

OPINION NO. 69-148

Syllabus:

Municipal and county building departments should be represented at adjudication hearings and in court proceedings by the city attorney and county prosecuting attorney, respectively.

To: William O. Walker, Director, Department of Industrial Relations, Columbus, Ohio

By: Paul W. Brown, Attorney General, November 12, 1969

I have before me your request for my opinion which reads as follows:

"When a certified municipal or county building department undertakes to enforce Chapters 3781 and 3791 of the Ohio Revised Code and the rules and regulations adopted pursuant thereto, is the Attorney General of the State of Ohio, the municipal attorney, or the county prosecutor to represent the certified building department at the adjudication hearings and, if necessary, in the Court of Common Pleas."

Section 3781.10, Revised Code, provides in pertinent part:

"The board of building standards shall:

* * * * *

"(E) certify municipal and county building departments to exercise enforcement authority and to accept and approve plans pursuant to sections 3781.03 and 3791.04 of the Revised Code.

* * * * *

(Emphasis added.)

It is important to note that the above statutory reference to building departments on the municipal or county level designates such departments as "municipal and county building departments." In other words, Section 3781.10, supra, presumes that such departments shall be operated and controlled by their respective political subdivisions, although these departments must comply with a standard set by the State Board of Building Standards in order to be certified.

Section 309.09, Revised Code, provides:

"The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections and all county officers and boards, including all tax supported public libraries, 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 section 305.14 of the Revised Code."

(Emphasis added.)

Section 309.09, supra, clearly mandates that the prosecuting attorney should represent a county building department in all legal actions. It might be advanced that under the Administrative Procedure Act (Chapter 119, Revised Code), particularly pursuant to Section 119.10, Revised Code, the Attorney General should represent any agency whose functions arguably come within the scope of such Act. But Section 119.01, Revised Code, provides in pertinent part:

"* * * (A)ny official, board or commission having authority to promulgate rules or make adjudications in the bureau of unemployment compensation, the civil service commission, the department of liquor control, the department of taxation, the industrial commission, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 and 119.13, inclusive, of the Revised Code, and the licensing functions of any administrative or executive officer, department, division, bureau, board or commission of the government of the state * * *." (Emphasis added.)

Implicit in this definition is that Chapter 119, Revised Code, ap-

plies only to agencies at the state level of government. In Karrick v. Board of Education, 174 Ohio St. 467 (1963), the Supreme Court of Ohio stated, at page 469: "A careful reading of the * * * statutory language clearly indicates that only agencies at the state level of government are covered by the act."

The prosecuting attorney, therefore, pursuant to Section 309.09, supra, is the proper legal representative of a county building department.

The same rationale would also apply to the municipal building department situation. Section 733.53, Revised Code, provides:

"The city solicitor, when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of such city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters, and controversies as he is, by resolution or ordinance, directed to prosecute. He shall not be required to prosecute any action before the mayor of such city for the violation of an ordinance without first advising such action."

"City," as used in the above section, has been historically interpreted to mean all city boards and officers. Yaple v. Police Commissioners, 2 C.C. 406 (1887). Therefore, the legislative authority of a municipality, upon its municipal building department being certified, is empowered to make provision for its city attorney or solicitor to represent such building department in all legal actions pursuant to Section 733.53, supra.

Therefore, it is my opinion and you are advised that municipal and county building departments should be represented at adjudication hearings and in court proceedings by the city attorney and county prosecuting attorney, respectively.