

OPINION NO. 70-050**Syllabus:**

A prosecuting attorney may bring a civil action for separate maintenance and support in accordance with the procedure outlined in Section 3115.05, Revised Code.

To: Hamilin C. King, Gallia County Pros. Atty., Gallipolis, Ohio
By: Paul W. Brown, Attorney General, April 23, 1970

I have before me your request for my opinion on the question of whether a prosecuting attorney may, in his official capacity as prosecutor, bring a civil action for separate maintenance and support on behalf of an indigent complainant on a no cost basis.

Section 3115.05, Revised Code, provides as follows:

"All duties of support are enforceable irrespective of the relationship between the obligor and obligee. Jurisdiction of all proceedings under sections 3115.01 to 3115.22, inclusive, of the Revised Code, is vested in any court of record.

"In any case where an Ohio court of record shall have previously obtained jurisdiction of the subject of the action, the existing judgment, orders, or decrees of such court shall be fully considered in the determination of the jurisdiction of and other issues between the parties.

"When it appears to the court by affidavit that the plaintiff has no means or property to provide for employment of counsel, the court may appoint the prosecuting attorney or other counsel to represent the plaintiff and fix the fee for such service, which fee shall be taxed as costs in said proceeding or the attorney of any agency or organization legally constituted for the welfare or protection of obligees may represent the plaintiff in any such proceeding. The prosecuting attorney shall be appointed to represent the county welfare department or a recipient of aid under Chapter 5107. or

5113. of the Revised Code, unless counsel is otherwise available to the plaintiff without cost to him.

"A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem."
(Emphasis added)

It thus appears that a prosecuting attorney may, in his official capacity as prosecutor, bring a civil action for separate maintenance and support on behalf of an indigent complainant in accordance with the procedure outlined in Section 3115.05, supra. Further, it does not appear that representation of the plaintiff by the prosecutor is limited to interstate actions but is applicable to intrastate actions as well. "Duty of Support" is defined in Section 3115.01, Revised Code, as follows:

"(F) 'Duty of support' means any duty of support imposed or imposable by law, court order, decree, or judgment, whether interlocutory or final, and whether incidental to a proceeding for divorce, legal separation, separate maintenance, or otherwise."

The definition as set forth above, fortifies the conclusion that proceedings involving the duties of support referred to in Section 3115.05, supra, include intrastate actions as well as interstate actions and the appointment of the prosecutor to represent the plaintiff accordingly includes actions limited to the State of Ohio as well as those involving reciprocal actions with other states.

Also, Chapter 3115, Revised Code, which is the Support of Dependents Act, was promulgated to achieve uniformity in the law and it would be anomalous to hold that Section 3115.05, supra, relating to the representation by the prosecuting attorney, does not apply uniformly to both interstate actions and intrastate actions.

Therefore, in view of the foregoing, it is my opinion and you are accordingly advised that a prosecuting attorney may bring a civil action for separate maintenance and support in accordance with the procedure outlined in Section 3115.05, Revised Code.