

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1606 was overruled in part
by 1980 Op. Att'y Gen. No. 80-064.

OPINION NO. 1606

Syllabus:

1. The legal adviser to a vocational school district formed by a local school district and an exempted village school district of the same county is the county prosecutor of the county in which such district is located.

2. The legal adviser to a vocational school district formed by two or more local and city school districts of the same county is the county prosecutor of the county in which such district is located.

3. The legal adviser to a vocational school district formed by two or more local and city school districts of more than one county is not the county prosecutor of any of the participating counties. Counsel therefor may be employed by said board of education pursuant to the provisions of Section 309.10, Revised Code.

To: Chester W. Goble, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, December 24, 1964

The recent request of the Auditor of State for my opinion reads as follows:

"Section 3311.19, Revised Code, effective October 7, 1963, provides that:

" * * * A joint vocational school district board of education shall have the same powers, duties, and authority for the management and operation of such joint vocational school district as is granted by law to a board of education of a city school district, and shall be subject to all the provisions of law that apply to a city school district. * * * "

"Several inquiries have been received in this office regarding a legal advisor for a joint vocational school district since city, exempted village and local school districts, either in the same county or adjoining counties, are permitted to unite in forming such a school district.

"Section 3313.35, Revised Code, provides:

" * * * in city school districts, the city solicitor shall be the legal advisor and the attorney for the board thereof, and shall perform the same services for such board as required of the prosecuting attorney for other boards of the county. * * * "

"As the interest in this question is of statewide concern, will you therefore please issue your formal opinion on the following:

"1. When a vocational school district is formed by a local school district and an exempted village school district, who would be the legal advisor?

"2. When a vocational school district is formed by two or more local and city school districts, either within the same county or two different counties, who would be the legal advisor?

"Will you please give the foregoing your consideration and issue your opinion at the earliest date, to the end that information may be made available to all school districts in Ohio concerned in this matter."

In answer to the first question set forth, your attention is directed to Section 3313.35, Revised Code, partially set forth in your request for my opinion, the first sentence of which provides as follows:

"Except in city school districts, the prosecuting attorney shall be the legal advisor of all boards of education of the county in which he is serving.

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Inasmuch as the school district described in your first question is other than a city school district but is located within one county, under the provisions of Section 3313.35, Revised Code, the county prosecutor of the county in which such district is located is the legal advisor of that board.

While under Section 3311.19, Revised Code, a joint vocational school district board of education is invested with the same powers, duties and authority for the management and operation of the district as is granted by law to the board of a city school district, and is subject to all laws that apply to a city school district, it is apparent that a joint vocational school district does not thereby become a city school district. The two remain distinct. This investiture by reference and subjection by reference is limited to those

powers and those statutory provisions which are appropriate to the management and operation of a joint vocational school district. It does not mean that a city solicitor is the legal advisor for a joint vocational school district (indeed there may not be a city school district participating).

The second question set forth in your request for my opinion contains two parts which must be considered separately. That question asks (1) who is the legal advisor to the board of a vocational school district when such district is formed by two or more local and city school districts within the same county and (2) who is the legal advisor to the board of a vocational school district when such district is formed by two or more local and city school districts of two different counties?

As in the case of the first question asked by you, inasmuch as the school district described in the first part of your second question is other than a city school district but is located within one county, under the provisions of Section 3313.35, Revised Code, the county prosecutor of the county in which such district is located is the legal advisor of that board.

The situation described in the second part of the second question wherein the vocational school district is formed by local and city school districts of more than one county, presents a more difficult question.

Section 309.09, Revised Code, provides in pertinent part as follows:

"the prosecuting attorney shall be the legal advisor of the board of county commissioners, board of elections, and all other county officers and boards * * *."

A board such as you have described -- that which includes school districts from more than one county -- is not a

county board within the meaning of Section 309.09, Revised Code, and the members thereof are not county officers. I am, therefore, unable to conclude that the prosecuting attorney of any one of the participating counties would have the duty, or the authority, to serve as legal counsel for such district. See Opinion No. 1523, Opinions of the Attorney General for 1964, issued November 6, 1964, and Opinion No. 95, Opinions of the Attorney General for 1963, issued March 13, 1963.

As mentioned in your letter, such boards of education are subject to all the provisions of law that apply to a city school district. Therefore, pursuant to Section 309.10, Revised Code, which provides that a school board may employ counsel to represent it, the board is authorized to employ counsel and make payment therefor from the school funds.

1. The legal adviser to a vocational school district formed by a local school district and an exempted village school district of the same county is the county prosecutor of the county in which such district is located.

2. The legal adviser to a vocational school district formed by two or more local and city school districts of the same county is the county prosecutor of the county in which such district is located.

3. The legal adviser to a vocational school district formed by two or more local and city school districts of more than one county is not the county prosecutor of any of the participating counties. Counsel therefor may be employed by said board of education pursuant to the provisions of Section 309.10, Revised Code.