

**OPINION NO. 85-086****Syllabus:**

1. Pursuant to R.C. 307.15, a board of county commissioners may contract with a city whereby the county agrees to pay an amount to the city for the purpose of providing compensation to the law director or his assistants under R.C. 1901.34(A) and the city agrees to disburse such compensation to the director of law or his assistants.
2. To the extent that payment of compensation to a city law director or his assistants under R.C. 1901.34 may render a county liable for payment of unemployment compensation, for the tortious acts of the law director or his assistants, or otherwise, then such liability will exist regardless of whether such compensation is paid directly to the law director or his assistants or whether the county pays such compensation to the city for disbursement to the law director or his assistants.

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**To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 26, 1985**

I have before me your request for my opinion regarding the payment of compensation to a law director or his assistants by the board of county commissioners pursuant to R.C. 1901.34(A).

R.C. 1901.34(A) provides that, except in certain counties not at issue herein, the village solicitor, city director of

law, or similar chief legal officer for each municipality within the territory of a municipal court shall:

prosecute all criminal cases brought before the municipal court for violations of the ordinances of the municipal corporation for which he is the solicitor, director of law, or similar chief legal officer, or for violation of state statutes or other criminal offenses occurring within the municipal corporation for which he is the solicitor, director of law, or similar chief legal officer. . . .The village solicitor, city director of law, or similar chief legal officer of the municipal corporation in which the court is located shall prosecute all criminal cases brought before the court arising in the unincorporated areas within the territory of the municipal court [except in certain counties].

. . . .The village solicitor, city director of law, or similar chief legal officer shall perform the same duties, as far as they are applicable thereto, as are required of the prosecuting attorney of the county. He or his assistants whom he may appoint shall receive for such services additional compensation to be paid from the treasury of the county as the board of county commissioners prescribes. (Emphasis added.)

See 1952 Op. Att'y Gen. No. 2183, p. 785, 792 ("the 'additional compensation' for which provision is made in [R.C. 1901.34(A)] is for services involved in the prosecution of so-called 'state cases'"). See generally 1983 Op. Att'y Gen. No. 83-026 (syllabus) ("R.C. 1901.34 provides for a city law director to receive compensation from the board of county commissioners in addition to the compensation established by the city"). See also R.C. 1901.34(B) (providing that most county prosecuting attorneys may enter into an agreement with a municipal corporation pursuant to which the duties of the city director of law or village solicitor set forth in R.C. 1901.34(A) with regard to violations of ordinances of the municipal corporation and other offenses occurring within the municipal corporation are performed by the prosecuting attorney). In this instance, the board of county commissioners desires to provide additional compensation to a director of law pursuant to R.C. 1901.34(A).<sup>1</sup> They wish to know, however, whether the board may contract with the city employing the law director whereby the county would promise to pay the city annually an amount for the purpose of compensating the law director, and the city would agree to disburse such payment to the law director or his assistants who prosecute violations of state statutes on those

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<sup>1</sup> 1952 Op. Att'y Gen. No. 2183, p. 785 concluded that a board of county commissioners has no mandatory duty to provide additional compensation to city law directors or village solicitors, stating:

It must be borne in mind that we are here concerned with additional compensation rather than the primary compensation attaching to a public office, and that provision for such is made by reason of additional duties imposed on the officer concerned. Such additional duties may well range from the complex, voluminous and onerous on the one hand, to the virtually negligible on the other. In this situation it is evidently the legislative intent that the

terms and conditions as the city deems best. You indicate in your letter that the board of county commissioners desires to enter such contract in order to avoid possible liability for unemployment compensation for the law director or his assistants and to avoid possible tort liability under the doctrine of respondeat superior.

R.C. 1901.34(A) specifies, among other things, the duties of municipal and county officers regarding the prosecution of criminal actions in municipal courts and further authorizes the county commissioners to pay additional compensation to village solicitors, city directors of law, or other similar chief legal officers for performing such services. R.C. 1901.34(A), however, does not expressly authorize the county to contract with a municipality for the payment of the additional compensation provided for in R.C. 1901.34(A).

R.C. 307.15, which you mention in your opinion request, expressly authorizes a board of county commissioners generally to contract with a municipality, stating in pertinent part:

The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation. . . .whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board, to exercise any power, perform any function, or render any service, in behalf of the county or the board, which the county or the board may exercise, perform, or render. . . .

Upon the execution of such agreement and within the limitations prescribed by it. . . .the legislative authority of any municipal corporation may exercise the same powers as the county possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the county directly.

See 1952 Op. Att'y Gen. No. 1330, p. 284 (contracting authority provided by G.C. 2450-2 (predecessor of R.C. 307.15) is broad and encompasses any power, function, or service which the contracting subdivision or its legislative authority may exercise, perform, or render).

Since R.C. 1901.34(A) authorizes a county to provide additional compensation to a city director of law, R.C. 307.15 appears to grant the board of county commissioners authority to contract with a city whereby the county agrees to pay an amount to the city for purposes of compensating the law director or his assistants and the city agrees to disburse such money to the law director or his assistants. R.C. 307.15 does not,

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commissioners are to provide additional compensation in amounts commensurate with the additional duties involved, and where such additional duties are negligible, to withhold such additional compensation entirely.

Id. at 793. In your request you state that the board of county commissioners intends to base the compensation of the law director or his assistants upon the population of the jurisdiction of the municipal court which the law director or his assistants serve.

however, empower the board of county commissioners to avoid their legal obligations to third parties. R.C. 307.15 merely grants authority to a county and city to agree that the city perform various county functions. To the extent that payment of compensation to a city law director may render the county liable for payment of unemployment compensation, see R.C. Chapter 4141, for the tortious acts of the law director, see Zents v. Board of Commissioners, 9 Ohio St. 3d 204, 459 N.E.2d 881 (1984); 1985 Op. Att'y Gen. No. 85-056, or otherwise, then such liability will exist regardless of whether such compensation is paid directly to the law director or to the city for distribution to the law director. See City of Parma Heights v. Schroeder, 26 Ohio Op. 2d 119, 122, 196 N.E.2d 813, 816 (C.P. Cuyahoga County 1963) ("clearly one cannot do indirectly what he cannot lawfully do directly"); 1980 Op. Att'y Gen. No. 80-048 at 2-200 to 2-201 ("one must confront the realities of the situation and. . .substance must triumph over form"). It is not necessary for purposes of this opinion to determine the potential liability which may be imposed upon a county as a consequence of the payment of compensation to the law director, and I express no opinion on that point. Clearly, however, any potential liability that does exist would not be affected by the manner in which such compensation is paid.

In conclusion, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 307.15, a board of county commissioners may contract with a city whereby the county agrees to pay an amount to the city for the purpose of providing compensation to the law director or his assistants under R.C. 1901.34(A) and the city agrees to disburse such compensation to the director of law or his assistants.
2. To the extent that payment of compensation to a city law director or his assistants under R.C. 1901.34 may render a county liable for payment of unemployment compensation, for the tortious acts of the law director or his assistants, or otherwise, then such liability will exist regardless of whether such compensation is paid directly to the law director or his assistants or whether the county pays such compensation to the city for disbursement to the law director or his assistants.