

1975 O. A. G.

OFFICIAL OPINION NO. 28

November 7, 1975

Doctor William T. Paynter
State Health Commissioner
Room 425
State Board of Health Building
1330 West Michigan Street
Indianapolis, Indiana 46202

Dear Doctor Paynter:

This is in response to your request for my official opinion as to whether the prosecuting attorney or the county attorney has the responsibility for the enforcement of county health ordinances.

ANALYSIS

With respect to this question the 1949 General Assembly changed the duties of the prosecuting attorney to include the representation of local health boards in certain judicial proceedings. Code section 16-1-4-13 provides the following:

“Any local health board or local health officer shall have power and authority to enforce any orders made by them by an action in the circuit or superior court at law or in equity and in such action the court or judge thereof in vacation shall have jurisdiction to enforce such order by prohibitory or mandatory injunction. *It is hereby made the duty of the prosecuting attorney of the judicial circuit or court in which such local health board or local health officer has jurisdiction to represent such local health board or local health officer in any such action to termination. Provided, however, that in cases of cities having full-time health officers they shall be represented by the city attorney.*” (Emphasis added).

This statute indicates that when a local health board seeks the aid of a court to enforce an order by prohibitory or mandatory injunction, it is the prosecuting attorney who shall

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serve as the board's legal counsel. No similar specific authority is given to the county attorney. Consequently, it is the prosecutor, not the county attorney, who has the statutory duty to represent the local board in the enforcement of any orders, including orders to comply with county health ordinances.

CONCLUSION

It is, therefore, my Official Opinion that it is the prosecuting attorney who has the statutory responsibility to enforce county health ordinances.