



Aida S. Montano

*Bill Analysis*  
Legislative Service Commission

**H.B. 400**  
123rd General Assembly  
(As Introduced)

Rep. Salerno

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**BILL 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.

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**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 bill.)

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 (see **COMMENT 1 and 2**). (R.C. 309.09(A)--not in the bill.)

### Employment of other counsel

Under existing law, the above-described provisions pertaining to the powers and duties of a county prosecuting attorney do *not* prevent a board of library trustees (see **COMMENT 3**) from employing counsel if any of the following conditions apply: (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 is employed, the counsel must be paid from the library's funds. (R.C. 309.10.) (See **COMMENT 4**.)

The bill 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 bill eliminates those conditions). If counsel is employed, the counsel must be paid from the library's funds. (R.C. 309.10.)

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### **COMMENT**

1. R.C. 305.14(A) (not in the bill) authorizes a court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, to authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer in any matter of public business coming before that board or officer, and in the prosecution or defense of any action or proceeding in which the board or officer is a party or has an interest, in its official capacity.

Notwithstanding the provision described in the preceding paragraph, a county board of mental retardation and developmental disabilities, without the authorization of the court of common pleas, may employ legal counsel to advise it or to represent it or any of its members or employees in any matter of public business coming before the board or in the prosecution or defense of any action or proceeding in which the board in its official capacity, or a board member or employee in the member's or employee's official capacity, is a party or has an interest, except that in any legal proceeding in which the prosecuting attorney is fully able to perform the statutory duty to represent the board without conflict of interest, the board is required to employ other counsel only with the written consent of the prosecuting attorney. In any legal proceeding in which the prosecuting attorney is unable, for any reason, to represent the board, the prosecuting attorney must so notify the board, and the board may then employ

counsel for the proceeding without further permission from any authority. (R.C. 305.14(C).)

R.C. 305.14(B) provides that the board of county commissioners may employ legal counsel, as provided in R.C. 309.09 (see "**Background law--county prosecuting attorney**," above) to represent it in any matter of public business coming before that board, and in the prosecution or defense of any action or proceeding in which the board is a party or has an interest, in its official capacity.

2. Whenever the board of county commissioners employs an attorney other than the prosecuting attorney of the county, without the authorization of the court of common pleas as provided in R.C. 305.14 (see **COMMENT 1**), either for a particular matter or on an annual basis, to represent the board of county commissioners in its official capacity and to advise it on legal matters, the board of county commissioners must enter upon its journal an order of the board in which the compensation to be paid for those legal services are to be fixed. The compensation must be paid from the county general fund. The total compensation paid, in any year, by the board of county commissioners for legal services under this provision cannot exceed the total annual compensation of the prosecuting attorney for that county. (R.C. 309.09(C).)

3. 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.

4. The provisions described above in "**Background law--county prosecuting attorney**" also do not prevent the following *boards* from employing counsel:

(a) A school board. Counsel employed to represent the board must be paid by the school board from the school fund.

(b) A county board of mental retardation and developmental disabilities. Counsel must be employed to represent the board in accordance with R.C. 305.14(C), as described above in **COMMENT 1**, and must be paid in accordance with the County Boards of Mental Retardation and Disabilities Law.

(c) A board of county hospital trustees with the approval of the county commissioners. Counsel employed to bring legal action for the collection of delinquent accounts of the hospital must be paid from the hospital's funds.

The provisions described above in "*Background law--county prosecuting attorney*" do not prevent the appointment and employment of assistants, clerks, and stenographers to assist the prosecuting attorney as provided in the Prosecuting Attorney Law, or the appointment by the court of common pleas or the court of appeals of an attorney to assist the prosecuting attorney in the trial of a criminal cause pending in that court, and do not prevent the board of county commissioners from paying those services. (R.C. 309.10.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-24-99	p. 965

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