

**Note from the Attorney General's Office:**

1957 Op. Att'y Gen. No. 57-737 was overruled by 1980  
Op. Att'y Gen. No. 80-036.

737

PUBLIC ASSISTANCE EXAMINING COMMITTEE—§329.091 RC—MANDATORY, NO ADDITIONAL JURISDICTION CONFERRED—REPORTS, PROPER, TO BE SUBMITTED— NO GENERAL INVESTIGATIVE POWER TO COMPEL ATTENDANCE OR OTHER REPORTS—COMMITTEE NOT AUTHORIZE TO APPOINT OR PAY EMPLOYEES—DEPUTIES OF COMMITTEE MEMBERS MAY SERVE—SUPPLIES, SOURCE OF, TO BE USED—CERTIFICATION OF COMMITTEE DETERMINATIONS.

SYLLABUS:

1. Section 329.091, Revised Code, is a mandatory statute, imposing specified duties upon the chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court, but it confers no additional jurisdiction or authority on the board of county commissioners, the county auditor, or the juvenile court.
2. The chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court are not, under the provisions of Section 329.091, Revised Code, liable upon their bonds for the proper conduct of the public assistance agencies which report to the public assistance examining committee.
3. The requirement of Section 329.091, Revised Code, that certain public assistance agencies submit quarterly reports to the county auditor is not satisfied by submission

of disorganized carbon-copy lists of checks issued, but such reports must assemble in intelligible form an account of the matters required by the statute to be reported.

4. Section 329.091, Revised Code, requires the public assistance examining committee to examine the reports required to be submitted to it, and that duty extends beyond investigation of the written informations filed by electors under the provisions of that section.

5. The powers of the public assistance examining committee being provided in Section 329.091, Revised Code, the committee has no power or authority to demand or require other reports or to compel officers or employees of public assistance agencies to appear before the committee.

6. There being no statutory authority therefor, and having no funds of its own, the public assistance examining committee cannot appoint and pay employees or incur expenses.

7. The chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court may require the employees of their respective offices, employed to assist them generally in the performance of their public duties, to perform clerical and other services in connection with the duties imposed upon such officers by Section 329.091, Revised Code, and may appoint such employees to serve as their deputies on the public assistance examining committee.

8. The chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court may utilize in the performance of the duties imposed upon them by Section 329.091, Revised Code, any supplies furnished them for use in the performance of their public duties generally.

9. The public assistance examining committee is an independent investigative agency, and it certifies to the prosecuting attorney and to the department of public welfare only its own determinations, arrived at in consequence of its own investigations.

Columbus, Ohio, July 9, 1957

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir:

In your request for my opinion you have raised a number of questions relative to Section 329.091, Revised Code, Amended Substitute Senate Bill No. 66, One Hundredth General Assembly, 125 Ohio Laws 672. That section reads:

“Before the thirtieth day of January, April, July and October of each year each county, city or state authority, administration, department, board, division or office responsible by law for the administration of the public assistance programs of aid for the aged, aid for the blind, aid for dependent children, aid for

the permanently and totally disabled, and poor relief shall file a report with the auditor of the county listing the names of all recipients to whom such agency has granted, paid or authorized payment of public assistance during the preceding fiscal quarter year of such agency and the amounts paid to each.

“The auditor, chairman of the board of county commissioners and the presiding judge of the juvenile court of each county, or deputies designated by them, are hereby designated and constituted the public assistance examining committee who shall serve during their terms of office, or at the pleasure of such appointing officers, and shall organize by electing a chairman and secretary on or before the thirtieth day of October, 1953. The committee shall meet quarterly, and at other times at the call of the chairman. A majority of said committee shall be necessary to a decision. Said committee shall examine the reports of such public assistance agencies upon the filing thereof, may examine any signed, written information filed by an elector of the county and may examine such other information contained in the files and records of such public assistance agencies as they may deem necessary to determine whether or not any grants or payments of public assistance funds have been fraudulently made or received, or are in violation of law or the regulations of the department of public welfare.

“In case the committee shall determine that there is reasonable cause to suppose that any grants or payments of public assistance funds have been fraudulently made or received or are in violation of law or the regulations of the department of public welfare, it shall certify its determination thereof, together with such facts and records as it deems pertinent, to the prosecuting attorney and to the director of the department of public welfare of Ohio each of whom shall take action toward the prosecution for and correction of such violations as provided by law.

“The reports and case records of such public assistance agencies pertaining to recipients of public assistance shall be open to examination by the prosecuting attorney and shall be made available if required as evidence in any action or proceeding for the enforcement of liability for support of any recipient of public assistance, for collection or recovery of public assistance funds, and for prosecution for any violation of the laws and regulations pertaining thereto. The reports of any agency, required by this section, shall be open to examination by the attorney general, auditor of state, and federal and state legislative representatives, commissions, committees and their designated representatives, and any other public official or public body required to have such information for the proper discharge of official duties.

“The report filed in the office of the county auditor as required by this section shall be open to examination by any elector

of the county who first signs his name and gives the reason in writing for such examination and files said request with the county auditor.

“No person, firm, association, corporation or other agency shall solicit, disclose, receive, use or authorize, participate in or acquiesce in the use of any lists or names of any such recipients of aid for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance.”

At the outset, and in reply to the tenth of your enumerated questions it is my opinion that Section 329.091, Revised Code, does not confer any new or additional authority or jurisdiction upon the board of county commissioners, the office of the county auditor, or upon the juvenile court. It is, however, a mandatory statute. It imposes upon the chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court, or their designated deputies, an additional duty to be performed.

Your eleventh question is whether the chairman of the board of county commissioners, the county auditor, or the presiding judge of the juvenile court are legally responsible under their bonds for the proper conduct of the several public assistance agencies which report to the public assistance examining committee.

Under the statute the public assistance examining committee is an investigatory body, charged with examining reports and having no sanction at its command other than certification of suspected violations of law to the county prosecutor. Nothing in the statute implies any control over the various public assistance agencies or responsibility for their conduct. In my opinion the chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court are not made responsible by Section 329.091, Revised Code, for the proper conduct of the agencies which that section requires to report to the public assistance examining committee.

Your ninth question appears to challenge the constitutionality of Section 329.091, Revised Code. It is not the proper function for this office to question the constitutionality of an act of the General Assembly; rather, the Attorney General must assume the constitutionality of statute law.

The remaining eight questions posed in your letter are concerned

with the extent of the duties of the public assistance examining committee and with the means whereby they may perform those duties.

The first and second questions read :

1. "Inasmuch as being a member of the examining committee is only a new duty placed on top of many others already imposed by statutes on the public officials named as members, and since no provision was made in the statute for hiring assistants to do the clerical and investigative work or for interrogating relief officials or recipients, and because this board was established by the same statute that inaugurated the system of having the quarterly relief lists filed with the Auditor and opened to public inspection by electors as well as the committee, is it contemplated that the examining committee should do any more than investigate any complaints made to it by an elector who had examined the list, or the few questions that might arise in looking over such a mass of meaningless names, addresses and amounts?"
2. If the committee has a greater duty, how far does it extend?"

In your letter you state that some of the agencies required to report are sending to the county auditor only carbon-copy lists of the checks issued by them, amounting to several thousands of names monthly or semi-monthly and not in alphabetical order. A report is an intelligible relation or account. The monthly submission of a mere disorganized list of transactions is not a report and is not sufficient compliance with the statute. The statute requires a quarterly report. Such a report must assemble in intelligible form an account of public assistance transactions over a period of several months. It must, by the terms of the statute, include a list of all persons paid or authorized to be paid public assistance money, together with an account of amounts paid to each such person.

When the public assistance examining committee does receive proper reports, it is its statutory duty to *examine* those reports. It is within the discretion of the committee to decide with what thoroughness it shall make its examination. It is not within the competence of the Attorney General to advise officers as to how they should exercise discretion; and thus I am unable to define the limits of the committee's duty. It appears on the face of the statute, however, that the duty does extend beyond the investigation of complaints.

Your third question reads :

3. "Has the committee any authority to call in the responsible employees of the county welfare department, the officials or

other members of the soldiers relief commission, the state officials charged with the duty of administering aid to the aged or the public officials of municipalities administering relief to answer questions pertaining to their policies or actions, or demand written reports from them as to the strictness or laxity of their relief investigations besides the quarterly list of names of recipients of relief required by the statute, or is its authority limited to examining the information contained in the files and records of such public assistance agencies?"

Section 329.091, *supra*, empowers the public assistance examining committee to examine the files and records of public assistance agencies. The same section requires those agencies to submit reports to the committee and authorizes the committee to investigate the written complaints submitted by electors. These are the sources of information provided the committee by statute, and in the absence of other statutory provision it has no power to require the production of other or additional information.

Your fourth and fifth questions are:

4. "What authority has the Committee to hire assistants and incur necessary expenses, and the board of county commissioners to appropriate money for these purposes?"
5. "If the committee has the legal right to appoint employees, who establishes the amounts of their compensation?"

As said above, Section 329.091, *supra*, imposes an additional duty upon the chairman of the board of county commissioners, upon the county auditor, and upon the presiding judge of the juvenile court. Such duties may be performed personally by the officers named or under the express terms of the statute, by deputies appointed by them. It appears to me that the employees of the board of county commissioners, of the county auditor, or the juvenile court may properly be appointed deputies to serve as members of the public assistance examining committee or may perform clerical or other services for the committee. Such employees being appointed to assist the board of county commissioners, the county auditor, and the juvenile court in the performance of their public duties, and the duties prescribed in Section 329.091, *supra*, being public duties imposed upon the officers previously mentioned, the clerk of the board of county commissioners or his assistants, appointed under Section 305.13, Revised Code, deputies of the county auditor appointed under Section 319.05, Revised Code, and employees of the juvenile court appointed under Sec-

tion 2151.13, Revised Code, may properly be appointed deputies to serve on the public assistance examining committee or may be directed to perform clerical or other necessary services for the committee. In fact it is the function of these employees to assist the officers in the performance of this public duty as much as in the performance of any other.

Your sixth question is :

6. "If the committee itself cannot legally incur any expense, can the individual members, as heads of their respective offices, take on in full or share in any expenses incurred by performing work the committee thinks it necessary to do?"

No provision is made in statute for the public assistance examining committee to receive any appropriation of money or incur any expense. This fact, incidentally, provides some indication of the legislative intent as to the extent of the committee's functions. It appears to me that any supplies furnished the members of the committee to use in the performance of their general public duties may be used in the performance of this public duty. The committee may not itself purchase any supplies or incur any other expense.

Your seventh question is :

7. "Can any of the three individual public officials named as members, appoint and pay a particular deputy to devote his whole time to the work of the committee? May he be a part-time employee paid on an hourly or per diem basis? Must the official obtain a special appropriation for this purpose, or can such deputy be paid out of the general yearly appropriation made by the County Commissioners for the entire office? Can such deputy make outside investigations of his own and report to the other members of the committee the result of his questioning people or examining records or evidence not specified in the statute itself?"

The answer to this question is contained in what has already been said in response to your third and fifth questions, *supra*. Deputies or employees of the board of county commissioners, of the county auditor, or of the juvenile court may be required to devote their full time to assisting the members of the public assistance examining committee in the performance of committee duties. Such employees are paid according to whatever method the respective offices have adopted to pay their employees, and they must be paid from the general appropriation made to pay the

employees of the respective offices. Such employees can investigate only to the extent of the authority of the committee to do so.

Your eighth question is:

8. "In certifying any fraud or violation of law or the regulations of the Department of Public Welfare to the Prosecutor and the Director of the Department of Welfare of Ohio, would the Committee be acting for the County Welfare Department Investigative Unit and other relief-giving authorities in the County or only with respect to what the Committee itself might uncover in the way of irregularities through its members and assistants?"

Under the terms of Section 329.091, *supra*, the public assistance examining committee conducts its own examination and certifies its own determinations. It is an independent investigating committee and acts for no other agency.

It is my opinion, and you are advised, that:

1. Section 329.091, Revised Code, is a mandatory statute, imposing specified duties upon the chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court, but it confers no additional jurisdiction or authority on the board of county commissioners, the county auditor, or the juvenile court.

2. The chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court are not, under the provisions of Section 329.091, Revised Code, liable upon their bonds for the proper conduct of the public assistance agencies which report to the public assistance examining committee.

3. The requirement of Section 329.091, Revised Code, that certain public assistance agencies submit quarterly reports to the county auditor is not satisfied by submission of disorganized carbon-copy lists of checks issued, but such reports must assemble in intelligible form an account of the matters required by the statute to be reported.

4. Section 329.091, Revised Code, requires the public assistance examining committee to examine the reports required to be submitted to it, and that duty extends beyond investigation of the written informations filed by electors under the provisions of that section.

5. The powers of the public assistance examining committee being provided in Section 329.091, Revised Code, the committee has no power

or authority to demand or require other reports or to compel officers or employees of public assistance agencies to appear before the committee.

6. There being no statutory authority therefor, and having no funds of its own, the public assistance examining committee cannot appoint and pay employees or incur expenses.

7. The chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court may require the employees of their respective offices, employed to assist them generally in the performance of their public duties, to perform clerical and other services in connection with the duties imposed upon such officers by Section 329.091, Revised Code, and may appoint such employees to serve as their deputies on the public assistance examining committee.

8. The chairman of the board of county commissioners, the county auditor, and the presiding judge of the juvenile court may utilize in the performance of the duties imposed upon them by Section 329.091, Revised Code, any supplies furnished them for use in the performance of their public duties generally.

9. The public assistance examining committee is an independent investigative agency, and it certifies to the prosecuting attorney and to the department of public welfare only its own determinations, arrived at in consequence of its own investigations.

Respectfully,  
WILLIAM SAXBE  
Attorney General