

**OPINION NO. 66-159****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.

3. It is the duty of a city solicitor to represent the State on felony violations occurring in such area, through the preliminary hearing stages.

4. A city solicitor may not represent defendants in a criminal case wherein the State of Ohio is plaintiff.

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**To: Joseph E. Mahoney, Ashtabula County Pros. Atty., Jefferson, Ohio**  
**By: William B. Saxbe, Attorney General, September 19, 1966**

I have before me your recent request for my opinion on the following questions:

"1. Is it the duty of a City Solicitor to prepare affidavits and warrants of arrest for violations of the law which occur in the jurisdictional area of a Municipal Court?

"2. Is it the duty of a City Solicitor to prosecute misdemeanor violations in each of the stages through final judgment or verdict?

"3. Is it the duty of a City Solicitor to represent the State through preliminary hearing stages on felony violations?

"4. May a City Solicitor represent defendants, wherein the State of Ohio is plaintiff, in criminal actions wherein the arrest and preliminary stages were conducted in an area outside the jurisdiction of the Municipal Court in which said Solicitor is employed?"

Section 1901.34, Revised Code, sets forth the duties of the city solicitor relating to a municipal court, the territory of which includes the city for which he is

solicitor, as follows:

"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. 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."  
(Emphasis added)

The answers to your first three questions depend partially on the interpretation given to the word "prosecute" as used in Section 1901.34, supra.

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.

The further plain direction to the city solicitor contained in Section 1901.34, supra, requires him to "prosecute all criminal cases brought before said court arising in the unincorporated areas within said territory." This, of course, includes the prosecution for violations of state statutes and the prosecution of preliminary hearing stages on felony violations.

In Opinion No. 66-081, Opinions of the Attorney General for 1966, the first and third branches of my conclusion read as follows:

"1. It is the duty of each city or village attorney, solicitor or director of law (or someone he delegates) to prosecute for the violation of his city or village ordinances.

"3. The term, 'all criminal cases,' as used in Section 1901.34, Revised Code, includes the preliminary hearing in felony prosecutions."

Further, Section 2935.01 (C), Revised Code, provides that the "prosecutor" who is to conduct preliminary matters in felony cases is the city solicitor, for courts inferior to the Court of Common Pleas.

The above mentioned statutes and Attorney General's Opinion support the conclusion that your first three questions must be answered in the affirmative.

In regard to your final question, the answer is set forth clearly in the statutes. Section 309.08, Revised Code, provides that the prosecuting attorney shall "prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party." (Emphasis added). Further, said Section 1901.34, supra, clearly requires, "The city solicitor \* \* \* shall prosecute all criminal cases \* \* \* for violation of state statutes \* \* \* occurring within the municipal corporation for which he is a solicitor, \* \* \* The city solicitor \* \* \* shall prosecute all criminal cases brought before said municipal court arising in the unincorporated areas within said territory." Also, Section 1901.34, supra, states that "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." There are certain violations of state statutes, such as license laws, which are specifically assigned to the prosecuting attorney for enforcement, but the city solicitor must represent the state in all other state cases arising within the territory of his municipal court and he would be precluded from representing the defendants in a criminal case when the State of Ohio is plaintiff.

It is accordingly my opinion and you are hereby advised as follows:

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.

3. It is the duty of a city solicitor to represent the State on felony violations occurring in such area, through the preliminary hearing stages.

4. A city solicitor may not represent defendants in a criminal case wherein the State of Ohio is plaintiff.