

OPINION NO. 77-019**Syllabus:**

When the Ohio Highway Patrol is ordered to investigate alleged criminal activity within the scope of R.C. 109.84, the evidence it gathers must be presented to the Attorney General for his consideration pursuant to that section. A duplicate copy of such an investigative report may only be made available to a local prosecuting attorney for prosecution of violations, when the Attorney General determines pursuant to R.C. 109.84(B) to refer the matter to the prosecuting attorney.

To: Adam G. Reiss, Supt., Ohio State Highway Patrol, Columbus, Ohio
By: William J. Brown, Attorney General, April 25, 1977

You have requested my opinion on the following questions, which have arisen as a result of the recent enactment of R.C. 109.84 as part of Am. Sub. S.B. No. 545, effective 1/17/77:

"1. When the State Highway Patrol is ordered to investigate alleged criminal activity in this area, to whom should the Patrol present evidence it has gathered -- the Attorney General or the Prosecutor of the county where the evidence indicates a crime has been committed?

"2. If the Attorney General is deemed to be the officer to receive evidence gathered by the Patrol and a county prosecutor has initiated a concurrent criminal investigation, if requested, can the Patrol furnish the county prosecutor with a duplicate copy of that investigative report?

R.C. 109.84 reads as follows:

"(A) Upon the written request of the Governor, the Industrial Commission, the Administrator of the Bureau of Workers' Compensation, or upon the Attorney General's becoming aware of criminal or improper activity related to Chapter 4121. or 4123. of the Revised Code, the Attorney General shall investigate any criminal or civil violation of law related to Chapter 4121. or 4123. of the Revised Code.

"(B) When it appears to the Attorney General, as a result of an investigation under Division (A) of this Section, that there is cause to prosecute for the commission of a crime or to pursue a civil remedy, he may refer the evidence to the prosecuting attorney having jurisdiction of the matter, or to a regular Grand Jury drawn and impaneled pursuant to Sections 2939.01 to 2939.24 of the Revised Code, or to a special Grand Jury drawn and impaneled pursuant to Section 2939.17 of the Revised Code, or he may initiate and prosecute any necessary criminal or civil actions in any court or tribunal of competent jurisdiction in this state. When proceeding under this Section, the Attorney General has all rights, privileges, and powers of prosecuting attorneys, and any assistant or special counsel designated by him for that purpose has the same authority.

"(C) The Attorney General shall be reimbursed by the Industrial Commission for all actual and necessary costs incurred in conducting investigations requested by the Governor, the Industrial Commission, or the Administrator of the Bureau of Worker's Compensation and all actual and necessary costs in conducting the prosecution arising out of such investigation."

County prosecuting attorneys in turn are charged by R.C. 309.08 with investigating and prosecuting criminal activity which has been alleged within their respective jurisdictions. It is clear then that both the Attorney General and the various prosecuting attorneys are charged with the prosecution of criminal cases within jurisdictions defined by statute. As I noted in 1977 Op. Atty Gen. No. 77-016, the jurisdiction of each officer may in some cases overlap. With respect then to your specific question it is necessary to consider the circumstances surrounding your investigation in order to determine the appropriate disposition of evidence gathered.

It may first be noted that Am. Sub. S.B. No. 545, supra, does not specifically grant the Ohio Highway Patrol authority with respect to the investigation of criminal activity involving Workers' Compensation. It is my understanding that the Patrol's participation in the investigation was in fact not ordered by the Governor pursuant to R.C. 109.84, but as a general directive under R.C. Chapter 5503. As such the statutory grant of authority to investigate does not specifically provide for disposition of evidence of violations of R.C. Chapters 4121 and 4123. Therefore, because the General Assembly has chosen to specifically provide for investigations

and prosecutions in this area, it is appropriate in answering your questions to consider further the terms of R.C. 109.84, as enacted by Am. Sub. S.B. No. 545, supra.

In this regard it is significant that the General Assembly has seen fit in R.C. 109.84(A) to expressly provide for investigation of possible criminal or civil violations of R.C. Chapters 4121 and 4123. In R.C. 109.84 (B) the General Assembly has assigned the principal responsibility for prosecuting such violations to the Attorney General. To this end the Attorney General has several alternatives, including the option of referring evidence of a violation to the appropriate prosecuting attorney. It follows that the General Assembly intended that any evidence relating to violations of this nature be submitted first to the Attorney General. Implicit in the language of R.C. 109.84(B) is the assumption that the Attorney General will have at his disposal all materials or evidence gathered by investigation in order that he may make a well-reasoned decision as to which option should be exercised.

The circumstances of each alleged violation may call for the exercise of a different option by the Attorney General. As discussed above this choice is to be made by the Attorney General pursuant to the express provisions of R.C. 109.84(B). Were the Highway Patrol to give evidence gathered by it to any officer other than the Attorney General, it would in effect be exercising the discretion reserved by the General Assembly to the Attorney General.

To the extent that R.C. 109.84 as so applied would appear to conflict with the grant of authority in R.C. 309.08 to prosecuting attorneys I refer you to R.C. 1.51, which provides that in the event of an irreconcilable conflict between two statutes a special or local provision prevails over a general provision. Such is the case here. R.C. 109.84 reflects the General Assembly's intention as to how criminal and civil violations of R.C. Chapters 4121 and 4123 are to be prosecuted. In response to your first question I must, therefore, conclude that when the Ohio Highway Patrol is ordered to investigate alleged criminal activity within the scope of R.C. 109.84, the evidence it gathers must be presented to the Attorney General for his consideration pursuant to that section.

The second question posed by you is answered by my response to your first question. The thrust of Section 109.84, Revised Code is that the Attorney General shall conduct an investigation of any civil or criminal violation of law related to Chapters 4121 and 4123 Revised Code. Upon such investigation, the decision as to what remedial action shall be taken lies within the discretion of the Attorney General. Therefore, release of information or evidence to a local prosecutor is a decision to be made solely by the Attorney General. It may well be that the Attorney General has already decided upon a course of action or in fact has not made such decision at the time the local prosecutor requests such information or evidence from the State Highway Patrol. Such a decision by the Attorney General must under R.C. 109.84 be the controlling factor in any determination to make evidence available.

In specific answer to your questions it is, therefore, my opinion and you are so advised that when the Ohio Highway Patrol is ordered to investigate alleged criminal activity within the scope of R.C. 109.84, the evidence it gathers must be presented to the Attorney General for his consideration pursuant to that section. A duplicate copy of such an investigative report may only be made available to a local prosecuting attorney for prosecution of violations, when the Attorney General determines pursuant to R.C. 109.84(B) to refer the matter to the prosecuting attorney.