

OPINION NO. 2011-013

Syllabus:

2011-013

1. Article V, § 5.06 of the Cuyahoga County Charter is valid and does not conflict with Article IV, § 4.01 of the Cuyahoga County Charter or the general law of the state as incorporated by reference into Article IV, § 4.01 of the Cuyahoga County Charter.
2. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which the County Executive or County Council is a party.

3. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party.
4. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which a political subdivision other than the county is a party.
5. On the basis of Article IV, § 4.01 and Article V, § 5.06 of the Cuyahoga County Charter, both the Cuyahoga County Prosecuting Attorney and Cuyahoga County Director of Law may provide legal advice and opinions to the County Executive and County Council.
6. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for providing legal advice and opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council.
7. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for providing legal advice and opinions to a political subdivision other than the county.
8. Neither the Cuyahoga County Director of Law nor the County Council may employ legal counsel for a county officer, office, department, board, commission, or agency.
9. Pursuant to R.C. 305.14, R.C. 309.09, R.C. 309.10, and Article II, § 2.03 of the Cuyahoga County Charter, the County Executive may in certain situations employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency. Except as provided in R.C. 305.14, R.C. 309.09, and R.C. 309.10, the County Executive may not employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency without obtaining the approval of the Cuyahoga County Prosecuting Attorney.
10. At the local government level the Attorney General will limit his issuance of formal opinions to county prosecuting attorneys and law directors of townships that have adopted a limited home rule government under R.C. Chapter 504.

To: William D. Mason, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio

By: Michael DeWine, Ohio Attorney General, May 9, 2011

You have requested an opinion concerning the duties imposed upon the Cuyahoga County Prosecuting Attorney and the Cuyahoga County Director of Law by the Cuyahoga County Charter (Charter). Specifically, you ask:¹

1. Is Article V, § 5.06 of the Charter valid, and, if so, does it conflict with Article IV, § 4.01 of the Charter or a general law of the state as incorporated by reference into Article IV, § 4.01 of the Charter?
2. Is the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law responsible for prosecuting or defending a civil lawsuit or administrative action in which the County Executive or County Council is a party?
3. Is the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law responsible for prosecuting or defending a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party?
4. Is the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law responsible for prosecuting or defending a civil lawsuit or administrative action in which a political subdivision other than the county is a party?
5. Is the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law responsible for providing legal advice and opinions to the County Executive and County Council?
6. Is the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law responsible for providing legal advice and opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council?
7. Is the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law responsible for providing legal advice and opinions to a political subdivision other than the county?
8. May the County Executive, County Council, or Cuyahoga County Director of Law employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency without the approval of the Cuyahoga County Prosecuting Attorney?
9. Does the Cuyahoga County Director of Law have the authority to request a legal opinion from the Attorney General or does that authority rest exclusively with the Cuyahoga County Prosecuting Attorney?

¹ We have consolidated and renumbered your questions for ease of discussion.

Authority for the Position of Cuyahoga County Director of Law

Your first question concerns the authority of Cuyahoga County to create the position of director of law and authorize the director of law to perform duties imposed upon the office of prosecuting attorney by the general law of the state.² Article X, § 1 of the Ohio Constitution directs the General Assembly to provide by general law for the organization and government of counties. The constitution also authorizes counties to adopt and amend charters. Ohio Const. art. X, § 3. If a county has not adopted a charter, the county in carrying out its governmental responsibilities must follow the general law as enacted by the General Assembly. 2009 Op. Att’y Gen. No. 2009-051 at 2-381. In that instance a county may exercise only those powers conferred upon the county by the General Assembly. *Id.*

When a county adopts a charter, the county may vary the system established by general law for the organization and operation of county government. *Id.* Article X, § 3 of the Ohio Constitution declares that a county charter must “provide the form of government of the county” and “for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.” This means that, “[r]egardless of how a charter county chooses to restructure its government, . . . the charter must provide for the exercise of all powers and the performance of all duties imposed by statute on counties and county officers.” 1994 Op. Att’y Gen. No. 94-095 at 2-469.

While a county charter must provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law, “the charter document provides for the ‘form’ as well as the ‘exercise’ and ‘performance’ of those powers and duties.” *State ex rel. O’Connor v. Davis*, 139 Ohio App. 3d 701, 705, 745 N.E.2d 494 (Summit County 2000); *accord* 1985 Op. Att’y Gen. No. 85-039 at 2-140 and 2-141. In the words of one Attorney General:

A county charter may provide for the transfer of the duties, which are imposed upon an elected county officer by general law, to another county officer, regardless of whether such officer is elected or appointed under the charter, so long as the charter provides for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law.

1985 Op. Att’y Gen. No. 85-039 (syllabus, paragraph 2).

This means that a county charter “may abolish existing elective offices and replace them with appointive offices, or transfer duties among public officials.” 2009 Op. Att’y Gen. No. 2009-051 at 2-382; *accord* 1985 Op. Att’y Gen. No. 85-

² The term “general law,” as used in the context of charter county government, refers to statutes enacted by the General Assembly that have application to the organization and operation of county government throughout the entire state. *See Village of Linndale v. State*, 85 Ohio St. 3d 52, 54, 706 N.E.2d 1227 (1999); 2008 Op. Att’y Gen. No. 2008-032 at 2-333.

039 (syllabus, paragraph 2); *see* 2007 Op. Att’y Gen. No. 2007-035 at 2-360 (a charter county may establish the position of fiscal officer and give that officer responsibility for certain duties imposed upon elective county officials by general law). Accordingly, as a charter county, Cuyahoga County may establish the position of director of law and authorize the director of law to perform “duties imposed upon counties and county officers by law.” Ohio Const. art. X, § 3.

Article V, § 5.06 and Article IV, § 4.01 of the Charter Are Valid and the Duties Assigned by the Charter to the Cuyahoga County Director of Law and Cuyahoga County Prosecuting Attorney Should Be Construed Not to Conflict

Article V, § 5.01 of the Charter provides for the appointment of officers by the County Executive. *See* Charter art. II, § 2.03(1). Among the officers appointed is the director of law. Charter art. V, § 5.06. This officer serves as “the legal advisor to and representative of the County Executive and County Council.” *Id.* The director of law may also authorize the Cuyahoga Clerk of Council to make necessary or desirable non-substantive changes to the Charter following adoption of amendments. Charter art. XII, § 12.11. No other provision in the Charter imposes additional duties upon, or grants other powers to, the director of law. Thus, except as provided in Article XII, § 12.11 of the Charter, the duties of the Cuyahoga County Director of Law are limited to serving as “the legal advisor to and representative of the County Executive and County Council.” Charter art. V, § 5.06.

Article IV, § 4.01 of the Charter states that “[t]he Prosecuting Attorney shall be elected, and *the duties of that office*, and the compensation thereof, including provision for the employment of outside counsel, *shall continue to be determined in the manner provided by general law.*” (Emphasis added.) In its Charter, Cuyahoga County has retained the office of prosecuting attorney. And, under the Charter, the prosecuting attorney shall continue to exercise all powers and perform all duties vested in, or imposed by, general law upon the office of prosecuting attorney. In other words, the Charter does not alter or modify the provisions of general law that confer the powers and duties of the Cuyahoga County Prosecuting Attorney.³

The meaning of the language of Article IV, § 4.01 of the Charter that the

³ R.C. 1.62 requires that,

[a]s used in the Revised Code, unless the context of a section does not permit the following or unless expressly provided otherwise in a section:

(A) References to particular county officers, boards, commissions, and authorities mean, in the case of a county that has adopted a charter under Article X, Ohio Constitution, the officer, board, commission, or authority of that county designated by or pursuant to the charter to exercise the same powers or perform the same acts, duties, or functions that are to be exercised or performed under the applicable section of the Revised Code by officers, boards, commissions, or authorities of counties that have not adopted a charter.

duties of the Cuyahoga County Prosecuting Attorney “shall continue to be determined in the manner provided by general law” is critical to understanding the conclusions we reach in this opinion. This language is left undefined in the Charter.

Words and phrases left undefined by a charter are to be “read in context and construed according to the rules of grammar and common usage.” R.C. 1.42; *see* Charter art. I, § 1.03 (“[t]he rules for statutory construction contained in the Ohio Revised Code shall govern” the interpretation of terms in the Charter). Common definitions of “continue,” used as a verb, are to “be steadfast or constant in a course or activity : keep up or maintain esp. without interruption a particular condition, . . . : PERSEVERE, ENDURE, PERSIST . . . CONTINUE indicates a remaining or going on, often in an uninterrupted way, without ceasing or ending.” *Webster’s Third New International Dictionary* 493 (unabr. ed. 1993).

Applying these dictionary definitions, we take the foregoing language of Article IV, § 4.01 of the Charter to mean that the powers and duties of the Cuyahoga County Prosecuting Attorney, as they existed under the general law of the state *prior to* the effective date of the Charter, exist and endure without change or alteration under the Charter *upon* and *after* its effective date. This further means that upon and after the effective date of the Charter, the Cuyahoga County Prosecuting Attorney is empowered to exercise without change or interruption the powers and duties that were conferred upon him by the general law of the state prior to the effective date of the Charter.

The salient general law governing the powers and duties of a prosecuting attorney is set forth in R.C. 309.08 and R.C. 309.09. R.C. 309.08(A) establishes the authority of a prosecuting attorney to enforce the criminal laws of Ohio. R.C. 309.09(A) requires a prosecuting attorney to (1) be “the legal adviser” to the board of county commissioners, board of elections, all other county officers and boards, and all tax-supported public libraries and (2) “prosecute and defend all suits and actions which any such officer or board directs or to which it is a party.” *See generally State ex rel. Attorney General v. Brennan*, 49 Ohio St. 33, 38-39, 29 N.E. 593 (1892) (when “a person is clothed . . . with public functions to be exercised in the supposed interest of the people . . . and where such duties are wholly performed within the limits of a county, and for the people of that county, . . . the person lawfully filling such place is necessarily a county officer”); 1999 Op. Att’y Gen. No. 99-028 at 2-186 (for purposes of R.C. 309.09(A), the term “county board” includes a subdivision of the county or a subordinate department of the county). In addition, a prosecuting attorney may be required or authorized to serve as legal advisor to a

It has been suggested that references to the office of prosecuting attorney in the Revised Code include the Cuyahoga County Director of Law. However, pursuant to Article IV, § 4.01 of the Cuyahoga County Charter (Charter), Cuyahoga County has retained the office of prosecuting attorney and authorized the holder of that office to *continue* to perform the duties imposed upon the office of prosecuting attorney by general law. Hence, references in the Revised Code to the office of prosecuting attorney continue to refer to the Cuyahoga County Prosecuting Attorney.

township or other entity that is not part of county government. *See, e.g.*, R.C. 309.09(B), (D)-(H); R.C. 3313.35; R.C. 3709.33.

Thus, pursuant to Article IV, § 4.01 of the Charter, retaining the duties of the office of prosecuting attorney provided by general law, the Cuyahoga County Prosecuting Attorney is the legal advisor to county officers and boards and is required to prosecute and defend such officers and boards in suits and actions. *See* R.C. 309.09(A). Insofar as the County Executive is a county officer, *see* Charter art. II, § 2.01, and the County Council is a county board, *see* Charter art. III, § 3.01; Charter art. III, § 3.09, the Cuyahoga County Prosecuting Attorney is required by Article IV, § 4.01 of the Charter to serve as legal advisor to the County Executive and County Council and is required to prosecute and defend suits and actions in which the County Executive or County Council directs or is a party. *See* R.C. 309.09(A).

Because Article V, § 5.06 of the Charter requires the Cuyahoga County Director of Law to be “the legal advisor to and representative of the County Executive and County Council,” we must determine whether the duties imposed upon the director of law by this charter provision conflict with the duties imposed upon the Cuyahoga County Prosecuting Attorney by Article IV, § 4.01 of the Charter.⁴ Article V, § 5.06 of the Charter indicates that the Cuyahoga County Director of

⁴ Case law is sparse regarding the authority of a charter county to supersede the general law of the state. This is understandable given that, until the general election of 2009 when the voters of Cuyahoga County adopted a charter form of county government under Article X, § 3 of the Ohio Constitution, Summit County was the only county in Ohio to have adopted and operated under a charter. (The Summit County electorate adopted the Summit County Charter on November 6, 1979; the Summit County Charter has been amended on a variety of occasions since that time.) Thus, unlike the powers of local self-government conferred upon Ohio’s municipalities by Article XVIII, §§ 3 (local self-government) and 7 (municipal charter government) of the Ohio Constitution (both provisions adopted September 3, 1912), we do not have the benefit of nearly 100 years of jurisprudence to guide us as we endeavor to arrive at the precise meaning of the language of Article X, § 3 of the Ohio Constitution and the scope of authority conferred by that provision upon a county that adopts a charter form of government.

Two Ohio cases have considered whether a county that has adopted a charter may authorize an attorney other than the prosecuting attorney to provide legal advice and representation to county officers and boards: *State ex rel. O’Connor v. Davis*, 139 Ohio App. 3d 701, 705, 745 N.E.2d 494 (Summit County 2000) and *County of Summit ex rel. Slaby v. Morgan*, No. 10270, 1981 Ohio App. LEXIS 11194 (Summit County Nov. 25, 1981). These cases were decided by the Ninth District Court of Appeals, which comprises Lorain, Medina, Wayne, and Summit counties. We recognize that the rulings of the courts in these cases are not controlling law in Cuyahoga County, which constitutes the Eighth District. *See* Ohio Const. art. IV, § 3; R.C. 2501.01; Ohio Sup. Ct. R. Rep. Ops. 4(B); 2009 Op. Att’y Gen. No. 2009-020 at 2-140 n.3; 2001 Op. Att’y Gen. No. 2001-010 at 2-59. Because these cases are

Law has two separate and distinct duties. First, the Cuyahoga County Director of Law is required to be “the legal advisor” to the County Executive and County Council. Charter art. V, § 5.06. No language in Article V, § 5.06 of the Charter or elsewhere in the Charter explicitly replaces the Cuyahoga County Prosecuting Attorney as “the legal advisor” to the County Executive and County Council. See R.C. 309.09(A). As indicated previously, the Charter has not abolished the office of prosecuting attorney in Cuyahoga County or transferred from the Cuyahoga County Prosecuting Attorney to the Cuyahoga County Director of Law the duty to advise the County Executive and County Council. Instead, pursuant to Article IV, § 4.01 of the Charter, the Cuyahoga County Prosecuting Attorney *continues* to be “the legal advisor” to the County Executive and County Council. See R.C. 309.09(A). Hence, Article V, § 5.06 and Article IV, § 4.01 of the Charter authorize both the Cuyahoga County Director of Law and Cuyahoga County Prosecuting Attorney to be “the legal advisor” to the County Executive and County Council.

The use of the word “the” before “legal advisor” when describing the duties of the Cuyahoga County Director of Law and Cuyahoga County Prosecuting Attorney could be read to indicate that “a following noun or noun equivalent is a unique or a particular member of its class.” *Merriam-Webster’s Collegiate Dictionary* 1294 (11th ed. 2005); see also *Brooks v. Zabka*, 168 Colo. 265, 269, 450 P.2d 653 (1969) (“[i]t is a rule of law well-established that the definite article ‘the’ particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of ‘a’ or ‘an’”). Were the use of the word “the” in this manner taken to mean that (1) Article V, § 5.06 of the Charter makes the Cuyahoga County Director of Law the sole legal advisor to the County Executive and County Council and (2) Article IV, § 4.01 of the Charter makes the Cuyahoga County Prosecuting Attorney the sole legal advisor to the County Executive and County Council, each charter provision would exclude anyone other than the officer named therein from being a legal advisor to the County Executive and County Council.

When considering potentially conflicting charter provisions that were adopted simultaneously, we must attempt to construe the two provisions as to give effect to both, and “we follow that body of law that we are required to follow when we construe statutes.” *State ex rel. Mirlisena v. Hamilton County Bd. of Elections*, 67 Ohio St. 3d 597, 599, 622 N.E.2d 329 (1993). One of the paramount principles used in construing related or co-existing statutes requires that the statutes be construed together and, if possible, harmonized to give full application to all the statutes. *State ex rel. Gains v. Rossi*, 86 Ohio St. 3d 620, 622, 716 N.E.2d 204 (1999); *United Tel. Co. v. Limbach*, 71 Ohio St. 3d 369, 372, 643 N.E.2d 1129

the only judicial determinations available to us regarding the provision of legal advice and representation to county officers and boards in a county that has adopted a charter, we believe it prudent to consider the court’s opinions in our examination of your questions. See 1989 Op. Att’y Gen. No. 89-098 at 2-478 and 2-479 (“an Ohio Court of Appeals decision is given a great deal of respect and generally, unless inherently wrong, followed by the other Courts of Appeals in Ohio”).

(1994). As discussed below, we conclude that Article V, § 5.06 and Article IV, § 4.01 of the Charter reasonably should be construed so as to give effect to each provision and to thus permit both the Cuyahoga County Director of Law and the Cuyahoga County Prosecuting Attorney to serve as legal advisors to the County Executive and County Council.

Under the directives of the Charter, the Cuyahoga County Prosecuting Attorney and the Cuyahoga County Director of Law are both legal advisors to the County Executive and County Council. Except for the use of the word “the” when describing the duty to provide legal advice, nothing in the Charter suggests that only the Cuyahoga County Director of Law or Cuyahoga County Prosecuting Attorney may serve as the legal advisor to the County Executive and County Council. Nor does the general law of the state impose a requirement barring an attorney other than the prosecuting attorney from serving as a legal advisor to the board of county commissioners.

Ohio statutory and case law directs this result. For example, although R.C. 309.09(A) references the prosecuting attorney as “the legal adviser” to the officers and boards of county government, general law, specifically R.C. 305.14(B) and R.C. 309.09(C), indicates that the prosecuting attorney and an attorney other than the prosecuting attorney may simultaneously serve as legal advisors to a board of county commissioners. R.C. 305.14(B) states:

The board of county commissioners may also employ legal counsel, as provided in [R.C. 309.09], to represent it in any matter of public business coming before such board, and in the prosecution or defense of any action or proceeding in which such board is a party or has an interest, in its official capacity.

R.C. 309.09(C), in turn, authorizes a board of county commissioners to employ “an attorney other than the prosecuting attorney of the county, without the authorization of the court of common pleas as provided in [R.C. 305.14], either for a particular matter or on an annual basis, to represent the board in its official capacity and to advise it on legal matters.” R.C. 305.14(B) and R.C. 309.09(C) thus authorize an attorney other than the prosecuting attorney to serve as a legal advisor to the board of county commissioners at the same time as the prosecuting attorney.

The County Executive and County Council are vested with powers and duties imposed upon a board of county commissioners by general law. *See* Charter art. II, § 2.03; Charter art. III, § 3.01; Charter art. III, § 3.09. Insofar as a board of county commissioners is authorized under general law to have both the prosecuting attorney and an attorney other than the prosecuting attorney serve as the board’s legal advisor, it reasonably follows that Article V, § 5.06 and Article IV, § 4.01 of the Charter may be interpreted as authorizing the Cuyahoga County Director of Law to serve as a legal advisor to the County Executive and County Council at the same time as the Cuyahoga County Prosecuting Attorney.

In a similar situation the Ninth District Court of Appeals determined that both the Summit County Prosecuting Attorney and general counsel, which was

provided for under the Summit County Charter, may serve as a legal advisor to the county's officers and boards. *County of Summit ex rel. Slaby v. Morgan*, No. 10270, 1981 Ohio App. LEXIS 11194, at *14 (Summit County Nov. 25, 1981); see *State ex rel. O'Connor v. Davis*, 139 Ohio App. 3d at 708. As in Cuyahoga County, Summit County adopted a charter requiring the prosecuting attorney to continue to perform the duties imposed by general law. *County of Summit ex rel. Slaby v. Morgan*, 1981 Ohio App. LEXIS 11194, at **7-8. Summit County also authorized the employment of general counsel. *Id.* at *3 Although the duties of general counsel were not explicitly defined, the Ninth District Court of Appeals determined that the general counsel could provide "counsel and advice." *Id.* at **12-13. In reaching the conclusion that both the prosecuting attorney and the general counsel could serve as advisor, the court stated that nothing in the general law requires the prosecuting attorney to be "the exclusive legal advisor to agencies of county government." *Id.* at *14; see *State ex rel. O'Connor v. Davis*, 139 Ohio App. 3d at 708.

Thus, on the basis of the general law authorizing a board of county commissioners to have both the prosecuting attorney and an attorney other than the prosecuting attorney serve as the board's legal advisor and, given the appellate case law that preexisted adoption of the Cuyahoga County Charter, Article V, § 5.06 and Article IV, § 4.01 of the Charter may be construed as authorizing the Cuyahoga County Director of Law and Cuyahoga County Prosecuting Attorney to serve as legal advisors to the County Executive and County Council even though each is denoted as "the legal advisor" to the County Executive and County Council. Accordingly, the language of Article V, § 5.06 of the Charter authorizing the Cuyahoga County Director of Law to be "the legal advisor" to the County Executive and County Council is valid and harmonizes with Article IV, § 4.01 of the Charter and the general law of the state as incorporated by reference into Article IV, § 4.01 of the Charter. See *County of Summit ex rel. Slaby v. Morgan*; see also *State ex rel. O'Connor v. Davis*.

The second duty imposed upon the Cuyahoga County Director of Law by Article V, § 5.06 of the Charter is to be the "representative" of the County Executive and County Council. The term "representative" is not defined for purposes of this charter provision. As a result, we must apply the rule of statutory construction set forth in R.C. 1.42 to determine the meaning of the term "representative," as used in Article V, § 5.06 of the Charter. See Charter art. I, § 1.03 ("[t]he rules for statutory construction contained in the Ohio Revised Code shall govern the interpretation of the provisions of [the] Charter").

R.C. 1.42 provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." In common legal parlance the term "representative" means "[o]ne who stands for or acts on behalf of another." *Black's Law Dictionary* 1416 (9th ed. 2009). Accordingly, pursuant to Article V, § 5.06 of the Charter, the Cuyahoga County Director of Law may act on behalf of the County Executive and County Council.

Article V, § 5.06 of the Charter does not set forth specific limitations upon the authority of the Cuyahoga County Director of Law to represent the County Ex-

ecutive and County Council. However, as stated above, we must also read this charter provision in conjunction with related or co-existing charter provisions and, if possible, give force and effect to all such charter provisions.

Pursuant to R.C. 309.09(A), which is incorporated into Article IV, § 4.01 of the Charter, the Cuyahoga County Prosecuting Attorney is specifically required to “prosecute and defend all suits and actions which any [county] officer or board directs or to which it is a party.” Because the County Executive and County Council are a county officer and county board, respectively, *see* Charter art. II, § 2.01; Charter art. III, § 3.01; Charter art. III, § 3.09, the Cuyahoga County Prosecuting Attorney is required by Article IV, § 4.01 of the Charter to prosecute and defend suits and actions involving the County Executive or County Council. *See* R.C. 309.09(A).

In contrast, the duty to serve as the representative of the County Executive and County Council imposed upon the Cuyahoga County Director of Law by Article V, § 5.06 of the Charter is a general duty to act on behalf of the County Executive and County Council. No language in this charter provision or elsewhere in the Charter imposes an explicit duty upon the Cuyahoga County Director of Law to prosecute and defend suits and actions involving the County Executive or County Council while serving as the representative of the County Executive and County Council.

Further, if Article V, § 5.06 of the Charter is interpreted as authorizing the Cuyahoga County Director of Law to prosecute and defend suits and actions involving the County Executive or County Council, the charter provision could conflict with Article IV, § 4.01 of the Charter. As explained previously, we are required, if possible, to construe Article V, § 5.06 and Article IV, § 4.01 of the Charter in a manner that gives effect to both charter provisions and avoids conflicts. In addition, we are required by the Charter to construe these seemingly conflicting charter provisions in accordance with R.C. 1.51.⁵ Charter art. I, § 1.03.

Article IV, § 4.01 of the Charter incorporates the longstanding current general law, R.C. 309.09(A), that explicitly requires the Cuyahoga County Prosecuting Attorney to prosecute and defend suits and actions involving the County Executive or County Council. In contrast, Article V, § 5.06 of the Charter requires the Cuyahoga County Director of Law to be a representative of the County Executive and County Council without explicit reference to the prosecution and defense of suits and actions. Article IV, § 4.01 of the Charter may be harmonized with Article V, § 5.06 of the Charter.

⁵ R.C. 1.51 provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Article IV, § 4.01 and Article V, § 5.06 of the Charter both took effect on January 1, 2010. *See* Charter art. XII, § 12.01; *see also* R.C. 307.96. Also, we find no manifest intent in the language of the Charter that Article V, § 5.06 of the Charter should prevail over Article IV, § 4.01 of the Charter with respect to the prosecution and defense of suits and actions involving the County Executive or County Council. Accordingly, the specific language of Article IV, § 4.01 of the Charter must be interpreted as prevailing over the general language of Article V, § 5.06 of the Charter with respect to the prosecution and defense of suits and actions involving the County Executive or County Council. *See* R.C. 1.51.

Further, we note that the Ninth District Court of Appeals has determined that a county may not use its powers as a charter county to authorize general counsel employed by the county to represent a county officer or board when the county's charter also requires the prosecuting attorney to continue to prosecute and defend suits and actions involving county officers or boards in accordance with R.C. 309.09(A). *See State ex rel. O'Connor v. Davis*, 39 Ohio App. 3d at 708 (ordinance explicitly authorizing general counsel to "represent the County Executive, and all departments under the authority of the County Executive, in all courts of law and equity, both state and federal, and to prosecute and defend all suits in which the County Executive, or any department under the authority of the County Executive, is a party"); *County of Summit ex rel. Slaby v. Morgan*. As explained by the Ninth District Court of Appeals, if both the prosecuting attorney and general counsel employed by the county were authorized under a charter to prosecute and defend suits and actions involving county officers or boards, the authorization bestowed upon the general counsel would be unconstitutional since the prosecuting attorney continues to prosecute and defend suits and actions involving county officers or boards in accordance with R.C. 309.09(A). *State ex rel. O'Connor v. Davis*, 139 Ohio App. 3d at 708; *County of Summit ex rel. Slaby v. Morgan*, 1981 Ohio App. LEXIS 11194, at *12.

We conclude the duty to serve as the "representative" of the County Executive and County Council imposed upon the Cuyahoga County Director of Law by Article V, § 5.06 of the Charter does not include prosecuting and defending suits and actions involving the County Executive or County Council, but rather is limited to representing the County Executive and County Council in other matters. The duty to prosecute and defend all suits and actions involving the County Executive or County Council instead remains exclusively with the Cuyahoga County Prosecuting Attorney since Article IV, § 4.01 of the Charter requires the Cuyahoga County Prosecuting Attorney to *continue* to prosecute and defend such suits in accordance with R.C. 309.09(A). This means that, under the Charter, the Cuyahoga County Prosecuting Attorney is required to prosecute and defend all suits and actions involving the County Executive or County Council, while the Cuyahoga County Director of Law represents the County Executive and County Council in other matters.

We are required by the Charter to construe Article V, § 5.06 of the Charter in a manner that ensures compliance with the Ohio Constitution when possible. *See* R.C. 1.47; Charter art. I, § 1.03. By reading Article V, § 5.06 of the Charter in this

manner, it is possible to avoid conflicts with Article IV, § 4.01 of the Charter and give effect to both charter provisions while promoting compliance with Ohio's constitution and the framework of general law for the prosecution and defense of suits and actions. Article V, § 5.06 of the Charter thus may not be interpreted as authorizing the Cuyahoga County Director of Law to prosecute and defend suits and actions involving the County Executive or County Council. Therefore, in response to your first question, Article V, § 5.06 of the Charter is valid and does not conflict with Article IV, § 4.01 of the Charter or the general law of the state as incorporated by reference into Article IV, § 4.01 of the Charter.

Duty to Prosecute and Defend Suits and Actions Involving the County Executive or County Council

Your second question asks whether the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law is responsible for prosecuting or defending a civil lawsuit or administrative action in which the County Executive or County Council is a party.⁶ As explained above, Article V, § 5.06 of the Charter does not authorize the Cuyahoga County Director of Law to prosecute or defend a suit or action involving the County Executive or County Council.

With respect to the provision of legal representation, R.C. 309.09(A) states:

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 the prosecuting attorney in matters connected with their official duties. The prosecuting attorney *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 [R.C. 305.14]. (Emphasis added.)

R.C. 309.09(A) requires a prosecuting attorney to prosecute and defend any suit or action involving a county officer or board. As part of this statutory duty, a

⁶ 2011 Op. Att'y Gen. No. 2011-006, slip op. at 6, states that Article V, § 5.06 of the Charter authorizes the Cuyahoga County Director of Law to "advocate on behalf of the County Executive and County Council in adversarial proceedings." The Cuyahoga County Director of Law asserts that this statement has resolved the question whether his office is responsible for representing the County Executive, the County Council, and the other departments, officers, offices, and agencies of county government in litigation before courts and administrative tribunals. In 2011 Op. Att'y Gen. No. 2011-006 we were asked to advise whether a person's service as a municipal court magistrate satisfied the qualifications set forth in the Charter for appointment to the position of Cuyahoga County Director of Law. That opinion did not address the question now before us regarding the scope of authority of the Cuyahoga County Director of Law and Cuyahoga County Prosecuting Attorney to prosecute and defend suits and actions in which a county officer or board directs or is a party.

prosecuting attorney is required to prosecute or defend a civil lawsuit or administrative action in which a county officer or board is a party. For purposes of R.C. 309.09(A), the County Executive is a county officer, *see* Charter art. II, § 2.01, and the County Council is a county board, *see* Charter art. III, § 3.01; Charter art. III, § 3.09. Thus, pursuant to R.C. 309.09(A), the Cuyahoga County Prosecuting Attorney has a continuing duty to prosecute or defend a civil lawsuit or administrative action in which the County Executive or County Council is a party.

Further, as determined previously, Article V, § 5.06 of the Charter should not be construed as a grant of authority for the Cuyahoga County Director of Law to prosecute or defend a suit or action involving the County Executive or County Council. This means that Article V, § 5.06 of the Charter does not authorize the Cuyahoga County Director of Law to prosecute or defend a civil lawsuit or administrative action in which the County Executive or County Council is a party. Therefore, the Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which the County Executive or County Council is a party.

Duty to Prosecute and Defend Suits and Actions Involving a County Officer, Department, Board, Commission, or Other Authority Appointed by, or under the Jurisdiction of, the County Executive or County Council

Your third question asks whether the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law is responsible for prosecuting or defending a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party. As stated above, the Cuyahoga County Director of Law is not authorized by the Charter to prosecute or defend a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party.

The Charter does, however, require the Cuyahoga County Prosecuting Attorney to continue to perform the duties imposed by general law upon the office of prosecuting attorney. Charter art. IV, § 4.01. A prosecuting attorney is required by R.C. 309.09(A) to prosecute or defend a civil lawsuit or administrative action in which a county officer or board is a party. This means that the Cuyahoga County Prosecuting Attorney has a continuing statutory duty to prosecute or defend a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party.

Insofar as the Cuyahoga County Prosecuting Attorney has a continuing statutory duty to prosecute or defend a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party, the Cuyahoga County Director of Law may not represent such an officer or entity in a civil lawsuit or administrative action in which the officer or entity is a party. *See*

State ex rel. O'Connor v. Davis; County of Summit ex rel. Slaby v. Morgan. Therefore, the Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party.

Duty to Prosecute and Defend Suits and Actions Involving a Political Subdivision Other than the County

Your fourth question asks whether the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law is responsible for prosecuting or defending a civil lawsuit or administrative action in which a political subdivision other than the county is a party. Various statutory provisions authorize or require a prosecuting attorney to prosecute or defend a suit or action involving a political subdivision other than the county. *See, e.g.*, R.C. 309.09(B) (statutory townships); R.C. 504.15 (townships that adopt a limited self-government form); R.C. 3313.35 (boards of education and school districts); R.C. 3709.33 (general health districts). In accordance with Article IV, § 4.01 of the Charter, the Cuyahoga County Prosecuting Attorney continues to be required to prosecute and defend a political subdivision other than the county in any suit or action when a statutory provision authorizes or requires the office of prosecuting attorney to do so.

Nothing in the Charter explicitly requires or authorizes the Cuyahoga County Director of Law to prosecute or defend suits and actions involving a political subdivision other than the county. Hence, the analysis set forth in response to the previous two questions applies to this question.

Accordingly, if the Cuyahoga County Prosecuting Attorney is required or authorized by a statute to prosecute or defend a civil lawsuit or administrative action in which a political subdivision other than the county is a party, the Cuyahoga County Director of Law may not represent the political subdivision in that lawsuit or administrative action. As a result, the Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which a political subdivision other than the county is a party.

Duty to Provide Legal Advice and Opinions to the County Executive and County Council

Your fifth question asks whether the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law is responsible for providing legal advice and opinions to the County Executive and County Council. Article V, § 5.06 of the Charter authorizes the Cuyahoga County Director of Law to serve as the “legal advisor” to the County Executive and County Council. Similarly, Article IV, § 4.01 of the Charter, which mandates that the Cuyahoga County Prosecuting Attorney perform the duties imposed upon the office of prosecuting attorney by R.C. 309.09(A), requires the Cuyahoga County Prosecuting Attorney to be the legal advisor of, and provide written opinions to, the County Executive, County Council,

and other county officers and boards. The Charter thus requires both the Cuyahoga County Director of Law and Cuyahoga County Prosecuting Attorney to provide legal advice and opinions to the County Executive and County Council. Therefore, on the basis of Article IV, § 4.01 and Article V, § 5.06 of the Charter, both the Cuyahoga County Prosecuting Attorney and Cuyahoga County Director of Law may provide legal advice and opinions to the County Executive and County Council.

Duty to Provide Legal Advice and Opinions to a County Officer, Department, Board, Commission, or Other Authority Appointed by, or under the Jurisdiction of, the County Executive or County Council

Your sixth question asks whether the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law is responsible for providing legal advice and opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council. Whether a person or county entity is appointed by, or under the jurisdiction of, the County Executive or County Council is not a factor used in assigning legal counsel under either the Charter or general law of the state. Rather, as explained in the previous analyses, pursuant to Article IV, § 4.01 of the Charter and R.C. 309.09(A), the Cuyahoga County Prosecuting Attorney is the legal advisor for, and required to provide legal opinions to, all county officers and boards. This means that the Cuyahoga County Prosecuting Attorney is responsible for providing legal advice and opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council.

No similar duty is conferred by the Charter upon the Cuyahoga County Director of Law. Instead, the language of Article V, § 5.06 of the Charter authorizes the Cuyahoga County Director of Law to “be the legal advisor to” the County Executive and County Council. It is a well-recognized canon of statutory construction “that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others.” *Fort Hamilton-Hughes Mem. Hosp. Ctr. v. Southard*, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903 (1984); *accord Indep. Ins. Agents of Ohio, Inc. v. Fabe*, 63 Ohio St. 3d 310, 314, 587 N.E.2d 814 (1992). That Article V, § 5.06 of the Charter requires the Cuyahoga County Director of Law to “be the legal advisor to” the County Executive and County Council, but does not require the Cuyahoga County Director of Law to be the legal advisor to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council, indicates that the Cuyahoga County Director of Law is not the legal advisor of such officers and entities.

The authority to provide legal advice and opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council thus remains with the Cuyahoga County Prosecuting Attorney. *See* Charter art. IV, § 4.01; *see also* R.C. 309.09(A). Accordingly, the Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for providing legal advice and

opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council.

Duty to Provide Legal Advice and Opinions to a Political Subdivision Other than the County

Your seventh question asks whether the Cuyahoga County Prosecuting Attorney or Cuyahoga County Director of Law is responsible for providing legal advice and opinions to a political subdivision other than the county. The analysis used in the previous question applies to this question.

Various statutes authorize or require the Cuyahoga County Prosecuting Attorney to provide legal advice and opinions to a political subdivision other than the county. *See* Charter art. IV, § 4.01 (the Cuyahoga County Prosecuting Attorney has the powers and duties vested in, or imposed upon, the office of prosecuting attorney by general law). Also, the Cuyahoga County Director of Law's duty to serve as "legal advisor" extends only to the County Executive and County Council. Charter art. V, § 5.06.

Nothing in the Charter requires or authorizes the Cuyahoga County Director of Law to provide legal advice and opinions to a political subdivision other than the county. The Cuyahoga County Director of Law thus does not have the authority to provide legal advice and opinions to a political subdivision other than the county. *See Indep. Ins. Agents of Ohio, Inc. v. Fabe*, 63 Ohio St. 3d at 314; *Fort Hamilton-Hughes Mem. Hosp. Ctr. v. Southard*, 12 Ohio St. 3d at 265. Rather, such advice and opinions must be rendered by the Cuyahoga County Prosecuting Attorney. *See* Charter art. IV, § 4.01. Therefore, the Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for providing legal advice and opinions to a political subdivision other than the county.

Employment of Legal Counsel by the County Executive, County Council, and Cuyahoga County Director of Law

Your eighth question asks whether the County Executive, County Council, or Cuyahoga County Director of Law may employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency without the approval of the Cuyahoga County Prosecuting Attorney.⁷ Article I, § 1.01 of the Charter states that Cuyahoga County may exercise "all the rights

⁷ This opinion considers the authority of the County Executive, County Council, and Cuyahoga County Director of Law to employ or authorize the employment of legal counsel without the approval of the Cuyahoga County Prosecuting Attorney when the Cuyahoga County Prosecuting Attorney does not have a conflict of interest. *Cf. State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (syllabus, paragraph 1) ("[a]pplication by both the prosecuting attorney and the board of county commissioners is a prerequisite to authorization by a court of common pleas pursuant to R.C. 305.14 of appointment of other counsel to represent a county officer, except where the prosecuting attorney has a conflict of interest and refuses to make application").

granted by . . . general law.” In addition, the County Executive has “all the powers and duties of an administrative nature under [the] Charter and such powers and duties of an administrative nature, except as otherwise provided herein, as are vested in or imposed upon boards of county commissioners by general law.” Charter art. II, § 2.03. Further, the Cuyahoga County Prosecuting Attorney “shall be elected, and the duties of that office, and the compensation therefor, including provision for the employment of outside counsel, shall continue to be determined in the manner provided by general law.” Charter art. IV, § 4.01. These provisions of the Charter require the county to continue to retain legal counsel for county officers, offices, departments, boards, commissions, and agencies in accordance with the general law of the state.⁸

Pursuant to R.C. 309.09(A), the prosecuting attorney is required to provide legal representation to county officers and boards and “no county officer may employ any other counsel or attorney at the expense of the county, except as provided in [R.C. 305.14].” R.C. 305.14, in turn, provides:

(A) The court of common pleas, *upon the application of the prosecuting attorney and the board of county commissioners*, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity.

(B) The board of county commissioners may also employ legal counsel, as provided in [R.C. 309.09], to represent it in any matter of public business coming before such board, and in the prosecution or defense of any action or proceeding in which such board is a party or has an interest, in its official capacity.⁹

(C) Notwithstanding division (A) of this section and except as provided in division (D) of this section, a county board of developmental disabilities or a public children services agency may, *without the authorization of the court of common pleas*, employ legal counsel to advise it or to represent it or any of its members or employees in any matter of public business coming before the board or agency or in the prosecution or defense of any action or proceeding in which the board or agency in its

⁸ Article V, §§ 5.01 and 5.06 of the Charter authorize the County Executive to appoint a person to the office of Cuyahoga County Director of Law without the approval of the Cuyahoga County Prosecuting Attorney, provided the County Council confirms the person’s appointment.

⁹ R.C. 309.09(C) authorizes a board of county commissioners to employ “an attorney other than the prosecuting attorney of the county, without the authorization of the court of common pleas as provided in [R.C. 305.14], either for a particular matter or on an annual basis, to represent the board in its official capacity and to advise it on legal matters.”

official capacity, or a board or agency member or employee in the member's or employee's official capacity, is a party or has an interest.

(D)(1) In any legal proceeding in which the prosecuting attorney is fully able to perform the prosecuting attorney's statutory duty to represent the county board of developmental disabilities or public children services agency without conflict of interest, *the board or agency shall employ other counsel only with the written consent of the prosecuting attorney*. In any legal proceeding in which the prosecuting attorney is unable, for any reason, to represent the board or agency, the prosecuting attorney shall so notify the board or agency, and, except as provided in division (D)(2) of this section, the board or agency may then employ counsel for the proceeding without further permission from any authority.

(2) A public children services agency that receives money from the county general revenue fund *must obtain the permission of the board of county commissioners of the county served by the agency* before employing counsel under division (C) of this section. (Footnote and emphasis added.)

In addition, R.C. 309.10 sets forth two other instances in which county officers and boards may employ legal counsel other than the prosecuting attorney:

[R.C. 309.08 and R.C. 309.09] do not prevent a county board of developmental disabilities from employing counsel to represent it, but that counsel shall be employed in accordance with [R.C. 305.14(C)] and paid in accordance with [R.C. 5126.05(A)(7)].

[R.C. 309.08 and R.C. 309.09] do not prevent a board of county hospital trustees from employing counsel with the approval of the county commissioners to bring legal action for the collection of delinquent accounts of the hospital, but when counsel is employed, the counsel shall be paid from the hospital's funds.

A review of R.C. 305.14, R.C. 309.09, and R.C. 309.10 reveals three relevant legal standards for purposes of your question. First, except as provided in R.C. 309.09(C), R.C. 309.10, and R.C. 305.14(B)-(D), no county officer, office, department, board, commission, or agency may employ legal counsel unless the court of common pleas has approved a joint application submitted by the board of county commissioners and the county prosecuting attorney pursuant to R.C. 305.14(A). See R.C. 309.09(A); 1993 Op. Att'y Gen. No. 93-001 at 2-6 n.2. Second, pursuant to R.C. 305.14(B) and R.C. 309.09(C), a board of county commissioners has the authority to employ legal counsel to represent the board in its official capacity and to advise the board on legal matters without the approval of the county prosecuting attorney. See 1986 Op. Att'y Gen. No. 86-036 at 2-188; 1983 Op. Att'y Gen. No. 83-078 at 2-318 n.1. Third, pursuant to R.C. 309.10, a board of county commissioners may authorize the employment of legal counsel by a board of county hospital trustees without the approval of the prosecuting attorney.

As explained above, the Cuyahoga County Prosecuting Attorney continues

to be required to perform the statutory duties imposed upon the office of prosecuting attorney. This includes authorizing the employment of legal counsel by a county officer, office, department, board, commission, or agency. *See* R.C. 305.14. Moreover, no provision of the Charter expressly authorizes the Cuyahoga County Director of Law to perform any statutory duty imposed upon the office of prosecuting attorney with regard to the employment of legal counsel or authorizes the Cuyahoga County Director of Law to approve the employment of legal counsel by a county officer, office, department, board, commission, or agency. Thus, the Cuyahoga County Director of Law does not have the authority to approve or authorize the employment of legal counsel by a county officer, office, department, board, commission, or agency.

With respect to the authority of the County Executive and County Council to approve or authorize the employment of legal counsel by a county officer, office, department, board, commission, or agency, it appears that the County Executive, rather than the County Council, may exercise the powers imposed upon a board of county commissioners by R.C. 305.14, R.C. 309.09, and R.C. 309.10. Under the Charter, the powers and duties of a board of county commissioners are delegated to the County Executive and County Council. Charter art. II, § 2.03; Charter art. III, § 3.01; Charter art. III, § 3.09. The County Executive performs the executive and administrative powers imposed upon a board of county commissioners by general law, *see* Charter art. II, § 2.01; Charter art. II, § 2.03, while the County Council performs other duties performed by a board of county commissioners under general law, *see* Charter art. III, § 3.01; Charter art. III, § 3.09.

Because the employment of legal counsel is an administrative function, the County Executive, rather than the County Council, has the same authority to employ or authorize the employment of legal counsel as a board of county commissioners under R.C. 305.14, R.C. 309.09, and R.C. 309.10. *See* Charter art. II, § 2.01; Charter art. II, § 2.03; *see also* Charter art. III, § 3.09(3). This means that the County Council does not have authority under the Charter or the general law of the state to approve or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency. Instead, the Charter vests this authority in the County Executive.¹⁰ R.C. 305.14; R.C. 309.10; Charter art. II, § 2.01; Charter art. II, § 2.03.

As stated above, the employment of legal counsel without the approval of the prosecuting attorney must comport with the requirements of R.C. 305.14, R.C. 309.09, and R.C. 309.10. *See State ex rel. O'Connor v. Davis*, 139 Ohio App. 3d at 707. These statutes provide several instances in which the County Executive, within specified constraints, may employ or authorize the employment of legal counsel without the approval of the Cuyahoga County Prosecuting Attorney. First, pursuant to R.C. 305.14(B) and R.C. 309.09(C), the County Executive may without the approval of the Cuyahoga County Prosecuting Attorney employ additional legal counsel, “either for a particular matter or on an annual basis,” (1) “to represent”

¹⁰ We do not consider whether the County Executive must act in conjunction with the County Council when exercising this authority. *See generally State ex rel. O'Connor v. Davis*, 139 Ohio App. 3d at 705.

the County Executive or County Council “in any matter of public business coming before” the County Executive or County Council; (2) “in the prosecution or defense of any action or proceeding” in which the County Executive or County Council¹¹ “is a party or has an interest in its official capacity;” and (3) “to advise [them] on legal matters.”¹² In addition, if applicable, the County Executive may authorize the board of county hospital trustees to employ legal counsel without the approval of the Cuyahoga County Prosecuting Attorney. R.C. 309.10.

Apart from the provisions of the Charter authorizing the County Executive to employ legal counsel in accordance with general law, we find no other authority in the Charter for the County Executive or County Council to employ legal counsel for a county officer, office, department, board, commission, or agency. The authority of the County Executive to employ legal counsel for a county officer, office, department, board, commission, or agency without first obtaining the approval of the Cuyahoga County Prosecuting Attorney is therefore limited to that conferred by general law. *See* Charter art. IV, § 4.01; 1995 Op. Att’y Gen. No. 95-035 (syllabus).

We are aware that the Charter authorizes the County Council “[t]o establish procedures under which the County Executive may employ experts and consultants in connection with the administration of the affairs of the County.” Charter art. III, § 3.09(3). It has been suggested that this provision may be construed as authorizing the County Council to establish procedures under which the County Executive may employ legal counsel for a county officer, office, department, board, commission, or agency without first obtaining the approval of the Cuyahoga County Prosecuting Attorney. *See generally* Charter art. I, § 1.03 (“[t]he powers of the County under this Charter shall be construed liberally in favor of the County” and “the specific

¹¹ Insofar as the County Council exercises powers vested in, and performs duties imposed upon, a board of county commissioners, *see* Charter art. III, § 3.01; Charter art. III, § 3.09, it appears that the County Council is entitled to the services of legal counsel employed in accordance with the terms of R.C. 305.14(B) and R.C. 309.09(C).

¹² While the Charter authorizes the County Executive to appoint a director of law to advise and represent him and the County Council, Charter art. V, § 5.01; Charter art. V, § 5.06, this authority does not foreclose the County Executive from exercising the authority conferred upon a board of county commissioners by R.C. 305.14(B) and R.C. 309.09(C). Under the Charter, the county and County Executive have the right to perform the duties imposed upon a board of county commissioners by general law. Charter art. I, § 1.01; Charter art. II, § 2.03. Also, the Charter requires the powers of the county under the Charter to “be construed liberally in favor of the County.” Charter art. I, § 1.03.

When the County Executive exercises his authority to employ additional legal counsel under R.C. 305.14(B) and R.C. 309.09(C), the County Executive must comply with the “journalization requirement as well as duration and monetary restrictions” imposed by R.C. 309.09(C). *State ex rel. O’Connor v. Davis*, 139 Ohio App. 3d at 711.

mention of particular powers in this Charter shall not be construed as limiting in any way the general powers granted under this Charter”).

For the following reasons, we decline to endorse the foregoing interpretation of Article III, § 3.09(3) of the Charter. When the Charter has not prescribed the specific manner by which a county may exercise a power vested in the county and Cuyahoga County Prosecuting Attorney by law, such power “shall be exercised in the manner prescribed by general law.” Charter art. I, § 1.01; *see also* Charter art. II, § 2.03; Charter art. IV, § 4.01. In addition, the Charter expressly requires the county to follow general law when employing legal counsel. Charter art. IV, § 4.01. Thus, to the extent that the Charter has not set forth specific procedures for the employment of legal counsel by a county officer, office, department, board, commission, or agency, the plain language of Article I, § 1.01, Article II, § 2.03, and Article IV, § 4.01 of the Charter requires the county to follow the procedures set forth in R.C. 305.14, R.C. 309.09, and R.C. 309.10.

Moreover, “[t]he rules for statutory construction contained in the Ohio Revised Code shall govern the interpretation of the provisions of [the] Charter.” Charter art. I, § 1.03. When comparing the authority conferred by Article IV, § 4.01 and Article III, § 3.09(3) of the Charter, it is helpful to consider R.C. 1.51, which states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

In this instance, when Article IV, § 4.01 and Article III, § 3.09(3) of the Charter are compared, Article IV, § 4.01 of the Charter is the special provision, while Article III, § 3.09(3) of the Charter is the general provision. Article IV, § 4.01 of the Charter explicitly provides for the employment of legal counsel other than the prosecuting attorney by the county. Article III, § 3.09(3) of the Charter, on the other hand, merely authorizes the County Council to establish procedures under which the County Executive may employ experts and consultants. Article III, § 3.09(3) of the Charter does not expressly mention providing procedures for employing legal counsel other than the prosecuting attorney.

Also, both charter provisions became effective at the same time and there is no manifest intent in the language of the Charter that Article III, § 3.09(3) of the Charter prevail over Article IV, § 4.01 of the Charter. Hence, when Article IV, § 4.01 and Article III, § 3.09(3) of the Charter are construed in accordance with R.C. 1.51, it is apparent that Article IV, § 4.01 of the Charter prevails over Article III, § 3.09(3) of the Charter. In other words, when employing legal counsel other than the Cuyahoga County Prosecuting Attorney or the Cuyahoga County Director of Law, Article IV, § 4.01 of the Charter requires the County Executive to comply with the procedures established by general law, rather than the procedures established by the County Council pursuant to Article III, § 3.09(3) of the Charter.

Finally, a requirement that the county follow the procedures governing the employment of legal counsel set forth in the general law of the state does not limit the power of the county to obtain such counsel for a county officer, office, department, board, commission, or agency. The general law merely prescribes the method by which the county may employ legal counsel. *See generally* 1993 Op. Att’y Gen. No. 93-001 at 2-6 n.2. No power imposed upon the County Executive, County Council, or Cuyahoga County Director of Law by the Charter is eliminated or diminished by requiring the county to follow general law when employing legal counsel. Accordingly, Article III, § 3.09(3) of the Charter does not authorize the County Council to establish procedures under which the County Executive may employ legal counsel for a county officer, office, department, board, commission, or agency without first obtaining the approval of the Cuyahoga County Prosecuting Attorney.

In light of the foregoing, we conclude that neither the Cuyahoga County Director of Law nor the County Council may employ legal counsel for a county officer, office, department, board, commission, or agency. Instead, pursuant to R.C. 305.14, R.C. 309.09, R.C. 309.10, and Article II, § 2.03 of the Cuyahoga County Charter, the County Executive may in certain situations employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency. Except as provided in R.C. 305.14, R.C. 309.09, and R.C. 309.10, the County Executive may not employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency without obtaining the approval of the Cuyahoga County Prosecuting Attorney.

Authority to Request a Legal Opinion of the Attorney General

Your final question asks whether the Cuyahoga County Director of Law has the authority to request a legal opinion of the Attorney General, or whether that authority rests exclusively with the Cuyahoga County Prosecuting Attorney. At the local government level, the Attorney General may advise “the prosecuting attorneys of the several counties respecting their duties in all complaints, suits, and controversies in which the state is, or may be a party” and “the township law director of a township that has adopted a limited home rule government under Chapter 504. of the Revised Code.” R.C. 109.14. It has been the longstanding policy of Ohio’s Attorneys General to limit the issuance of formal opinions to the legal counsel listed in R.C. 109.14. We agree with that policy and will continue to follow it. Consequently, at the local government level the Attorney General will limit his issuance of formal opinions to county prosecuting attorneys and law directors of townships that have adopted a limited home rule government under R.C. Chapter 504.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Article V, § 5.06 of the Cuyahoga County Charter is valid and does not conflict with Article IV, § 4.01 of the Cuyahoga County Charter

or the general law of the state as incorporated by reference into Article IV, § 4.01 of the Cuyahoga County Charter.

2. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which the County Executive or County Council is a party.
3. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which a county officer, department, board, commission, or other authority appointed by, or under the jurisdiction of, the County Executive or County Council is a party.
4. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for prosecuting or defending a civil lawsuit or administrative action in which a political subdivision other than the county is a party.
5. On the basis of Article IV, § 4.01 and Article V, § 5.06 of the Cuyahoga County Charter, both the Cuyahoga County Prosecuting Attorney and Cuyahoga County Director of Law may provide legal advice and opinions to the County Executive and County Council.
6. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for providing legal advice and opinions to county officers, departments, boards, commissions, and other authorities appointed by, or under the jurisdiction of, the County Executive or County Council.
7. The Cuyahoga County Prosecuting Attorney, rather than the Cuyahoga County Director of Law, is responsible for providing legal advice and opinions to a political subdivision other than the county.
8. Neither the Cuyahoga County Director of Law nor the County Council may employ legal counsel for a county officer, office, department, board, commission, or agency.
9. Pursuant to R.C. 305.14, R.C. 309.09, R.C. 309.10, and Article II, § 2.03 of the Cuyahoga County Charter, the County Executive may in certain situations employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency. Except as provided in R.C. 305.14, R.C. 309.09, and R.C. 309.10, the County Executive may not employ or authorize the employment of legal counsel for a county officer, office, department, board, commission, or agency without obtaining the approval of the Cuyahoga County Prosecuting Attorney.
10. At the local government level the Attorney General will limit his issuance of formal opinions to county prosecuting attorneys and law

directors of townships that have adopted a limited home rule government under R.C. Chapter 504.