

## OPINION 65-91

### Syllabus:

1. A board of county commissioners is without authority to establish branch offices for the county auditor in a city other than the county seat.
2. A board of county commissioners is without authority to establish branch offices for the county treasurer in a city other than the county seat except under the provisions of Section 323.61, Revised Code.
3. A board of county commissioners is without authority to provide permanent rooms and facilities for the performance of the functions of a court of domestic relations in a place other than the courthouse.
4. A board of county commissioners, upon finding that a

branch office of the prosecuting attorney is needed, may agree to pay a part of the cost of the operation of the private office of an assistant prosecuting attorney when such office is also being used as a branch office of the prosecuting attorney.

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**To: Richard J. Wessel, Butler County Pros. Atty., Hamilton, Ohio**  
**By: William B. Saxbe, Attorney General, May 19, 1965**

I have before me your request for my opinion which asks the following questions:

"1. Does the Board of County Commissioners have the authority to rent office space in a city other than the county seat for branch offices for the County Auditor, Treasurer, Domestic Relations Court, and Prosecuting Attorney of the County?

"2. Does the Board of County Commissioners have authority to pay for janitorial services and utilities for office space located in the city other than the county seat?"

Your letter further states that the City of Middletown has provided rent free office space for "branch offices" of the County Auditor, Treasurer, and Domestic Relations Court in the Middletown City Building. Now that the City of Middletown needs such office space for municipal purposes, the county must vacate the premises. However, the City of Middletown has offered to permit the county to occupy office space in another building owned by the city if the county will pay for utility and janitorial services.

You further indicate that as Prosecuting Attorney of Butler County you have taken steps to provide a branch office of the Prosecuting Attorney in Middletown, located in the private law office of an Assistant Prosecuting Attorney, and that you have submitted a bill to the county for a portion of the rent of that office.

You also state that the above mentioned offices are "branch offices," that the County Treasurer, Auditor, and Domestic Relations Court have offices in the courthouse in Hamilton and that the Prosecuting Attorney has an office in Hamilton outside the courthouse. You also stress the fact that these "branch offices" are for the convenience of the citizens of Middletown, Ohio, and for that reason only.

Section 307.01, Revised Code, provides as follows:

"A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county commissioners when in its judgment any of them are needed. Such buildings and offices shall be of such style, dimensions, and expense as the board determines. The board shall also provide equipment, stationery, and postage, as it deems necessary for the proper and convenient conduct of

county offices, and such facilities as will result in expeditious and economical administration of such offices. The board shall provide all rooms, fireproof and burglarproof vaults, safes, and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

While the foregoing section gives broad authority to the county commissioners and has been construed by former attorneys general to give implied authority to the county commissioners to rent or lease space outside the courthouse if there is not sufficient space available therein, (see Opinion No. 4163, Opinions of the Attorney General for 1935, page 433) your attention is directed to Sections 319.03 and 321.05, Revised Code.

Section 319.03, Revised Code, provides as follows:

"The office of the county auditor shall be at the county seat, in such rooms as the board of county commissioners provides."

And Section 321.05, Revised Code, provides in pertinent part as follows:

"The county treasurer shall keep his office at the county seat, in rooms provided for that purpose by the board of county commissioners, \* \* \*."

Your attention is also directed to Section 323.61, Revised Code, which provides as follows:

"When no additional expense will be incurred, the county treasurer may open as many tax receiving offices as are necessary for the receiving of taxes. Such offices shall be in municipal corporations in which a bank of deposit is located. The treasurer or his deputies may attend at such offices and receive payment of all taxes. They may remove from the county treasury to the place of collection records necessary for the receiving of taxes upon the days fixed for that purpose."

Accordingly, it is clear that the Board of County Commissioners of Butler County is without authority to establish branch offices for the county auditor or county treasurer in a city other than the county seat. Such prohibition, as it relates to the county treasurer, is, of course, qualified by the provisions of Section 323.61, supra.

In Zanzerle, Auditor v. Common Pleas Court of Cuyahoga

County, et al., 141 Ohio St., 70, the Supreme Court stated in paragraph one of the syllabus as follows:

"The primary and paramount purpose of a courthouse, as its name implies, is to furnish the rooms and facilities essential for the proper and efficient performance of the functions of the court."

The Court also said that it was significant that there is no statutory authority vested in the county commissioners to provide permanent quarters for court purposes outside the courthouse.

Although you state that the Middletown "branch" of the Butler County Court of Domestic Relations is administrative only, and the court does not hold sessions there, I can only conclude that said "branch office" does perform a function of the court and must be located in the courthouse at the county seat.

In 1959 the then Attorney General was asked to render an opinion on the question of a board of county commissioners paying a part of the cost of rent and lighting of the private office of the prosecuting attorney. See Opinion No. 963, Opinions of the Attorney General for 1959, page 653. It was therein stated that a board of county commissioners is not legally bound to pay a part of the cost of rent and lighting of the private office of the prosecuting attorney when said office is also being used as the office of the prosecutor, unless the board has agreed to make such payments in providing an office pursuant to Section 307.01, Revised Code.

That Opinion also stated that the authority to provide an office for the prosecuting attorney rests solely with the board of county commissioners and that it was not the intent of the legislature in Sections 307.01 and 307.02, Revised Code, to permit the substitution of the judgment of anyone else in that matter.

At page 656, the Opinion went on to state as follows:

"While the logical location for the office of prosecuting attorney should be the county courthouse, if space is not available in the courthouse, then the board of county commissioners could provide such an office at such other location, if in its judgment such office is needed. Further, I would deem it within the authority of the board to agree to pay part of your office rent and lighting in order to furnish you with an office for your official duties. Until this authority is exercised, however, such board is not required to pay part of your rent and lighting as in the circumstances set forth in your letter.

"In passing, I might add that the prosecuting attorney, because of the large

and important task which he has to perform, should certainly be furnished with office facilities for the performance of his official duties and should not be required to provide such office at his own expense. While the board of county commissioners is given a discretion in this regard, the obvious need for office facilities plainly indicates that the board should provide such facilities; and failure to so provide is certainly not in the best interests of the people of the county and of the state."

It is also significant that those sections of the Revised Code dealing with the prosecuting attorney contain no provisions calling for the prosecuting attorney to have his office in the courthouse or in the county seat.

Accordingly, I am of the opinion that a board of county commissioners may provide the prosecuting attorney with an office and such branch offices as they deem are needed. The members of said board, upon finding that a branch office of the prosecuting attorney is needed, may agree to pay a part of the cost of the operation of the private office of an assistant prosecuting attorney when such office is also being used as a branch office of the prosecuting attorney.

Therefore, it is my opinion and you are accordingly advised as follows:

1. A board of county commissioners is without authority to establish branch offices for the county auditor in a city other than the county seat.
2. A board of county commissioners is without authority to establish branch offices for the county treasurer in a city other than the county seat except under the provisions of Section 323.61, Revised Code.
3. A board of county commissioners is without authority to provide permanent rooms and facilities for the performance of the functions of a court of domestic relations in a place other than the courthouse.
4. A board of county commissioners, upon finding that a branch office of the prosecuting attorney is needed, may agree to pay a part of the cost of the operation of the private office of an assistant prosecuting attorney when such office is also being used as a branch office of the prosecuting attorney.