

It should be noted that by the terms of Section 1342, General Code, the application must contain, among other things, "a certificate from two reputable citizens that the applicant is of legal age", etc. It clearly follows that if an applicant is not of legal age, then the necessary certificate to that effect cannot truthfully be made and consequently the mandatory prerequisite of Section 1342, General Code, as to the age of the applicant would not be satisfied. Of course, only those submitting valid applications are entitled to examinations.

A question similar to that presented by you was considered in an opinion found in Opinions of the Attorney General for 1930, p. 984, which construed Section 1295-28 of the General Code, relative to the admission of applicants to the standard examination to practice optometry in this state. Such section provides that "any person over the age of twenty-one years \* \* \* shall be entitled to take a standard examination \* \* \*." In holding that a person under the age of twenty-one years may not be admitted to such examination, I pointed out that "The legislature has seen fit to expressly provide in plain, unambiguous language that one of the qualifications which an applicant must have before he may take the examination therein provided is that he be over the age of twenty-one years."

This same observation is true of the provision of Section 1342, General Code, relative to the certification that the applicant is of legal age.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a person under the age of twenty-one years may not, under the provisions of Section 1342, General Code, be admitted to take the examination for a license to practice embalming and the preparation of the dead for burial, cremation or transportation in this state.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

4671.

PROSECUTING ATTORNEY—NO DUTY TO DEFEND COUNTY DOG  
WARDEN IN SUIT INVOLVING PERSONAL LIABILITY.

*SYLLABUS:*

*A county prosecuting attorney under Section 2917 G. C. owes no duty to appear on behalf of a county dog warden in an action which involves only the personal liability of such dog warden.*

COLUMBUS, OHIO, October 6, 1932.

HON. R. S. CUNNINGHAM, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"We respectfully ask that you give us your opinion in the interpretation of Section 2917 of the General Code.

The County Dog Warden in this county filed affidavits against three individuals for assault with intent to kill. Upon a preliminary hearing in a magistrate's court these men were discharged, the warden having failed to identify them as his assailants.

Will you now tell us whether or not it is the duty of the Prosecuting Attorney in his official capacity under Section 2917 of the General Code to defend the dog warden in a civil action for false arrest and malicious prosecution."

Section 2917 to which you refer is as follows:

"Shall be legal adviser of county and township officers; exception. The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund".

Your attention is called to an opinion of the Attorney General found in 1913 Opinions Attorney General, Volume 2, page 1222, the syllabus of which reads as follows:

"Under Section 2917, General Code, which requires a prosecuting attorney to be the legal adviser of township officers, that official is required to defend a justice of the peace or road superintendent in a suit brought against either in their official capacity, but not when such suit was brought against them in their individual capacity. Whether or not a person is sued in official capacity and what effect the refusal of an officer to follow the opinion of his legal adviser should be, must be left to the circumstances of each case".

The opinion stated in part:

"Whether or not a prosecuting attorney shall represent an officer of a township in a suit against such township officer must depend upon the particular facts in each case. If the interest of the township, that is the public, is involved in such action it would be the duty of the prosecuting attorney to represent the township in such action, through its proper officer or officers, and to protect its interests. If, however, the action involves only the personal liability of an officer, as for misconduct or negligence in office, the prosecuting attorney would not be required to represent such officer in such action".

It is believed that the rule above enunciated is applicable to the situation presented by your inquiry.

It should also be noted that since there is not statutory authority for a suit of this nature to be brought against a county dog warden it is apparent that the action in question is one involving the personal liability of such dog warden.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a county prosecuting attorney under Section 2917 G. C. owes no duty to appear on behalf of a county dog warden in an action which involves only the personal liability of such dog warden.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*