

584.

PROSECUTING ATTORNEY—MAY NOT CONTINUE TO REPRESENT CLIENT HAVING A CLAIM AGAINST COUNTY COMMISSIONERS—MAY EMPLOY OTHER COUNSEL IF AUTHORIZED BY COMMON PLEAS COURT.

SYLLABUS:

1. *A prosecuting attorney may not, after taking office, continue to represent a client in a case in which the interests of such client and of the county are adverse.*

2. *If an application is made to the Common Pleas Court by the county commissioners and prosecuting attorney for employment of an assistant for the conduct of such case, and such authority is granted by the Common Pleas Court, the determination of the question of whether assistant legal counsel shall be provided, and if so, who shall be employed, rests wholly with the county commissioners.*

COLUMBUS, OHIO, July 16, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—We acknowledge receipt of your letter of recent date requesting the opinion of this department as follows:

“The prosecuting attorney prior to his election to that office was attorney for a client having a claim against the county and brought suit against the county on such claim.

May he legally continue to represent this client in the case and have the court appoint another attorney to represent the county's interests under the provisions of section 2912 of the General Code?”

Section 2917 of the General Code reads as follows:

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve.”

Section 2412 reads as follows:

“If it deems it for the best interests of the county, the common pleas court, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board of county commissioners to employ legal counsel temporarily to assist the prosecuting attorney, the board of county commissioners or any other county board or 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 county board or officer is a party or has an interest, in its official capacity.”

It is assumed that the prosecuting attorney in this case will feel obliged, for ethical reasons, to request that disinterested counsel be employed to assist the county commissioners in the conduct of this case. While the prosecuting attorney cannot continue to represent his former client, he will doubtless find himself in a position where he could not ethically take active charge of the case against his former client. An assistant could not be employed by authority of section 2912. This section reads in part as follows:

"* * * In case of sickness or other disability of the prosecuting attorney, preventing him from discharging his duties, the court shall appoint an assistant prosecuting attorney to perform the duties of the office until the disability is removed or a prosecuting attorney is elected or appointed and qualified."

This section evidently contemplates only such disability as would prevent the prosecutor from performing the general duties of his office, and not a disability occurring by reason of conflicting interests.

It is our opinion, therefore, that the prosecuting attorney may not continue to represent a client whose interests are adverse to those of the county, and that the commissioners, if authorized by the Common Pleas Court, may, if they deem it advisable, employ other counsel to take active charge of the case.

Respectfully,

C. C. CRABBE,

Attorney General.

585.

ABSTRACT OF TITLE, 1.678 ACRES OF LAND, JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, July 16, 1923.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract certified to by J. Oscar Naylor, attorney-at-law and abstracter, of Steubenville, Ohio, under date of April 4, 1923, requesting my opinion as to the status of the title to the following described premises, as disclosed by said abstract:

Situated in section thirty-six (36), township two (2) and range one (1), in the township of Steubenville, county of Jefferson and state of Ohio, beginning at a point 169.93 feet westwardly from the intersection of the west line of Woodlawn Road with the south line of Franklin avenue; thence with the south line of Franklin avenue N. 69° 52' W. 29.37 feet to the P. C. of a curve having a central angle of 64° 37'; thence in an arc of a circle a distance of 44.52 feet to the P. T. of said curve; thence S. 45° 31' W. with the east line of Brady avenue 356.99 feet to the P. C. of a curve having a central angle of 129° 14'; thence in an arc of a circle a distance of 42.73 feet to the P. T. of said curve; thence S. 83° 43' east with the north line of Pershing avenue 180.17 feet to a 15-foot alley; thence with the west line of said alley N. 6° 17' east 303.03 feet to the place of beginning, containing 1.678 acres of land, more or less.