

2383

REGIONAL PLANNING COMMISSION NOT A "COUNTY BOARD" AND NOT ELIGIBLE TO RECEIVE SERVICES OF COUNTY PROSECUTOR AS ITS LEGAL ADVISOR—§§713.21, 309.09, R.C.

SYLLABUS:

A regional planning commission established pursuant to Section 713.21, Revised Code, is not a "county board" within the meaning of Section 309.09, Revised Code, and such commission, therefore, is not eligible to receive the services of the prosecuting attorney as its legal advisor.

Columbus, Ohio, July 19, 1961

Hon. Everett Burton, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In this area there has been established a Regional Planning Commission which is confined to the geographical area of Scioto County. The membership is composed of persons appointed by the Board of County Commissioners of Scioto County, Ohio, the City of Portsmouth, and other incorporated villages contained in this county.

"The City of Portsmouth and all other political subdivisions contributed to the budget of the commission, and the City of Portsmouth and the Village of South Webster each has its own city solicitor. We respectfully request your opinion on the following question:

"Is such a regional planning commission a county board which would be eligible to receive the services of the prosecuting attorney as its legal advisor?"

"We have before us an opinion of the Attorney General of September 15, 1958, being opinion No. 2736. In this opinion the Attorney General found that such a commission could not be classified as "county officers," but did not resolve the question as to whether or not such a commission would be a "county board," within the meaning of Section 309.09 of the Ohio Revised Code."

Section 309.09, Revised Code, provides 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 except those organized as a part of a city school district or of a municipal corporation, 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.

“Such prosecuting attorney shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.” (Emphasis added)

In Opinion No. 2736, Opinions of the Attorney General for 1958, page 567, referred to in your request, the syllabus reads as follows :

“1. A regional planning commission, *having more than one participating county*, is not a ‘county board,’ nor its members ‘county officers,’ within the meaning of Section 309.09, Revised Code, and such commission is not eligible to receive under this section the services of the prosecuting attorney of a member county as its legal advisor.

“2. Section 713.21, Revised Code, authorizes a regional planning commission to employ counsel if such employment is necessary and if funds therefor are available within the amounts agreed upon and appropriated by the agencies participating in the creation and operation of such commission.” (Emphasis added)

My predecessor in Opinion No. 2736, *supra*, specifically left open the question whether a regional planning commission, having only one participating county, is a “county board” within the meaning of Section 309.09, *supra*. This opinion, therefore will be directed to answering that specific question.

Prosecuting attorneys have been held to be the legal advisors to the following boards and commissions :

1. County child welfare board. Opinion No. 172, Opinions of the Attorney General for 1959, page 85.

2. Board of county hospital trustees. Opinion No. 1981, Opinions of the Attorney General for 1950, page 467.
3. Soldiers' relief commission. Opinion No. 3133, Opinions of the Attorney General for 1940, page 1065.

None of the foregoing opinions, however, have defined what constitutes a "county board," and I have been unable to find any statutory definition of the term. A possible clue, however, to what constitutes a "county board" is found in Opinion No. 1970, Opinions of the Attorney General for 1950, page 446.

In Opinion No. 1970, *supra*, the question was whether the prosecuting attorney would be required to continue to serve the county library district as its legal advisor under the general provisions of Section 2917, General Code (now Section 309.09 Revised Code) in view of the fact that the legislature had repealed a special provision, Section 7643-10 General Code, which had previously made the prosecuting attorney the legal advisor of such library district. After considering the status of county library districts, the then Attorney General concluded as follows:

"All of these considerations, I think, pretty clearly indicate that such county library district is not essentially a subdivision of the county nor a subordinate department of the county. From this it would follow that the general provisions of Section 2917, General Code, would not be applicable so as to constitute the prosecuting attorney as the legal advisor of the board of trustees of such county library district."

The status of a regional planning commission is set forth in Section 713.21, Revised Code, reading as follows:

"The planning commission of any municipal corporation or group of municipal corporations, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission.

"The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations and counties in the region shall be such as is determined by the planning commissions and boards.

* * *

It is thus apparent that a regional planning commission is a co-operative venture involving at least one municipal corporation and one county. Obviously, therefore, such a commission is not essentially a subdivision of the county or a subordinate department of the county. Following the reasoning in Opinion No. 1970, *supra*, I conclude that the general provisions of Section 309.09, *supra*, are not applicable so as to constitute the prosecuting attorney as the legal advisor of a regional planning commission.

My conclusion is further strengthened by the fact that the legislature could have enacted a special statute authorizing the prosecuting attorney to advise the commission, but this has not been done. You will note that in the case of the county engineer the legislature has enacted a special statute authorizing him to assist the commission. Section 713.26, Revised Code.

It is my opinion, therefore, and you are accordingly advised that a regional planning commission established pursuant to Section 713.21, Revised Code, is not a "county board" within the meaning of Section 309.09, Revised Code, and such commission, therefore, is not eligible to receive the services of the prosecuting attorney as its legal advisor.

Respectfully,

MARK McELROY

Attorney General