BEFORE THE JUDICIAL FINANCE COMMISSION
STATE OF MISSOURI

IN RE: Circuit Court Budget of the 11th Judicial Circuit of the State of Missouri The County Executive and County Council of St. Charles County: The St. Charles County Executive, Joe Ortwerth; The County Council consists of the following members: Doug Funderburk, County Council Chair; Terry Varner, District 1; Joe Brazil, District 2; Bob Schnur, District 3; Sally Faith, District 5; Dan Foust, District 6. John White, District 7, Petitioners.	)	
vs.	)	Case No. 01-0060
Eleventh Circuit Court, The Judges of the 11th Circuit are Nancy Schneider, Presiding Judge; Ellsworth Cundiff, Division 1: Lucy Rauch, Division 3: Joe Bristow, Division 4; Jon Cunningham, Division 5, Terry L. Cundiff, Division 6; Daniel Pelikan, Division 7; Steven Ehlmann, Division 8; Respondents.	)	

OPINION

The County Executive and County Council for St. Charles County filed a petition for review with the commission pursuant to section 50.640.[1] The petitioners contend that the estimates of the circuit court are unreasonable to the extent they seek to fund four security

[1] All statutory references are to RSMo 2000.

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officers at a new juvenile facility built by the county.[2] Although the parties held several discussions to resolve the dispute, they have been unable to do so. Pursuant to section 477.600, the commission has reviewed the petition, held a settlement conference, received written briefs from the parties, and conducted a hearing. After careful review of the entire record, the commission determines that the circuit court has met its burden of proof with respect to part of the amount in dispute. The commission concludes that for the current budget year the county shall provide funds necessary to employ four security personnel at the equivalent of county pay grade 7, step 1.[3]

The parties began discussions to build a new juvenile facility in 1997. As may occur with such projects, the parties had discussions as to the proper functions of the facilities. The county officials spoke with the court personnel closely associated with juvenile division matters, but there is no indication that the court, as a whole, monitored (or was aware of) these developments. This is unfortunate, as the county officials concluded there would be no request for an increase in personnel as a result of building the juvenile facility. When such an increase was sought, these officials were understandably disappointed. Nevertheless, the commission's task is limited by statute to determining if the budget estimate is reasonable for the current budget year. *Section 50.640.*[4]

The parties agree that the new facility is an excellent one. The parties agree that security is necessary. The parties differ as to what security is necessary and who should provide it. To

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[2] The county's request to amend its petition to include the constitutional issues is granted. The county's request to amend its petition to contest $20,000 for attorney's fees is denied. Therefore, the budget estimate for these fees is not before the commission.

[3] The record indicates the amount is approximately $143,334.

[4] In light of the statutory directive, the county' constitutional arguments will not be addressed. See *State Tax Com'n v. Administrative Hearing Com'n*, 641 S.W.2d 69, 75 (Mo. banc 1982) (agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise).

the extent the parties believe security is solely an executive function, the statutes do not support such a belief. See *section 57.220* (circuit court in second classification county to appoint deputy sheriffs and set compensation); *section 476.083* (circuit court marshal to aid the presiding judge in overseeing the physical security of the courthouse); *section 477.005* (appellate courts may appoint marshals); *section 547.350* (marshal of supreme court and deputies while performing their official duties shall have the same power and like authority in every county of this state, in all respects, as are granted by law to sheriffs).

The Supreme Court has noted:

> The purposes of sections 50.640, 50.641 and 477.600 are to ensure that county officials include expenditures to support the judicial function in their annual appropriations and to provide those county officials an informal and expeditious mechanism for challenging the reasonableness of the appropriations sought by the circuit court. Given that legislative intent, "operations of the circuit court" necessarily includes the whole process that causes the courts to function. No one could seriously argue that a reasonably safe, accessible and habitable facility in which to hold court is not critical to performance of the judicial function.

State ex rel. Twenty-Second Judicial Circuit v. Jones, 823 S.W.2d 471, 477 (Mo. banc 1992). In light of the foregoing, if the security concerns are not otherwise addressed in the county's budget, e.g., through the sheriff's office, inclusion of funding for adequate security in the estimates of the circuit court is proper.

The question remains whether the estimates in this instance are reasonable. The county urges that the configuration of the juvenile facility provides sufficient security particularly when combined with the ability of the sheriff to respond to calls for assistance. The employees are behind closed doors and cameras monitor the facility. The sheriff can respond within ten minutes. However, these security measures fail to adequately protect the public and others. No one is subject to search or inspection unless he or she is entering the courtroom. By placing

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employees as requested by the court, visitors to the facility can be screened and belongings inspected before access is gained to other areas of the facility. Absent these employees, a person gaining access to the secure areas will not have been screened except if going into the courtroom.[5] The response time also permits breaches of security with significant damaging consequences.

The county also notes that the court has lapsed funds in excess of $500,000 in each of the last three years. It suggests that the security costs could be funded out of those funds. It may be appropriate for the court to carefully examine this issue for future years if security funding is again requested. For this dispute, approving the budget estimate has the same effect; i.e., if the same amount is lapsed this year, the effect on the county's budget is the same as if the court's budget had included a lower lapse amount

With respect to the court's estimate for security, rather than the authority to include such an estimate in the budget, the county does not challenge the amount requested. "In determining the reasonableness of any budget estimate involving compensation, the [commission] shall also consider compensation for county employees with similar duties, length of service and educational qualifications." *Section 50.640.2*. Considering those factors, the commission concludes that county pay range 7, step 1, is the appropriate amount.

The court is well advised to seriously review the county's suggestion that in future years its budget request result in fewer lapsed funds. The county and the court are encouraged to continue discussions to arrive at a mutually beneficial solution to providing necessary security through other offices. Nevertheless, for this budget year only, which is the only issue before the commission, the estimate submitted is reasonable to the extent that the county shall provide

[5] The courtroom is located on a level different from the main public entrance.

funds necessary to employ four security personnel at the equivalent of county pay grade 7, step 1.

Dated this 26th day of August, 2002.

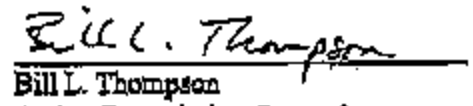
Four concur.

JUDICIAL FINANCE COMMISSION

Honorable Robert G. Dowd, Jr., Chair

Honorable Edith Louise Messina
Honorable David Lee Vincent III
Honorable Robert M. Clayton II

I hereby certify that copies of the foregoing Opinion were mailed by certified mail, return receipt requested, this 26th day of August, 2002, to: Joanne Leykam, Office of the St. Charles County Counselor, Suite 216, 100 North Third Street, St. Charles, Missouri 63301, Attorney for Petitioners; and John J. Smith, Legal Counsel, Office of Family Court Services, 300 North Third Street, St. Charles, Missouri 63301, Attorney for Respondents.



Bill L. Thompson
Acting Commission Counsel

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BEFORE THE JUDICIAL FINANCE COMMISSION
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vs	)	Case No. 01-0060
Eleventh Circuit Court, The Judges of the 11th Circuit are: Nancy Schneider, Presiding Judge; Ellsworth Cundiff, Division 1; Lucy Rauch, Division 3; Joe Briscoe, Division 4; Jon Cunningham, Division 5; Terry L. Cundiff, Division 6, Daniel Pelikan, Division 7; Steven Ehlmann, Division 8; Respondents.	)	

MINORITY REPORT

After carefully reviewing the record in this case and the opinion of the Commission, I conclude that the circuit court has failed to meet its burden of proof. Thus, I am filing this minority report.

All members of the St. Charles County Commission and the Circuit Court recognize the need to provide adequate security at the new juvenile facility. I am not convinced that a circuit court can direct a county commission as to how to allocate its budget for a purpose related to the

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function and/or performance of a structure or building under its control, and I believe that case law offers concurrence to this position. Essentially, the county commission has taken the necessary steps to ensure adequate security. In the guise of a budget dispute, the circuit court is seeking to direct the details of how security is to be designed and implemented – usurping the commission's responsibility and resources. The county commission is the chief financial authority for a respective county. Therefore, the county commission has the discretionary duty to address all funds, whether they be "lapsed" or otherwise.

I do hereby vote in favor of the petitioner in this case.

Dated this 26th day of August, 2002.

Two concur.

JUDICIAL FINANCE COMMISSION

Honorable David L. Coonrod

Honorable Marshal Pile

I hereby certify that copies of the foregoing Opinion were mailed by certified mail, return receipt requested, this 26th day of August, 2002, to: Joanne Leykam, Office of the St. Charles County Counselor, Suite 216, 100 North Third Street, St. Charles, Missouri 63301, Attorney for Petitioners; and John J. Smith, Legal Counsel, Office of Family Court Services, 300 North Third Street, St. Charles, Missouri 63301, Attorney for Respondents.

Bill L. Thompson
Acting Commission Counsel

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vs.	)	Case No. 014-0060
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MINORITY REPORT

After carefully reviewing the record in this case and the opinion of the Commission, I conclude that the 11th Judicial Circuit has failed to meet its burden of proof regarding the need to hire four (4) security people under its jurisdiction to provide security for the new juvenile center. The circuit court is seeking to direct the details of how security is to be designed and implemented.

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In chapter 57, RSMo, sheriffs are given direct statutory requirements to provide security for each division of the circuit court presided over by a circuit or associate circuit judge held in their counties, when so directed by the court. The Judicial Finance Commission is in violation of section 57.090 if it assigns that duty to the circuit court to hire its own personnel.[1]

The testimony before this Commission includes the testimony of Major David L. Todd, commander of the St. Charles County sheriff's department. He testified on behalf of the sheriff that the sheriff would locate a substation in the new juvenile center. He also said that a security aide could be provided to search baggage and a bailiff provided when a judge is present. He noted that the sheriff's department had "never left a Judge unattended." Further, if necessary, they would "pull officers off the street to provide security."

By statute the sheriff is responsible for security evaluation of county operated facilities. The St. Charles County sheriff has concluded the lobby area of the new juvenile center does not need additional security because it is highly secure. Major Todd noted that in his 25 years with the department, there had not been a need to respond to the juvenile department for a disturbance in the lobby.

[1] Section 57.090 provides: The several sheriffs shall attend each division of the circuit court presided over by a circuit or associate circuit judge held in their counties, when so directed by the court; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court.

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I do hereby vote in favor of the petitioner in this case.

Dated this 26th day of August, 2002.

Two concur.

JUDICIAL FINANCE COMMISSION

Honorable Gerald Jones

Honorable Marshal Pile

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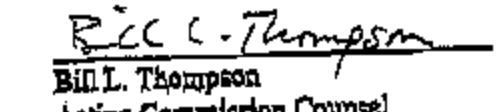

Bill L. Thompson
Acting Commission Counsel

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