

OPINION NO. 90-073**Syllabus:**

A county prosecuting attorney has no duty to provide legal advice to a regional water and sewer district created under R.C. Chapter 6119.

To: Wilfred G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 8, 1990

I have before me your opinion request concerning a regional water and sewer district created pursuant to R.C. Chapter 6119. Your request states:

Please advise if a Water District formed pursuant to [R.C. 6119.01] is a "body politic" or corporate entity with tax powers.

If it is a "body politic" then please advise if the Prosecuting Attorney is the legal advisor to a Water District formed pursuant to [R.C. 6119.01 et seq.].

I turn first to your second question asking whether the prosecuting attorney is the legal advisor of a water district created pursuant to R.C. Chapter 6119. For purposes of R.C. Chapter 6119, the term "regional water and sewer district" is defined as, "a district organized or operating for one or both of the purposes described in [R.C. 6119.01] and, if organized or operating for only one of such purposes, may be designated either a regional water district or a regional sewer district, as the case may be." R.C. 6119.01 sets forth the permissible purposes for such a district as being: "(A) [t]o supply water to users within and without the district; (B) [t]o provide for the collection, treatment and disposal of waste water

within and without the district." For ease of discussion, I will use the statutory term "regional water and sewer district" when referring to the district about which you ask.

The duty of the county prosecutor to provide legal advice is set forth in R.C. 309.09(A), which states in pertinent part: "The prosecuting attorney shall be the legal adviser of the board of county commissioners,...and all other county officers and boards....Such prosecuting attorney shall be the legal adviser for all township officers." In addition to R.C. 309.09(A), various statutes allow the prosecuting attorney to advise or represent other entities or persons. *See, e.g.*, R.C. 3313.35 (with certain exceptions, the county prosecuting attorney is the legal adviser of all school districts within the county). I am unaware of any statute, however, which specifically designates the county prosecuting attorney as legal adviser of a regional water and sewer district. Whether the prosecuting attorney may act as legal advisor for a regional water and sewer district depends, therefore, upon whether such a district constitutes a county board for purposes of R.C. 309.09(A).

As stated above, a regional water and sewer district may be created for those purposes set forth in R.C. 6119.01. As summarized in *Kucinich v. Cleveland Regional Sewer District*, 64 Ohio App. 2d 6, 6-7, 410 N.E.2d 795, 796 (Cuyahoga County 1979):

R.C. Chapter 6119 provides a voluntary method whereby cities, counties and townships may form a water and/or sewer district.

The voluntary proceedings for the organization of a regional water and sewer district shall be initiated only by a petition filed in the office of the clerk of the Common Pleas Court. The petition shall be signed by one or more municipal corporations, or one or more counties, or by township trustees, or a combination of them, after having been authorized by the legislative authority of the subdivision. R.C. 6119.02.

Thus, it is apparent that a regional water and sewer district may be composed of one or more municipalities, or one or more counties, or one or more townships, or any combination thereof.

R.C. 6119.04 then provides for a preliminary hearing upon the petition to create the district. Pursuant to R.C. 6119.04(A):

Upon a preliminary hearing, if it appears that the proposed district is probably necessary and that it will probably be conducive to the public health, safety, convenience, or welfare, the court after disposing of all objections as justice and equity require shall by its findings, entered of record, issue a preliminary order declaring the district to be organized and an *independent political subdivision of the state* with a corporate name designated in said order.... (Emphasis added.)

Further, pursuant to R.C. 6119.04(A), one of the purposes for which the court may issue a preliminary order declaring the district "to be...an independent political subdivision of the state," is to enable the district to employ, among others, attorneys, "as may be necessary to prepare a plan for the operation of the district." R.C. 6119.04(A)(2). This express grant of authority to hire attorneys suggests that a regional water and sewer district is not otherwise entitled to representation by, or the advice of, the county prosecuting attorney.

R.C. 6119.04(C) then provides for a final hearing where the court, after making the appropriate findings, shall "declare the district finally and completely organized and to be, or to be empowered to continue as, a *political subdivision*." (Emphasis added.) It is clear, therefore, that a regional water and sewer district is an independent political subdivision, distinct from its member subdivisions. *Kucinich v. Cleveland Regional Sewer District*. Thus, although a county may be included within a regional water and sewer district, the district is not a county board for purposes of R.C. 309.09(A). The county prosecutor, therefore, has no duty under R.C. 309.09(A) to represent a regional water and sewer district. *See* 1986 Op.

Att'y Gen. No. 86-068 at 2-374 ("[a] regional council of governments is formed of the various political subdivisions that participate in its establishment, *see* R.C. 167.01, and is, therefore, not a county board. It appears as a result, that a county prosecutor is under no duty to advise such a council").

Since I have concluded that a county prosecuting attorney has no duty to advise a regional water and sewer district created under R.C. Chapter 6119, I have no authority under R.C. 109.14 to advise you in your capacity as county prosecutor as to the matters referred to in your first question. *See generally* R.C. 109.14 ("[w]hen requested by them, the attorney general shall advise the prosecuting attorneys of the several counties *respecting their duties* in all complaints, suits, and controversies in which the state is, or may be a party" (emphasis added)).

It is, therefore, my opinion, and you are hereby advised that, a county prosecuting attorney has no duty to provide legal advice to a regional water and sewer district created under R.C. Chapter 6119.