

1 ASBURY APARTMENTS, JOINT VENTURE; RPS MANAGEMENT, APPELLEE, V.
2 DAYTON BOARD OF ZONING APPEALS ET AL., APPELLANTS.

3 [Cite as *Asbury Apts. v. Dayton Bd. of Zoning Appeals* (1997), ___ Ohio
4 St.3d ___.

5 *Declaratory judgment -- Appeal dismissed for failure to serve Attorney*

6 *General pursuant to R.C. 2721.12.*

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

9 APPEAL from the Court of Appeals for Montgomery County, No.
10 15109.

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12 *Gary L. Froelich*, for appellee.

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

16 _____

17 Appellee challenged the constitutionality of Dayton Revised Code of
18 General Ordinances 150.128(E), but failed to serve the Attorney General

1 pursuant to R.C. 2721.12. When a statute or municipal ordinance is
2 challenged in a declaratory judgment action, the failure to serve the
3 Attorney General is a jurisdictional defect that can be raised at any time;
4 therefore, because the courts below lacked jurisdiction, we vacate the
5 judgments of the trial court and the court of appeals, and we dismiss this
6 appeal.

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

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