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COUNTY COMMISSIONERS—NOT LEGALLY BOUND TO PAY PART OF COST OF PRIVATE OFFICE OF PROSECUTING ATTORNEY WHEN SUCH OFFICE IS ALSO USED AS OFFICE OF PROSECUTOR. §§307.01, 325.12, R.C.

## SYLLABUS:

1. A board of county commissioners is not legally bound to pay a part of the cost of rent and lighting of the private office of the prosecuting attorney, which office is also being used as the office of the prosecutor, unless such board has agreed to make such payments in providing an office pursuant to Section 307.01, Revised Code.

2. A prosecuting attorney may not expend from the fund created in Section 325.12, Revised Code, any amount to pay part of the rent and lighting of his private office which office is also used as the office of the county prosecutor.

Columbus, Ohio, November 24, 1959

Hon. John G. Peterson, Prosecuting Attorney  
Greene County, Xenia, Ohio

Dear Sir:

I have your letter requesting my opinion in which you state:

“I have received the following letter from the Greene County Commissioners, dated August 22, 1959.

“Dear Mr. Peterson:

We, the Greene County Commissioners, feel that the County should not have to pay for the rent and lighting of your office as Prosecuting Attorney since you would have that expense whether you were or were not Greene County Prosecuting Attorney.

May we hear from you in the near future on this matter.

Very respectfully yours,

The Greene County Commissioners  
Court House, Xenia, Ohio.

By: \_\_\_\_\_  
Clerk'

“My predecessors in office have received a percentage of their costs of renting and utilities and to date, the County Commissioners have approved and paid a percentage of these expenses for the operation of the office of the Prosecuting Attorney. I have discussed this matter with the Commissioners, and they formerly requested me to move the Prosecuting Attorney’s office into the Greene County Court House. However, the Commissioners have found that such a move is not feasible because there is not sufficient space available in the Court House. Would you please, at your earliest convenience, give me your formal opinion as to the following :

- “1. Are the Greene County Commissioners legally bound to pay a part of the cost of rent and lighting of my office as Prosecuting Attorney?
- “2. In the event that you find that there is no legal obligation for the Greene County Commissioners to pay such expense, would it be legal for me to pay such expenses out of the fund provided for in Section 325.12 of the Revised Code of the State of Ohio?”

Section 307.01, Revised Code, provides as follows :

“A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county commissioners *when in its judgment any of them are needed*. Such buildings and offices shall be of such style, dimensions, and expense as the board determines. The board shall also provide equipment, stationery, and postage, as it deems necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices. The board shall provide all rooms, fire-proof and burglarproof vaults, safes, and other means of security

in the office of the county treasurer, necessary for the protection of public moneys and property therein.” (Emphasis added)

Section 307.02, Revised Code, provides as follows:

“The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court buildings, detention home, public market houses, county children’s home, and other necessary buildings, public stadiums, public auditorium, exhibition hall, zoological park, and related parking facilities, and sites therefor, such real estate adjoining an existing site as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress; such copies of any public records of such county, made or reproduced by miniature photography or microfilm, as are necessary for the protection and preservation of public records of such county.”

Although it would certainly appear that the county prosecutor needs an office to properly perform his official duties, the above sections leave it to the discretion of the board of county commissioners as to whether an office shall be provided. The magnitude and importance of the duties of the prosecutor can be seen in the provisions of Sections 309.08 and 309.09, Revised Code.

Section 309.08, Revised Code, provides:

“The prosecuting attorney may inquire into the commission of crimes within the county and shall prosecute, on behalf of the state, all complaints, suits, and such other suits, matters, and controversies as he is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals. In conjunction with the attorney general, such prosecuting attorney shall prosecute cases arising in his county in the supreme court. In every case of conviction, he shall forthwith cause execution to be issued for the fine and costs, or costs only, as the case may be, and he shall faithfully urge the collection until it is affected or found to be impracticable to collect, and shall forthwith pay to the county treasurer all moneys belonging to the state or county which come into his possession.”

Section 309.09, Revised Code, provides:

“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, and no such officer may employ other counsel or attorney, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.”

Sections 307.01 and 307.02, Revised Code, set forth earlier, appear to be clear and unambiguous, the language used expressing plainly the intent of the law-making body that the authority to provide an office for the prosecuting attorney rests solely with the board of county commissioners and that it was not the intent of the legislature to permit the substitution of the judgment of anyone else in this regard.

While the logical location for the office of prosecuting attorney should be the county courthouse, if space is not available in the courthouse, then the board of county commissioners could provide such an office at some other location, if in its judgment such office is needed. Further, I would deem it within the authority of the board to agree to pay part of your office rent and lighting in order to furnish you with an office for your official duties. Until this authority is exercised, however, such board is not required to pay part of your rent and lighting as in the circumstances set forth in your letter.

In passing, I might add that the prosecuting attorney, because of the large and important task which he has to perform, should certainly be furnished with office facilities for the performance of his official duties and should not be required to provide such office at his own expense. While the board of county commissioners is given a discretion in this regard, the obvious need for office facilities plainly indicates that the board should provide such facilities; and failure to so provide is certainly not in the best interests of the people of the county and of the state.

Regarding the use of the funds provided for in Section 325.12, Revised Code, such section provides in part:

“There shall be allowed annually to the prosecuting attorney, in addition to his salary and to the allowance provided for by section 309.06 of the Revised Code, an amount equal to one half of the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice. \* \* \*”

This section, before the code revision of 1953, was Section 3004, General Code, and provided in part:

“There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by section 2914, an amount equal to one-half the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, *not otherwise provided for.* \* \* \*” (Emphasis added)

You will note that in Section 325.12, Revised Code, the proviso “not otherwise provided for” was omitted by the code revision of 1953.

Section 1.24, Revised Code, however, provides:

“That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.”

Since, pursuant to Section 307.01, Revised Code, the board of county commissioners may provide the prosecuting attorney with an office when in its judgment such office is needed, I do not believe an expenditure of any moneys from the fund established in Section 325.12, Revised Code, for part of the payment of rent and lighting for the private office of the prosecutor which is also used as the office of the prosecutor, would be authorized. Provision for an office being “provided for” in said Section 307.01, expense for such purpose, pursuant to said Section 325.12, would not be permissible.

Therefore, it is my opinion and you are advised:

1. A board of county commissioners is not legally bound to pay a part of the cost of rent and lighting of the private office of the prosecuting attorney, which office is also being used as the office of the prosecutor,

unless such board has agreed to make such payments in providing an office pursuant to Section 307.01, Revised Code.

2. A prosecuting attorney may not expend from the fund created in Section 325.12, Revised Code, any amount to pay part of the rent and lighting of his private office which office is also used as the office of the county prosecutor.

Respectfully,  
MARK McELROY  
Attorney General