

OPINION NO. 68-117**Syllabus:**

1. It is the duty of the solicitor or village attorney to prosecute violators of the village ordinances when village police file the charge or affidavit.

2. It is the duty of the solicitor or village attorney to prosecute violators of state laws occurring within the municipal corporation when the city or village police, sheriff or State Highway Patrol file the charge or affidavit.

3. It is the duty of the solicitor or village attorney to prosecute for the violation of a village ordinance if any other county or state official files charges or an affidavit for a violation of such ordinance.

To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio
By: William B. Saxbe, Attorney General, July 22, 1968

I have before me your letter of recent date wherein you pose several questions concerning the obligations of the City Solicitor of Tiffin, Ohio, in prosecuting criminal matters arising within separate villages in the jurisdiction of the Tiffin Municipal Court. It is my understanding that the villages in question are incorporated municipalities located within the jurisdiction of the Tiffin Municipal Court. You ask the following five questions concerning the obligations of the City Solicitor or Assistant City Solicitor of Tiffin, Ohio.

Is he obligated to:

- (1) Prosecute violation of village ordinances where village police file the charge?
- (2) Prosecute violations of state laws where village police file the charge?
- (3) Prosecute violations of state laws where county sheriff's department or State Highway Patrol file the charge?

- (4) Prosecute violations of Village Ordinances where County or State officials file the charge?
- (5) Or is the Village Solicitor responsible for the municipal court prosecution in any or all of one through four?

Section 1901.34 of the Revised Code states in part the following:

"The city solicitor, city attorney, or director of law for each municipal corporation within the territory shall prosecute all criminal cases brought before the municipal court for violations of the ordinance of the municipal corporation for which he is solicitor, attorney, or director of law or for violation of state statutes or other criminal offenses occurring within the municipal corporation for which he is a solicitor, attorney, or director of law."
(Emphasis added)

In consideration of the fact that the villages in question are incorporated municipalities, Section 1901.34, *supra*, is applicable to the questions presented. Pursuant to this section of the Code the city solicitor is directed to prosecute all criminal cases brought before the municipal court for violations of ordinances of the municipal corporation, as well as violation of state statutes or other criminal offenses occurring within the municipal corporation for which he is city solicitor.

Therefore, since there is a solicitor acting for and on behalf of the six villages in question, such solicitor is required to act as the attorney for his designated municipal corporation. The statute is not permissive nor is it indefinite or uncertain in its terms but rather it is mandatory, and the legislature used the word "shall" rather than "may" or other words of less force and direction.

Ohio Revised Code Section 2938.13 supports my foregoing conclusion:

"In any case prosecuted for violation of a municipal ordinance the solicitor or law director, and for a statute, he or the prosecuting attorney, shall present the case for municipality and state respectively, but either may delegate such responsibility to some other attorney in a proper case, or, if the defendant be unrepresented by counsel may with leave of court, withdraw from the case. But the magistrate or judge shall not permit prosecution of any criminal case by private attorney employed or retained by a complaining witness."

My conclusion is that Sections 1908.34 and 2938.13, *supra*, make it the duty of each city solicitor, city attorney, or director of law of a city or village to prosecute all violations of his city or village ordinances. Also, it is his

duty to prosecute all criminal cases arising in his incorporated municipal area wherein there is a violation of state statutes.

Inasmuch as the two applicable statutes do not mention or differentiate in any instance as to the person or public authority filing the charge or affidavit, I conclude that the city solicitor of his city or village shall perform his duties as stated herein regardless of the person, persons, or police authority filing the charge. Whether the charge is filed by the village police for a violation of a village ordinance or state law makes no difference. Likewise, it is my conclusion that in instances where the county sheriff's department or the Ohio State Highway Patrol file the charges or affidavit for violation of state laws, the city solicitor must perform his function as stated in the statutes recited herein.

Accordingly, it is my opinion and you are advised:

1. It is the duty of the solicitor or village attorney to prosecute violators of the village ordinances when village police file the charge or affidavit.
2. It is the duty of the solicitor or village attorney to prosecute violators of state laws occurring within the municipal corporation when the city or village police, sheriff or State Highway Patrol file the charge or affidavit.
3. It is the duty of the solicitor or village attorney to prosecute for the violation of a village ordinance if any other county or state official files charges or an affidavit for a violation of such ordinance.