

**OPINION NO. 81-059****Syllabus:**

1. A prosecuting attorney does not have a statutory duty to be the legal adviser of a joint recreation district established under R.C. 755.14(C), or of the board of trustees, officers, or employees of such a district.
2. A prosecuting attorney does not have a statutory duty to be the legal adviser of a joint recreation board established under R.C. 755.14(B), or of the members, officers, or employees of such a board.

---

**To: Craig S. Albert, Geauga County Pros. Atty., Chardon, Ohio**  
**By: William J. Brown, Attorney General, October 21, 1981**

I have before me your request for my opinion whether a county prosecuting attorney is designated by R.C. 309.09 or any other section of the Revised Code as the legal adviser to a joint recreation district established under R.C. 755.14(C), or

the board of trustees, officers or employees of such a district. Further, you have asked, similarly, whether the prosecuting attorney is designated as the legal adviser to a joint recreation board established under R.C. 755.14(B), or to the members, officers, or employees of such a board.

A prosecuting attorney is a county officer whose duties are prescribed by statute. See State ex rel. Finley v. Lodwich, 137 Ohio St. 329, 29 N.E.2d 959 (1940); R.C. 309.01, 309.08. Among these duties is the duty to act as legal adviser for various entities. R.C. 309.09 provides, in pertinent part, as follows:

(A) The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards, including all tax supported public libraries, and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code.

Such prosecuting attorney shall be the legal adviser for all township officers. When the board of township trustees deems it advisable or necessary to have additional legal counsel it may employ an attorney other than the prosecuting attorney of the county, either for a particular matter or on an annual basis, to represent the township and its officers in their official capacities and to advise them on legal matters. . . . (Emphasis added.)

In addition to this general duty imposed on a prosecuting attorney to advise county officers and boards and township officers, he is specifically made the adviser to certain other governmental entities and counsel in certain other special proceedings. See, e.g., R.C. 3313.35 (prosecuting attorney shall be the legal adviser to all boards of education of the county, other than in city school districts); R.C. 5719.29 (prosecuting attorney shall represent the county treasurer in all special proceedings to collect unpaid real property taxes); R.C. 6131.18 (prosecuting attorney shall represent the county in all county ditch proceedings).

A joint recreation district, the subject of your first question, is formed under R.C. 755.14(C), which provides as follows:

The legislative authorities of the several subdivisions joined in the operation and maintenance of recreation facilities under section 755.16 of the Revised Code may, by resolution, establish a joint recreation district, consisting of all the territory of the subdivisions so joined. The joint recreation district board of trustees shall be the governing body of a district and shall possess all the powers of a legislative authority of an individual subdivision under sections 755.12 to 755.18 of the Revised Code. The number of trustees shall be fixed by the resolutions creating the district and may be any number so long as there is representation of all participating subdivisions.

R.C. 755.16, referenced in this division, authorizes certain governmental subdivisions to enter into a joint venture by agreement with other such subdivisions to provide for common parks and recreational facilities. The component subdivisions may be any combination of municipal corporations, townships, township park districts, counties, or school districts.

When a joint recreation district is established under R.C. 755.14(C), a "joint recreational district board of trustees" must be simultaneously formed. This district and its board of trustees accede to "all the power of a legislative authority of an individual subdivision" under R.C. 755.12 to 755.18.

I am aware of no statute which specifically designates the county prosecutor

as legal adviser to a joint recreation district, its board of trustees, its officers, or its employees. Compare with R.C. 3313.35; R.C. 146.06 (prosecuting attorney shall be the legal adviser to volunteer fire fighters' dependents fund board); R.C. 1515.11 (prosecuting attorney shall be the legal adviser to soil and water conservation district). There remains the question whether the prosecutor's duty to advise under R.C. 309.09 extends to a joint recreation district, its board of trustees, its officers, or its employees.

I had occasion in 1975 Op. Att'y Gen. No. 75-014 to consider what is meant by a county board which a prosecutor must advise under R.C. 309.09, and concluded, after reviewing various opinions of my predecessors, that the term "county board" as used in that section is limited to boards which are essentially a subdivision of a county or a subordinate department of the county. See 1961 Op. Att'y Gen. No. 2383, p. 366 (prosecuting attorney has no duty to advise regional planning commission). As noted above, a joint recreation district is a separate entity, established by action of the participating subdivisions, rather than a subdivision or subordinate department of a county. Further, as noted above, the subdivisions comprising a joint recreation district may be any combination of municipal corporations, townships, township park districts, and counties. Thus, it is clear that a joint recreation district will not necessarily have jurisdiction coextensive with the county. I conclude, therefore, that a joint recreation district is not a county board for purposes of R.C. 309.09, nor is it governed by county officers. See 1927 Op. Att'y Gen. No. 279, vol. I, p. 489 (prosecuting attorney has no duty to advise a metropolitan park district created under R.C. Chapter 1545, formerly G.C. 2976-1 et seq.); 1919 Op. Att'y Gen. No. 125, vol. I, p. 217. Similarly, since the jurisdiction of a joint district may encompass a varied combination of municipal, school, foreign county, and distinct township park districts in addition to any member townships, and since the district is an entity apart from a particular township, the joint district is not a township board, and the members of the board of trustees are not township officers. See 1964 Op. Att'y Gen. No. 1297 (prosecuting attorney has no duty to advise a township park district created under R.C. 511.18 et seq.).

I conclude, therefore, that a joint recreation district created pursuant to R.C. 755.14(C), its board of trustees, its officers, and its employees, are not included with the clientele for whom the prosecuting attorney must act as legal adviser under R.C. 309.09 or any other section of the Revised Code. While it is true that the county prosecutor may have a duty to advise certain members of a joint recreation district (e.g., a county or a school district), or certain persons (e.g., county or township officers) who may serve as trustees, officers, or employees of the district, in their capacities as his statutory clients under R.C. 309.09, the prosecutor's duty to so advise does not extend to advising the district as such, or to advising those who serve as trustees, officers, or employees in their capacities with the district.<sup>1</sup>

In contrast with a joint recreation district, a joint recreation board is formed under R.C. 755.14(B), which provides as follows:

The legislative authorities of the municipal corporations, boards of township trustees of the townships, boards of township park commissioners, boards of county commissioners of the counties, and

---

<sup>1</sup>I note that, under R.C. 755.15, a board established pursuant to R.C. 755.14 has the authority to "employ such . . . persons as are needed." As a result, such a board apparently has the authority to hire the legal adviser of its choice, if it finds such counsel necessary. See, e.g., 1975 Op. No. 75-014 (authority of a joint county community mental health and retardation board to employ includes authority to employ counsel); 1964 Op. No. 1297 (authority of a township park district to employ includes authority to employ attorney when necessary); 1958 Op. Att'y Gen. No. 2736, p. 567 (authority of a regional planning commission to employ necessary employees includes authority to employ counsel).

boards of education of the school districts joined in the operation and maintenance of parks or recreation facilities under section 755.16 of the Revised Code may, by resolution, establish a joint recreation board which may possess all the powers and be subject to all the responsibilities of the respective local authorities under sections 755.12 to 755.18 of the Revised Code. The resolutions shall specify the number of members of the joint recreation board and the method of appointing members and filling vacancies. Members of the board shall serve without pay.

Like R.C. 755.14(C), this division references R.C. 755.16, which authorizes any member subdivision to enter into a joint venture by agreement to provide for common parks and recreational facilities. However, unlike a joint recreation district created under R.C. 755.14(C), a joint recreation board does not necessarily accede to all power of a legislative authority of an individual subdivision under R.C. 755.12 to 755.18; rather, it is charged with only such powers and responsibilities of its establishing legislative authorities under R.C. 755.12 to 755.18 as those local authorities choose to confer and impose by the establishing resolutions.

A joint recreation district is not a subdivision or subordinate department of a county. It is not necessarily county-wide, nor is it limited to the area of a single township. Thus, like a joint recreation district, it is neither a county nor a township board. Accordingly, neither it nor its members, officers, or employees are included with the clientele set forth in R.C. 309.09. Nor am I aware of any specific statute imposing upon a prosecuting attorney a duty to advise such boards.

I conclude, therefore, that a joint recreation board created pursuant to R.C. 755.14(B), and its members, officer, and employees are not included with the clientele for whom the prosecuting attorney must act as legal adviser under R.C. 309.09 or any other section of the Revised Code.

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

1. A prosecuting attorney does not have a statutory duty to be the legal adviser of a joint recreation district established under R.C. 755.14(C), or of the board of trustees, officers, or employees of such a district.
2. A prosecuting attorney does not have a statutory duty to be the legal adviser of a joint recreation board established under R.C. 755.14(B), or of the members, officers, or employees of such a board.