

OPINION NO. 80-064**Syllabus:**

Pursuant to R.C. 309.10, the school board of a joint vocational school district may employ counsel of its choice, rather than relying on the county prosecutor of the most populous county in the joint vocational school district, provided that such counsel is paid from school funds. (1964 Op. Att'y Gen. No. 1606, p. 2-454 and 1964 Op. Att'y Gen. No. 1523, p. 2-422, overruled in part.)

To: Peter R. Selbel, Defiance County Pros. Atty., Defiance, Ohio
By: William J. Brown, Attorney General, October 15, 1980

I have before me your request for my opinion on the following question: "Can the Board of Education of a Joint Vocational School District, composed of all or part of eight counties, employ legal counsel rather than rely upon the Prosecuting Attorney of the most populous county having a school district within the joint vocational school district?" You ask particularly about the reasoning of 1964 Op. Att'y Gen. No. 1606, p. 2-454, in which my predecessor concluded, inter alia, in paragraph 3 of the syllabus:

The legal adviser to a vocational school district formed by two or more local and city school districts of more than one county is not the county prosecutor of any of the participating counties. Counsel therefor may be employed by said board of education pursuant to the provisions of Section 309.10, Revised Code.

Accord, 1964 Op. Att'y Gen. No. 1523, p. 2-422.

As you note, 1964 Op. No. 1606 was written prior to adoption of Am. H.B. 447, which added the following sentence to R.C. 3313.35:

In joint vocational school districts the legal adviser shall be the prosecuting attorney of the most populous county containing a school district which is a member of the joint vocational school district. (Emphasis added.)

1967-1968 Ohio Laws Pt. I 1036, Pt. II-III 2630 (Am. H.B. 447, eff. Dec. 11, 1967). It is clear that, under R.C. 3313.35 as amended, the prosecuting attorney of the most populous county containing a school district which is a member of the joint vocational school district has the duty of serving as legal adviser of the joint vocational school district. 1964 Op. No. 1606 and 1523 are hereby overruled to the extent that they are inconsistent with this conclusion.

To provide a complete answer to your question, however, it is necessary to read R.C. 3313.35 in conjunction with other provisions dealing with the duties of prosecuting attorneys and the powers of school boards. R.C. 309.08 and 309.09 impose certain duties of representation upon the prosecuting attorney, and R.C. 309.09 specifically prohibits county officials from employing counsel at county expense except as authorized by statute. R.C. 309.10 exempts school boards from the prohibition against employing other counsel. It states in pertinent part as follows: "Sections 309.08 and 309.09 of the Revised Code do not prevent a school board from employing counsel to represent it but such counsel, when so employed, shall be paid by such school board from the school fund."

A joint vocational school district is managed and controlled by a joint vocational school district board of education, established pursuant to R.C. 3311.19. While the term "school board" is not defined for purposes of R.C. 309.10, that term would seem to include a joint vocational school board. See 1964 Op. No. 1523. Thus, pursuant to R.C. 309.10, a joint vocational school district board of education may employ counsel other than the prosecuting attorney of the most populous county in the district, if it so chooses, provided that counsel so employed is paid by the school board from the school fund. This result is in accordance with that reached in Knepper v. French, 125 Ohio St. 613, 183 N.E. 869 (1932) (holding that a county board of education may employ counsel other than the prosecuting attorney to represent it in litigation or matters involving legal controversy). See also 1970 Op. Att'y Gen. No. 70-081 (authority of city school board to obtain legal services other than from city solicitor or law director); 1961 Op. Att'y Gen. No. 2678, p. 690; 1954 Op. Att'y Gen. No. 3644, p. 135. However, if the school board would insist, the county prosecutor would be required to handle the legal affairs of the joint vocational school district. See State ex rel. Grandview Heights City School District Board of Educ. v. Morton, 44 Ohio St. 2d 151, 339 N.E. 2d 663 (1975) (duty of city solicitor to advise city school board).

Accordingly, it is my opinion, and you are advised, that, pursuant to R.C. 309.10, the school board of a joint vocational school district may employ counsel of its choice, rather than relying on the county prosecutor of the most populous county in the joint vocational school district, provided that such counsel is paid from school funds. (1964 Op. Att'y Gen. No. 1606, p. 2-454 and 1964 Op. Att'y Gen. No. 1523, p. 2-422, overruled in part.)