

OPINION NO. 83-064**Syllabus:**

1. Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the county prosecuting attorneys of the participating counties have no duty to provide legal counsel for the joint board of county commissioners.
2. Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the joint board of county commissioners may employ legal counsel.

To: Frederick D. Pepple, Auglaize County Prosecuting Attorney, Wapakoneta, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 26, 1983

I have before me your request for my opinion in which you raised the following issue:

Who is responsible for giving legal advice to a joint board of county commissioners organized under Section 2151.65 of the Ohio Revised Code?

In addition, you have indicated a concern with respect to the prosecuting attorney's specific duty under R.C. 153.44 to review all contracts entered into by a county building commission (organized pursuant to R.C. 153.21).

To address your concerns, consideration must first be given to the authority by which counties may jointly participate in the creation and maintenance of facilities for the detention and treatment of juveniles.

In this regard, R.C. 2151.34 and R.C. 2151.65 empower boards of commissioners of two or more adjoining counties, upon the advice and recommendation of the juvenile judges of such counties, to form themselves into a joint board and organize a district for the purpose of constructing and maintaining a facility for the detention, training, treatment, and rehabilitation of juveniles. You have informed me that, pursuant to the above statutory authority, the boards of county commissioners of Miami, Shelby and Auglaize counties have formed themselves into a joint board for the purpose of constructing and maintaining a multicounty

detention and rehabilitation facility. It is my understanding that the facility to be created by the joint board of commissioners will serve the dual purpose of a detention home pursuant to R.C. 2151.34-R.C. 2151.3416 and a treatment facility pursuant to R.C. 2151.65-R.C. 2151.80, thus requiring an analysis of both sets of statutory provisions in order to properly resolve the issue you have raised.

The role of a joint board created for the purposes outlined above is statutorily defined, and such statutes impose responsibilities upon the joint board as a whole, rather than upon individual county boards of commissioners. See, e.g., R.C. 2151.343 and 2151.68 (appointment of board of trustees); R.C. 2151.3411 and 2151.96 (selection and completion of facility); R.C. 2151.3412 and 2151.66 (imposition of taxes). The district created by such a joint board is clearly an entity apart from the counties which participate in its establishment. See, e.g., R.C. 5705.01(C) (defining the joint board of county commissioners of "a detention home district or a district organized under [R.C. 2151.65], or a combined district organized under [R.C. 2151.34 and 2151.65]" as a "[t]axing authority" or "bond issuing authority" for purposes of R.C. Chapter 5705).

The office of prosecuting attorney is also statutorily defined and exists as a result of legislation enacted by the General Assembly of Ohio under Ohio Const. art. X, §1, wherein the General Assembly is authorized to "provide by general law for the organization and government of counties, and [to] provide by general law alternative forms of county government." See R.C. Chapter 309. The county prosecutor has only such powers as are conferred upon him by statute and such powers as may be reasonably and necessarily inferred from the statutorily created power. See State ex rel. Finley v. Lodwich, 137 Ohio St. 329, 29 N.E.2d 959 (1940).

The statutory duties of a county prosecutor to act as legal adviser are set forth in R.C. Chapter 309 and related provisions. In pertinent part, R.C. 309.09(A) provides:

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 him in matters connected with their official duties. He 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 section 305.14 of the Revised Code. (Emphasis added.)

An additional specific duty of the prosecuting attorney is to review all contracts pertaining to public improvements that exceed one thousand dollars in amount and are submitted to him by his board of county commissioners for his certification as to compliance with R.C. 153.01-R.C. 153.60, relating to public improvements. R.C. 153.44. In summary, the role of the prosecuting attorney is limited by statute and in the absence of statutory authority the prosecuting attorney cannot act.

Since R.C. Chapter 2151 does not expressly provide for legal counsel to be appointed once the county boards of commissioners of two or more counties elect to form a joint board of commissioners for the purposes of creating a detention facility, R.C. 2151.34-R.C. 2151.3416, or a treatment facility, R.C. 2151.64-R.C. 2151.80, the resolution of the issue you have presented requires interpretation of that chapter in light of R.C. 309.09.

R.C. 309.09 is explicit in directing the prosecuting attorney to serve as the legal adviser to the board of county commissioners, board of elections, and all other county officers and boards. It is clear, however, that the reference in the statute to the board of county commissioners applies only to the board of county commissioners of the prosecuting attorney's county. See 1966 Op. Att'y Gen. No. 66-017. The matter, then, to be inquired into is whether a joint board of county commissioners organized for the creation of a multicounty juvenile detention and treatment facility is a "county board" or its members as members of the joint board are "county officers" within the meaning of R.C. 309.09(A).

While the terms "county board" and "county officers" are not statutorily defined, it has been opined by several of my predecessors that, when a joint-county entity is created, by virtue of the fact that such board or officers may exercise authority over an area exceeding the territorial limits of any one county, such board or officers may not be considered a county board or county officers. For example, in 1979 Op. Att'y Gen. No. 79-019, one of my predecessors concluded that a multicounty felony bureau was not a county board for purposes of R.C. 309.09 and that the director of such bureau was not a county officer for purposes of R.C. 309.09. Op. No. 79-019 states, at 2-69:

Moreover, there is ample authority for the proposition that the term "county board" as used in R.C. 309.09, does not apply to any entity established on a multi-county basis. 1975 Op. Att'y Gen. No. 75-014 (joint county community mental health and retardation board); 1964 Op. Att'y Gen. No. 95, p. 157 (joint county airport facility); 1958 Op. Att'y Gen. No. 2736, p. 567 (regional planning commission). Accordingly, I am of the opinion that a Multi-County Felony Bureau is not a "county board" for purposes of R.C. 309.09.

This conclusion is supported by the judicial definition of county officer found in State v. Brennan, 49 Ohio St. 33, 38-39, 29 N.E. 593, 594 (1892).

And where such duties are wholly performed within the limits of a county, and for the people of that county, the salary to be paid by the disbursing officer of the county, from the funds of the county, the office is a county office, and, as one who is lawfully invested with an office is an officer, the person lawfully filling such place is necessarily a county officer.

In accordance with the foregoing, I am of the opinion that the prosecuting attorney of a county whose board of county commissioners has joined in the formation of a joint board of county commissioners for the purpose of the creation of a multicounty juvenile detention and rehabilitation facility pursuant to R.C. Chapter 2151, is not under any statutory duty to provide legal counsel to the joint board of county commissioners. Should the intent of the legislators have been otherwise, it was within their power to more clearly state that intent. See R.C. 2151.3414 and R.C. 2151.79 (providing a means for the selection of the auditor of one of the participating counties to serve as fiscal agent for a detention home or treatment facility district or combined district). The prosecutor will, of course, retain the responsibility of advising the commissioners of his county with respect to any county functions they may have in relation to the activities of the joint board. See, e.g., R.C. 2151.3413, 2151.3415, 2151.3416, 2151.651, 2151.78, 2151.80.

Under a similar analysis, R.C. 153.44, pertaining to contracts to be submitted to the prosecuting attorney, must be seen as applying only to contracts entered into on behalf of a single county and not to contracts relating to the creation of a multicounty juvenile treatment and detention facility. R.C. 153.44 should be read in pari materia with the other provisions of R.C. Chapter 153 relating to county buildings, e.g., R.C. 153.21-153.49. Cf. State ex rel. Fornoff v. Nash, 23 Ohio St. 568, 575 (1873) ("The act [the predecessor of R.C. 153.21-R.C. 153.49] is copied, substantially, from the Act of April 3, 1868 [the predecessor of R.C. 153.01-R.C. 153.19], which provides for the erection, etc., of public buildings by the state (S. & S. 637), and only so changed as to adapt its provisions to counties"); Plessner v. Pray, 6 Ohio N.P. 444 (C.P. Lucas County 1869) (R.S. 782-793, inclusive [now R.C. 153.01-153.20], relate to buildings and improvements constructed by the state and have no necessary reference to anything being done by the county commissioners); 1954 Op. Att'y Gen. No. 3743, p. 207 (R.C. 153.44 is limited in its application to only such contracts as are included within the scope of R.C. 153.40 (now repealed)). Although no special statutory definition of county building is given, it is clear from the use of that term within R.C. 153.21-153.49 that what is intended is its plain meaning, to wit: a county building is a building housing agencies, departments, etc., of that county to serve the county. Cf. R.C. 153.56 (county courthouse or jail); R.C. 153.57 (county home). Support for this proposition can be found in R.C. 307.93, for therein the General Assembly, providing for a multicounty facility, did enact a statute for the creation of a multicounty correctional center and the

appointment of a building commission to oversee its construction, rather than relying on R.C. 153.21-153.49.

Furthermore, R.C. 153.21, pertaining to the creation of a county building commission, composed of the board of county commissioners and four electors of the county, to oversee the construction of a courthouse or other county building, supports the conclusion that what is envisioned in R.C. 153.21-153.49 is the construction of a county building under the direction of a county building commission composed of county officials and county residents.

In the instant matter, what is being contemplated is the construction of a multicounty building under the direction of a joint board of county commissioners, R.C. 2151.34 and R.C. 2151.65, and a board of trustees, R.C. 2151.343 and R.C. 2151.68. Consequently, the prosecuting attorney of a member county is under no duty to review contracts relating to the creation of a multicounty juvenile treatment and detention facility.

Since the prosecuting attorney of any member county is not under a duty to provide legal services to a joint board of commissioners, the question arises as to whether such a board may employ legal counsel to assist in the construction and maintenance of a multicounty detention and treatment facility. As you have indicated, the joint board of commissioners could very well require the services of an attorney to review construction contracts and to perform other legal work. An examination of the Code, case law and prior opinions yields no authority directly on point. However, in light of the general rule that public officials have those powers which are conferred by statute and such powers as may be reasonably and necessarily inferred from the statutory powers, *State ex rel. Finley v. Lodwich*, it may be inferred that, since by statute the joint boards of county commissioners may engage in real estate transactions and construction agreements in order to organize and build a multicounty detention and treatment facility, *see* R.C. 2151.3411 (detention homes); R.C. 2151.76 (treatment facilities), the joint boards must necessarily and reasonably have the ability to employ legal counsel to advise them with respect to such matters. *See generally* Op. No. 79-019 at 2-69 to 2-70 ("[a]s the General Assembly has not made provisions for [legal representation for a multicounty felony bureau] it must be presumed that such an organization is free to seek private representation. Payment for such representation must be made from the Bureau's own funds. . . . Since there is no legal obligation upon the prosecuting attorney to represent the Bureau, it would not be improper for the county prosecutor or his assistants to undertake such representation on a private basis, provided, of course, that such representation does not conflict with the duties imposed by statute upon the office of prosecuting attorney").

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

1. Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the county prosecuting attorneys of the participating counties have no duty to provide legal counsel for the joint board of county commissioners.
2. Where a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility for the training and treatment of juveniles, the joint board of county commissioners may employ legal counsel.