

## OPINION NO. 84-099

## Syllabus:

A prosecuting attorney has no statutory duty or authority to serve as legal adviser of a private industry council established for a service delivery area under the Federal Job Training Partnership Act, 29 U.S.C. §1501-1781.

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To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1984

I have before me your request for my opinion on whether a private industry council established for a service delivery area under the Federal Job Training Partnership Act is a "county board" within the meaning of R.C. 309.09, and is, therefore, a body which the prosecuting attorney is directed by statute to advise. I understand that, in your particular situation, the service delivery area coincides with the boundaries of Lorain County.

The office of prosecuting attorney is statutorily defined and the holder thereof has only such powers as are conferred upon him by statute and such powers as may be reasonably and necessarily inferred from the express powers. See State ex rel. Finley v. Lodwich, 137 Ohio St. 329, 29 N.E.2d 959 (1940). The statutory duties of a county prosecutor to act as legal adviser are set forth in R.C. Chapter 309 and related provisions. In pertinent part, R.C. 309.09(A) provides:

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. (Emphasis added.)

R.C. 309.09 is explicit in directing the prosecuting attorney to serve as legal adviser to all county officers and boards. The matter to be inquired into is whether a private industry council (PIC) established for a county-wide service delivery area is a county board. The term "county board" is not statutorily defined, but has been the subject of several opinions by attorneys general. In general, the term "county

board" has been restricted to "boards which are essentially a subdivision of a county or a subordinate department of the county." 1981 Op. Att'y Gen. No. 81-059 at 2-237. See 1975 Op. Att'y Gen. No. 75-014. In 1961 Op. Att'y Gen. No. 2383, p. 366, my predecessor concluded that a regional planning commission was not a county board within the meaning of R.C. 309.09, irrespective of the fact that it was geographically confined to a county-wide area, since it was neither essentially a subdivision of a county nor a subordinate department of a county. See 1950 Op. Att'y Gen. No. 1970, p. 446. Thus, geographic boundaries alone are insufficient to bring an entity within the purview of R.C. 309.09.

The Federal Job Training Partnership Act was designed "to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment." 29 U.S.C. §1501. To serve that end, the Act provides for the Governor to designate service delivery areas within the state. 29 U.S.C. §1511(b). 29 U.S.C. §1511 states, in part:

(a)(1) The Governor shall, after receiving the proposal of the State job training coordinating council [see 29 U.S.C. §1532], publish a proposed designation of service delivery areas for the State each of which—

(A) is comprised of the State or one or more units of general local government;

(B) will promote effective delivery of job training services;

and

(C)(i) is consistent with labor market areas or standard metropolitan statistical areas, but this clause shall not be construed to require designation of an entire labor market area; or

(ii) is consistent with areas in which related services are provided under other State or Federal programs.

(2) The Council shall include in its proposal a written explanation of the reasons for designating each service delivery area.

(3) Units of general local government (and combinations thereof), business organizations, and other affected persons or organizations shall be given an opportunity to comment on the proposed designation of service delivery areas and to request revisions thereof.

(4)(A) The Governor shall approve any request to be a service delivery area from—

(i) any unit of general local government with a population of 200,000 or more;

(ii) any consortium of contiguous units of general local government with an aggregate population of 200,000 or more which serves a substantial part of a labor market area; and

(iii) any concentrated employment program grantee for a rural area which served as a prime sponsor under the Comprehensive Employment and Training Act.

(B) The Governor may approve a request to be a service delivery area from any unit of general local government or consortium of contiguous units of general local government, without regard to population, which serves a substantial portion of a labor market area.

(C) If the Governor denies a request submitted under subparagraph (A) and the entity making such request alleges that the decision of the Governor is contrary to the provisions of this section, such entity may appeal the decision to the Secretary [of Labor], who shall make a final decision within 30 days after such appeal is received.

Pursuant to 20 C.F.R. §628.1(b), all areas within the State must be covered by designated service delivery areas. Under the federal law, a service delivery area

may coincide with county boundaries, but it need not do so, and most often in fact, does not so coincide.

29 U.S.C. §1512 provides for the establishment of private industry councils. Section 1512 reads in part:

There shall be a private industry council for every service delivery area established under section 1511 of this title, to be selected in accordance with this subsection. Each council shall consist of—

- (1) representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility; and
- (2) representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.

The functions of a PIC are set forth in 29 U.S.C. §1513 which reads in pertinent part: "It shall be the responsibility of the private industry council to provide policy guidance for, and exercise oversight with respect to, activities under the job training plan for its service delivery area in partnership with the unit or units of general local government within its service delivery area."

Members of a PIC are appointed from the various nominations by the chief elected officials of the local governmental units within the service delivery area, or by the Governor, 29 U.S.C. §1512(d), and a PIC is certified by the Governor, 29 U.S.C. §1512(g). However, rather than being a part of the local governmental units, the PIC acts in conjunction with the local governmental units. See 29 U.S.C. §1513(a) ("[i]t shall be the responsibility of the [PIC] to provide policy guidance for, and exercise oversight with respect to, activities under the job training plan for its service delivery area in partnership with the unit or units of general local government within its service delivery area" (emphasis added)). A PIC and the appropriate local officials act pursuant to agreement in developing a job training program and designating a grant recipient and entity to administer the plan. 29 U.S.C. §1513(b)(1). See 29 U.S.C. §1513(d) (a job training program may not be submitted to the Governor unless it has been approved by a PIC and the appropriate local officials and unless the plan is submitted jointly by the PIC and local officials). Division (b)(2) of §1513 authorizes a PIC to oversee the programs operated under the job training plan, and pursuant to 20 C.F.R. §628.2(b), this oversight may be "independent," and "shall not be circumscribed by agreements

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<sup>1</sup> With regard to boards which may exercise authority over an area exceeding the territorial limits of any one county, see 1979 Op. Att'y Gen. No. 79-019, in which one of my predecessors concluded that a multicounty felony bureau was not a county board for purposes of R.C. 309.09 and that the director of such bureau was not a county officer for purposes of R.C. 309.09. Op. No. 79-019 states, at 2-69:

Moreover, there is ample authority for the proposition that the term "county board," as used in R.C. 309.09, does not apply to any entity established on a multi-county basis. 1975 Op. Att'y Gen. No. 75-014 (joint county community mental health and retardation board); 1964 Op. Att'y Gen. No. 1523 (joint vocational school district); 1963 Op. Att'y Gen. No. 95, p. 157 (joint county airport facility); 1958 Op. Att'y Gen. No. 2736, p. 567 (regional planning commission).

See also 1983 Op. Att'y Gen. No. 83-064.

with the appropriate chief elected official(s) of the [service delivery area]." See 20 C.F.R. §629.43(c) ("[t]he PIC and local elected official(s) may conduct such oversight as they, individually or jointly, deem necessary or delegate to an appropriate entity pursuant to their mutual agreement").

A PIC is a separate legal entity established pursuant to federal law. It is created to provide guidance over a service delivery area which may or may not be county-wide. Although it works in conjunction with officials of local government, 29 U.S.C. §1513, it is not a subdivision or a subordinate department of the county. A PIC is composed of individuals from the private sector and is given authority pursuant to federal law. The county is not responsible for the organization or funding of a PIC, even if it is located solely within the county. Since a PIC is neither a subdivision of a county nor a subordinate department of a county, I find that a PIC is not a county board within the meaning of R.C. 309.09. See Op. No. 81-059; 1979 Op. Att'y Gen. No. 79-039.

Therefore, it is my opinion, and you are hereby advised, that a prosecuting attorney has no statutory duty or authority to serve as legal adviser of a private industry council established for a service delivery area under the Federal Job Training Partnership Act, 29 U.S.C. §1501-1781.