OPINION NO. 89-015

Syllabus:

1. With respect to child support enforcement actions, the county prosecuting attorney must perform those duties expressly imposed by statute upon his office and, where the county department of human services has been designated under R.C. 2301.35 as the child support enforcement agency for the county, such duties as may be required of his office by R.C. 309.09(A).

2. Where the county prosecuting attorney represents an appellant who is a non-recipient of aid to dependent children on appeal in a child support enforcement action, should the court of appeals require a deposit as security for costs or should the appellant be required to pay the cost of the transcript as part of the record on appeal, the child support enforcement agency must advance such deposit and cost of the transcript.

3. The county prosecuting attorney is entitled to receive no compensation in addition to that prescribed by R.C. 325.11 for the performance of his statutory duties with respect to child support enforcement.

To: Paul F. Kutscher, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 23, 1989

I have before me your opinion request in which you ask several questions concerning the county prosecutor's duties with respect to child support enforcement activities. I have restated your questions as follows:

1. What are the child support enforcement duties of a county prosecuting attorney who performs legal services for a county department of human services which has been designated as the child support enforcement agency for the county?

2. Where the county prosecuting attorney represents a non-recipient of public assistance on appeal in a child support enforcement action, who pays for the deposit and transcript costs?

3. Is the county prosecuting attorney entitled to any additional compensation for the child support enforcement services he performs?

Your first question concerns the nature and extent of the duties of the prosecuting attorney with respect to child support enforcement actions. Since the prosecuting attorney is a creature of statute, he has only those powers and duties conferred upon that office by the General Assembly. *State ex rel. Finley v. Lodwich*, 137 Ohio St. 329, 29 N.E.2d 959 (1940); *State ex rel. Doerfler v. Price*, 101 Ohio St. 50, 128 N.E. 173 (1920). It is, therefore, necessary to examine the statutory scheme concerning child support enforcement in order to determine the scope of the prosecutor's authority and duties.

As I noted recently in 1988 Op. Att'y Gen. No. 88-094, at 2-450:

> Pursuant to Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), a new system of child support enforcement has been established within the state. R.C. 2301.35 provides for each board of county commissioners to designate and contract with the county department of human services, the office of the prosecuting attorney, a bureau within the court of common pleas, or a separate agency under the direct control of the board of county commissioners, as the child support enforcement agency for the county. Pursuant to R.C. 2301.35(C), each such agency "shall be responsible for the collection of payments due under support orders, and shall perform all administrative duties related to the collection of payments due under any support order." Concerning the role of the county prosecuting attorney in the scheme for child support enforcement, R.C. 2301.35(F) requires each child support enforcement agency to enter into written agreements with, not only the prosecuting attorney, but also the courts and law enforcement officials; such agreements are to "establish cooperative working arrangements and specify areas of responsibility for the enforcement of child support among the agency, courts, and officials."

The fact that the legislature has required each child support enforcement agency to enter into a written agreement with the county prosecuting attorney for the purpose stated in R.C. 2301.35(F) raises the question as to the extent to which the duties of the prosecuting attorney, when handling child support enforcement actions, are determined by the terms of the agreement with the child support enforcement agency.

It appears that in Seneca County, the county department of human services has been designated under R.C. 2301.35 as the child support enforcement agency for the county. As I discussed in Op. No. 88-094, since a county department of human services is a county board within the meaning of R.C. 309.09(A),[1] 1987 Op. Att'y Gen. No. 87-090, the prosecuting attorney is the board's legal advisor. R.C. 309.09(A) thus requires the prosecuting attorney to "prosecute and defend all suits and actions which...such...board directs or to which it is a party."

There are various types of actions provided for throughout the Revised Code concerning child support enforcement. In certain instances the child support enforcement agency itself is authorized to bring an action with regard to the enforcement of child support obligations. For example, R.C. 2301.38(B) imposes upon each child support enforcement agency the obligation to commence an action on behalf of the obligee under R.C. 2301.38(A) to obtain judgment and execution as provided for in R.C. 2301.38(A)(1) or to obtain an order of the type specified in R.C. 2301.38(A)(2) in the event of the obligor's default under a support order. Op. No. 88-094. In order to commence such an action, however, the child support enforcement agency must be represented by counsel, and, as noted in Op. No. 88-094 at 2-453: "In most instances...the county prosecuting attorney will serve as attorney for the agency under a cooperative agreement entered into pursuant to [R.C. 2301.35(F)]."

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1 R.C. 309.09(A) states in part:

> The prosecuting attorney shall be the legal adviser of the board of county commissioners...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, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in [R.C. 305.14].

Other statutes governing child support enforcement actions, however, impose duties specifically upon the office of the prosecuting attorney. R.C. 2301.372, for example, states in part:

> (A) If the court or the child support enforcement agency fails to comply with the requirements of [R.C. 2301.37 or 3113.21] and if the rights to support have been assigned to the department of human services under [R.C. 5107.07] or the responsibility for the collection of support has been assumed under Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C.A. 651, as amended, the child support enforcement agency shall, unless the office of the prosecuting attorney has been designated as the child support enforcement agency for the county under [R.C. 2301.35], notify the prosecuting attorney of the county in which the obligee resides. If the office of prosecuting attorney has been designated as the child support enforcement agency, the board of county commissioners of the county shall seek a writ of mandamus under [R.C. Chapter 2731] directing the prosecuting attorney to comply with the requirements of this section and [R.C. 2301.37 or 3113.21]. The prosecuting attorney shall commence either or both of the following:
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> (1) Proceedings under [R.C. 3113.21] requesting the issuance of one or more orders under division (D) of that section;
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> (2) A civil action in the small claims division of the municipal or county court within whose jurisdiction the obligor resides.

Thus, pursuant to R.C. 2301.372(A), the prosecuting attorney himself is under a duty to initiate child support enforcement actions in the circumstances set forth therein.

Certain child support enforcement actions may, however, be initiated by various entities. For example, R.C. 2705.031(B) states: "Any party who has a legal claim to any support ordered for a child, spouse, or former spouse may initiate a contempt action for failure to pay the support. In Title IV-D cases, the contempt action also may be initiated by an attorney retained by the party, the prosecuting attorney, or an attorney of the department of human services or the child support enforcement agency." Thus, under this statute, the prosecuting attorney is only one of several persons authorized to initiate a contempt action for failure to pay support.

In other cases, however, it appears that the legislature has imposed certain child support enforcement duties upon the prosecuting attorney, but has, nonetheless, provided for situations where the prosecutor neglects or refuses to perform such duties. *See, e.g.,* R.C. 3115.10 ("[i]f this state is acting as an initiating state, the prosecuting attorney upon the request of the court *shall* represent the obligee[2] in any proceeding under [R.C. 3115.01-.34]. If the prosecuting attorney neglects or refuses to represent the obligee, the county director of human services may obtain other representation" (emphasis added));[3] R.C. 3115.16 (the prosecuting attorney of the responding state "shall prosecute the case diligently....If the prosecuting attorney neglects or refuses to represent the obligee, the county director of human services may undertake the representation"). The wording of the statutes strongly suggests that the duties imposed upon the prosecutor are mandatory. *See* 1987 Op. Att'y Gen. No. 87-033. *See generally*

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2 R.C. 3115.01(B)(10) defines "obligee," as used in R.C. 3115.01-.34, as meaning, "any person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance."

3 I note, however, that, for purposes of R.C. 309.09(A), a county department of human services is a county board. 1987 Op. Att'y Gen. No. 87-090. The prosecuting attorney is, therefore, the board's legal advisor and is under a duty to "prosecute and defend all suits and actions which...[the] board directs or to which it is a party." R.C. 309.09(A). The statute does,

Dorrian v. Scioto Conservancy Dist., 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage").

From the foregoing examples it is apparent that the prosecuting attorney has numerous responsibilities in the area of child support enforcement. In some instances, he is required by statute in his capacity as county prosecutor to pursue certain actions related to child support enforcement. At other times, where the county department of human services, having been designated as the child support enforcement agency for the county, is under a duty to commence child support enforcement proceedings, the prosecuting attorney will represent the agency as required by R.C. 309.09(A). *See* Op. No. 88-094. As set forth above, however, in certain cases, the prosecuting attorney will commence child support enforcement actions, not on behalf of a county officer or agency as required by R.C. 309.09(A), but on behalf of a non-county entity, as specifically required by statute. *See, e.g.*, R.C. 3115.10 (county prosecuting attorney may represent obligee of support in proceedings under R.C. 3115.01-.34). In any event, whether the statutes impose duties expressly upon the office of the prosecuting attorney or whether the statutes impose upon a county board certain child support enforcement duties requiring legal representation, the prosecuting attorney is under a duty to carry out such representation. *See* Op. No. 88-094.

The question arises as to the effect of a written agreement entered into between a child support enforcement agency and the county prosecuting attorney pursuant to R.C. 2301.35(F) which states:

> Each child support enforcement agency designated under this section shall enter into written agreements with courts, the prosecuting attorney, and law enforcement officials that establish cooperative working arrangements and specify areas of responsibility for the enforcement of child support among the agency, courts, and officials. The agreements shall provide for the reimbursement of the courts and law enforcement officials for the responsibilities they assume and actions they undertake pursuant to such agreements.

Although R.C. 2301.35(F) requires each child support enforcement agency to enter into written agreements with, among others, the county prosecuting attorney, nothing in that provision allows such agreements to vary the duties otherwise imposed by statute upon the prosecuting attorney.

As I noted in Op. No. 88-094, the Department of Human Services has promulgated a rule concerning cooperative agreements for legal services. 8 Ohio Admin. Code 5101:1-29-53 states:

> IV-D cooperative a[g]reements shall be executed with the county prosecuting attorney whenever possible. The agreement must cover legal services for establishing parentage, child support, and medical support in Uniform Reciprocal Support Enforcement Act actions as well as in-county actions. It shall also cover other legal services to the local IV-D program.
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> (B) If legal services are to be provided by a source other than the county prosecutor, the CSEA [(child support enforcement agency)]

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however, set forth an exception to the prohibition against a county officer employing other counsel at county expense. Such outside counsel may be so employed in accordance with R.C. 305.14(A), which empowers a court of common pleas, upon application by the prosecuting attorney and the board of county commissioners, to authorize the board to employ counsel to assist the prosecuting attorney, the board, or any 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."

> must follow the provisions of sections 305.14 and 309.09 of the Revised Code. It is suggested the agency seek the assistance of the prosecuting attorney in following this procedure.
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> (C) The CSEA shall not enter into an agreement with the county prosecuting attorney or his employees as a private attorney during his term of office if he has refused to enter into an agreement as a public official.
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> (D) When a new prosecuting attorney takes office or a new CSEA director is appointed, cooperative agreements with the prosecutor or private attorneys must be reviewed. The agreements will continue to be in effect until either party changes or terminates the agreement.

Pursuant to rule 5101:1-29-53, the legal services covered by such agreement include those for establishing parentage, child support, and medical support for both in-county actions and Uniform Reciprocal Support Enforcement Act actions and "other legal services." In those instances where legal services are to be provided to the child support enforcement agency by an attorney other than the county prosecuting attorney, the procedures set forth in R.C. 305.14 and R.C. 309.09 for the appointment of counsel must be followed. As I stated in Op. No. 88-094 at 2-456: "the administrative treatment of the functions of the county prosecuting attorney with respect to child support enforcement matters contemplates that where the county prosecuting attorney handles such matters, he is doing so in his capacity as county prosecuting attorney." *See generally State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (discussing the provisions of R.C. 305.14 and R.C. 305.17). It appears, therefore, that whether a duty concerning child support enforcement is imposed expressly by statute upon the office of the prosecuting attorney or whether the prosecuting attorney is acting pursuant to R.C. 309.09(A) in representing a county board, he is performing duties imposed upon his office by statute, regardless of the terms of the agreement entered into between the prosecuting attorney and the child support enforcement agency under R.C. 2301.35(F).

Your second question asks who pays for the deposit and transcript costs in the event that a non-recipient of public assistance, represented by the prosecuting attorney, appeals a child support enforcement action. No statute of which I am aware imposes specific duties upon the county prosecuting attorney with regard to the appeal of any child support enforcement action. *Cf.* R.C. 3115.31 (authorizing the Director of Human Services to cause an appeal to be taken if he "is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest"). I will assume, therefore, that your question relates to those situations where the prosecuting attorney has determined that such appeal is necessary to the execution of his duties respecting child support enforcement. *See generally Brown v. Brown*, 16 Ohio App. 3d 26, 474 N.E.2d 613 (Warren County 1984) (on appeal, the court found that under the Uniform Reciprocal Enforcement of Support Act, the failure to provide legal representation to the obligee during all of the stages necessary for enforcement of the Act constitutes "plain error").

I addressed an analogous question in 1987 Op. Att'y Gen. No. 87-022, where I was asked whether a non-recipient of public assistance must pay a deposit for court costs when filing a title IV-D child support enforcement or modification action. I concluded in the syllabus that:

> No state or federal statutes or regulations prohibit county courts of common pleas from requiring, through local rule, a court cost deposit in actions brought pursuant to title IV-D of the Social Security Act (42 U.S.C. Sections 651-669) on behalf of non-recipients of public assistance to enforce or modify child support obligations. If a court cost deposit is required in any non-recipient title IV-D action filed through a county's title IV-D agency, that county's department of human services must advance the deposit.

Although the legislative scheme for the enforcement of child support was substantially altered after Op. No. 87-022 was issued, Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), the underlying rationale set forth in that opinion has not changed.

8 Ohio Admin. Code 5101:1-29-13, concerning services for recipients and non-recipients of aid to dependent children, states in part:

> Child support services must be made available to both recipients of ADC and non-ADC recipients....
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> (A)....The CSEA is required by federal law to provide full child support services to recipients of ADC....A formal application for service as a non-ADC recipient is not necessary.
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> (B) All child support services provided to ADC recipients must be made available to non-ADC recipients....
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> ....
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> (D) A non-ADC recipient who has not yet filed a petition for child support may request absent-parent-location-only service. Location-only service shall be limited to attempts to secure a current address of the absent parent. ***The non-ADC recipient shall be provided all services at no cost beyond the application fee***, if this is not absorbed by the CSEA.[4]
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> ....
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> (F) Within twenty days of the submittal of a non-ADC application for IV-D services, the CSEA must mail the applicant a notice that the application has been accepted or not accepted and why....***Not all requests for child support services will be valid.*** The CSEA may refuse to accept an application for several reasons.... (Emphasis and footnote added.)

Based upon the requirement that all child support enforcement services be provided to non-recipients of ADC "at no cost beyond the application fee," I concluded in Op. No. 87-022 that where a child support enforcement action filed through a county's title IV-D agency requires the deposit of court costs, the county department of human services[5] must "absorb court cost charges for non-recipients using IV-D services when those court costs are not waived." Op. No. 87-022 at 2-146 (footnote omitted).

Your question specifically concerns the payment of a deposit in the court of appeals, as well as payment for the cost of the transcript of the lower court proceedings, upon the filing of an appeal in a child support enforcement action. R.C. 2505.03 states in pertinent part:

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[4] Pursuant to R.C. 5101.31, the Department of Human Services is directed to charge an application fee of up to twenty-five dollars for furnishing services under title IV-D to non-recipients of aid to dependent children. Further, pursuant to rule, the Department may allow counties the option of waiving the payment of such fee. *See* [1988-1989 Monthly Record] Ohio Admin. Code 5101:1-29-12 ("[a]t the time of application for IV-D services, a fee of one dollar shall be charged to each non-ADC recipient....The child support enforcement agency (CSEA) may, at its option, absorb the payment of the one-dollar non-ADC recipient application fee for child support services instead of charging the non-ADC recipient").

[5] At the time 1987 Op. Att'y Gen. No. 87-022 was issued, R.C. 2301.35 provided for a local bureau of support to be established by each court of common pleas. 1985-1986 Ohio Laws, Part III, 4725 (Am. Sub. H.B. 509, eff. Dec. 1, 1986). Sub. H.B. 231, 117th Gen. A. (1987) (eff., in part, Oct. 5, 1987), however, transferred the powers and duties related to child support enforcement to one of the entities designated as the child support enforcement agency for the county, pursuant to R.C. 2301.35, as amended in that bill. *See generally* 1987 Op. Att'y Gen. No. 87-094. Certain child support enforcement duties formerly performed by county departments of human services were then imposed upon the newly created child support enforcement agencies.

> (A) Every final order,[6] judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.
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> ....
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> (C) An appeal of a final order, judgment, or decree of a court shall be governed by the Rules of Appellate Procedure or by the Rules of Practice of the Supreme Court, whichever are applicable, and, to the extent not in conflict with those rules, this chapter. (Footnote added.)

Although the Rules of Appellate Procedure do not directly address the issue of deposits in the courts of appeals, R. App. P. 31 authorizes courts of appeals to "adopt rules concerning local practice in their respective courts which are not inconsistent with these rules." Accordingly, the Third Appellate District, which includes Seneca County, has adopted a rule governing court deposits, which states in pertinent part:

> (B) In appeals. A notice of appeal or cross-appeal shall be accompanied by a deposit with the clerk of the trial court of the sum of $50.00 as security for the payment of the costs that may be assessed on appeal. However, if the appellants or cross-appellants make and file with the clerk their sworn affidavit of inability to secure costs for such prepayment, the clerk shall receive and file the notice of appeal without such deposit. The deposit shall be applied by the clerk of the trial court to the costs, if any, assessed against the respective appellants or cross-appellants during the appeal, as determined by this Court, and any balance remaining shall be returned by the clerk of the trial court to the depositor.

Rule 1 of the Rules of the Third Appellate District. Thus, in the Third Appellate District, a notice of appeal must be accompanied by a deposit of fifty dollars as security for the costs that may be assessed on appeal. The rule, however, also provides an exception to such requirement. Where the party makes and files with the clerk a sworn affidavit of inability to secure costs for such prepayment, the clerk must receive and file the notice of appeal without such deposit.

Part of your question concerns payment for the cost of the transcript of the proceedings in a child support enforcement action in which the county prosecutor represents the appellant. R.C. 2505.44 states: "Courts may compel transcripts of actions or proceedings, that relate to a final order, judgment, or decree sought to be reversed, to be furnished, completed, or perfected." More specifically, R. App. P. 9, concerning the record on appeal, states in pertinent part:

> (B) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered. ***At the time of filing the notice of appeal the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record*** and shall file a copy of said order with the clerk....Unless the entire transcript is to be included, or if no transcript is necessary, or if a statement pursuant to either Rule 9(C) or 9(D) is to be prepared

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6 R.C. 2505.02 states in part:

> An order that affects a substantial right in an action which in effect determines the action and prevents a judgment, an order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment, or an order that vacates or sets aside a judgment or grants a new trial is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial.

> in lieu of a transcript, the appellant shall, with his notice of appeal, file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript which he intends to include in the record or a statement that no transcript is necessary or that a statement pursuant to either Rule 9(C) or 9(D) will be submitted, and a statement of the assignments of error he intends to present on the appeal....
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> ...*At the time of ordering, a party shall arrange for the payment to the reporter of the cost of the transcript.*
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> ....
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> (C) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or *if a transcript is unavailable,*[7] the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection....
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> (D) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (A) of this rule, the parties may, no later than ten days prior to the time for transmission of the record pursuant to Rule 10, prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court prior to the time for transmission of the record pursuant to Rule 10, and shall then be certified to the court of appeals as the record on appeal.... (Emphasis and footnote added.)

Thus, pursuant to R. App. P. 9(B), at the time of filing the notice of appeal, the appellant is required to order from the reporter so much of the transcript as he deems necessary for inclusion in the record. R. App. P. 9(B) further specifies that, at the time of ordering the transcript, the party "shall arrange for the payment to the reporter of the cost of the transcript."

Thus, in an appeal to the Third District Court of Appeals, there is the possibility that the appellant may be required to provide a deposit as security for costs and also to pay for the cost of the transcript which is to be included as part of the record on appeal. Based upon the fact that all child support enforcement services provided to recipients of ADC shall be available to non-recipients of ADC at no cost beyond the application fee, I must conclude that, where the prosecuting attorney represents an appellant on appeal in a child support enforcement action, should the court require of the appellant a deposit as security for costs or if the appellant must pay for a transcript as part of the record on appeal, the child support enforcement agency must advance such costs.

Your third question asks whether the county prosecuting attorney is entitled to any additional compensation for his legal services with respect to child support enforcement actions. Concerning the compensation of public officers generally, Ohio Const. art. II, §20 states: "The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished." The county prosecuting attorney is an officer subject to the terms of Ohio Const. art. II, §20. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976). The compensation of prosecuting attorneys has been fixed by the General Assembly in R.C. 325.11, according to the population of the county in which the prosecutor serves and whether or not the

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[7] In *State ex rel. Motley v. Capers*, 23 Ohio St. 3d 56, 491 N.E.2d 311 (1986), the court determined that a transcript is unavailable, within the meaning of R. App. P. 9(C), to an indigent appellant unable to bear the cost of providing a transcript in a civil appeal.

prosecutor also engages in the private practice of law. R.C. 325.11 does, however, contain the following exclusion: "As used in this section, 'salary' does not include any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination thereof, covering the prosecuting attorney and paid on his behalf by a governmental entity." There is, however, no exception from the compensation schedule prescribed by R.C. 325.11 for payments to the prosecutor for his performance of child support enforcement activities.

As set forth above, R.C. 2301.35(F) requires each child support enforcement agency to enter into written agreements with the courts and law enforcement officials, as well as with the prosecuting attorney. R.C. 2301.35(F) further expressly provides for the reimbursement of the courts and law enforcement officials for any responsibilities and duties they assume under such agreements. There is, however, no similar provision in R.C. 2301.35(F) for reimbursement of the county prosecuting attorney.[8] Based on the rule of statutory construction, ***expressio unius est exclusio alterius***, meaning that, "under proper conditions and with important limitations, the express mention of a person, thing, or consequence in a statute is tantamount to an express exclusion of all others," *State v. Amman*, 78 Ohio App. 10, 12-13, 68 N.E.2d 816, 818 (Hamilton County 1946), it appears that the legislature did not intend that the agreement between the child support enforcement agency and the prosecuting attorney, entered into pursuant to R.C. 2301.35(F), provide reimbursement to the prosecuting attorney in addition to the compensation he receives under R.C. 325.11 for his legal services with respect to child support enforcement activities.[9]

Thus, although the General Assembly has imposed upon the prosecuting attorney various duties concerning child support enforcement, no statute of which I am aware authorizes payment to the prosecuting attorney, in addition to his compensation prescribed by R.C. 325.11, for the performance of his child support enforcement duties. *See generally State ex rel. Doerfler v. Price*, 101 Ohio St. at 57, 128 N.E. at 175 ("the prosecuting attorney of a county...is not a constitutional officer. He exists only by virtue of the favor of the general assembly....The general assembly of Ohio that passed the act providing for the prosecuting attorney of each county may tomorrow abolish the office and create a new one, or entirely change the duties of the office"). I must conclude, therefore, that the county prosecuting attorney is entitled to no compensation in addition to that prescribed by R.C. 325.11 for the performance of his statutory duties with respect to child support enforcement.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. **With respect to child support enforcement actions, the county prosecuting attorney must perform those duties expressly imposed by statute upon his office and, where the county department of human services has been designated under R.C. 2301.35 as the child support enforcement agency for the county, such duties as may be required of his office by R.C. 309.09(A).**

2. **Where the county prosecuting attorney represents an appellant who is a non-recipient of aid to dependent children on appeal in a child support enforcement action, should the court of appeals require a deposit as security for costs or should the appellant be required to pay the cost of the transcript as part of the record on**

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8 I note that Ohio Const. art. II, §20 also prohibits the payment of additional compensation to the county prosecuting attorney after the commencement of his existing term. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976).

9 Whether the county itself may be reimbursed from federal funds for the services provided by the prosecuting attorney in conjunction with the IV-D program is, however, a separate question.

appeal, the child support enforcement agency must advance such deposit and cost of the transcript.

3. The county prosecuting attorney is entitled to receive no compensation in addition to that prescribed by R.C. 325.11 for the performance of his statutory duties with respect to child support enforcement.