

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

STATE OF OHIO)	CASE NO.: CR-2024-02-0473-C
)	
Plaintiff)	JUDGE SUSAN BAKER ROSS
-vs-)	
)	
CHARLES E. JONES)	<u>ORDER</u>
)	
Defendant)	

- - -

This matter comes before the Court upon Defendant Charles Jones (Jones) and Michael Dowling's (Dowling) (collectively "the Defendants") Renewed Motion to Dismiss, Motion to Disqualify or Exclude the Office of the Ohio Attorney General (OAG), and Motion to Exclude or Suppress Evidence Obtained by the OCIC Task Force. The State filed a response. The Defendants filed a reply.

I. ANALYSIS

A. THE COURT FINDS THE DEFENDANTS' RENEWED MOTION TO DISMISS, MOTION TO DISQUALIFY OR EXCLUDE THE OAG, AND MOTION TO EXCLUDE OR SUPPRESS EVIDENCE OBTAINED BY THE OCIC TASK FORCE LACKS MERIT.

Crim.R. 12 (C)(1) and (2) states the following:

(C) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

- (1) Defenses and objections based on defects in the institution of the prosecution;
- (2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

The parties agree that this matter was investigated by the OCIC pursuant to R.C. 177.02. In addition, the parties agree that the OCIC was established around April of 2023. R.C. 177.02(B)(1) states, in pertinent part, the following:

Upon the filing of a complaint under division (A) of this section or upon its own initiative, the commission may establish an organized crime task force to investigate organized criminal activity in a single county or in

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two or more counties if it determines, based upon the complaint filed and the information relative to it or based upon any information that it may have received, that there is reason to believe that organized criminal activity has occurred and continues to occur in that county or in each of those counties.

The Defendants' first argument relies upon whether the OCIC complied with R.C. 177.02. Specifically, whether "organized criminal activity continues to occur". The Defendants primarily rely upon certain public statements made by the Ohio Attorney General. These statements include concern regarding the statute of limitations. As such, the Defendants argue the OCIC was aware that the alleged criminal activity ceased. In response, the State states that the OCIC suspected continuing criminal activity. Upon review, the Court agrees with the State that the OCIC complied with R.C. 177.02.

The Defendants' second argument is that the OAG does not have authority to prosecute this matter. In response, the State argues that the Summit County Prosecutor's Office (SCPO) requested the OAG's assistance in this matter. Specifically, the SCPO had authority pursuant to R.C. 309.06 to request assistance. In support, the State presented the affidavits of former Summit County Prosecutor Walsh and current Summit County Prosecutor Kolkovich. Both affidavits state that the OCIC referred this matter to the SCPO, and the OAG is prosecuting this matter as an extension of the SCPO. Upon review, the Court finds the State's argument has merit.

R.C. 177.03(D)(2)(a) states the following:

If a task force determines, pursuant to its investigation of organized criminal activity in a single county or in two or more counties, that there is reasonable cause to believe that organized criminal activity has occurred or is occurring in the county or in any of the counties, it shall report its determination to the commission and, except as provided in division (D)(3) of this section, shall refer a copy of all of the information gathered during the course of the investigation to the prosecuting attorney who has jurisdiction over the matter and inform the prosecuting attorney that the prosecuting attorney has thirty days to decide whether the prosecuting attorney should present the information to a grand jury and that, if the prosecuting attorney intends to make a presentation of the information to the grand jury, the prosecuting attorney has to give the

commission written notice of that intention. If the organized criminal activity occurred or is occurring in two or more counties, the referral of the information shall be to the prosecuting attorney of the county in which the most significant portion of the activity occurred or is occurring or, if it is not possible to determine that county, the county with the largest population.

R.C. 309.06(A) states that a ‘prosecuting attorney may appoint any assistants who are necessary for the proper performance of the duties of his office.’ The plain language of the statute does not require a specific timeframe or manner of appointment. Moreover, the Court is not persuaded by the Defendants’ reliance upon *State v. Herman*, 1994 WL 534880 (4th Dist. Sept. 29, 1994). In *Herman*, the Fourth District reasoned that a court appointed special prosecutor could not also serve as an assistance prosecutor. *Id.*, at *7. In this case, the SCPO requested assistance and appointed the OAG as assistants pursuant to R.C. 309.06(A). In addition, R.C. 309.06(A) does not mandate a specific form of appointment or assignment. Finally, R.C. 177.03 does not limit the SCPO from requesting assistance. Consequently, the Court finds that the submitted affidavits show the SCPO requested assistance from the OAG. Therefore, the Court finds that the OAG’s appearance with the SCPO is lawful pursuant to R.C. 309.06(A).

II. CONCLUSION.

Based upon the findings and law herein, the Court **DENIES** Defendants’ Renewed Motion to Dismiss, Motion to Disqualify or Exclude the Office of the Ohio Attorney General (OAG), and Motion to Exclude or Suppress Evidence Obtained by the OCIC Task Force.

IT IS SO ORDERED.



JUDGE SUSAN BAKER ROSS

CC:

PRINCIPAL ASSISTANT ATTORNEY GENERAL MATTHEW MEYER
DEPUTY ATTORNEY GENERAL CAROL O’BRIEN

ASSISTANT PROSECUTOR BRAD GESSNER
ATTORNEY CAROLE S. RENDON
ATTORNEY DANIEL R. WARREN
ATTORNEY TERRY M. BRENNAN
ATTORNEY RACHAEL L. ISRAEL
ATTORNEY DOUGLAS L. SHIVELY
ATTORNEY DANTE A. MARINUCCI
ATTORNEY JEREMY DUNNABACK
ATTORNEY TAYLOR M. THOMPSON
ATTORNEY NOAH C. MUNYER
ATTORNEY GEORGE A. STAMBOULIDIS
ATTORNEY WILLIAM S. SCHERMAN

CMP