

OPINION NO. 66-017

Syllabus:

1. If creation of a university branch district is initiated by the board of county commissioners, or by the board of county commissioners in conjunction with the board of county commissioners of one or more contiguous counties, or by petition and referendum of the electors in the county, the prosecuting attorney has the duty to legally advise the board of county commissioners or the board of elections in matters relating to said creation. Said duty continues until such time as the board or boards of county commissioners appoint either a district administrator or a university branch district board of trustees in accordance with Section 3355.04, Revised Code.

2. If the board or boards of county commissioners appoint a district administrator pursuant to Section 3355.04, Revised Code, the prosecuting attorney has the duty to legally advise the board of county commissioners of his county in matters pertaining to the management of the university branch district, but he has no duty to so advise the district administrator.

3. If the board or boards of county commissioners appoint a university branch district board of trustees pursuant to Section 3355.04, Revised Code, the prosecuting attorney has no duty to legally advise the university branch district board of trustees.

To: Harlan R. Spies, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: William B. Saxbe, Attorney General, January 18, 1966

Your request for my opinion presents the following question:

"Does the Prosecuting Attorney have the responsibility to serve as legal counsel for a University Branch District as created under Chapter 3355 of the Revised Code?"

Since Chapter 3355, Revised Code, does not expressly provide for legal counsel to the university branch district, your question requires interpretation of that chapter in light of Section 309.09, Revised Code, which sets forth the duties of the prosecuting attorney and reads in pertinent part:

"The prosecuting attorney shall be the legal adviser to 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." * * * (Emphasis added)

Section 3355.02, Revised Code, generally provides four methods by which a university branch district may be created: (1) by the legislative authority of a municipal corporation; (2) by the board of county commissioners; (3) by the boards of county commissioners of any two or more contiguous counties; (4) by petition and referendum of electors in a municipality, county, or two or more contiguous counties. Since the sole concern of this opinion is whether the prosecuting attorney has the responsibility to be legal counsel for a university branch district, such a district formed by the legislative authority of a municipal corporation or by petition and referendum of electors within a municipal corporation will not be considered herein, for a university branch district so formed would clearly be outside the province of the prosecuting attorney.

Section 309.09, *supra*, is explicit in providing that the prosecuting attorney is legal adviser to the board of county commissioners; therefore, if that body undertakes the creation of a university branch district, or joins in the creation with the board of county commissioners of one or more contiguous counties, his responsibility to legally advise the board of county commissioners of his county in matters pertaining to the creation of the university branch district is unquestionable. Similarly, Section 309.09, *supra*, clearly requires him to legally advise the board of elections; hence, if creation of a university branch district is sought by petition and referendum, he must advise his county board of elections concerning creation of the university branch district.

The duty to legally advise the board of county commissioners or the board of elections discussed above involves only the period during the formation of the district and this duty does not necessarily continue after the district has been established. The terminal point of the formative stage, and the point up to which the prosecuting attorney's duty is clear, is when the board or boards of county commissioners select the method of administration for the university branch district as they are required to do by Section 3355.04, Revised Code. That section provides two alternative methods of administration for the university branch district: (1) district administrator form; (2) university branch district board of trustees form.

If the board or boards of county commissioners choose the district administrator form, Section 3355.05, Revised Code, provides that they, the board or boards of county commissioners, shall be the managing authority of the university branch district. Consequently, since the board of county commissioners is acting as the board of county commissioners with the official duties specified in Chapter 3355, Revised Code, for the management of the university branch district, the prosecuting attorney is required by Section 309.09, *supra*, to legally advise the board in matters relating to their management of the district. However, this duty to advise pertains only to advising the board of county commissioners of his county; thus, in the instance where more than one board of county commissioners is managing the university branch district pursuant to Section 3355.05, *supra*, the prosecuting attorney has the duty to advise only the board from his county. Following the reasoning discussed *infra*, the prosecuting attorney has no duty to legally advise the district administrator of the university branch district.

On the other hand, if the board or boards of county commissioners choose the university branch district board of trustees form of administration, Section 3355.05, Revised Code, provides that the board of trustees, not the board or boards of county commissioners, shall be the managing authority of the district. Hence, the question becomes one of determining whether the prosecuting attorney has the duty to be legal adviser to the university branch district board of trustees. This resolves to a determination of whether the board of trustees is a "county board" or the members thereof are "county officers", within the purview of Section 309.09, supra. The answer is found in Section 3355.01 (A), Revised Code, which reads:

" * * * * * * * * * * * * * * *"

"(A) 'University branch district' means a political subdivision of the state and a body corporate with all the powers of a corporation, and organized for the purpose of establishing, owning, and operating a branch university district within the territory of such district.

" * * * * * * * * * * * * * * *"

(Emphasis added)

A county is not a body corporate but rather a subordinate political subdivision of the state. Board of County Commissioners of Portage County v. Gates, 83 Ohio St., 19, 30. Section 3355.01 (A), supra, defines the university branch district as a political subdivision of the state and a body corporate. Therefore, the university branch district board of trustees, the governing body of said district, is not a county board because a university branch district is separate and apart from the county; it is an independent corporate body. Likewise, the members of the board of trustees are not county officers, for one of the requisites for a county officer is that his jurisdiction be coextensive with the county. Cline v. Martin et al., 5 Ohio App., 90,100. Inasmuch as the university branch district board of trustees is not a county board nor its members county officers, the prosecuting attorney has no duty to legally advise said body or its members.

Therefore, it is my opinion and you are hereby advised as follows:

1. If creation of a university branch district is initiated by the board of county commissioners, or by the board of county commissioners in conjunction with the board of county commissioners of one or more contiguous counties, or by petition and referendum of the electors in the county, the prosecuting attorney has the duty to legally advise the board of county commissioners or the board of elections in matters relating to said creation. Said duty continues until such time as the board or boards of county commissioners appoint either a district administrator or a university branch district board of trustees in accordance with Section 3355.04, Revised Code.

2. If the board or boards of county commissioners appoint a district administrator pursuant to Section 3355.04, Revised Code, the prosecuting attorney has the duty to legally advise

the board of county commissioners of his county in matters pertaining to the management of the university branch district, but he has no duty to so advise the district administrator.

3. If the board or boards of county commissioners appoint a university branch district board of trustees pursuant to Section 3355.04, Revised Code, the prosecuting attorney has no duty to legally advise the university branch district board of trustees.