In re: Circuit Court Budget of the 11th Judicial Circuit of the State of Missouri

Pike County Court, Robert W. Turpin, Jack Hufty, and Gene Miller, Petitioners,	)	
vs.	)	No. 85-0010
Eleventh Judicial Circuit, Honorable Donald E. Dalton, Honorable David A. Dalton, Honorable Fred Rush, and Honorable Lester W. Duggan, Jr., Respondents.	)	

STATEMENT OF THE CASE, FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION

This matter appears before the Judicial Finance Commission upon a complaint filed on January 18, 1985, by Pike County, Petitioner herein, seeking the determination that the County is not legally obligated to provide the funds for deputy sheriff pay increases and for the employment of an additional deputy sheriff as requested by the Pike County Sheriff and approved and ordered by the Circuit Court.

Pursuant to § 50.640.2, RSMo Supp. 1984, a settlement conference was held on March 15, 1985, at the Pike County Courthouse, Bowling Green, Missouri, with Commission Chairman, Honorable Robert G. Dowd, and member, Honorable Archie McGee, in attendance. There was no resolution of the issues at that time.

Following written notice to the parties, a hearing was held on April 11, 1985, at the Supreme Court Building, Jefferson City, Missouri. At the hearing, Petitioner was represented by J. Rockne Calhoun, Pike County Prosecutor. The Court was represented by John M. McIlroy, Sr. and John M. McIlroy, Jr. of the firm of McIlroy and Millan.

FINDINGS OF FACT

1. Petitioner Pike County, Missouri, (the "County") is a body corporate and politic and a county of the third class of the State of Missouri. Commissioner Robert Turpin is the duly elected and acting Presiding Commissioner of the Pike County Commission. The other petitioners are the duly elected and acting members of the Pike County Commission.

2. Pike County is one of three counties within the jurisdiction of the Eleventh Judicial Circuit, respondent in this suit (the "Court"). The other two counties are Lincoln and St. Charles. The individual respondents are the duly appointed and acting judges of the 11th Judicial Circuit.

3. Sheriff Dave Jenkins has been the duly elected and acting Sheriff of Pike County, Missouri, since 1976.

4. As of December 31, 1984, the Pike County Sheriff's Department employed six deputy sheriffs, four as "road deputies," one as an investigator, one as a bailiff.

5. Sheriff Jenkins proposed in his 1985 budget to increase the number of deputies by one man, to provide for two investigators, while still maintaining current manpower standards for patrolling county roads.

6. Sheriff Jenkins further proposed an 11.4% pay increase for each of the deputies already on the payroll.

7. The Pike County Commission decided on an across the board 7% pay increase for all county employees.

8. Sheriff Jenkins requested and received from approval of the Circuit Court en banc for both budget items pursuant to §§ 57.250 and 57.230, RSMo 1978.

9. Upon presenting the request and finding it unacceptable to the County Commission, the Presiding Judge of the Court, Judge Donald Dalton, and Sheriff Jenkins agreed to a reduction in the requested salary increase from 11.4% to 10%. This figure was approved by the Court en banc.

10. The County informed both the Sheriff and the Court that it deemed the requests unreasonable, even at the new compromise figure of 10%.

11. Judge Dalton ordered the County to comply with the Court's decision.

12. The additional deputy sheriff has been on the County payroll since January 1985. His monthly starting salary was $1,333.00 for the first six months, with the salary going to $1,467.00 by the end of the first year.

13. The remaining deputies have been receiving the desired 10% pay increases since January, 1985, bringing their monthly salary to $1,467.00.

14. In anticipation of the costs of meeting the additional pay raise, the County has ceased funding the Sheriff's Office uniform allowance. The County had contributed $35.00 per deputy per month

to a fund for the purchase of uniforms. This was not a personal benefit for each deputy but a central fund.

15. The County had previously funded health insurance for the deputies. At the deputies' request this benefit was dropped in 1983 in lieu of a $283/month salary increment. For many deputies, the coverage had been duplicative of benefits their spouses already received.

16. The regular starting salary for deputies in Pike County is $17,996.00. This is higher than other starting positions for county employees. The deputies must furnish their own weapons, do their own janitorial and yard work and maintain their own uniforms. Automobiles are furnished to them by the County. A separate fund is available for in-service training.

17. Salaries for deputies in neighboring Lincoln County are lower, $16,764.00. No automobiles are provided but an automobile allowance is given.

18. The only promotion possible beyond the position of deputy sheriff is the elective office of Sheriff. All deputies are paid the same, irrespective of experience.

19. Pike County now has four "road officers." This number enables the County to keep one deputy on the roads at all times.

20. The work of the deputies is unique in that deputies must work shifts to provide the coverage necessary. They also can work holidays and the work can be dangerous.

21. Crime has increased in Pike County over the last five years by approximately 25%. Several factors have been advanced as contributing to this trend: growth in population, increased use of major

highways passing through the County by travelers heading to recreation spots north of Pike County, and the opening of a new General Motors plant in the area.

22. In 1984 the Sheriff's Department posted the following statistics:

117,703 miles patrolled

26,612 radio/telephone calls answered

2,670 complaints answered

2,327 legal papers served

264 warrants served

25 patients transported to Fulton State Hospital

332 inmates held in Pike County jail

23. The deputy sheriff who was the department's sole investigator regularly worked overtime. He provided services to the Prosecutor's Office as well as the Sheriff's Office. His criminal case "clearance" record has declined from 87.2% in 1983 to 78% in 1984. The work record of the Sheriff's investigation department indicates that 104 serious crimes were referred to the investigations office with a total of 79 days available for their investigation, after making allowance for time spent doing office work, relieving other officers on vacation, serving as a witness in court, handling investigations for Prosecutor's Office.

24. Both deputies who now function as investigators continue to work some overtime.

25. Personnel have left the Sheriff's Department for better pay and benefits as well as for the opportunity for advancement. They

have gone on to work with the Conservation Commission, the Water Patrol and other law enforcement agencies. No evidence was presented that empty positions could not be filled.

26. Testimony of Dr. James LePage, C.P.A., established that Pike County is in good financial condition, with an overall fund balance of $500,000 and a general revenue fund balance of $340,000. The balance in the general revenue fund reflects approximately $200,000 of tax collections.

27. The General Fund and the general revenue sharing fund are the only county sources of funding for the Sheriff's budget.

28. Sales tax revenue has continued to decline in recent years.

29. The Court considered the County's financial position in reaching its decision to approve the Sheriff's budget request.

30. The total impact on the County if the disputed items are found to be reasonable will be approximately $20,000.

Conclusions of Law

I

Section 57.250, RSMo 1978[1] states:

> The sheriff in counties of the third and fourth classes shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of a majority of the circuit judges of the circuit court, as such judges shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. Such judges of the circuit court, in their order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judges shall annually, and oftener if

[1] All citations unless otherwise indicated are to RSMo 1978.

necessary, review their order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered of record and a certified copy thereof shall be filed in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment.

II

Section 57.230 states:

> The county shall pay the salaries, in the amount approved by a majority of the circuit judges of the circuit court, of each deputy appointed by the sheriff and approved by a majority of the circuit judges of the circuit court.

III

Section 477.600.5, RSMo Supp. 1984 states:

> The [Judicial Finance] commission shall:
>
> (1) Examine the budget request of the circuit court upon the petition by the county governing body . . .
>
> (2) Issue a written opinion addressed to the presiding circuit judge and the presiding officer of the county. The opinion shall state the conclusions of the commission as to the reasonableness of the circuit court budget request. The opinion of the commission shall state clearly the reasons for its decision. Any member of the commission who disagrees with the commission's findings may file a minority report . . . .

IV

The Pike County Court petitions this Commission to resolve a dipute involving its budget, arising from an order of the 11th Judicial Circuit, the Honorable Donald E. Dalton, presiding judge, which has increased the salaries of deputy sheriffs in Pike County and added a new deputy sheriff to the payroll, pursuant to § 57.250.

The Judicial Finance Commission was established in 1982 to settle budget disputes between county courts and circuit courts. The intent of the legislation creating the Commission was to provide an avenue of redress for counties whose budgets were impacted by judicial authority. Bosley v. Berra, Nos. 65957 and 66586 (April 1985). The context in which this has arisen in the past has been disputes involving the budget requests for the operation of the Court, whether arising at the beginning of a county fiscal year or during the fiscal year. Id., at 5.

Both parties have submitted their arguments to the Commission. However, we are mindful that jurisdiction cannot be conferred by consent of the parties. V.A.M.R. 55.27(g)(3); State Tax Com'n v. Admin. Hearing Com'n, 641 S.W.2d 69, 72 (Mo. banc 1982). In dealing with the petition before us, then, we must first determine whether the jurisdiction of the Commission extends to a situation where judicial authority has been invoked to make a demand on the county budget which does not involve the operation of the court system itself. After reviewing the relevant statutes and case law, it is our understanding of the intent of the legislature that our jurisdiction does include such a situation.

In construing the relevant statutes we are aware that statutory construction is a matter of law. Staley v. Missouri Director of Revenue, 623 S.W.2d 246 (Mo. 1981). In reviewing and seeking to harmonize the statutory law in this case, we do not attempt to usurp the role of a court, but only to determine the extent of our jurisdiction in as careful a manner as possible. While studying legislation to determine the intent of the legislature, we will consider similar or

related subject matter where such related statutes shed light upon the meaning of the statute in question, even though such statutes are found in different chapters and were enacted at different times. Weber v. Mo. State Highway Commission, 639 S.W.2d 825 (Mo. 1982).

Section 50.640, RSMo Supp. 1984, which sets out the procedure for filing a petition with the Finance Commission is part of the County Budget Law, § 50.250 et seq., which contemplates a complete financial plan for counties and all officers and agencies thereof. § 50.550. Section 50.640 revises and codifies the process for resolving budget disputes between counties and circuit courts. In re the 1983 Budget for the Circuit Court of St. Louis County, Mo., 665 S.W.2d 943 (Mo. banc 1984). Section 57.250 establishes the same concern for the financial well-being of 3rd and 4th class counties as that set out under the County Budget Law: "The circuit judges . . . [in] fixing the number and compensation of the deputies . . . shall have due regard for the financial condition of the county." Taken together, then, both sections would seem to signify an intent on the part of the legislature to enable counties to have an avenue of redress when faced with demands on their financial capabilities which they deem unreasonable. However, there remains the question of whether the authority exercised by the Court in making the demand presented here is identical to the authority which enables it to mandate its own budget.

Before the creation of the Finance Commission, Missouri case law held that petitions for review which invoke an inquiry as to the reasonableness of a budget request regarding personnel must necessarily be founded on the doctrine of inherent power of the judiciary.

They were "not intended for use in a dispute between a sheriff and a county court." Gaines v. Grimm, 555 S.W.2d 11 (Mo. banc 1977). However, in distinguishing the inherent authority of the judiciary to control expenditures to "enable the courts to function and perform their constitutional mandate" from the statutory authority to control compensation for deputy sheriffs, one member of the Supreme Court, concurring in Gaines v. Grimm, observed that, insofar as § 57.250 assigns duties to a circuit judge relating to the appointment of and compensation for persons in the executive branch of government, it may contravene the provisions of Mo. Const., Art II, § I, on the separation of powers and thus be unconstitutional, if this could not be considered a judicial act.

We are guided by the precept that a statute must, if possible, be given a construction which is consistent with the Constitution. State Highway Com'n v. Spainhower, 504 S.W.2d 121, 125 (Mo. 1973). Therefore, we believe that the better interpretation of the actions of the circuit court here is that the Court is acting in a judicial capacity in overseeing this aspect of the administration of justice in Pike County. "The circuit judges are part of the judicial system and when they act they act judicially. . . . [W]hatever the circuit judges do as to setting the number of sheriff's deputies and their salaries must be viewed as being done judicially . . . if it is to be constitutional." Gaines v. Grimm, 555 S.W.2d at 15.

The dispute in the present cause is more a dispute between the circuit court judges and the county court than it is between the county court and the sheriff. As such it would now seem to fall within the jurisdiction of the Finance Commission, as the legislature

has established the Commission to handle disputes between counties and circuit courts which impact on county budgets.

We conclude that, absent further judicial determination of the Commission's jurisdiction, it is appropriate for us entertain Pike County's petition.

V.

Having addressed the threshold question of jurisdiction, we turn to the issues presented by the County. First is the objection to the addition of a deputy sheriff to the payroll. In establishing the legitimacy of this request, we apply the same analysis as for other court/county budget disputes: the reasonableness, based on necessity in fact, for the request. State ex rel. Baty, 601 S.W.2d 263 (Mo. banc 1980). As with any other court-ordered budget request, the burden of establishing the reasonableness of the item would be on the Court. § 50.640.2, RSMo Supp. 1984. We conclude the court has carried its burden here.

The unrefuted facts, as presented at the hearing, established that the crime rate is up in Pike County and that the disposal rate of cases is down despite the overtime schedule one deputy sheriff was putting in as investigator. Fortunately, Pike County, due to the able stewardship of its county court, has been able to provide a healthy financial cushion for county operations. Testimony before the Commission established that Pike has an adequate financial reserve on hand and is operating the type of conservative accounting practices which insure future stability. Moreover, Judge Dalton assures the Commission that the Court took this financial condition of the County into consideration in approving the sheriff's request for the additional deputy.

We must conclude that, not only is the additional deputy a feasible request in light of the financial condition of the County, but that the request is a necessity, in light of the unrefuted statistics on crime and sheriff's office workload, presented by the Court.

VI

The County next objects to providing a 10% pay raise for the deputy sheriffs when other county salaried employees are receiving a 7% raise--the highest ever given in recent years. The county's financial position has been established as secure. This security has enabled the county to provide the 7% across the board pay increase here. The court's evidence establishes that, while poor remuneration contributes to attrition in the Sheriff's Office, lack of possibility for advancement is an equally important contributing factor. True, the work of a deputy sheriff is quantitatively and qualitatively different from that of most county employees. Long hours, no allowance for traditional holiday leave, and dangerous situations place the deputy in a unique situation, of which everyone, the Court, the County and the Commission, is aware. It is no reflection on the work of these fine men that we must conclude that the County need not fund the additional 3% pay increase requested by the Sheriff and ordered by the Court.

While the Court has established that men have left the Sheriff's Office for jobs which happen to pay better, there has been testimony that lack of opportunity for advancement also plays a significant part in the decision to move on. Furthermore, the pay scale in Pike County is more than competitive with that of surrounding counties and higher than in other county offices. Most important, there has been no

evidence presented by the Court that positions for deputy sheriff could not be filled absent a pay raise higher than that for other county-salaried employees. The hours are long, the responsibility great, the experience valuable. That the men who have left the office have gone on to greater rewards does not negate the fact that others have been more than willing to serve in their place. There has been no showing that positions in the Sheriff's Office would go unfilled absent a pay raise over and above the 7% offered by the County. While the County's current budget position is secure enough to offer the 7% pay increase, a significant increase over past years, the balancing of the reasonableness of this request against the financial condition of the County does not establish the requisite necessity for its funding.

VII

The County has testified to the esteem in which it holds the Sheriff's Department. We would hope that, in light of this decision, the County would reconsider its position on funding that Department's uniform allowance. No attempt will be made here to determine the reasonableness of that item, as it clearly is not within the circuit court's statutory authority to mandate payment of that expenditure--it does not involve the number or the compensation of the deputies--and therefore does not fall under the Commission's purview. However, we strongly urge reinstatement of an item traditionally funded by the County and deleted this year only in response to the Court's order for the additional salary increase.

DECISION

The Court's request for funding of an additional deputy sheriff's

position is reasonable. However, the Court's request for an additional 3% salary increase for the deputies in the Pike County Sheriff's Department, over the 7% increase granted by Pike County, the highest in recent years, is not reasonable under the circumstances presented here.

Dated this 31st day of May, 1985

Honorable Robert G. Dowd, Chairman

Honorable Douglas Haile
Honorable Byron L. Kinder
Honorable Ralph Krodinger
Honorable Floyd McBride
Honorable Archie McGee
Honorable John M. Yeaman