

OPINION NO. 90-017**Syllabus:**

A county prosecuting attorney has no duty to provide legal counsel to a countywide emergency management agency established under R.C. 5915.06 or to its director.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 3, 1990

I have before me your opinion request concerning the prosecutor's duties with respect to a countywide emergency management agency. By way of background, your opinion request states that, in 1979 the Erie County Board of Commissioners established a county-wide disaster services agency pursuant to R.C. 5915.07, as it then existed. Since establishment of that agency, however, the legislature passed 1987-1988 Ohio Laws, Part II, 2051 (Am. Sub. H.B. 131, eff. June 29, 1988), changing the name of such agencies to countywide emergency management agencies and making various other changes with respect to such agencies. In light of the changes made by Am. Sub. H.B. 131, you ask whether the prosecuting attorney is under a duty to provide legal counsel to a countywide emergency management agency or its director.

Pursuant to R.C. 309.09(A), the county prosecuting attorney is designated as "the legal adviser of the board of county commissioners, board of elections...all other county officers and boards...[and] all township officers." In addition, the county prosecuting attorney may act as legal adviser or represent other entities or persons, as specifically provided by statute. *See, e.g.*, R.C. 3115.10 (allowing prosecuting attorney to represent obligee of support proceedings under R.C. 3115.01-.34); R.C. 3313.35 (designating prosecuting attorney as legal adviser of all school districts within county, with certain exceptions). No statute of which I am aware, however, expressly delegates to the prosecuting attorney the duty of rendering legal advice or providing representation to a countywide emergency management agency. I will, therefore, examine the nature of such an agency in

order to determine whether it is a county board and thus entitled to representation by the prosecuting attorney as required by R.C. 309.09(A).

As noted in your opinion request, the countywide emergency management agency in Erie County was established in 1979 under authority of former R.C. 5915.07 (now at R.C. 5915.06), which stated in part:

The board of county commissioners of any county and the legislative authority of all or a majority of the other political subdivisions, including the municipal corporation having the largest population, within such county may enter into an agreement establishing a county-wide organization for civil defense in accordance with such regulations as are promulgated by the governor.

1973 Ohio Laws, Part I, 888 (Am. S.B. 218, eff. Oct. 16, 1973). Thus, pursuant to the above-quoted portion of former R.C. 5915.07 (now, in pertinent part, at R.C. 5915.06), Erie County chose to establish a county-wide organization for civil defense. The membership of the organization included the county itself and various political subdivisions within the county.

In 1983 Op. Att'y Gen. No. 83-057, I had occasion to discuss the nature of such an organization, and concluded in the syllabus, paragraph one: "A county-wide organization for civil defense created pursuant to R.C. 5915.07 [now at R.C. 5915.06] constitutes an entity separate from the several political subdivisions which join in its creation." Since issuance of that opinion, the legislature has restructured and renumbered various provisions within R.C. Chapter 5915. Am. Sub. H.B. 131. The amendments made by Am. Sub. H.B. 131, however, have not changed the aspects of a countywide emergency management agency such that the conclusion reached as to its predecessor organization in Op. No. 83-057 would change.

Currently, R.C. 5915.06 provides for the establishment of a "countywide emergency management agency," by written agreement among the board of county commissioners and the chief executives of all or a majority of the other political subdivisions within the county. See generally R.C. 5915.01(M) (defining "political subdivision," for purposes of R.C. Chapter 5915, as meaning "a county, township, or municipal corporation in this state"). Further, any political subdivision which has established its own program for emergency management in accordance with R.C. 5915.071 need not participate in the establishment of a countywide emergency management agency. Pursuant to R.C. 5915.06, only those political subdivisions participating in the agency are required to provide financial support to the agency. It is apparent, therefore, that a countywide emergency management agency is a separate entity, not a subdivision or subordinate department of any of its member subdivisions. Thus, I must conclude that a countywide emergency management agency is not a county board for purposes of R.C. 309.09. See 1985 Op. Att'y Gen. No. 85-012 at 2-45 ("[s]ince a regional organization for civil defense is not a county agency or board, it is not entitled under R.C. 309.09 to the representation of a prosecuting attorney").¹

Your question also asks whether the director of a countywide emergency management agency is entitled to counsel of the prosecuting attorney under R.C. 309.09(A). The appointment of a director of a countywide emergency management agency is provided for in R.C. 5915.06, as follows:

The executive committee shall appoint a director/coordinator of emergency management who shall pursue a professional development training program in accordance with rules adopted under [R.C.

¹ See former R.C. 5915.07 (1973 Ohio Laws, Part I, 888 (Am. S.B. 218, eff. Oct. 16, 1973) (providing for regional organizations for civil defense to be created in a manner similar to a county-wide agency, but on a multi-county basis).

5915.05].² The director/coordinator of emergency management may be an official or employee of any political subdivision entering into the countywide agreement, except that the director/coordinator shall not be the chief executive of any such political subdivision. (Footnote added.)

It is, therefore, possible that a county or township officer, other than the chief executive, *see* R.C. 5915.01(C), may serve as director of the countywide emergency management agency. Such officer's service as director of the agency is not, however, part of his duties as a county or township officer, but instead constitutes service to a separate entity, the countywide emergency management agency. Since a countywide emergency management agency is not a board of any of the individual member political subdivisions, its director may not be considered an officer of any such member, including the county or townships. Thus, pursuant to R.C. 309.09(A), the prosecuting attorney is under no duty to act as counsel for the director of a countywide emergency management agency.

Based on the foregoing, it is my opinion, and you are hereby advised, that a county prosecuting attorney has no duty to provide legal counsel to a countywide emergency management agency established under R.C. 5915.06 or to its director.

² R.C. 5915.05 makes the Governor responsible for the promulgation and enforcement of rules with respect to the emergency management of the state. It is my understanding that, as yet, no such rules have been adopted.