

648

MUNICIPALITIES—COUNTY PROSECUTOR HAS NO DUTY TO PROSECUTE VIOLATIONS OF VILLAGE ORDINANCES—§1905.13, R.C.

SYLLABUS:

It is not the duty of the prosecuting attorney of a county to prosecute cases involving violations of village ordinances prosecuted in the name of the village and for the benefit of the village, that are transferred from the Mayor's Court to the Common Pleas Court under the authority of Section 1905.13 of the Revised Code, and legal counsel provided by the village should conduct such prosecutions.

Columbus, Ohio, July 1, 1959

Hon. Wilford R. Miller, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Some of the villages in our county transfer criminal cases from the Mayor's court to the Common Pleas Court under the authority of Section 1905.13 of the Revised Code of Ohio.

“Since the cases are prosecuted under the name of the village and for the benefit of the village, my question is this:

Is it the duty of the Prosecuting Attorney or the Solicitor of the village to try village ordinance cases when they are tried before a Court of Common Pleas?”

Section 1905.13, Revised Code, provides as follows:

“The mayor of a village may decline to permit the trial mentioned in section 1905.12 of the Revised Code, if in his opinion the public interest will be promoted. Having entered that fact on his docket, the mayor shall inquire into the complaint, and discharge the accused, recognize him to the court of common pleas, or commit him in default of bail, and in such case the court of common pleas shall have jurisdiction of the offense.”

Section 309.08, Revised Code, outlines the powers and duties of the prosecuting attorney of the county, and reads as follows:

“The prosecuting attorney may inquire into the commission of crimes within the county and shall prosecute, on behalf of the state, all complaints, suits and controversies in which the state is a party, and such other suits, matters, and controversies as he is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals. In conjunction with the attorney general, such prosecuting attorney shall prosecute cases arising in his county in the supreme court. In every case of conviction, he shall forthwith cause execution to be issued for the fine and costs, or costs only, as the case may be, and he shall faithfully urge the collection until it is effected or found to be impracticable to collect, and shall forthwith pay to the county treasurer all moneys belonging to the state or county which come into his possession.”

From this section it will be observed that the prosecution duties of that office are on behalf of the state and in which the state is a party.

In your request you state that the cases in question pertain to violations of village ordinances in the name of the village and for the benefit of the village. Certainly the prosecution of these cases could in no manner be considered the duty of the prosecuting attorney in view of the aforementioned section.

Section 733.48, Revised Code provides for the employment of legal counsel for a village. It reads as follows:

“When it deems it necessary, the legislative authority of a village may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel.”

Since the cases referred to in your opinion are village ordinances, prosecuted in the name of the village and for the benefit of the village, it is the duty of the village to provide legal counsel for their prosecution.

Section 733.48, Revised Code, is practically identical with former section 4220, General Code.

In opinion No. 2115, Opinions of the Attorney General for 1916, a former Attorney General rendered an opinion, the syllabus of which reads as follows:

“The prosecuting attorney of a county may not accept employment from the council of a village in such county, acting under authority of sections 4220 G. C., to represent such village in any matter in which the interest of the village is adverse to

that of the county, township, school district or other taxing district in said county, or to that of either of the boards mentioned in section 2917-1 G. C., or in any matter involving the taxing authority of the council of said village and coming before the county budget commission, but said prosecuting attorney may accept employment from the council of said village in matters involving the rights of the village which are outside and independent of the relations above referred to, where the rendering of service by said prosecuting attorney in his personal capacity as an attorney at law to such village will not conflict directly or indirectly with the full performance of his official duties as prosecuting attorney of the county. It would be proper to place in such a contract of employment a provision to the effect that the employment by the village council shall not extend to any matter which may directly or indirectly conflict with the performance of the official duties of such prosecuting attorney."

From this opinion it may be observed that the village under the stated circumstances may employ the prosecuting attorney of the county as legal counsel in matters involving the right of the village which are outside and independent of his duties as prosecuting attorney.

Reference to this opinion is made because it can reasonably be inferred that the hire of the prosecuting attorney would not be necessary if he had any duty to perform for the village.

It is accordingly my opinion and you are advised that it is not the duty of the Prosecuting Attorney of a county to prosecute cases involving violations of village ordinances prosecuted in the name of the village and for the benefit of the village, that are transferred from the Mayor's Court to the Common Pleas Court under the authority of Section 1905.13, Revised Code, and legal counsel provided by the village should conduct such prosecutions.

Respectfully,
MARK McELROY
Attorney General