

Note from the Attorney General's Office:

1979 Op. Att'y Gen. No. 79-039 was overruled in part
as a result of legislative enactment by
2018 Op. Att'y Gen. No. 2018-020.

OPINION NO. 79-039

Syllabus:

1. A county prosecuting attorney has no statutory duty to advise the board of trustees of a joint ambulance district, formed pursuant to R.C. 505.71, which is comprised of townships and municipalities in a single county.
2. The board of trustees of a joint ambulance district has the authority, pursuant to R.C. 505.71 and R.C. 505.72 to employ legal counsel to assist the board in performing its functions.

To: Richard B. Hauser, Huron County Pros. Atty., Norwalk, Ohio
By: William J. Brown, Attorney General, July 24, 1979

You have asked for my opinion on whether the county prosecuting attorney has a statutory duty to act as legal adviser to a joint ambulance district, formed pursuant to R.C. 505.71, which is comprised of townships and municipalities in a single county.

R.C. 309.09 outlines the duties of a county prosecuting attorney and provides, in part, as follows:

(A) 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. Such prosecuting attorney shall be the legal adviser for all township officers. . . . (Emphasis added.)

The language of this section makes it necessary to determine whether a board of trustees of a joint ambulance district, comprised of municipalities and townships within a single county, is a "county board" or whether its members are "county officers" or "township officers" within the meaning of R.C. 309.09.

R.C. 505.71, which establishes the power of townships and municipalities to create joint ambulance districts, reads, in part, as follows:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining such townships, or the boards of township trustees of two or more townships, or the legislative authority of two or more municipal corporations, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint ambulance district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon. A district so created shall be given a name different from the name of any participating township or municipal corporation.

The governing body of a district shall be a board of trustees, which shall include one representative appointed by each board of township trustees and one representative appointed by the legislative authority of each municipal corporation in the district. Members of

the board of trustees may be compensated at a rate not to exceed twenty dollars per meeting, not to exceed twelve meetings per year, and may be reimbursed for all necessary expenses incurred

To provide the services and equipment it considers necessary for the district, the board may levy taxes, subject to Chapter 5705. of the Revised Code, and issue bonds and other evidences of indebtedness, subject to Chapter 133. of the Revised Code, after submitting the question of such issuance to the electors of the district in the manner provided by Chapter 133. of the Revised Code. (Emphasis added.)

Thus, it is apparent that the joint ambulance district authorized by R.C. 505.71 is a separate legal entity. It is created by agreement of separate townships and municipalities. It is to be given a name different from any of its participants. It is vested with independent authority to levy taxes and to issue bonds, and its board of trustees is specifically designated as the taxing and bond issuing authority of the district.

In re Termeer, 52 Ohio Misc. 101 (C.P. Franklin Co. 1977), establishes that a joint fire district, created pursuant to R.C. 505.371, is a separate legal entity. The language of that section is nearly identical to that of R.C. 505.71 and it, therefore, seems beyond peradventure that a joint ambulance district, created pursuant to that section, is also a separate legal entity.

This being so, it is difficult to conceive of the board of trustees of a joint ambulance district as a "county board" or its members as "county officers." The county has absolutely no involvement in the organization, funding, or operation of the district and the functions of the board of trustees do not relate to county matters.

The status of the district as a separate legal entity also indicates that its board members are not "township officers." The mere fact that some of its members are representatives from the townships involved is not a basis for classifying them as township officers.

In 1960 Op. Att'y Gen. No. 60-1234, p. 205, one of my predecessors considered the question of whether the county prosecuting attorney is the legal adviser for either a joint township district hospital board or the board of governors of such joint township hospital. That Opinion concluded that the prosecuting attorney is the legal adviser for a joint township board but not for the board of governors of the hospital.

That conclusion as to a joint township board, however, was based on the fact that R.C. 513.07, which authorizes the creation of such a board, provides that the boards of township trustees may form themselves into a joint township district hospital board. The Opinion reasoned that since the hospital board is comprised exclusively of township trustees, who are township officers, then that board is entitled to be advised by the prosecuting attorney.

The conclusion in the same Opinion that the county prosecutor is not the legal adviser to the board of governors of a joint township hospital was based on the rationale that the members of such board are not township officers and are therefore not entitled to legal advice from the county prosecuting attorney.

The situation of the members of the board of trustees of a joint ambulance district is closely analogous to that of the board of governors of a joint township hospital. The members are not township trustees but rather are appointed by the township trustees and municipal legislative authority, and, although they are appointed to represent the township or municipality, their duties are performed for the ambulance district. They are not township officers and are, therefore, not entitled to be represented by the county prosecutors.

It should be recognized at this point that my opinion does not leave the joint

ambulance district without authority to obtain legal advice. Pursuant to R.C. 505.72, the board of trustees has the authority to provide for the employment of such employees as it considers best. In addition, the board's authority to retain the services of private legal counsel is necessarily implied in R.C. 505.71, set forth above, which describes the general powers and duties of the board of trustees.

It is, therefore, my opinion and you are advised:

1. A county prosecuting attorney has no statutory duty to advise the board of trustees of a joint ambulance district, formed pursuant to R.C. 505.71, which is comprised of townships and municipalities in a single county.
2. The board of trustees of a joint ambulance district has the authority, pursuant to R.C. 505.71 and R.C. 505.72 to employ legal counsel to assist the board in performing its functions.