IN RE: CIRCUIT COURT BUDGET OF THE 32nd JUDICIAL CIRCUIT OF THE STATE OF MISSOURI	)	
CAPE GIRARDEAU COUNTY, BOLLINGER COUNTY, AND PERRY COUNTY, MISSOURI,	)	
Petitioners,	)	
vs.	)	Case No. 01-0061
CIRCUIT COURT OF THE 32nd JUDICIAL CIRCUIT OF MISSOURI,	)	
Respondents.	)	

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

STATEMENT OF THE CASE

This matter comes before the Judicial Finance Commission upon a petition filed on December 3, 2001, by Cape Girardeau County, Bollinger County, and Perry County, Missouri (hereinafter "Counties"). It arises from an interest by the 32nd Judicial Circuit Court (hereinafter "Court") and it's counties for a new juvenile detention center to be built in Cape Girardeau County. The Court in its 2001 juvenile budget requested $360,460.00 in line item requests. In response to the Courts' juvenile budget request, the Counties deemed only $157, 100.00 in line items in the Court's budget to be reasonable and further deemed $313,626.00 in "undesignated" line items to be unreasonable. The Court now contends that the Counties' total maintenance of effort (hereinafter "MOE") obligation pursuant to Section 211.393.6, RSMo 2000, is $470,726.00. The Court further contends that after deducting the MOE based on the eight (8) delineated expenditure categories set out in Section 211.393.6, the remaining amount should be set aside and accumulated or "maintained" from one budget year to the next and merged with other unexpended MOE

[1] All references, unless otherwise denoted, are to Revised Missouri Statutes, RSMo 2000.

funds. The Court in this matter wishes to now use these funds as initial funding to design, construct, staff and maintain a new juvenile detention facility in 2003 or 2004. [2]

In their petition, the Counties are requesting the Judicial Finance Commission to declare and determine that:

1) A county's MOE obligation is not limited to the eight (8) expenditure obligations set out in Section 211.393.6 but such funds may be used for any operational expenditure of the juvenile court,
2) Cash surpluses, including MOE funding surpluses, cannot be accumulated and carried forward from budget year to budget year for the benefit of designated future circuit court expenditures;
3) The Counties have the ultimate authority to determine the design, scope and cost of a new juvenile detention center in Cape Girardeau County;
4) Neither Bollinger nor Perry County, as a 3rd class county has a duty to provide funds for a new juvenile detention center in Cape Girardeau County, a first class county , pursuant to Section 211.331.1; and
5) The request for a new juvenile detention facility in the 32nd Judicial Circuit is unreasonable because of failure to show a factual need at this time.
6) Finally, the Counties are requesting the Commission to find and declare the Court's juvenile budget request of $157,100.00 is reasonable.

Additionally, the Court is requesting the Judicial Finance Commission to declare how the MOE amount is determined according to Section 211.393.6.[3]

Pursuant to Section 50.640.2, a settlement conference was held. There was no resolution of the issues at that time.

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[2] The Commission notes the parties disagreed about the ultimate facility design. However, no detail to individual requests or design specifications and their respective costs were submitted to or reviewed by the Commission.

[3] The Commission notes the Court in their filings raised this issue. The Commission finds and believes the resolution of this issue is essential to the ultimate computation of the correct obligations of the Counties and the Court's financial requests.

Following written notice to the parties, a waiver of hearing on behalf of each party was filed. Additionally, and in lieu of a formal hearing, the parties agreed to file proposed stipulations of facts and legal memorandums for consideration by the Commission.

This Commission has jurisdiction over this proceeding pursuant to Section 477.600, which provides that the Commission shall examine the budget request of the circuit court upon the petition of the county governing body and issue a written opinion, stating the conclusions of the Commission as to the reasonableness of the circuit court budget request.

FINDINGS OF FACT

1. The 32nd Judicial Circuit consists of Cape Girardeau County, Bollinger and Perry counties.
2. Cape Girardeau County is a county of the first classification, and Bollinger and Perry Counties are of the third classification
3. Cape Girardeau county has, along with Bollinger and Perry Counties as part of the 32nd Judicial Circuit, for the past ten years combined the juvenile court's budget from all three counties and allowed Cape Girardeau County to receive and pay for the various expenditures for all counties in the circuit. Bollinger and Perry Counties were then billed for their proportional share of these expenditures based on each county's proportional population.
4. These pro rata shares among the counties have been 12% for Bollinger County, 19% for Perry County and 69% for Cape Girardeau County.
5. On September 27, 2001, Hon. John W. Grimm, Presiding Judge of the 32nd Judicial Circuit Court, submitted a Juvenile ($238,926.72) and Detention ($231,800.00) Budget Estimate to the Cape Girardeau Budget Officer in the total amount of $470,726.72.
6. On or about December 18, 2001, petitioner reduced respondent's Judicial Court Budget estimates for juvenile services for calendar year 2002 to $157,100.00, and declared $313,626.72 delineated as "undesignated" to be unreasonable.

7. The current juvenile detention center for the 32nd Judicial Circuit has a maximum population capacity of 10 residents. During the years 1999, 2000, and 2001, this facility reached or exceeded its maximum population on four (4) days, only. During this period the facility had an average population of three (3) residents per day.

CONCLUSIONS OF LAW

I. Spending of MOE Funds

Section 211.393.6 provides (emphasis added to pertinent part):

> 6. Each county in every circuit in which a juvenile court employee becomes a state employee shall maintain each year in the local juvenile court budget an amount, defined as "maintenance of effort funding" not less than the total amount budgeted for all employees of the juvenile court including any juvenile officer, deputy juvenile officer, or other juvenile court employees in the calendar year 1997, minus the state reimbursement as described in this section received for the calendar year 1997 personnel costs for the salaries of all such juvenile court employees who become state employees. The juvenile court shall provide a proposed budget to the county commission each year. The budget shall contain a separate section specifying all funds to be expended in the juvenile court. *Such funding may be used for contractual costs for detention services, guardians ad litem, transportation costs for those circuits without detention facilities to transport children to and from detention and hearings, short-term residential services, indebtedness for juvenile facilities or services, continuation of services funded by public grants or subsidy, and enhancing the court's ability to provide prevention, probation, counseling and treatment services.* The county commission may review such budget and may appeal the proposed budget to the judicial finance commission pursuant to section 50.640, RSMo.

Statutory construction is a question of law, not judicial discretion. Staley v. Missouri Director of Revenue, 623 S.W.2d 246, 248 (Mo. banc 1981). The Commission must ascertain the true intention of the legislature, with due regard to the reasonable interpretation of the legislative objective. Collins v. Director of Revenue, 691 S.W.2d 246, 251 (Mo. banc 1985). "In determining whether a statute is mandatory or directory, the general rule is when a statute provides what results shall follow any failure to so comply with its terms, it is mandatory and must be obeyed; however, if it merely requires certain things to be done and nowhere prescribes results that follow, such a statute is merely directory." State v. Conz, 756 S.W.2d 543, 546 (Mo. App. 1988)

Section 211.393.6 does not limit MOE funds to the eight enumerated items set out in the statute. There are no words of limitation such as "shall" but rather a permissive "may" indicative

of the statute's intent to set out examples of what items for juvenile services and support these funds could and should be used. There are numerous situations in which other items and services, not necessarily enumerated in the listed statute are just as essential to the furtherance of the needs of the juvenile court. Therefore, it cannot be said this statute in any way absolutely limits the expenditure of funds for juvenile services outside of the eight listed categories.

II. Accumulation of Surplus MOE Funds from Budget Year to Budget Year

The Court argues that surplus unexpended funds in one budget year should be carried forward and utilized in the next year for juvenile expenses only. The Court further argues the Counties have demonstrated an intention to escrow or accumulate such unexpended funds for juvenile services from year-to-year and have "maintained" a separate fund in the juvenile budget delineated as "undesignated" in compliance with Section 211.393.6. We disagree.

Again rules of statutory construction require that we give effect to the legislative intent, if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Co. v. Dir. Of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). We believe Section 50.610 controls. This section provides in relevant part:

> Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year.

There is no saving provision in Section 211.393.6, such as to retain and accumulate unexpended portions of these budgets from one year to the next. The MOE is the starting point of each participating jurisdiction's juvenile budget and it is a minimum level of funding for the effected juvenile court for each new year. Any unexpended balances, unless designated for some project or expense, should be returned to general revenue at the end of each fiscal year.

III. Authority to Design, Erect New Juvenile Detention Center

Although the Counties, per Section 211.331, have the ultimate responsibility to "erect" a juvenile detention center, which may include the right to determine its scope, costs and ultimate design, the Counties are nonetheless required to allow input from the Court. This input is commensurate with the Court's ultimate power to "control" the juvenile court. See St. Louis County v. Edwards, 589 S.W.2d 283 (Mo. banc 1979); see also Circuit Court of Jackson County v. Jackson County, 776 S.W.2d 925 (Mo. App. W.D. 1989) [county has no authority or power to fix salaries of circuit court employees]. The Counties,

with input from the Court, once a need has been shown, are required to erect a building which will comply with the Court's inherent authority to provide suitable detention facilities which comply with federal, state and local laws and regulations. This will also allow the Court to satisfy its' overall responsibility of providing juvenile justice to its' citizens. As noted in Edwards:

> "The General Assembly considered placement of control of juvenile facilities in the juvenile court to be so important to the achievement of the purpose of providing care, protection and discipline of children coming within the juvenile court's jurisdiction that it made explicit provision for the juvenile court to control these facilities. The evident purpose of the juvenile code provisions in question is to insure that a single agency (the juvenile court) control and coordinate all aspects of juvenile treatment . . . [n]othing in the juvenile code can be construed to give the county control over juvenile facilities."

Edwards, 589 S.W.2d at 287.

IV. Pro Rata Share of Funding by Bollinger and Perry Counties

Petitioners Perry and Bollinger Counties object to their obligation to pay a pro rata share of costs for juvenile services billed by the Court. These petitioners specifically object to any forced commitment of contribution for any new juvenile detention facility. As previously noted, Cape Girardeau County Circuit Court has for several years handled the entire circuit's juvenile budget for each separate county as one combined package and then billed each of the three counties for their share of the total.[4] These shares have recently been 12% for Bollinger, 19% for Perry, and 69% for Cape Girardeau County respectively. The Commission finds that forced payment for any new facility, without full compliance with all provisions of Section 211.341 can only be said to be voluntary, not mandatory. Section 211.341 provides, in relevant part:

> 1. Counties of the third and fourth classes within one judicial circuit, shall, upon the written recommendation of the circuit judge of that judicial circuit, establish a place of juvenile detention to serve all of the counties within that judicial circuit, and in like manner, the counties shall supply offices for the juvenile officers of that circuit. The recommendation of the circuit judge shall be made only after a hearing conducted by him, after thirty days' notice, to determine the need and feasibility of establishing such a place of detention within the judicial circuit.

[4] Respondents appear to use Section 211.241 as authority for its juvenile budget process. It provides, in relevant part, that "...[t]he provisions of section 211.331 apply as to the form of operation and means of maintenance of the place of detention, except that the total cost of establishment and operation of the places of detention shall be prorated among the several counties within the judicial circuit upon a ratio to be determined by a comparison of the respective populations of the counties."

The Commission finds no record of such hearing or recommendation.[5]

V. Reasonableness of Funding Request for New Juvenile Detention Center

The Counties ultimately contend that the Court's request for MOE funding for the new juvenile detention center is unreasonable. The Circuit Court has the burden of convincing this Commission that this amount is reasonable. Section 50.640. The Commission must consider whether the expenditure is lawful and is therefore: (1) those fixed by statute or absolutely reposed to the court's discretion; (2) those the local government unit is required to provide to meet such expenditures as may have been authorized previously; and (3) those reasonably necessary for the court to carry out it functions. Judges for the 22nd Judicial Circuit v. City of St. Louis, 494 S.W.2d 39 (Mo. banc 1973). The request in question in this matter falls under the third category, those reasonably necessary for the court to carry out its function. Before the Commission may determine reasonableness, the Court must first establish a need for such request. The Court must show a "factual need" for such expenditures as opposed to a "declared need". Id. at 41. There is no such showing here. The Commission is aware that juvenile needs have and will continue to grow exponentially in this circuit as in every other circuit of this state. The Commission, however, has no indication that the needs of the 32nd Judicial Circuit rise to a level supporting such an expense at this time. The figures supplied by the Counties show only four (4) days in the last three years in which the juvenile population was at or exceeded the maximum capacity of ten (10) detainees. Without more, the Commission is without sufficient support to find a factual need at this time.[6] Consequently, the Commission need not determine reasonableness until such need has been clearly established from the record.

VI. Calculation of the Maintenance of Effort Funding

The essential issue in dispute before the Commission is, "What is the MOE obligation of the Counties of the 32nd Judicial Circuit?" This necessarily requires this Commission to also determine how

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[5] The Commission notes that although numbers of juvenile detainees may be low, there exists no record before it that reflects the relative population of juveniles in relation to their respective counties. Additionally, the Commission notes that all counties within the 32nd Judicial Circuit receive a full spectrum of services including, but not limited to, detention services, counseling, crisis intervention and management, and transportation of juveniles, as well as hotline staffing, etc.

this figure is determined. Under the language of Section 211.393.6, we must first examine the Court juvenile budget of 1997. We agree with the Court that the MOE funding must include all amounts *budgeted* rather than the amounts actually *spent*. The evolution of this statute can be seen from the language of Section 211.393, RSMo Cum. Supp. 1998, which provided, in pertinent part:

> 4. In addition to any amount paid pursuant to subsection 1 of this section, the State shall also reimburse…the following percentages of the salaries of all other juvenile Court personnel, excluding fringe benefits;

The legislature in 1998 passed HB 971, which changed this section to the following:

> "Each county in every circuit in which juvenile court personnel become state employees shall maintain in the local juvenile court budget an amount, defined as " maintenance of effort funding", not less than the total amount **budgeted** for all employees of the juvenile court including any juvenile officer, deputy juvenile officer, or other juvenile court employees in the calendar year 1997, minus the state reimbursements as described in this section received for the calendar 1997 personnel costs for the salaries of all such juvenile court employees who became state employees." (Emphasis added).

This new language changed the way in which the MOE amount is determined. The 32nd Judicial Circuit's total MOE should be:

$503,676.00	1997 total juvenile personnel budgets
$ 32,949.28	1997 state reimbursement for salaries
$470,726.72	Maintenance of Effort Funding

Therefore, the Commission finds as a matter of law the MOE should include whatever amounts are budgeted, as opposed to amounts spent.

VII. Reasonableness of budget request

The Counties contend the Court included in its' juvenile budget $157,100.00 in designated line item requests and $313,626.72 in "undesignated" line item requests. The Counties deemed $157,100.00 as *reasonable* under Section 50.640 and the undesignated request of $ 313,626.72 as *unreasonable*.

The Court has the burden of convincing this Commission that the amount in dispute is reasonable. Section 50.640.2. The Court contends according to case law that because its' budget includes MOE funding that "has been fixed by statute;" it is, therefore, "reasonable." In Re: 1984

[6] The Commission notes that juvenile resident population may not be the only factor necessitating a new facility. Other factors such as living conditions, housing code requirements, or health and safety concerns may also necessitate consideration.

Budget For Circuit Court, 687 SW 2d 896 (Mo. banc 1985). However, this Commission has previously held in Stone County Commission v. 39th Judicial Circuit (No. 99-0054) as follows:

> A county may pay existing operations expenditures, and then for enhancements to its existing juvenile operations, from the level of funding required by Section 211.393.6, RSMo.Supp.1998. All of such proposed expenditures, however, remain subject to the previous county budget law, and shall be enumerated within the juvenile court budget submitted by the circuit court to the county budget officer pursuant to Section 50.640, RSMo Supp. 1998.

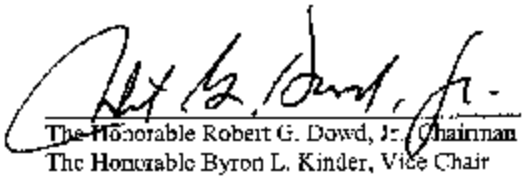
We find, based on all of the foregoing findings, that the Court has failed to show the amount in dispute is reasonable.

DECISION

It is the decision of this Commission that the Counties are obligated under § 211.393.6 to maintain MOE funding for the 32nd Judicial Circuit in the amount of $470,726.72, not $157,100.00; the Counties are obligated to release for spending $157,100.00 in designated line item requests as submitted in the Circuit Court's 2002 budget. Furthermore, the Counties' obligation to fund expenditures that fall outside the eight enumerated categories of Section 211.393.6 are allowable, so long as they relate only to juvenile operational expenditures. It is further the decision of this Commission that cash surpluses from one budget year to the next that are remainders of the total amount budgeted for juvenile services are to be returned to the county's general revenue fund. Furthermore, it is the decision of this Commission that although it is the Counties that have the authority to design and construct new buildings and facilities under Section 211.331, such cannot be done without input from and compliance with the needs and mandates of the Court in compliance with it's duties and responsibilities in the area of juvenile justice. Additionally, it is the decision of this Commission that before Perry or Bollinger Counties may be held to provide any contribution or funding for any new juvenile detention facility, the Circuit

Court must first adhere to all provisions of Section 211.241. Finally, it is the decision of this Commission that respondent has failed to show a factual need for any new juvenile detention facility. Thus, there is no need to determine reasonableness.

DATED this 18th day of June, 2002.



The Honorable Robert G. Dowd, Jr. Chairman
The Honorable Byron L. Kinder, Vice Chair
The Honorable Edith Louise Messina
The Honorable David L. Vincent III
The Honorable Marshall Pile
The Honorable David Coonrod
The Honorable Don Stamper

I hereby certify that copies of the foregoing Findings of Fact, Conclusions of Law and Decision were mailed by certified mail, addressee only, return receipt requested, this 20th day of June, 2002, to: William McCullah, 221 Main Street, Forsyth, Missouri, 65653, attorney for petitioners; A. J. Seier, 400 Broadway, P.O. Box 539, Cape Girardeau, Missouri, 63702-0539, attorney for respondents.

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