

**OPINION NO. 79-019****Syllabus:**

1. A "Multi-County Felony Bureau" is not a "county board" as that term is used in R.C. 309.09, nor is the director of a "Multi-County Felony Bureau" a "county officer" for purposes of that section. Therefore, the prosecuting attorney has no duty to represent the bureau, its director, or its board of control under R.C. 309.09.

2. A "Multi-County Felony Bureau" may hire private legal counsel, and pay for such representation out of its own funds. Such representation may be performed by the prosecuting attorney, provided that it does not conflict with the statutory duties of his office.

**To: Ronald L. Collins, Tuscarawas County Pros. Atty., New Philadelphia, Ohio**  
**By: William J. Brown, Attorney General, May 24, 1979**

I have before me your request for my opinion which concerns a Multi-County Felony Bureau of which your county is a part. Specifically, you have asked the following questions:

1. Is a "Multi-County Felony Bureau" a county board within the meaning of Section 309.09 of the Revised Code?
2. Do I, as prosecuting attorney for Tuscarawas County, Ohio, owe a duty of representation to the Director of a Multi-County Felony Bureau?
3. Do I, as prosecuting attorney for Tuscarawas County, Ohio, owe a duty of representation to the "Board of Control" of a Multi-County Felony Bureau?
4. If the answer to any or all of the above questions is in the negative, to whom should that organization look for legal advice?

Answers to your first three questions require analysis of R.C. 309.09. That section provides, in pertinent part, as follows:

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. (Emphasis added.)

R.C. 305.14 authorizes the court of common pleas, upon application of the prosecuting attorney and the board of county commissioners, to allow employment of counsel by the county commissioners to assist any "county board or officer" provided that the court determines such employment is in "the best interests of the county."

Your first question asks whether a Multi-County Felony Bureau is a "county board" for purposes of R.C. 309.09. In 1963 Op. Att'y Gen. No. 95, p. 157, one of my predecessors had occasion to consider R.C. 309.09 with respect to a joint county airport. Resolution of the issues presented in that opinion required analysis of the term "county board." My predecessor stated:

While the term "county board" lacks statutory definition, I think it reasonable to conclude that the legislature intended to denote thereby a body or organization created by statute to exercise some part of the function of county government. The airport agency in question is a body created by contract and is separate and apart from any one county.

Since, as you indicate, the Multi-County Felony Bureau is created by contract rather than by statute, it seems that the Bureau is not a "county board" as that term is defined in the 1963 opinion, supra. Moreover, there is ample authority for the proposition that the term "county board," as used in R.C. 309.09, does not apply to any entity established on a multi-county basis. 1975 Op. Att'y Gen. No. 75-014 (joint county community mental health and retardation board); 1964 Op. Att'y Gen. No. 1523 (joint vocational school district); 1963 Op. Att'y Gen. No. 95, p. 157 (joint county airport facility); 1958 Op. Att'y Gen. No. 2736, p. 567 (regional planning commission). Accordingly, I am of the opinion that a Multi-County Felony Bureau is not a "county board" for purposes of R.C. 309.09.

In your second question you ask whether you are required to represent the Director of the Multi-County Felony Bureau. This question is in part answered by my response to your first question, since, under R.C. 309.09, the bureau is not a "county board." Therefore, unless the Director is a "county officer" under R.C. 309.09, you have no obligation to represent him. The term "county officer" as used in R.C. 309.09 was analyzed in 1962 Op. Att'y Gen. No. 2840, p. 144. That opinion dealt with the status of a county director of civil defense, and concluded that the director was an officer for purposes of the statute. Among the factors relied upon to reach that conclusion were appointment pursuant to statute, definite duties, and the exercise of a portion of the sovereignty of the state. These factors were among those established by the supreme court in State ex rel. Milburn v. Pethtel, 153 Ohio St. 1 (1950). Other indicia of "office" set forth in Pethtel are tenure in office, oath, bond and emoluments. As the Bureau is not established by statute, and since the powers and duties of its director are not anywhere defined in the Revised Code, I am of the opinion that the director is not a "county officer" as that term is used in R.C. 309.09. Accordingly, the prosecuting attorney has no duty to represent the director.

Your third question asks whether you, as prosecuting attorney, are required to represent the "Board of Control" of the Multi-County Felony Bureau. Since, as indicated, the bureau itself is not a "county board," and the director is not a "county officer," I am of the opinion that the prosecuting attorney is not required to represent the bureau's "Board of Control."

In your final question you ask to whom the bureau is to turn for legal representation. As the General Assembly has not made provision for such a bureau, it must be presumed that such an organization is free to seek private representation. Payment for such representation must be made from the Bureau's own funds which are derived from state and federal grants, as

well as county appropriation pursuant to contract. Since there is no legal obligation upon the prosecuting attorney to represent the Bureau, it would not be improper for the county prosecutor or his assistants to undertake such representation on a private basis, provided, of course, that such representation does not conflict with the duties imposed by statute upon the office of prosecuting attorney.

Accordingly, it is my opinion, and you are so advised that:

1. A "Multi-County Felony Bureau" is not a "county board" as that term is used in R.C. 309.09, nor is the director of a "Multi-County Felony Bureau" a "county officer" for purposes of that section. Therefore, the prosecuting attorney has no duty to represent either the bureau, its director or its board of control under R.C. 309.09.
2. A "Multi-County Felony Bureau" may hire private legal counsel, and pay for such representation out of its own fund. Such representation may be performed by the prosecuting attorney, provided that it does not conflict with the statutory duties of his office.