

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

<b>STATE OF OHIO</b>	:	<b>NO. 2013-403</b>
Plaintiff-Appellant	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
vs.	:	
<b>AMBER LIMOLI</b>	:	Court of Appeals Case Number 11AP-924
Defendant-Appellee	:	

BRIEF OF AMICUS CURIAE, THE OHIO PROSECUTING ATTORNEYS  
ASSOCIATION, IN SUPPORT OF STATE OF OHIO'S REPLY BRIEF

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## **STATEMENT OF AMICUS INTEREST**

The Ohio Prosecuting Attorneys Association (“OPAA”) offers this amicus brief in support of the State of Ohio’s reply brief. The OPAA is a private non-profit membership organization that was founded in 1937 for the benefit of the 88 elected county prosecutors. Its mission is to increase the efficiency of its members in the pursuit of their profession, to broaden their interest in government, to provide cooperation and concerted action on policies that affect the office of the Prosecuting Attorney, and to aid in the furtherance of justice.

Here, Limoli contends in his brief that county prosecutors lack the authority to prosecute an appeal in this Court unless the appeal is “in conjunction with” the attorney general. Because Amicus has a great interest in re-affirming a prosecutor’s authority to prosecute such appeals without intervention by the attorney general, it offers this brief in support of the State of Ohio.

## **STATEMENT OF THE CASE AND FACTS**

Amicus adopts by reference the statement of case and facts contained in the State of Ohio’s Merit Brief.

**AMICUS CURIAE PROPOSITION OF LAW NO. 1**

**A COUNTY PROSECUTOR MAY INDEPENDENTLY PURSUE AN APPEAL IN A CRIMINAL MATTER TO THIS COURT WITHOUT INTERVENTION OR INVOLVEMENT BY THE STATE ATTORNEY GENERAL.**

The respective powers of the state attorney general and of the prosecuting attorneys for the various subdivisions of the state are ordinarily defined by constitution or statute. *State ex rel. Wood v. Lassiter*, 99 So.2d 186 (La. Ct. App. 2d Cir. 1957); *Capitol Stages v. State*, 157 Miss. 576, 128 So. 759 (1930); *In re B. Turecamo Contracting Co.*, 260 A.D. 253, 21 N.Y.S.2d 270 (2d Dep't 1940).

Such provisions have been applied in various states in determining whether a particular prosecution should be conducted by the county attorney or the state's attorney. *Wells v. Miller*, 300 Ky. 680, 190 S.W.2d 41 (1945).

In some jurisdictions, the powers and duties of the different prosecuting attorneys are partly concurrent, in that certain cases may be prosecuted by either the attorney general or a district or county attorney, *State v. Becker*, 938 S.W.2d 267 (Mo. 1997); *People v. Shieh*, 174 Misc. 2d 971, 666 N.Y.S. 2d 904 (City Crim. Ct. 1997), [see example: County district attorneys share concurrent jurisdiction with the state attorney general to investigate criminal violations of the Pennsylvania Gaming Act, which does not limit the existing authority of local prosecutors. *In re Dauphin County Fourth Investigating Grand Jury*, 596 Pa. 378, 943 A.2d 929 (2007)], or by either the attorney general or a state's attorney. *American Federation of State, County and Mun. Employees, Council 31 v. Ryan*, 347 Ill. App.3d 732, 283 Ill. Dec. 394, 807 N.E.2d 1235 (5th Dist. 2004). Normally, however, the prosecuting attorney is entitled to prosecute the criminal affairs of the state within the county without intervention by the attorney general. *Morss v. Forbes*, 24 N.J. 341, 132 A.2d 1 (1957).

In Ohio, the traditional power of county prosecuting attorneys is governed by statute.

R.C. 309.08(A) provides:

“The prosecuting attorney may inquire into the commission of crimes within the county. The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted \* \* \* by the attorney general pursuant to section 109.83 of the Revised Code, 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 shall prosecute in the Supreme Court cases arising in the prosecuting attorney’s county, except for those cases required to be prosecuted by the attorney general pursuant to section 109.83 of the Revised Code.<sup>1</sup>”

Based on this broad statute, the county prosecutor may investigate any offenses within the county and must prosecute all complaints in which the state is a party. Prosecution contemplates pursuit of the state’s interest in the case up and through higher courts of appeal. To the extent the attorney general is mentioned, the statute refers only to the situation in which the attorney general is exclusively authorized to act – the investigation of organized crime – a situation not applicable in the present case. Thus, under R.C. 309.08, all complaints and controversies involving the state must be prosecuted by county prosecuting attorneys, except for narrow exceptions (which are not applicable in the present case). Therefore, the prosecutor can prosecute an appeal to this Court without involvement of the attorney general.

This straight-forward reading of R.C. 309.08 is supported by R.C. 2953.14 which specifically governs appeals by prosecuting authorities. It reads:

**2953.14 Appeal by prosecuting authority**

Whenever a court superior to the trial court renders judgment adverse to the state in a criminal action or proceeding, the state, through either the prosecuting attorney or the attorney general, may institute an appeal to reverse such judgment in the next higher court. If the conviction was for a violation of a municipal ordinance, such appeal may be brought by the village solicitor, city director of

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<sup>1</sup> R.C. 109.83 pertains to prosecution and investigation of organized crime. Thus, it is inapplicable here.

law, or other chief legal officer of the municipal corporation. Like proceedings shall be had in the higher court at the hearing of the appeal as in the review of the other criminal actions or proceedings. The clerk of the court rendering the judgment sought to be reversed, on application of the prosecuting attorney, attorney general, solicitor, director of law, or other chief legal officer shall make a transcript of the docket and journal entries in the action or proceeding, and transmit it with all papers and files in the action or proceeding to the higher court. (Emphasis added.)

The statute clearly reads that either the prosecuting attorney or the attorney general may appeal an adverse judgment in a criminal case to the next higher court. These statutes, read together, do not restrict the power of prosecuting attorneys to prosecute and appeal crimes and judgments to this Court. They simply evidence the concurrent jurisdiction shared by county prosecutors and the attorney general in Ohio to appeal criminal cases to this Court.

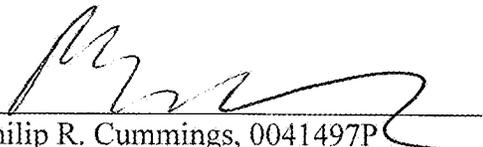
Significantly, Limoli cites to no Ohio case holding to the contrary.

## CONCLUSION

In Ohio, county prosecutors have repeatedly prosecuted appeals in this Court, without complaint or intervention by the Attorney General. This Court has consistently entertained such appeals and reviewed the cases without involvement by the Attorney General. Limoli cites no case in Ohio holding that county prosecutor's lack such authority. Ohio's statutory scheme clearing reflects that county prosecutors and the Attorney General share concurrent jurisdiction in these matters. The OPAA asks this Court to reaffirm this principle.

Respectfully,

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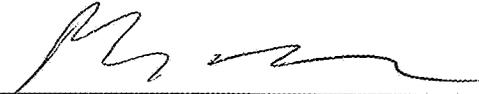


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**PROOF OF SERVICE**

I hereby certify that I have sent a copy of the foregoing Brief of Amicus Curiae, by United States mail, addressed to Ron O'Brien (0017245), Franklin County Prosecuting Attorney, & Steven L. Taylor (0043876), Counsel of Record, Chief Counsel, Appellate Division, 373 South High Street, 13<sup>th</sup> Floor, Columbus, Ohio 43215, counsel for plaintiff-appellant, and to Dennis C. Belli (0025216), Two Miranova Place, Suite 500, Columbus, Ohio 43215, counsel for defendant-appellee, and to E. Kelly Mihocik, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, counsel for amicus curiae Ohio Public Defender, this 3 day of October, 2013.

  
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