



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 168

128th General Assembly
(As Introduced)

Sens. Hughes, Patton, Sawyer, Seitz, Wagoner

BILL SUMMARY

- Authorizes the chief legal officer of the municipal corporation, in addition to the prosecuting attorney of the county or any judge or magistrate, to cause investigative subpoenas to issue regarding specified criminal offenses.
- Provides that investigative subpoenas may be issued regarding any criminal offense, not just a felony, after the offense has been committed and before any arrest has been made.

CONTENT AND OPERATION

Existing law

Existing law provides that, after a felony has been committed, and before any arrest has been made, the prosecuting attorney of the county, or any judge or magistrate, may cause subpoenas to issue, returnable before any court or magistrate, for any person to give information concerning the felony. The subpoenas must require the witness to appear forthwith. Before the witness is required to give any information, the witness must be informed of the purpose of the inquiry and that he or she is required to tell the truth concerning that purpose. The witness then must be sworn and be examined under oath by the prosecuting attorney, or the court or magistrate, subject to the constitutional rights of the witness. The examination must be taken in writing in any form, and must be filed with the court or magistrate taking the testimony. Witness fees must be paid to the person as in other cases. (R.C. 2925.23.) (See **COMMENT.**)

Operation of the bill

The bill expands the existing investigative subpoena provision in two ways. First, it authorizes the "chief legal officer" of the municipal corporation, in addition to

the prosecuting attorney of the county or any judge or magistrate, to cause investigative subpoenas to issue. Second, it provides that investigative subpoenas may be issued regarding any criminal offense, not just a felony, after the offense has been committed and before any arrest has been made.

Specifically, under the bill, the investigative subpoena provision provides that, after a *criminal offense* has been committed, and before any arrest has been made, the prosecuting attorney of the county, *the chief legal officer of the municipal corporation*, or any judge or magistrate, may cause subpoenas to issue, returnable before any court or magistrate, for any person to give information concerning *the criminal offense*. The bill retains, without substantive change, the existing provisions regarding the content of and procedures governing the use of investigative subpoenas. (R.C. 2935.23.)

COMMENT

Separate from this provision, Criminal Rule 17 governs the issuance of subpoenas in Ohio courts *in the exercise of criminal jurisdiction*. In relevant part, it provides that, *at the request of any party*, subpoenas for attendance at a hearing or trial must be issued by the clerk of the court in which the hearing or trial is held. The court must order at any time that a subpoena be issued for service on a named witness upon an *ex parte application of a defendant* upon a satisfactory showing that the presence of the witness is necessary to an adequate defense and that the defendant is financially unable to pay the witness fees otherwise required by the Rule. A subpoena also may command the person to whom it is directed to produce books, papers, documents, or other objects designated in the subpoena. When the attendance of a witness before an official authorized to take depositions is required, the subpoena is issued by that person and commands the person to whom it is directed to attend and give testimony at a time and place specified in the subpoena.

Several Ohio appellate court decisions have held that Criminal Rule 17 authorizes a court to issue a subpoena only to compel the attendance of a witness or the production of documents at a proceeding over which the court has jurisdiction and does not compel a prospective witness to attend, or provide a means for discovery at, a pretrial interview with law enforcement officials. *State v. Leonard*, (Hamilton County, 2004), 157 Ohio App. 3d 653, discretionary appeal not allowed at (2005), 104 Ohio St.3d 1460, appeal after remand at (December 31, 2007), Hamilton County Appellate, 2007 Ohio App. LEXIS 6214; *State v. Campbell* (January 8, 1997), Hamilton County App. No. C-950746, 1997 Ohio App. LEXIS 11; *State v. Cleveland Plain Dealer* (June 15, 1979), Cuyahoga County App. Nos. 40531, 40532, and 40533, 1979 Ohio App. LEXIS 10955.

HISTORY

ACTION

DATE

Introduced

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