

## OPINION NO. 87-090

## Syllabus:

1. R.C. 1925.04 does not authorize a county department of human services to file an action in propria persona in the small claims division of a municipal or county court.
2. A county department of human services may not commence an action in the small claims division of a municipal or county court through a non-attorney employee of the department. Rather, a county department of human services may only appear in the small claims division of a municipal or county court through an attorney.
3. Pursuant to R.C. 309.09(A), the county prosecuting attorney must prosecute an action in the small claims division of a municipal or county court on behalf of a county department of human services.

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**To: Michael G. Spahr, Washington County Prosecuting Attorney, Marietta, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, November 19, 1987**

I have before me your request for my opinion on the issue of whether an employee of a county department of human services may file a civil action in the small claims division of municipal or county court without the representation of the county prosecutor. You have indicated that the Washington County department of human services brings suit in the small claims division of municipal court to recover overpayments to welfare recipients. The department employs a claims investigator who files and prosecutes these actions. The claims investigator is not an attorney.

I note first that a county department of human services, as a creature of statute, is limited to those powers and duties expressly conferred by statute or necessarily implied therefrom. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (board of county commissioners is a creature of statute and thus possesses only those powers expressly conferred by statute). Clearly, a county department of human services may bring suit to recover welfare overpayments. See, e.g., R.C. 5113.07 ("The county department of human services may institute civil action to recover erroneous payments"). However, the question arises as to whether the department has the authority to represent itself when bringing suit. The Ohio Supreme Court was faced with an analogous issue when it addressed the question of whether a corporation, which is also a creature of statute, could file an action in common pleas court through a non-attorney employee. The Court held that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." Union Savings Association v. Home Owners Aid, Inc., 23 Ohio St. 2d 60, 262 N.E.2d 558 (1970) (syllabus). The Court reasoned that since a corporation is a statutory entity, express statutory authority must be found to allow the corporation to appear in propria

persona. Id. at 62, 262 N.E.2d at 559. A county department of human services is also a creature of statute. There is no statutory authority allowing the department to appear through a non-attorney employee.<sup>1</sup> Therefore, I must conclude that the department is not permitted to represent itself in court through one of its agents or employees.

An examination of R.C. Chapter 1925 reinforces my conclusion. R.C. Chapter 1925 contains no express authority for a county department to represent itself in the small claims division of municipal or county court. I note that R.C. 1925.01 contains one provision which arguably may bear on the question of whether a government entity such as the county department of human services may represent itself in the small claims division. R.C. 1925.01(D) states that "[t]he appearance of an attorney at law on behalf of any party is permitted but not required" in the small claims division. However, I do not construe the broad language of R.C. 1925.01(D) to authorize an agency of county government to bring an action in propria persona in the small claims division. If the General Assembly had intended to so authorize, it would have used more specific language. See, e.g., R.C. 1925.17 ("a corporation may, through any bona fide officer or salaried employee, file and present its claim or defense..."). See generally Lake Shore Electric Ry. Co. v. PUCO, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926)(had the legislature intended a term to have a particular meaning, "it would not have been difficult to find language which would express that purpose," having used such language in other connections).

I note that R.C. 1925.17 specifically provides that a corporation may file an action in propria persona in the small claims division through an officer or employee.<sup>2</sup> The General Assembly also specifically provided that "where personal property taxes are sought, the county treasurer may commence the action." R.C. 1925.04. However, I find no similar

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<sup>1</sup> I note also that R.C. 4705.01 provides:

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court....

<sup>2</sup> R.C. 1925.17 provides:

A corporation which is a real party in interest in any action in a small claims division may commence such an action and appear therein through an attorney at law. Such a corporation may, through any bona fide officer or salaried employee, file and present its claim or defense in any action in a small claims division arising from a claim based on a contract to which the corporation is an original party or any other claim to which the corporation is an original claimant, provided such corporation does not, in the absence of representation by an attorney at law, engage in cross-examination, argument, or other acts of advocacy.

provision which expressly confers authority on government entities such as county departments to bring an in propria persona action in the small claims division. Thus, while there is limited statutory authority for a corporation to bring an action in propria persona in the small claims division, I find no such authority for a county department of human services. Therefore, I conclude that a county department of human services may not commence an action in propria persona in the small claims division of a municipal or county court through a non-attorney employee of the department.<sup>3</sup> Rather, I conclude that the department may only appear in small claims division through an attorney. See generally State ex rel. Alden E. Stilson & Associates v. Ferguson, 154 Ohio St. 139, 93 N.E.2d 688 (1950) (citing the general principle of statutory construction that the specification of one thing implies the exclusion of another).<sup>4</sup>

Having concluded that the county human services department must be represented by an attorney in the small claims division, I also note, as a final matter, that the department must be represented by the county prosecutor. R.C. 309.09(A) provides:

The prosecuting attorney [of the county] shall be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards...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<sup>5</sup> of the Revised Code. (Emphasis and footnote added.)

A county human services department is a county board within the meaning of R.C. 309.09(A). 1983 Op. Att'y Gen. No. 83-078, p. 2-317 to 2-318 (pursuant to R.C. 309.09(A), "the county prosecuting attorney is under a duty to represent county departments," including county human services department). See also 1959 Op. Att'y Gen. No. 172, p. 85 (county prosecutor is the legal adviser for the county child welfare board).

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<sup>3</sup> As you have not asked, I am not addressing the issue of whether any past judgments based on claims filed by the department through an employee may be challenged by the judgment debtor where the debtor did not raise, as a defense, lack of authority of the employee to file the action. Cf. Civ. R. 8(C).

<sup>4</sup> I note also that R.C. 1925.08, which limits the number of suits a claimant may file in the small claims division, fails to provide for government entities such as county departments. R.C. 1925.08 states that "[n]ot more than twenty-four claims may be filed in the small claims division of any court by a single person, firm, or corporation within any calendar year. This section does not apply to a county treasurer with regard to actions to recover personal property taxes."

<sup>5</sup> R.C. 305.14 is not of concern in your situation, since you have indicated that the claims investigator prosecuting these actions is not an attorney.

Therefore, pursuant to R.C. 309.09(A), the county prosecutor is the statutory counsel for the county department of human services and, as such, must prosecute and defend all suits and actions which the county department of human services directs or to which it is a party. An action to recover an overpayment of welfare funds, filed in the small claims division, is clearly a suit or action to which a county "officer or board directs or to which it is a party." See R.C. 309.09(A). See generally 1969 Op. No. 69-148 at p. 2-320 (R.C. 309.09 "clearly mandates that the prosecuting attorney should represent a county building department in all legal actions"); 1927 Op. Att'y Gen. No. 1125, vol. III, p. 1971 at p. 1975 (G.C. 2917 [now R.C. 309.09] "expressly makes it the duty of the prosecuting attorney to prosecute and defend all suits and actions in which any county officer or board is a party...").

Therefore, I conclude that pursuant to R.C. 309.09(A), the county prosecutor must prosecute all actions which a county department of human services directs or to which it is a party, including those actions brought in the small claims division to recover welfare overpayments.

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. R.C. 1925.04 does not authorize a county department of human services to file an action in propria persona in the small claims division of a municipal or county court.
2. A county department of human services may not commence an action in the small claims division of a municipal or county court through a non-attorney employee of the department. Rather, a county department of human services may only appear in the small claims division of a municipal or county court through an attorney.
3. Pursuant to R.C. 309.09(A), the county prosecuting attorney must prosecute an action in the small claims division of a municipal or county court on behalf of a county department of human services.