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THE COUNTY PROSECUTING ATTORNEY HAS THE AUTHORITY TO BRING A CIVIL ACTION FOR THE RECOVERY OF COSTS OWING TO A COUNTY OFFICER; IT HAS THIS DUTY TO DO SO IF DIRECTED BY THE OFFICER—A COUNTY PROSECUTOR WHO RECEIVES A REPORT FROM THE BUREAU OF INSPECTION CERTIFIED TO HIM TO INSTITUTE ACTION TO RECOVER MONIES MUST INSTITUTE ACTION WITHIN 90 DAYS—§§§309.12, R.C., 117.01, R.C., 117.10, R.C.

SYLLABUS:

1. Under Sections 309.12 and 325.27, Revised Code, the county prosecuting attorney is authorized to bring a civil action for the recovery of costs owing to county officers, including the county engineer or probate judge; and pursuant to Section 309.09, Revised Code, has a duty to so proceed when directed by such a county officer.

2. Where a report of the bureau of inspection and supervision of public offices sets forth that public moneys due a county officer have not been collected, the report is, under Section 117.10, Revised Code, certified to the prosecuting attorney of the county, who then has a duty to institute action for the recovery of such moneys within ninety days after receipt of the report.

Columbus, Ohio, April 6, 1962

Hon. Everett Burton, Prosecuting Attorney  
Scioto County, Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We respectfully request the opinion of your office concerning a request received by this office from the county engineer and Probate Court of Scioto County, Ohio, concerning the collection of costs owing to those respective parties. These offices have certified these costs to our office pursuant to Section 325.29 of the Ohio Revised Code for collection. However, upon examining the statutes we find that Section 325.29 of the Ohio Revised Code was repealed by the Ohio Legislature, effective September 11, 1961.

"We have been unable to find any other new section which may have been passed by the legislature supplanting this section for authorizing the Prosecuting Attorney to collect costs on behalf of the different county officers.

"We will appreciate your opinion concerning the responsibility of the Prosecuting Attorney under the present statutes of the law."

As you state, former Section 325.29, Revised Code, was repealed by Amended House Bill Number 213 of the 104th General Assembly, effective September 11, 1961. That section required that each county officer submit to the prosecuting attorney an annual report of money due his office for more than one year, and provided that the prosecuting attorney should then collect such money and pay it into the county treasury to the credit of the general county fund.

While the repeal of said Section 325.29 does remove the requirement that the officers involved submit an annual report, there appears to be ample authority in law for the prosecuting attorney to take action to collect costs on behalf of the different county officers.

Section 309.12, Revised Code, reads in pertinent part as follows:

"Upon being satisfied that \* \* \* money is due the county, the prosecuting attorney may, by civil action in the name of the state, apply to a court of competent jurisdiction, \* \* \* to recover such money as is due the county."

Also, Section 325.27, Revised Code, provides :

“All the fees, costs, percentages, penalties, allowances, and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of the court of common pleas, county engineer, or county recorder, shall be received and collected for the sole use of the treasury of the county in which such officers are elected, and shall be held, accounted for, and paid over as public moneys belonging to such county in the manner provided by sections 325.30 and 325.31 of the Revised Code.”

Section 309.12, *supra*, provides that the prosecuting attorney may, by civil action, recover money that is due the county. Section 325.27, *supra*, provides that costs collected or received by law as compensation for services by the various county officers, including a county engineer or probate judge, “shall be received and collected for the sole use of the treasury of the county,” and “shall be held, accounted for, and paid over as public moneys belonging to such county.” What must be resolved, therefore, is whether costs which are owed to a county officer and which are as yet uncollected, are moneys “due the county.” Or, conversely, is the term “money \* \* \* due the county,” as used in Section 309.12, *supra*, comprehensive enough to include costs which are owing to specific county officers.

It seems clear that these costs constitute money due the county. They are “collected for the sole use of the treasury of the county,” and are thereupon “held \* \* \* as public moneys belonging to such county.” The officials who collect these costs are, accordingly, mere agents for collection, and act for the county.

Section 309.12, *supra*, is the so-called “watch dog” statute providing for the protection of county funds. *In re Estate of Davis*, 107. O. App. 52, 57 (1958). It is a remedial law and should be liberally construed. *State, Ex Rel., Maher v. Baker*, 88 Ohio St. 165, 179 (1913). And here, Section 1.11, Revised Code, reads, in part, as follows :

“Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice. \* \* \*”

In order to promote the object of Section 309.12, *supra*, (the protection of county funds), and to assist the county in obtaining justice, the term “money \* \* \* due the county,” used in Section 309.12, *supra*, must be

construed to include costs owing to the various county officials enumerated in Section 325.27, *supra*. Such a construction is in line with the test adopted by the Ohio Supreme Court in *Dennis v. Smith*, 125 Ohio St. 120, 125 (1932) :

“In applying the rule of liberal construction all reasonable doubts are to be resolved in favor of the statute being applicable to the particular case.”

Resolving all reasonable doubts in the present case, there can be no doubt but that costs owing to the county engineer and probate court and the other specific county officers, constitute money due the county. It is accordingly my opinion that a prosecuting attorney may bring a civil action pursuant to Section 309.12, Revised Code, for the recovery of costs owing to the county engineer or probate court.

In addition to the permissive provisions of Section 309.12, *supra*, for the collection of money due the county, the mandatory provisions of Sections 117.01 and 117.10, Revised Code, must also be observed.

Section 117.01, Revised Code, reads, in part :

“This section creates the bureau of inspection and supervision of public offices, in the office of the auditor of state, which bureau shall inspect and supervise the accounts and reports of all state offices. \* \* \*

\* \* \*

\* \* \*

\* \* \*”

Section 117.10, Revised Code, reads, in part :

“The report of the examination made by the bureau of inspection and supervision of public offices shall set forth, in such detail as is deemed proper by the bureau, the result of the examination \* \* \*.

“\* \* \* if the report relates to the expenditure of public money belonging to the treasury of any other subdivision of the state or of a special taxing district or to any custodian of public funds other than the treasurer of state, the treasurer of a city, the treasurer of a city school district, or the treasurer of a village, \* \* \* a certified copy shall be filed with the prosecuting attorney of any county in which such political subdivision or special taxing district or part thereof is located, or in which such custodian of public money \* \* \* resides. \* \* \*

“If the report sets forth \* \* \* that any public money due has not been collected, \* \* \* the officer receiving such certified

copy of such report, \* \* \* shall within ninety days after the receipt of such certified copy of such report, institute civil actions in the proper court in the name of the political subdivision or taxing district to which such public money is due \* \* \* and shall prosecute such actions to a final determination. \* \* \*

“\* \* \*

\* \* \*

\* \* \*”

Pursuant to these sections the bureau of inspection and supervision of public offices inspects the accounts and reports of all county officials. And, when the bureau sets forth in its report to a prosecuting attorney that public money due a county officer has not been collected, the prosecutor must institute civil actions for the recovery of such money within ninety days after receiving the report.

I might further note that under Section 309.09, Revised Code, the prosecuting attorney has a duty to prosecute and defend all suits and actions which any county officer directs or to which it is a party. Thus, where a county officer directs that a suit be brought to collect costs due his office, the prosecuting attorney has the duty to proceed with the action.

Concluding, it is my opinion and you are advised :

1. Under Sections 309.12 and 325.27, Revised Code, the county prosecuting attorney is authorized to bring a civil action for the recovery of costs owing to county officers, including the county engineer or probate judge; and pursuant to Section 309.09, Revised Code, has a duty to so proceed when directed by such a county officer.

2. Where a report of the bureau of inspection and supervision of public offices sets forth that public moneys due a county officer have not been collected, the report is, under Section 117.10, Revised Code, certified to the prosecuting attorney of the county, who then has a duty to institute action for the recovery of such moneys within ninety days after receipt of the report.

Respectfully,  
MARK MCELROY  
Attorney General