

PROSECUTING ATTORNEY: To give advice to county officers regarding matters of law in which county is interested; but not his duty to advise and represent the various school boards of the county.

September 4, 1943

Opinion No. 84



Mr. George A. Spencer
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of recent date, in which you request the opinion of this department. Your letter of request is as follows:

"I presume you have had this question up as to the duties of the Prosecuting Attorney with reference to the county superintendent of schools. There are some sixty-five or seventy school boards in this particular county, and I am wondering if you have a written opinion concerning the duties of advising all of the school boards and the county superintendent of schools and other county officers except the county court, with reference to the various laws of the State.

"As I understand it, where county finances are involved or money due to the county, it is my duty to look after the interest of the county and to advise the county court on all matters before the court, but is it the duty of the Prosecuting Attorney to advise on all laws affecting all other county offices and boards, or should those officers and boards get their information from their own attorney?"

Your questions, which we have deduced from your letter are as follows:

What are the duties of the Prosecuting Attorney in regard to advising the County Superintendent of Schools and other county officials with reference to the various laws of the State?

Is it the duty of the Prosecuting Attorney to give advice to the various school boards of the county?

The general duties of the Prosecuting Attorney in regard to civil matters are set forth in Sections 12944 and 12947, R. S. Mo. 1939, which we quote as follows:

"Sec. 12944. Shall prosecute or defend in civil cases, etc. -- He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace, when the state is made a party thereto: Provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any

funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties."

"Sec. 12947. He shall give his opinion, when. -- The prosecuting attorney shall, without fee, give his opinion to any justice of the peace, and to any county court, or to any judge thereof, if required, on any question of law in any criminal case, or other case in which the state or county is concerned, pending before such court or officer."

Under the above sections it is clearly the duty of the Prosecuting Attorney to prosecute and defend all civil suits in which the county is interested and represent generally the county in all matters of law.

It is also the duty of the Prosecuting Attorney to investigate all claims against the county and draw all contracts relating to the business of the county.

Section 12944, supra, requires that he give his opinion without fee in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, excepting those counties which have a county counselor. Under this section we think it is the duty of the Prosecuting Attorney to give his opinion, without fee, to county officials in matters of law in which the county is interested, for the reason that if it is his duty to represent the county in litigation of this kind it surely would be his duty to advise the county officials with reference to matters in which the county is interested before the county may be involved in litigation. No hard and fast rule can be set out as to just what matters he is required to advise the county officials upon, but the duty of the Prosecuting Attorney must be determined as each matter arises to ascertain whether it is a county matter or not. What has been said above refers also to the Superintendent of Schools, that is, he should give such superintendent advice in matters of law in which the county is interested.

Concerning your second question "Is it the duty of the Prosecuting Attorney to advise the school boards of his county?" we find nothing in Section 129⁴⁴, supra, or the other sections of the statute pertaining to prosecuting attorneys, which makes it the duty of the prosecuting attorney to advise and represent the various boards of the county, including school boards.

In the case of State ex rel. Wammack and Welborn v. Affolder, 257 S. W. 493, 214 Mo. App. 500, the plaintiff's attorneys had been retained by the county court to advise the county in connection with a bond issue of a certain township of the county and the treasurer of the county refused to honor a warrant for the payment of their fees contending that the duty of advising a township was that of the prosecuting attorney of the county. The court, in this opinion, reviewed the statutes relative to the duties of prosecuting attorneys and held that under the statutes it was not the duty of the prosecuting attorney to represent the township board and so stated in the following language (Mo. App. 1. c. 506):

"* * * Since there is no statute directing generally that the prosecuting attorney shall act for the township in counties under township organization, it is our conclusion that it was not the official duty of the prosecuting attorney to render the services which plaintiffs rendered."

By analogy we conclude that, there being no statute which makes it the duty of the prosecuting attorney to render official services to school districts or school boards, it is not his official duty to do so.

CONCLUSION

It is, therefore, our opinion that it is the duty of the Prosecuting Attorney to give advice to county officials in those matters of law in which the county is interested,

Mr. Geo. A. Spencer

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and in writing when demanded, to the county court or any judge thereof.

It is our further opinion that there is no duty on the Prosecuting Attorney to give advice and represent the various school boards of his county.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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