

OPINION NO. 69-095

Syllabus:

Either a city solicitor or law director has the duty, pursuant to Section 1901.34, Revised Code, to prepare affidavits for and prosecute township misdemeanor zoning violation cases to be heard in a municipal court with jurisdiction outside its municipal boundaries.

To: J. Richard McMannis, Medina County Pros. Atty., Medina, Ohio
By: Paul W. Brown, Attorney General, July 31, 1969

I have before me your request for my opinion which asks, in essence, whether the city solicitor, law director, or county prosecuting attorney has the duty to prepare affidavits for and prosecute township misdemeanor zoning violation cases to be heard in a municipal court with jurisdiction outside its municipal boundaries.

Section 1901.34, Revised Code, reads:

"The city solicitor, city attorney, or director of law for each municipal corporation within the territory shall prosecute all criminal cases brought before the municipal court for violations of the ordinances of the municipal corporation for which he is solicitor, attorney, or director of law or for violation of state statutes or other criminal offenses occurring within the municipal corporation for which he is a solicitor, attorney, or director of law. The city solicitor, city attorney, or director of law of the city in which the court is located shall prosecute

all criminal cases brought before said court arising in the unincorporated areas within said territory, except that in the Portage county municipal court the prosecuting attorney of the county shall prosecute all violations of state law arising within said territories and for assuming said additional duties, shall receive compensation at the rate of four thousand eight hundred dollars per year payable from the county treasury in semi-monthly installments. The city solicitor, city attorney, or director of law shall perform the same duties, as far as they are applicable thereto, as are required of the prosecuting attorney of the county. He or his assistants whom he may appoint shall receive for such services additional compensation to be paid from the treasury of the county as the board of county commissioners prescribes." (Emphasis added)

This section was interpreted by Opinion No. 66-159, Opinions of the Attorney General for 1966, first and second branches of the syllabus:

"1. It is the duty of a city solicitor to prepare affidavits and warrants of arrest for violations of the law which occur in the territorial area of the municipal court of the municipality for which he is solicitor.

"2. It is the duty of a city solicitor to prosecute misdemeanor violations occurring in such area, through to a final verdict; except those violations which are specifically assigned to the prosecuting attorney by statute."

Quoting from the text of Opinion No. 66-159, supra, at 386, it is stated:

"Webster's New World Dictionary (1964 Edition) defines 'prosecute' as follows: 'to institute legal proceedings against or conduct criminal proceedings in court against.'

"Black's Law Dictionary explains that to 'prosecute' an action is not merely to commence it, but includes following it to an ultimate conclusion.

"The preparation of affidavits and warrants of arrest is basic to the conduct of criminal proceedings and by definition, therefore, would be included in the solicitor's duty to 'prosecute.' Also, by definition, the city solicitor must 'prosecute' misdemeanor violations through to a final verdict."

Opinion No. 66-159, supra, interprets Section 1901.34, supra, only with respect to the duties of the city solicitor. The entirety of the above-cited passages would likewise be applicable to the city law director, whose duties are identical

to those of the city solicitor pursuant to Section 1901.34, supra, which tacitly recognizes that most cities would not have both a city solicitor and law director.

I am mindful that Section 309.09, Revised Code, directs the prosecuting attorney to be the legal adviser to all township officers, and more specifically to the township board of zoning appeals, Opinion No. 4893, Opinions of the Attorney General for 1955. Also, the prosecuting attorney, among others, is permitted to institute civil proceedings to prevent violations of zoning regulations pursuant to Section 519.24, Revised Code. But it is an elementary legal proposition that a misdemeanor, being a criminal action, is prosecuted in the name of the government, as a public prosecution. Schultz's Lessee v. Moore, Wright 280 (1833), State v. Clinton, 2 Ohio Dec. Reprint, 725 (1863). Thus, in the prosecution of an alleged township zoning misdemeanor violation no township officer or board would be an actual party.

Section 1901.34, supra, appears controlling with regard to the question you have posed. I believe this result is reinforced by the language in that statute which, in essence, states that the city solicitor or law director shall perform the same duties as the county prosecutor in cases arising before the municipal court.

It is, therefore, my opinion and you are advised that either a city solicitor or law director has the duty, pursuant to Section 1901.34, Revised Code, to prepare affidavits for and prosecute township misdemeanor zoning violation cases to be heard in a municipal court with jurisdiction outside its municipal boundaries.