

OPINION NO. 81-089**Syllabus:**

1. While the Ohio Public Defender Commission has the duty to generally supervise the functioning of the public defender system in Ohio pursuant to R.C. 120.01, such duty does not extend to the management, supervision, and control of the daily operations of the State Public Defender's Office.
2. Pursuant to R.C. 120.03, the Ohio Public Defender Commission has the following duties which relate to the State Public Defender's Office: appointment and removal of the State Public Defender, approval of an annual budget, and submission of an annual report concerning the operations of the State Public Defender's Office.

To: Everett Burton, Chairman, Ohio Public Defender Commission, Columbus, Ohio
By: William J. Brown, Attorney General, December 16, 1981

I have before me your request for my opinion concerning the duty of the Ohio Public Defender Commission to oversee the State Public Defender's Office. Your request is phrased in general terms; however, it is my understanding that your specific concern is with the issue of whether the Ohio Public Defender Commission is under a statutory duty to manage, supervise and control the State Public Defender's Office.

The Ohio Public Defender Commission was created pursuant to R.C. 120.01 "to provide, supervise, and coordinate legal representation at state expense for indigent and other persons." Thus, the Commission is required by statute to oversee the functioning of the public defender system in Ohio. This system does not consist solely of the State Public Defender's Office. The county and joint county public defender commissions and offices also form a part of the overall program which is supervised by the Ohio Public Defender Commission. See generally R.C. 120.03(B); R.C. 120.13; R.C. 120.15; R.C. 120.23; R.C. 120.25. Clearly, the general duty to supervise the performance of the public defender system does not necessarily carry with it an obligation on the part of the Commission to manage, supervise and control the daily operations of all aspects of the public defender system. A resolution of your question requires a further examination of the statutes which create specific duties on the part of the Commission with regard to the State Public Defender's Office.

The powers and duties of the Commission are set forth in R.C. 120.03. Pursuant to R.C. 120.03(B), the Commission has the authority to establish rules; however, such rules are for the "conduct of the offices of the county and joint county public defenders and for the conduct of county appointed counsel systems in the state" and do not affect the operation of the State Public Defender's Office. Thus, the Commission does not have the statutory authority to control, through its rules, the manner in which the functions of the State Public Defender's Office are to be carried out.

R.C. 120.03 also gives the Commission the authority to appoint the State Public Defender, who serves at the pleasure of the Commission, R.C. 120.03(A), and requires that the Commission "[m]ake an annual report to the governor, the general assembly, and the supreme court of Ohio on the operation of the state public defender's office," R.C. 120.03(C)(1)(b). In addition, the Commission must "[a]pprove an annual operating budget." R.C. 120.03(C)(1)(a). This statute does not specifically state that the budget prepared by the Commission includes the funding for the State Public Defender's Office. However, it is apparent from the fact that the General Assembly has made an appropriation for the Commission and has not made a separate appropriation for the State Public Defender's Office that the budget prepared by the Commission includes the operation of the State Public Defender's Office. See Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981).

Thus, the Commission has three basic responsibilities with regard to the State Public Defender's Office. It appoints, and may remove, the State Public Defender; it approves a budget; and it makes an annual report on the operation of the State Public Defender's Office. Although these duties do require a knowledge of the overall manner in which the State Public Defender's Office is functioning, they clearly do not confer an obligation to manage, supervise or control that office on a daily basis.

Further support for this conclusion can be derived from the fact that the Commission is required by statute to meet only four times per year. R.C. 120.02. It would be illogical to assume that the General Assembly intended the Commission, which meets so infrequently, to manage, supervise and control the daily operations of the State Public Defender's Office. This is true particularly since the Commission was not granted the necessary power, such as rule-making authority, which would enable it to exercise such control over the operation of the State Public Defender's Office while it was not in session.

The State Public Defender is required to "[s]upervise the maintenance, by

county and joint county public defenders, and by county appointed counsel systems, of standards established by rules of the Ohio public defender commission" and to "[c]ollect all moneys due the state for reimbursement for legal services." R.C. 120.04. Additionally, the State Public Defender is, pursuant to R.C. 120.04(B)(4), required to "report periodically, but not less than annually, to the commission on all relevant data on the operations of the office, costs, projected needs, and recommendations for legislation or amendments to court rules, as may be appropriate to improve the criminal justice system." Thus, pursuant to R.C. 120.04(B)(4), the State Public Defender must inform the Commission on how his office is functioning. The statute, however, requires a minimum of only one report per year. Such a minimal reporting requirement clearly does not support a suggestion that the Commission is to supervise the daily operations of the State Public Defender's Office. Rather, it is apparent that the function of the report is to make the Commission aware of the general performance of the State Public Defender's Office in order to enable the Commission to perform the budgetary and reporting functions required by R.C. 120.03.

Therefore, it is my opinion, and you are advised, that:

1. While the Ohio Public Defender Commission has the duty to generally supervise the functioning of the public defender system in Ohio pursuant to R.C. 120.01, such duty does not extend to the management, supervision, and control of the daily operations of the State Public Defender's Office.
2. Pursuant to R.C. 120.03, the Ohio Public Defender Commission has the following duties which relate to the State Public Defender's Office: appointment and removal of the State Public Defender, approval of an annual budget, and submission of an annual report concerning the operations of the State Public Defender's Office.