

OPINION NO. 76-020

Syllabus:

1. The "appropriate law enforcement agency" referred to in R.C. 102.06, for the purpose of prosecuting violations of R.C. Chapter 102, is the prosecuting authority vested with the authority to initiate prosecutions for misdemeanor violations which occurred within his jurisdiction.

2. The county prosecuting attorney and the city solicitor have the authority to initiate prosecutions for alleged violations of R.C. Chapter 102, when appropriately requested to do so by the Ohio Ethics Commission so that either such prosecutor would be an "appropriate law enforcement agency" under Section 102.06, Revised Code.

To: J. Walter Dragelevich, Trumbull County Pros. Atty., Warren, Ohio
By: William J. Brown, Attorney General, March 17, 1976

Your request for my opinion reads in pertinent part as follows:

"What public official is deemed to be 'the appropriate law enforcement agency . . . ' in the third paragraph of Ohio Revised Code Section 102.06, to prosecute any violations of Chapter 102 of the Ohio Revised Code?"

R.C. 102.06 provides that the Ohio Ethics Commission, upon hearing and finding, by a preponderance of the evidence, a violation of R.C. 102.02, 102.03, or 102.04, "shall report its findings to the appropriate law enforcement agency for proceedings in prosecution of violations of Chapter 102 of the Revised Code. . . ." (Emphasis added.) When read in context, it is clear that the Legislature, in employing the phrase "appropriate law enforcement agency" intended such agency to be the appropriate prosecuting authority as the duty described is that of criminal prosecution before a proper court. See R.C. 102.99.

The question of which particular prosecuting authority is "appropriate" can be answered by determining whether a particular prosecutor has the authority to initiate prosecution of the offense in question. In this instance, violation of R.C. 102.02(C), 102.03, 102.04 or 102.07 constitutes a misdemeanor pursuant to R.C. 102.99. Therefore, if a prosecutor has the authority to initiate prosecutions of misdemeanors committed within his jurisdiction he would be an "appropriate law enforcement agency" (officer) under the terms of R.C. 102.06.

Rule 7(A) of the Ohio Rules of Criminal Procedure states, in pertinent part, as follows:

"A misdemeanor may be prosecuted by indictment on information in the court of common pleas, or by complaint in courts inferior to the court of common pleas."

Further, an examination of the Revised Code reveals that both the county prosecuting attorney and the city solicitor are vested with the authority to initiate misdemeanor prosecutions for violations of state statutes which occurred within their respective jurisdictions. The general duties of the prosecuting attorney are defined in R.C. 309.08, the relevant portion of which reads as follows:

"The prosecuting attorney may inquire into the commission of crimes within the county and shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party. . . ."

The Ohio Supreme Court, in dictum, analyzed the analogous Section 2918 of the General Code, and opined that the provision is stated in "permissive" rather than "mandatory" language, and, therefore, "does not purport to absolutely and at all events impose specific duties upon that officer." Knepper v. French, 125 Ohio St. 613, 614 (1932). Clearly, prosecution of the alleged misdemeanor in question would be a prosecution on behalf of the state. There are no other statutory provisions which would prohibit the misdemeanor prosecutions under consideration. Therefore, if one of the violations occurred within the jurisdiction of the prosecuting attorney, he would qualify as an "appropriate law enforcement agency" (officer) as that term is used in R.C. 102.06.

R.C. 1901.34 established the criminal prosecution powers of the city solicitor, city attorney, or director of law for any municipal corporation. The relevant portions of that section read as follows:

"The city solicitor . . . shall prosecute all criminal cases brought before the municipal court . . . for violation of state statutes or other criminal offenses occurring within the municipal corporation for which he is a solicitor The city solicitor . . . shall perform the same duties, as far as they are applicable thereto, as are required of the prosecuting attorney of the county."

This section does, then, confer upon the city solicitor the power to prosecute alleged violations of state statutes which constitute a misdemeanor and which occur within his jurisdiction. As contemplated in this statute, duties in this regard are the same as those required of a county prosecuting attorney. Therefore, if one of the violations in question occurred within the jurisdiction of the city solicitor, he would also qualify as an "appropriate law enforcement agency" (officer) as that term is used in R.C. 102.06.

Accordingly, it is my opinion and you are so advised that:

1. The "appropriate law enforcement agency" referred to in R.C. 102.06, for the purpose of prosecuting violations of R.C. Chapter 102, is the prosecuting authority

vested with the authority to initiate prosecutions for misdemeanor violations which occurred within his jurisdiction.

2. The county prosecuting attorney and the city solicitor have the authority to initiate prosecutions for alleged violations of R.C. Chapter 102, when appropriately requested to do so by the Ohio Ethics Commission so that either such prosecutor would be an "appropriate law enforcement agency" under Section 102.06, Revised Code.