
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> A prosecuting attorney may elect to engage or not to engage in the private practice of law before the commencement of each new term of office, and a prosecuting attorney who engages in the private practice of law who intends not to engage in the private practice of law during the prosecuting attorney's next term of office shall so notify the board of county commissioners. A prosecuting attorney who elects not to engage in the private practice of law may, for a period of six months after taking office, engage in the private practice of law for the purpose of concluding the affairs of private practice of law without any diminution of salary as provided for in [R.C. 325.11(A)] and in [R.C. 325.18].

R.C. 325.11(B). Accordingly, if a county prosecuting attorney chooses not to engage in the private practice of law, the prosecuting attorney receives a higher salary than a county prosecuting attorney who chooses to engage in the private practice of law.

Questions four and five concern the applicability of charter provisions, resolutions, ordinances, and federal, state, and local departmental regulations. In this instance, there are no applicable charter provisions or federal or state regulations. Whether there is an applicable resolution, ordinance, or local departmental regulation is a matter of local concern that is best determined at the local level on a case-by-case basis. 1994 Op. Att'y Gen. No. 94-035 at 2-178. For the purpose of this opinion, it is assumed that no such resolution, ordinance, or regulation exists.

Discussion of R.C. 124.57

The first question concerns the application of R.C. 124.57 to the public position. This statute prohibits officers and employees in the classified service of the state, or of a county, city, city school district, or civil service township, from taking part in a variety of activities that occur as part of the regular political process and are partisan in nature.[2] In straightforward terms, "R.C. 124.57 does the following: it prohibits an officer or employee in the classified service from seeking election or appointment to, or holding, a partisan political office, or engaging in other partisan political activities, and it prevents a partisan political officeholder from serving simultaneously as an officer or employee in the classified service." 2003 Op. Att'y Gen. No. 2003-041 at 2-336.

We must now determine whether a county prosecuting attorney is a position that is subject to R.C. 124.57's prohibition. The position of county prosecuting attorney is filled by popular vote, R.C. 309.01, and, as such, is in the unclassified service of the county. R.C. 124.11(A)(1); 1994 Op. Att'y Gen. No. 94-035 at 2-178. R.C. 124.57 thus does not apply to a county prosecuting attorney.

Laws Prohibiting the Holding of Another Position

The second question asks whether a constitutional provision or statute prohibits a person from serving in both positions at the same time. No constitutional provision or statute prohibits a financial manager or office administrator of a private law firm or licensed title insurance agent from serving in a public office or employment.

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[2] R.C. 124.57(A) provides, in relevant part:

> *No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state* shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; ... *nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state* be an officer in any political organization or *take part in politics* other than to vote as the officer or employee pleases and to express freely political opinions. (Emphasis added.)

Various statutes, however, proscribe county prosecuting attorneys from holding particular positions. *See, e.g.,* R.C. 309.02 (''[n]o prosecuting attorney shall be a member of the general assembly of this state or mayor of a municipal corporation''); R.C. 3313.13 (''no prosecuting attorney ... shall be a member of a board of education''). In particular, R.C. 325.11(B) states that ''[a] prosecuting attorney shall not engage in the private practice of law unless before taking office the prosecuting attorney notifies the board of county commissioners of the intention to engage in the private practice of law[,]'' except for a period of six months after taking office ''for the purpose of concluding the affairs of private practice of law.''[3] *See* note one, *supra*.

Neither the General Assembly nor the courts of Ohio have defined what constitutes the ''practice of law'' for purposes of R.C. 325.11(B). The Ohio Supreme Court, however, has defined this term for purposes of the rule prohibiting the unauthorized practice of law.[4]

In this context, the court has consistently defined the ''practice of law'' as follows:

> The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law.

Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (1934) (syllabus, paragraph one); *accord Cleveland Bar Ass'n v. Woodman,* 98 Ohio St. 3d 436, 2003-Ohio-1634, 786 N.E.2d 865, at ¶4 (2003); *Office of Disciplinary Counsel v. Taylor,* 84 Ohio St. 3d 390, 391, 704 N.E.2d 249 (1999); *see, e.g., Disciplinary Counsel v. Alexicole, Inc.,* 105 Ohio St. 3d 52, 2004-Ohio-6901, 822 N.E.2d 348, at ¶8 (2004); *Toledo Bar Ass'n v. Chelsea Title Agency of Dayton, Inc.,* 100 Ohio St. 3d 356, 2003-Ohio-6453, 800 N.E.2d 29, at ¶7 (2003); *Gustafson v. V.C. Taylor & Sons, Inc.,* 138 Ohio St. 392, 35 N.E.2d 435 (1941). *See generally* Ohio Gov. Bar R. VII, § 2(A) (''[t]he unauthorized practice of law is the rendering of legal services for another person by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio'').

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[3] You have informed us that you have elected not to engage in the practice of law during your current term as county prosecuting attorney. Thus, under R.C. 325.11(B), you are prohibited from engaging in the private practice of law, except for a period of six months after taking office ''for the purpose of concluding the affairs of private practice of law.''

[4] In Ohio a person may not engage in the practice of law ''unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.'' R.C. 4705.01; *see also* Ohio Gov. Bar. R. VII (setting forth provisions governing the unauthorized practice of law).

Because the Ohio Supreme Court "has exclusive power to regulate, control, and define the practice of law in Ohio[,]" *Cleveland Bar Ass'n v. CompManagement, Inc.*, 104 Ohio St. 3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, at ¶39 (2004), it reasonably follows that the court's definition of the term "practice of law" in a related context should be used when determining what constitutes the practice of law for purposes of R.C. 325.11. Accordingly, for purposes of R.C. 325.11, a county prosecuting attorney who elects not to engage in the private practice of law may not perform an activity in a private position that constitutes the "practice of law" as defined by the Ohio Supreme Court.

We must now determine whether service as a financial manager or office administrator of a private law firm or licensed title insurance agent constitutes the "practice of law" as defined by the Ohio Supreme Court. No statute requires a financial manager or office administrator of a private law firm or licensed title insurance agent to be admitted to practice law in Ohio before performing his duties. *Cf.* R.C. 309.02 ("[n]o person shall be eligible as a candidate for the office of prosecuting attorney, or shall be elected to such office, who is not an attorney at law licensed to practice law in this state"). *See generally* R.C. 3905.06 (setting forth the qualifications for issuance of a resident insurance agent license). More importantly, however, is the fact that it is commonly understood by most people that the duties associated with these positions do not involve providing legal advice and instructions to clients advising them of their rights and obligations; preparing documents for clients that require legal knowledge not possessed by ordinary layman; or appearing for clients in courts or administrative hearings. Thus, service in these positions does not ordinarily constitute the "practice of law" as defined by the Ohio Supreme Court.

Nevertheless, a person holding any of these positions could perform an activity that constitutes the "practice of law" as defined by the Ohio Supreme Court. *See, e.g., generally Office of Disciplinary Counsel v. Taylor,* 84 Ohio St. 3d 390, 704 N.E.2d 249 (insurance agent who was not admitted to the practice of law engaged in the unauthorized practice of law by advising widow friend about when an estate qualified for relief from administration, recommending course of action, and aiding widow in completing legal forms). For instance, if the person advises a client of the law firm or a purchaser or prospective purchaser of a title insurance policy of his legal rights or responsibilities in any substantive way, the person has engaged in the "practice of law." *See Columbus Bar Ass'n v. Verne,* 99 Ohio St. 3d 50, 2003-Ohio-2463, 788 N.E.2d 1064, at ¶5 (2003); *Cincinnati Bar Ass'n v. Telford,* 85 Ohio St. 3d 111, 707 N.E.2d 462 (1999); *Land Title Abstract & Trust Co. v. Dworken,* 129 Ohio St. at 28, 193 N.E. 650. A county prosecuting attorney who elects not to engage in the private practice of law and who serves as a financial manager and office administrator of a private law firm and licensed title insurance

agent thus should be careful not to perform an activity in his private positions that constitutes the "practice of law" as defined by the Ohio Supreme Court.[5]

Conflicts of Interest

The final question asks whether there is a conflict of interest between the two positions. A public officer or employee may not hold a private position if he will be subject to divided loyalties, conflicting duties, or to the temptation to act other than in the best interests of the public. 1989 Op. Att'y Gen. No. 89-037 at 2-164.

We must now review the powers, duties, and responsibilities of the respective positions so as to determine whether a person who holds both a public and private position is subject to a conflict of interest. *Id.* at 2-165. Such a review will disclose instances in which the person's activities in the private position may conflict with the performance of his duties and responsibilities in the public position. *Id.* at 2-165 and 2-166.

If our review discloses conflicts, we must then determine whether the conflicts may be avoided or eliminated entirely, thus allowing the person to hold both positions at the same time. The factors used in making this determination include, but are not limited to, the probability of the conflicts occurring, the ability of the person to remove himself from any conflicts that may occur (should they arise), whether the person exercises decision-making authority in both positions, and whether the conflicts relate to the primary functions of each position, or to financial or budgetary matters. 2003 Op. Att'y Gen. No. 2003-041 at 2-340.

Let us first turn to the powers, duties, and responsibilities of a county prosecuting attorney. R.C. 309.08 requires a county prosecuting attorney to prosecute criminal cases and all complaints, suits, and controversies in which the state is a party, and, in the case of conviction the prosecuting attorney is required to cause execution to be issued for the fine and costs, or costs only, as the case may be, and urge the collection of any moneys due the state or county. A county prosecuting attorney serves as the legal adviser to all county and statutory township officers. R.C. 309.09. In addition, a county prosecuting attorney is authorized to prosecute or commence various legal actions on behalf of the county or state. *See, e.g.,* R.C. 309.12 (action to restrain the misapplication of county funds or public moneys in the hands of the county treasurer); R.C. 309.14 (prosecution of person who in any way unlawfully cut downs or injures timber growing on land belonging to the state

[5] Whether a particular activity performed by a financial manager or office administrator of a private law firm or a licensed title insurance agent constitutes the "practice of law" can only be determined on a case-by-case basis. *See S&P Lebos, Inc. v. Ohio Liquor Control Comm'n,* No. 03AP-447, 2004-Ohio-1613, 2004 Ohio App. LEXIS 1376, at ¶15 (Franklin County Mar. 30, 2004). Because we are unable by means of a formal opinion of the Attorney General to answer factual questions, *see* 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three), we can only generally advise you that you may not perform an activity in your private vocations that constitutes the "practice of law" as defined by the Ohio Supreme Court.

or any school district); R.C. 309.17 (action to recover property of a decedent held by another person); R.C. 321.42 (commencement of an action upon the bond of the county auditor or county treasurer in the event such bond is breached); R.C. 1747.11(A) (forfeiture action against a real estate investment trust that transacts real estate business in the state without authority); R.C. 4123.92 (prosecution of actions pertaining to violations of R.C. Chapter 4123 (workers' compensation)).

We will now review the general duties and responsibilities performed by the financial manager and office administrator of a private law firm and a licensed title insurance agent. The financial manager of a private law firm is primarily responsible for managing the firm's finances and handling other fiscal matters for the firm. The position maintains the financial accounts and records of the firm. The financial manager may also be required to collect fees and costs owed to the firm.

The position of office administrator in a private law firm supervises and oversees the provision of clerical, recordkeeping, and other support services that are necessary and incidental to the practice of law by the firm. A person in this position is responsible for making sure that phone calls, clients, and visitors to the firm are promptly and professionally received and directed to the appropriate person in the firm; pleadings and letters are mailed or delivered in a timely and orderly manner; computer, copying, and other ministerial business services are available when needed by firm personnel; and office furnishings and equipment are maintained and replaced as needed.

A title insurance agent is a person who is authorized in writing by a title insurance company to solicit title insurance[6] and collect premiums on the company's behalf. *See* R.C. 3953.01(H); *see also* R.C. 3905.01(D). *See generally* R.C. 3953.21(A) (''[e]very title insurance company authorized to transact business within this state shall certify annually to the superintendent of insurance the names of all title insurance agents representing it in this state in accordance with [R.C. 3905.20]''). Such an agent is required to be ''licensed in the manner provided for agents of insurance companies in [R.C. Chapter 3905].'' R.C. 3953.22(A); *see also* R.C. 3905.01(C)-(D); R.C. 3905.02. A person duly licensed as a title insurance agent may sell, solicit, or negotiate title insurance in accordance with the provisions of R.C. Chapters 3905 and 3953 and the rules adopted by the Superintendent of Insurance pursuant to R.C. 3905.12. *See* R.C. 3905.01(D); R.C. 3905.02; R.C. 3905.14; R.C. 3953.01(H); R.C. 3953.22. Selling title insurance means the exchange of an insurance contract by any means, for money or its equivalent, on behalf of an insurer. *See* R.C. 3905.01(N). Soliciting title insurance means to attempt to sell title insurance, or to ask or urge a person to apply for title insurance from a particular

[6] Title insurance is the insuring, guaranteeing, or indemnifying owners of real property or others interested in real property against loss or damage suffered by reason of liens against, encumbrances upon, defects in, or the unmarketability of the title to, the real property; guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property; and doing any business in substance equivalent to any of the foregoing. *See* R.C. 3953.01(A); R.C. 3905.06(B)(8).

insurer. *See* R.C. 3905.01(O). Negotiating title insurance means to confer directly with, or offer advice directly to, a purchaser or prospective purchaser of title insurance with respect to the substantive benefits, terms, or conditions of the contract for such insurance. *See* R.C. 3905.01(L).

In light of the respective duties and responsibilities of the positions, there are no instances in which a county prosecuting attorney is subject to a conflict of interest when he serves as the financial manager and office administrator of a private law firm. However, there is one occasion in which a person who serves as a county prosecuting attorney and licensed title insurance agent is subject to a conflict of interest. If a governmental entity to whom the county prosecuting attorney serves as legal counsel were to purchase title insurance on a parcel of property through the county prosecuting attorney, the prosecuting attorney could be subject to divided loyalties or the temptation to act other than in the public's best interest.

For example, the governmental entity may request the county prosecuting attorney in his capacity as the entity's legal adviser to review the language of the title insurance contract or advise or represent the board in settlement proceedings or litigation arising under the contract. In such situations, the private interests of the county prosecuting attorney, as the insurance agent who sold the governmental entity the insurance coverage, could make it difficult for him to make completely objective and disinterested decisions as county prosecuting attorney. *See* 1994 Op. Att'y Gen. No. 94-035 at 2-179.

In our opinion, however, this conflict of interest can be easily avoided. A county prosecuting attorney who is a licensed title insurance agent is not required to sell, solicit, or negotiate title insurance to governmental entities he represents or advises. Moreover, there are many other title insurance agents from which these governmental entities may procure title insurance. Accordingly, a county prosecuting attorney who elects not to engage in the private practice of law is not prohibited by common-law conflict of interest principles from serving as a licensed title insurance agent, provided that as an insurance agent he does not sell, solicit, or negotiate title insurance to a governmental entity he is required to advise or represent in his capacity as county prosecuting attorney. *See generally* 1994 Op. Att'y Gen. No. 94-035 at 2-179 (when it is possible for a county prosecuting attorney to avoid conflicts of interest by limiting the type of legal services provided as a private practitioner, the prosecuting attorney is not completely precluded from privately representing a park or joint ambulance district that does not appear before the county budget commission on which the prosecuting attorney sits).

Ethical Considerations

As a final matter, the conduct of a county prosecuting attorney who serves as the financial manager and office administrator of a private law firm and a licensed title insurance agent must comport with the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43 and the rules, ethical considerations, and canons set forth in the Supreme Court Rules for the Government of the Bar of Ohio and the Code of Professional Responsibility. *See* 1994 Op. Att'y Gen. No. 94-035 at 2-180. Because the Attorney General is not empowered to render advice concern-

ing these provisions, rules, considerations, and canons, *see* R.C. 102.08; Ohio Gov. Bar R. V, § 2(C), we must refrain from interpreting and applying them in a particular situation by way of a formal opinion of the Attorney General. *See* 1994 Op. Att'y Gen. No. 94-035 at 2-180; 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three).

Instead, the authority to issue advisory opinions concerning the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43 implicated in the particular situation presented in your letter requesting our opinion is conferred upon the Ohio Ethics Commission pursuant to R.C. 102.08. *See, e.g.*, Ohio Ethics Comm'n, Advisory Op. No. 90-007, slip op. at 1 (addressing "whether the Ohio Ethics Law and related statutes prohibit the private practice law partner of a county prosecutor from representing township trustees on negotiations involving annexation agreements and tax abatements with an adjoining municipality"); Ohio Ethics Comm'n, Advisory Op. No. 89-015 (syllabus, paragraph two) (R.C. 102.03 "prohibits an individual from serving as a city law director where the law firm of which he is a member represents clients in adversarial actions against the city"); Ohio Ethics Comm'n, Advisory Op. No. 79-001, slip op. at 1 (addressing "whether the Ohio Ethics law or [R.C. 2921.42] would prohibit a county prosecutor from refusing to provide child support enforcement services for the county welfare department [now the county department of job and family services] and offering to undertake the contract himself as a private attorney or refer it to his law partner"); *see also, e.g.*, Ohio Ethics Comm'n, Advisory Op. No. 96-004 (syllabus, paragraph three) (R.C. 102.03(D) "prohibits a public official or employee who engages in private outside employment or business activity from: (a) using public time, facilities, personnel, or resources in conducting a private business or while engaging in private outside employment including conducting demonstrations for clients using public equipment; (b) using his official title or identification on private business cards or other written materials or appearing in uniform while soliciting business or conducting demonstrations for clients; (c) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding his private interests; (d) discussing, deliberating, or voting on any matter involving his private business, including recommending his outside employer's or business's services to his own public agency; (e) receiving fees for providing services rendered on projects that he has recommended in his official capacity; (f) participating in decisions or recommendations regarding his competitors; and (g) using his public position or authority in any other way to secure a benefit for his outside employer or private business").

In addition, the Board of Commissioners on Grievances and Discipline of the Supreme Court is vested with the authority to issue advisory opinions regarding the rules, ethical considerations, and canons set forth in the Supreme Court Rules for the Government of the Bar of Ohio and the Code of Professional Responsibility. R.C. 102.08; Ohio Gov. Bar R. V, § 2(C); *see, e.g.*, Board of Commissioners on Grievances & Discipline Op. No. 2001-4 (August 10, 2001) (syllabus) ("[i]t is improper for a lawyer, who is also a licensed insurance agent, to sell annuities through the law firm to estate planning clients of the lawyer"); Board of Commis-

sioners on Grievances & Discipline Op. No. 89-16 (June 16, 1989) (syllabus) (''Disciplinary Rule 2-102(A)(4) does not provide for the listing of non-lawyer employees on a law firm's letterhead. In our view therefore, non-lawyer employees may not be listed on a law firm's letterhead. Office managers and other non-lawyer employees may have business cards designating their title and identifying them as employed by the firm''). Accordingly, we recommend that you consult with the Ohio Ethics Commission and the Board of Commissioners on Grievances and Discipline of the Supreme Court for guidance concerning the ethical and professional responsibilities that will confront a county prosecuting attorney who serves as the financial manager and office administrator of a private law firm and a licensed title insurance agent.

Conclusions

It is, therefore, my opinion, and you are hereby advised as follows:

1. A county prosecuting attorney who elects not to engage in the private practice of law may serve as the financial manager and office administrator of a private law firm and a licensed title insurance agent, provided that as an insurance agent he does not sell, solicit, or negotiate title insurance with respect to a governmental entity he is required to advise or represent in his capacity as county prosecuting attorney, and further provided that such service does not violate any provision of R.C. Chapter 102 or R.C. 2921.42-.43, or rule, ethical consideration, or canon of the Supreme Court Rules for the Government of the Bar of Ohio or the Code of Professional Responsibility.
2. A county prosecuting attorney who elects not to engage in the private practice of law may serve as the financial manager and office administrator of a private law firm and a licensed title insurance agent, but in his capacity as financial manager, office administrator, and licensed title insurance agent, he may not perform an activity that constitutes the ''practice of law'' as defined by the Ohio Supreme Court.