

PROSECUTING ATTORNEY:  
COUNTY BOARD OF EDUCATION:  
SCHOOLS:

The prosecuting attorney of a third class county is required to represent a county board of education created under Section 162.111, RSMo Cum. Supp. 1967.

OPINION NO. 263

May 2, 1968

Honorable Maurice B. Graham  
Prosecuting Attorney  
Madison County  
148 East Main Street  
Fredericktown, Missouri 63645



Dear Mr. Graham:

This is in response to your request for an opinion which was stated as follows:

"Is the Prosecuting Attorney of a third class county required to represent a County Board of Education created under Section 162.111 Revised Statutes of Missouri."

The duties of a prosecuting attorney are found in Chapter 56, RSMo 1959, the pertinent sections being Sections 56.060 and 56.070 which provide:

"56.060. Each prosecuting attorney shall commence and prosecute all civil and criminal actions in his county in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county. \* \* \*"  
(Emphasis added.)

"56.070. The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. He shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded,

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to the county court or any judge thereof, except in counties in which there is a county counselor. He shall, without fee, give his opinion to any magistrate court, if required, on any question of law in any criminal case, or other case in which the state or county is concerned, pending before the court." (Emphasis added.)

Prior to 1959 the language of Section 56.070 was even more broad in that its first provision was:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, \* \* \* "

Senate Bill 67, Laws 1959, deleted this phrase from Section 56.070, yet there is no reason to consider this as an attempt to narrow the scope of the prosecutor's duties since the committee comments with regard to this part of Senate Bill 67 state that:

" \* \* \* Sections 56.060, 56.070 and 56.100 are here rewritten in two sections omitting the duplications. In one section are consolidated the prosecuting attorney's duties to prosecute and defend actions, and in the other section are consolidated his duties in an advisory capacity . . . "

Thus, the reason for the deletion of the phrase from 56.070 was because of its duplication of the provisions in 56.060.

The underscored provisions of the previously quoted sections along with the pre-1959 wording of Section 56.070 indicate that in the absence of express statutory provisions to the contrary, the prosecuting attorney must represent the county in all matters in which the county is interested or concerned.

Chapter 162, RSMo Cum. Supp. 1967, contains the statutes which regulate the county boards of education. The county board in question was created under Section 162.111, RSMo Cum. Supp. 1967. The duties of this board are set out in Section 162.161, RSMo Cum. Supp. 1967, which provides:

"The county board of education shall

(1) Make or cause to be made and kept current a comprehensive study of each school

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district of the county. The study shall include:

(a) The assessed tax valuation of each existing district;

(b) The number of pupils attending school, average daily attendance, and the population of all districts in the county;

(c) The location and conditions of school buildings and their accessibility to the pupils;

(d) The location and condition of roads, highways and natural barriers within the county;

(e) The high school facilities of the county;

(f) The conditions affecting the welfare of the teachers and pupils;

(g) Any other factors concerning adequate facilities for the pupils.

(2) From time to time submit to the state board of education specific plans for the reorganization of school districts of the county. Each plan shall be in writing and shall include charts, maps and statistical information necessary to document properly the plan for the proposed reorganized districts and to provide a comparison of existing districts with proposed reorganized districts.

(3) Cooperate with boards of adjoining counties in the solution of common organization problems, and submit to the state board of education for final decision any and all organization questions on which the cooperating boards fail to agree.

(4) Approve the budget prepared by the county superintendent of schools in

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cooperation with the clerks of the boards of the districts under his supervision and approve the audit, made by the county superintendent, of the expenditures report prepared by the district clerk and submitted for the approval of the state board of education.

(5) Continue to advise with the county superintendent of schools, school patrons, and school officials on all matters pertaining to the improvement of the schools in the county.

(6) Designate some person to perform the duties imposed by law on the county superintendent of public schools during any vacancy in his office or in the event of his incapacity to perform his duties. The person designated during the vacancy or incapacity of the county superintendent shall have full power to perform the duties imposed upon him by the county board of education."

These enumerated duties clearly illustrate that the operation of the county board of education is within the interest and concern of the county as required by Sections 56.060 and 56.070.

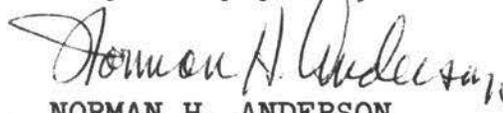
A search of the statutes reveals that there are no express provisions concerning the right of the county board of education to have or acquire counsel.

#### CONCLUSION

Therefore, it is the opinion of this office that the prosecuting attorney of a third class county is required to represent a county board of education created under Section 162.111, RSMo Cum. Supp. 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, William L. Culver.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General