

**As Reported by the House Local Government Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**S. B. No. 120**

**Senator Beagle**

**Cosponsors: Senators Seitz, Schaffer, Wagoner, Tavares, Brown, Hite,  
Hughes, Jones, Lehner, Manning, Obhof, Oelslager, Patton, Sawyer, Stewart,  
Wilson**

**Representatives Brenner, Ruhl, Lundy**

**—**

**A B I L L**

To amend section 309.09 of the Revised Code to make 1  
clear that the prosecuting attorney of a county is 2  
the legal adviser of all tax-supported public 3  
libraries. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 309.09 of the Revised Code be amended 5  
to read as follows: 6

**Sec. 309.09.** (A) The prosecuting attorney shall be the legal 7  
adviser of the board of county commissioners, board of elections, 8  
~~and~~ all other county officers and boards, ~~including~~ and all 9  
tax-supported public libraries, and any of them may require 10  
written opinions or instructions from the prosecuting attorney in 11  
matters connected with their official duties. The prosecuting 12  
attorney shall prosecute and defend all suits and actions ~~which~~ 13  
that any such officer or, board, or tax-supported public library 14  
directs or to which it is a party, and no county officer may 15  
employ any other counsel or attorney at the expense of the county, 16

except as provided in section 305.14 of the Revised Code. 17

(B)(1) The prosecuting attorney shall be the legal adviser 18  
for all township officers, boards, and commissions, unless, 19  
subject to division (B)(2) of this section, the township has 20  
adopted a limited home rule government pursuant to Chapter 504. of 21  
the Revised Code and has not entered into a contract to have the 22  
prosecuting attorney serve as the township law director, in which 23  
case, subject to division (B)(2) of this section, the township law 24  
director, whether serving full-time or part-time, shall be the 25  
legal adviser for all township officers, boards, and commissions. 26  
When the board of township trustees finds it advisable or 27  
necessary to have additional legal counsel, it may employ an 28  
attorney other than the township law director or the prosecuting 29  
attorney of the county, either for a particular matter or on an 30  
annual basis, to represent the township and its officers, boards, 31  
and commissions in their official capacities and to advise them on 32  
legal matters. No such legal counsel may be employed, except on 33  
the order of the board of township trustees, duly entered upon its 34  
journal, in which the compensation to be paid for the legal 35  
services shall be fixed. The compensation shall be paid from the 36  
township fund. 37

Nothing in this division confers any of the powers or duties 38  
of a prosecuting attorney under section 309.08 of the Revised Code 39  
upon a township law director. 40

(2)(a) If any township in the county served by the 41  
prosecuting attorney has adopted any resolution regarding the 42  
operation of adult entertainment establishments pursuant to the 43  
authority that is granted under section 503.52 of the Revised Code 44  
or if a resolution of that nature has been adopted under section 45  
503.53 of the Revised Code in a township in the county served by 46  
the prosecuting attorney, all of the following apply: 47

(i) Upon the request of a township in the county that has 48

adopted, or in which has been adopted, a resolution of that nature 49  
that is made pursuant to division (E)(1)(c) of section 503.52 of 50  
the Revised Code, the prosecuting attorney shall prosecute and 51  
defend on behalf of the township in the trial and argument in any 52  
court or tribunal of any challenge to the validity of the 53  
resolution. If the challenge to the validity of the resolution is 54  
before a federal court, the prosecuting attorney may request the 55  
attorney general to assist the prosecuting attorney in prosecuting 56  
and defending the challenge and, upon the prosecuting attorney's 57  
making of such a request, the attorney general shall assist the 58  
prosecuting attorney in performing that service if the resolution 59  
was drafted in accordance with legal guidance provided by the 60  
attorney general as described in division (B)(2) of section 503.52 61  
of the Revised Code. The attorney general shall provide this 62  
assistance without charge to the township for which the service is 63  
performed. If a township adopts a resolution without the legal 64  
guidance of the attorney general, the attorney general is not 65  
required to provide assistance as described in this division to a 66  
prosecuting attorney. 67

(ii) Upon the request of a township in the county that has 68  
adopted, or in which has been adopted, a resolution of that nature 69  
that is made pursuant to division (E)(1)(a) of section 503.52 of 70  
the Revised Code, the prosecuting attorney shall prosecute and 71  
defend on behalf of the township a civil action to enjoin the 72  
violation of the resolution in question. 73

(iii) Upon the request of a township in the county that has 74  
adopted, or in which has been adopted, a resolution of that nature 75  
that is made pursuant to division (E)(1)(b) of section 503.52 of 76  
the Revised Code, the prosecuting attorney shall prosecute and 77  
defend on behalf of the township a civil action under Chapter 78  
3767. of the Revised Code to abate as a nuisance the place in the 79  
unincorporated area of the township at which the resolution is 80

being or has been violated. Proceeds from the sale of personal 81  
property or contents seized pursuant to the action shall be 82  
applied and deposited in accordance with division (E)(1)(b) of 83  
section 503.52 of the Revised Code. 84

(b) The provisions of division (B)(2)(a) of this section 85  
apply regarding all townships, including townships that have 86  
adopted a limited home rule government pursuant to Chapter 504. of 87  
the Revised Code, and regardless of whether a township that has so 88  
adopted a limited home rule government has entered into a contract 89  
with the prosecuting attorney as described in division (B) of 90  
section 504.15 of the Revised Code or has appointed a law director 91  
as described in division (A) of that section. 92

The prosecuting attorney shall prosecute and defend in the 93  
actions and proceedings described in division (B)(2)(a) of this 94  
section without charge to the township for which the services are 95  
performed. 96

(C) Whenever the board of county commissioners employs an 97  
attorney other than the prosecuting attorney of the county, 98  
without the authorization of the court of common pleas as provided 99  
in section 305.14 of the Revised Code, either for a particular 100  
matter or on an annual basis, to represent the board in its 101  
official capacity and to advise it on legal matters, the board 102  
shall enter upon its journal an order of the board in which the 103  
compensation to be paid for the legal services shall be fixed. The 104  
compensation shall be paid from the county general fund. The total 105  
compensation paid, in any year, by the board for legal services 106  
under this division shall not exceed the total annual compensation 107  
of the prosecuting attorney for that county. 108

(D) The prosecuting attorney and the board of county 109  
commissioners jointly may contract with a board of park 110  
commissioners under section 1545.07 of the Revised Code for the 111  
prosecuting attorney to provide legal services to the park 112

district the board of park commissioners operates. 113

(E) The prosecuting attorney may be, in the prosecuting 114  
attorney's discretion and with the approval of the board of county 115  
commissioners, the legal adviser of a joint fire district created 116  
under section 505.371 of the Revised Code at no cost to the 117  
district or may be the legal adviser to the district under a 118  
contract that the prosecuting attorney and the district enter 119  
into, and that the board of county commissioner approves, to 120  
authorize the prosecuting attorney to provide legal services to 121  
the district. 122

(F) The prosecuting attorney may be, in the prosecuting 123  
attorney's discretion and with the approval of the board of county 124  
commissioners, the legal adviser of a joint ambulance district 125  
created under section 505.71 of the Revised Code at no cost to the 126  
district or may be the legal adviser to the district under a 127  
contract that the prosecuting attorney and the district enter 128  
into, and that the board of county commissioners approves, to 129  
authorize the prosecuting attorney to provide legal services to 130  
the district. 131

(G) The prosecuting attorney may be, in the prosecuting 132  
attorney's discretion and with the approval of the board of county 133  
commissioners, the legal adviser of a joint emergency medical 134  
services district created under section 307.052 of the Revised 135  
Code at no cost to the district or may be the legal adviser to the 136  
district under a contract that the prosecuting attorney and the 137  
district enter into, and that the board of county commissioners 138  
approves, to authorize the prosecuting attorney to provide legal 139  
services to the district. 140

(H) The prosecuting attorney may be, in the prosecuting 141  
attorney's discretion and with the approval of the board of county 142  
commissioners, the legal adviser of a fire and ambulance district 143  
created under section 505.375 of the Revised Code at no cost to 144

the district or may be the legal adviser to the district under a 145  
contract that the prosecuting attorney and the district enter 146  
into, and that the board of county commissioners approves, to 147  
authorize the prosecuting attorney to provide legal services to 148  
the district. 149

(I) All money received pursuant to a contract entered into 150  
under division (D), (E), (F), (G), or (H) of this section shall be 151  
deposited into the prosecuting attorney's legal services fund, 152  
which shall be established in the county treasury of each county 153  
in which such a contract exists. Moneys in that fund may be 154  
appropriated only to the prosecuting attorney for the purpose of 155  
providing legal services to a park district, joint fire district, 156  
joint ambulance district, joint emergency medical services 157  
district, or a fire and ambulance district, as applicable, under a 158  
contract entered into under the applicable division. 159

**Section 2.** That existing section 309.09 of the Revised Code 160  
is hereby repealed. 161