

**ASBURY APARTMENTS, JOINT VENTURE; RPS MANAGEMENT, APPELLEE, v.  
DAYTON BOARD OF ZONING APPEALS ET AL., APPELLANTS.**

**[Cite as *Asbury Apts. v. Dayton Bd. of Zoning Appeals*, 1997-Ohio-272.]**

*Declaratory judgment—Appeal dismissed for failure to serve Attorney General pursuant to R.C. 2721.12.*

(No. 95-2495—Submitted November 18, 1996 at the Urbana Session—Decided January 15, 1997.)

APPEAL from the Court of Appeals for Montgomery County, No. 15109.

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*Gary L. Froelich*, for appellee.

*J. Anthony Sawyer*, Director of Law, and *Steven R. Milby*, Senior City Attorney, for appellants Dayton Board of Zoning Appeals and city of Dayton.

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{¶ 1} Appellee challenged the constitutionality of Dayton Revised Code of General Ordinances 150.128(E), but failed to serve the Attorney General pursuant to R.C. 2721.12. When a statute or municipal ordinance is challenged in a declaratory judgment action, the failure to serve the Attorney General is a jurisdictional defect that can be raised at any time; therefore, because the courts below lacked jurisdiction, we vacate the judgments of the trial court and the court of appeals, and we dismiss this appeal.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and STRATTON, JJ., concur.

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