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SYLLABUS:

A county director of civil defense appointed pursuant to Section 5915.06, Revised Code, is a county officer, and under Section 309.09, Revised Code, the county prosecuting attorney is the legal advisor of such officer.

Columbus, Ohio, February 28, 1962

Hon. Rex Larson, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“There has been appointed in Richland County by the Board of County Commissioners a County Director of Civil Defense. This office has been approached to serve such Director as legal advisor.

"In view of the appointive nature of such position and in view of Opinion No. 2736, Opinions of the Attorney General for 1958, which states that such appointed officers are not county officers within the meaning of Section 309.09, Revised Code, I have deemed it a matter of statewide importance to request your opinion as to whether the Prosecuting Attorney should serve as advisor to such County Director of Civil Defense, particularly in view of the fact that such director operates directly under the rules and regulations promulgated by the Governor of Ohio through the office of the Adjutant General."

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

"The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and all other 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.

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In view of the provisions of Section 309.09, *supra*, the answer to your question is dependent upon whether a county director of civil defense is a county officer.

Chapter 5915., Revised Code, contains the civil defense law of Ohio. Sections 5915.01 through 5915.05, Revised Code, provide for a state organization of civil defense. As stated in your letter of request, the governor is authorized to promulgate rules and regulations with respect to state civil defense, and the adjutant general is the state director of civil defense. Regarding the county organization, Section 5915.06, Revised Code, reads as follows:

"Each county and municipality of this state may establish local civil defense in accordance with the regulations promulgated by the governor. Each county and municipality shall have a director of civil defense who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. He shall co-ordinate the organization, administration, and operation of local agencies for civil defense, subject to the direction and control of such board and chief executive and not inconsistent with regulations promulgated by the governor."

It appears clear that the position of county director of civil defense is a part of the county government. The director is appointed by the board of county commissioners. Also, the expenses of county civil defense are borne by the county under Section 5915.11, Revised Code, reading:

“Each political subdivision may make appropriations for the payment of the expenses of its local activities for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to section 5915.07 of the Revised Code.” (Emphasis added)

Further, it appears that a person serving as director of civil defense is an officer. In this regard, it is stated in 44 Ohio Jurisprudence 2d, Public Officers, Section 2, at pages 484 and 485:

“Since one who holds an office is an officer, the term ‘officer’ and ‘office’ are paronymous and, in their original and proper sense, are to be regarded as strictly correlative. In defining a ‘public officer’ therefore, it becomes necessary to define a ‘public office.’ A public office of a civil nature, as defined by the Ohio cases, is a charge or trust conferred by public authority for a public purpose, with independent and continuing duties involving in their performance the exercise of some portion of the sovereign power, and similar definitions by lay and legal lexicographers have been pointed out in the Ohio cases. In legal thinking, an office is an entity and may exist in fact although it is without an incumbent. As a general rule, however, the term ‘office’ embraces the ideas of tenure, duration, emolument, and duties, and in accordance therewith it is said that a public office is the right, authority, and duty created and conferred by law by which for a given period—either fixed by law or enduring at the pleasure of the creating power—an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.”

The county director of civil defense is appointed pursuant to law, has definite duties, and exercises a portion of the sovereignty of the state. Under Section 5915.06, *supra*, the director is authorized to:

“* * * co-ordinate the organization, administration, and operation of local agencies for civil defense, * * *.”

Further, as head of the county organization, the director has certain powers in time of emergency. As to this, Section 5915.09, Revised Code, reads:

“Political subdivisions may, in collaboration with other public and private agencies within this state, develop mutual aid arrangements for reciprocal civil defense aid and assistance in case of enemy action, or other disaster, too great to be dealt with unassisted. Such arrangements shall be consistent with the regulations promulgated by the governor. In time of emergency each political subdivision shall render assistance in accordance with such mutual aid arrangements.”

I am aware of Opinion No. 2736, Opinions of the Attorney General for 1958, page 567, in which my predecessor stated at page 570:

“Article X, Section 1, Ohio Constitution, requires that all county officers be elected, and since, as seen in Section 713.21, *supra*, the members of the regional planning commission are not, they cannot be designated ‘county officers.’”

On reading Section 1 of Article X, Ohio Constitution, however, I am unable to find any requirement that county officers be elected. That constitutional section did, prior to November 7, 1933, require that county and township officers be elected. As of that date, however, that requirement was deleted from the section. I am of the opinion, therefore, that there is no constitutional requirement that county officers be elected. And here I might note the provision of Section 3 of Article X, Ohio Constitution, reading:

“The people of any county may frame and adopt or amend a charter as provided in this article but the right of the initiative and referendum is reserved to the people of each county on all matters which such county may now or hereafter be authorized to control by legislative action. Every such charter shall provide the form of government of the county and shall determine *which of its officers shall be elected and the manner of their election.* * * *” (Emphasis added)

The emphasized provisions clearly demonstrate an understanding that some county officers may be appointed.

(NOTE: Section 2 of Article X, Ohio Constitution, as effective November 7, 1933, states that the general assembly “shall provide by general law for the election of such township officers as may be necessary.”)

In conclusion, it is my opinion and you are advised that a county director of civil defense appointed pursuant to Section 5915.06, Revised Code, is a county officer, and under Section 309.09, Revised Code, the county prosecuting attorney is the legal advisor of such officer.

Respectfully,
MARK McELROY
Attorney General