

Other statutes governing child support enforcement actions, however, impose duties specifically upon the office of the prosecuting attorney. R.C. 2301.372, for example, states in part:

(A) If the court or the child support enforcement agency fails to comply with the requirements of [R.C. 2301.37 or 3113.21] and if the rights to support have been assigned to the department of human services under [R.C. 5107.07] or the responsibility for the collection of support has been assumed under Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C.A. 651, as amended, the child support enforcement agency shall, unless the office of the prosecuting attorney has been designated as the child support enforcement agency for the county under [R.C. 2301.35], notify the prosecuting attorney of the county in which the obligee resides. If the office of prosecuting attorney has been designated as the child support enforcement agency, the board of county commissioners of the county shall seek a writ of mandamus under [R.C. Chapter 2731] directing the prosecuting attorney to comply with the requirements of this section and [R.C. 2301.37 or 3113.21]. The prosecuting attorney shall commence either or both of the following:

- (1) Proceedings under [R.C. 3113.21] requesting the issuance of one or more orders under division (D) of that section;
- (2) A civil action in the small claims division of the municipal or county court within whose jurisdiction the obligor resides.

Thus, pursuant to R.C. 2301.372(A), the prosecuting attorney himself is under a duty to initiate child support enforcement actions in the circumstances set forth therein.

Certain child support enforcement actions may, however, be initiated by various entities. For example, R.C. 2705.031(B) states: "Any party who has a legal claim to any support ordered for a child, spouse, or former spouse may initiate a contempt action for failure to pay the support. In Title IV-D cases, the contempt action also may be initiated by an attorney retained by the party, the prosecuting attorney, or an attorney of the department of human services or the child support enforcement agency." Thus, under this statute, the prosecuting attorney is only one of several persons authorized to initiate a contempt action for failure to pay support.

In other cases, however, it appears that the legislature has imposed certain child support enforcement duties upon the prosecuting attorney, but has, nonetheless, provided for situations where the prosecutor neglects or refuses to perform such duties. *See, e.g.*, R.C. 3115.10 ("[i]f this state is acting as an initiating state, the prosecuting attorney upon the request of the court shall represent the obligee² in any proceeding under [R.C. 3115.01-.34]. If the prosecuting attorney neglects or refuses to represent the obligee, the county director of human services may obtain other representation" (emphasis added));³ R.C. 3115.16 (the prosecuting attorney of the responding state "shall prosecute the case diligently....If the prosecuting attorney neglects or refuses to represent the obligee, the county director of human services may undertake the representation"). The wording of the statutes strongly suggests that the duties imposed upon the prosecutor are mandatory. *See* 1987 Op. Att'y Gen. No. 87-033. *See generally*

² R.C. 3115.01(B)(10) defines "obligee," as used in R.C. 3115.01-.34, as meaning, "any person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance."

³ I note, however, that, for purposes of R.C. 309.09(A), a county department of human services is a county board. 1987 Op. Att'y Gen. No. 87-090. The prosecuting attorney is, therefore, the board's legal advisor and is under a duty to "prosecute and defend all suits and actions which...[the] board directs or to which it is a party." R.C. 309.09(A). The statute does,

Dorrian v. Scioto Conservancy Dist., 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage").

From the foregoing examples it is apparent that the prosecuting attorney has numerous responsibilities in the area of child support enforcement. In some instances, he is required by statute in his capacity as county prosecutor to pursue certain actions related to child support enforcement. At other times, where the county department of human services, having been designated as the child support enforcement agency for the county, is under a duty to commence child support enforcement proceedings, the prosecuting attorney will represent the agency as required by R.C. 309.09(A). See Op. No. 88-094. As set forth above, however, in certain cases, the prosecuting attorney will commence child support enforcement actions, not on behalf of a county officer or agency as required by R.C. 309.09(A), but on behalf of a non-county entity, as specifically required by statute. See, e.g., R.C. 3115.10 (county prosecuting attorney may represent obligee of support in proceedings under R.C. 3115.01-.34). In any event, whether the statutes impose duties expressly upon the office of the prosecuting attorney or whether the statutes impose upon a county board certain child support enforcement duties requiring legal representation, the prosecuting attorney is under a duty to carry out such representation. See Op. No. 88-094.

The question arises as to the effect of a written agreement entered into between a child support enforcement agency and the county prosecuting attorney pursuant to R.C. 2301.35(F) which states:

Each child support enforcement agency designated under this section shall enter into written agreements with courts, the prosecuting attorney, and law enforcement officials that establish cooperative working arrangements and specify areas of responsibility for the enforcement of child support among the agency, courts, and officials. The agreements shall provide for the reimbursement of the courts and law enforcement officials for the responsibilities they assume and actions they undertake pursuant to such agreements.

Although R.C. 2301.35(F) requires each child support enforcement agency to enter into written agreements with, among others, the county prosecuting attorney, nothing in that provision allows such agreements to vary the duties otherwise imposed by statute upon the prosecuting attorney.

As I noted in Op. No. 88-094, the Department of Human Services has promulgated a rule concerning cooperative agreements for legal services. 8 Ohio Admin. Code 5101:1-29-53 states:

IV-D cooperative [a]greements shall be executed with the county prosecuting attorney whenever possible. The agreement must cover legal services for establishing parentage, child support, and medical support in Uniform Reciprocal Support Enforcement Act actions as well as in-county actions. It shall also cover other legal services to the local IV-D program.

(B) If legal services are to be provided by a source other than the county prosecutor, the CSEA [(child support enforcement agency)]

however, set forth an exception to the prohibition against a county officer employing other counsel at county expense. Such outside counsel may be so employed in accordance with R.C. 305.14(A), which empowers a court of common pleas, upon application by the prosecuting attorney and the board of county commissioners, to authorize the board to employ counsel to assist the prosecuting attorney, the board, or any county officer "in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity."

prosecutor also engages in the private practice of law. R.C. 325.11 does, however, contain the following exclusion: "As used in this section, 'salary' does not include any portion of the cost, premium, or charge for health, medical, hospital, dental, or surgical benefits, or any combination thereof, covering the prosecuting attorney and paid on his behalf by a governmental entity." There is, however, no exception from the compensation schedule prescribed by R.C. 325.11 for payments to the prosecutor for his performance of child support enforcement activities.

As set forth above, R.C. 2301.35(F) requires each child support enforcement agency to enter into written agreements with the courts and law enforcement officials, as well as with the prosecuting attorney. R.C. 2301.35(F) further expressly provides for the reimbursement of the courts and law enforcement officials for any responsibilities and duties they assume under such agreements. There is, however, no similar provision in R.C. 2301.35(F) for reimbursement of the county prosecuting attorney.⁸ Based on the rule of statutory construction, *expressio unius est exclusio alterius*, meaning that, "under proper conditions and with important limitations, the express mention of a person, thing, or consequence in a statute is tantamount to an express exclusion of all others," *State v. Amman*, 78 Ohio App. 10, 12-13, 68 N.E.2d 816, 818 (Hamilton County 1946), it appears that the legislature did not intend that the agreement between the child support enforcement agency and the prosecuting attorney, entered into pursuant to R.C. 2301.35(F), provide reimbursement to the prosecuting attorney in addition to the compensation he receives under R.C. 325.11 for his legal services with respect to child support enforcement activities.⁹

Thus, although the General Assembly has imposed upon the prosecuting attorney various duties concerning child support enforcement, no statute of which I am aware authorizes payment to the prosecuting attorney, in addition to his compensation prescribed by R.C. 325.11, for the performance of his child support enforcement duties. See generally *State ex rel. Doerfler v. Price*, 101 Ohio St. at 57, 128 N.E. at 175 ("the prosecuting attorney of a county...is not a constitutional officer. He exists only by virtue of the favor of the general assembly....The general assembly of Ohio that passed the act providing for the prosecuting attorney of each county may tomorrow abolish the office and create a new one, or entirely change the duties of the office"). I must conclude, therefore, that the county prosecuting attorney is entitled to no compensation in addition to that prescribed by R.C. 325.11 for the performance of his statutory duties with respect to child support enforcement.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. With respect to child support enforcement actions, the county prosecuting attorney must perform those duties expressly imposed by statute upon his office and, where the county department of human services has been designated under R.C. 2301.35 as the child support enforcement agency for the county, such duties as may be required of his office by R.C. 309.09(A).
2. Where the county prosecuting attorney represents an appellant who is a non-recipient of aid to dependent children on appeal in a child support enforcement action, should the court of appeals require a deposit as security for costs or should the appellant be required to pay the cost of the transcript as part of the record on

⁸ I note that Ohio Const. art. II, §20 also prohibits the payment of additional compensation to the county prosecuting attorney after the commencement of his existing term. *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976).

⁹ Whether the county itself may be reimbursed from federal funds for the services provided by the prosecuting attorney in conjunction with the IV-D program is, however, a separate question.

appeal, the child support enforcement agency must advance such deposit and cost of the transcript.

3. The county prosecuting attorney is entitled to receive no compensation in addition to that prescribed by R.C. 325.11 for the performance of his statutory duties with respect to child support enforcement.