



H.B. 400

123rd General Assembly
(As Passed by the General Assembly)

Reps. Salerno, Callender, Peterson, Terwilleger, Tiberi, O'Brien, Jolivette, Evans, Distel, Perry, Damschroder, Willamowski, Corbin, Mead

Sens. Mallory, Latta, Watts, Herington, Prentiss, DiDonato, Latell, Gardner

Effective date: August 29, 2000

ACT SUMMARY

- Authorizes a board of library trustees to employ legal counsel to represent the board regardless of whether the county prosecuting attorney is able to serve or is adversely interested and regardless of whether the legal action is between two or more boards of library trustees in the same county.

CONTENT AND OPERATION

Background law--county prosecuting attorney

Under the Prosecuting Attorney Law, the powers and duties of a county prosecuting attorney include, among others, the prosecution, on behalf of the state, of all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor or by the Attorney General pursuant to law, and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals. In conjunction with the Attorney General, the prosecuting attorney must prosecute in the Supreme Court cases arising in the prosecuting attorney's county, except for those cases required to be prosecuted by a special prosecutor or by the Attorney General pursuant to law. (R.C. 309.08(A)--not in the act.)

The prosecuting attorney is 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 the prosecuting attorney in matters connected with their official duties. The prosecuting attorney must prosecute and defend all suits and actions that any of those officers or boards directs or to which it is a party. The Prosecuting Attorney Law prohibits a *county officer* from employing any other counsel or attorney at the expense of the county, except as provided in R.C. 305.14. (R.C. 309.09(A)--not in the act.)

Employment of other counsel

Under prior law, the above-described provisions pertaining to the powers and duties of a county prosecuting attorney did *not* prevent a board of library trustees (see **COMMENT**) from employing counsel if any of the following conditions applied: (a) *the prosecuting attorney is unable to serve*, (b) *the prosecuting attorney is adversely interested*, or (c) *the legal action is between two or more boards of library trustees in the same county*. If counsel was employed, the counsel was paid from the library's funds. (R.C. 309.10.)

The act provides that the provisions described above in "**Background law--county prosecuting attorney**" pertaining to the powers and duties of a county prosecuting attorney do *not* prevent a board of library trustees from employing counsel to represent the board, *regardless* of whether any of the conditions described in (a), (b), or (c) in the preceding paragraph applies (the act eliminates those conditions). If counsel is employed, the counsel must be paid from the library's funds. (R.C. 309.10.)

COMMENT

The respective boards of library trustees have control and management of county free public libraries under R.C. 3375.06, township free public libraries under R.C. 3375.10, municipal free public libraries under R.C. 3375.12, school district free public libraries under R.C. 3375.15, county district free public libraries under R.C. 3375.22, and regional district free public libraries under R.C. 3375.30. The nature, powers, and duties of boards of library trustees are specified in R.C. 3375.32 to 3375.41.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-24-99	p. 965
Reported, H. Civil & Commercial Law	01-13-00	p. 1514
Passed House (93-3)	01-25-00	pp. 1539-1540
Reported, S. Judiciary	03-22-00	pp. 1499-1500



Passed Senate (32-1)
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03-22-00

pp. 1502-1503

