BEFORE THE JUDICIAL FINANCE COMMISSION
STATE OF MISSOURI

IN RE Circuit Court Budget of the 41st Judicial Circuit of the State of Missouri	)	
MACON COUNTY COMMISSION, Roger Kohl, Presiding Commissioner Steven J. Fuller, Commissioner Gail Smith, Commissioner,	)	
Petitioner,	)	
vs.	)	Case No. 98-0051
FORTY-FIRST JUDICIAL CIRCUIT, Ronald M. Belt, Presiding Judge James N. Foley, Associate Circuit Judge,	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

This matter comes before the Judicial Finance Commission upon a Petition filed by Macon County, Petitioner herein, against the Circuit Court for the 41st Judicial Circuit, Respondent. Petitioner seeks a determination that it is not obligated to pay for various costs of the circuit court related to relocation of court offices and services, salaries for deputy sheriffs, jailers and juvenile employees, and certain judicial equipment and operational expenses, in the amount of $143,898.90. The judges of the 41st Judicial Circuit disagreed with the budget decisions of the Macon County Commission relating to these issues, and the county commission thereupon filed this Petition on February 3, 1998.

Pursuant to law and the rules of this Commission, this matter was set for Settlement Conference, which was conducted by Judge Robert Dowd, Jr. and Commissioner Marshall Pile on March 5, 1998. The parties were unable to resolve their differences, and following written notice to the parties, this matter was heard by the Commission on June 1, 1998, in the Division II Courtroom of the Supreme Court Building in Jefferson City, Missouri. All members of the Commission were present at this hearing other than Commissioner Marshall Pile, who was absent with excuse and did not participate in the hearing, deliberation or decision of this case. The chair of the Commission requested

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a temporary replacement for the absent commissioner, and the Supreme Court of Missouri appointed the Honorable Rick Thornburg, Associate County Commissioner of Randolph County, a member of the Commission for the purpose of the hearing in this matter. Petitioner appeared by counsel, D. Keith Henson, and by its commissioners, Presiding Commissioner Roger Kohl and Associate Commissioners Steven Fuller and Gail Smith. Respondent appeared by counsel, R. Timothy Bickhaus, and by Presiding Judge Ronald M. Belt. Testifying for the Petitioner was Presiding Commissioner Kohl; and for the Respondent was Presiding Judge Belt

The parties' evidence showed that on or about October 15, 1996, the entryway and upstairs restroom in the courthouse annex building were sprayed for wasps by a commercial exterminator. On October 17, 1996, the law library on the second floor of the courthouse was sprayed for wasps by the same exterminator. On October 17, 1996, court employees began to suffer health problems, including a metallic taste in their mouths, headaches and respiratory problems. These problems persisted for the next several days, and several employees were treated at the emergency room of the local hospital. Thereafter, the circuit, associate circuit, circuit clerk ex officio recorder of deeds and juvenile offices relocated, first to another county building and later to private facilities outside of the courthouse complex. This relocation was at first accomplished with the consent of the county commission.

The county commission retained a private consultant, which conducted air samples in the buildings in three different sites on October 26-28, 1996. Although the air sampling indicated the presence of the active ingredient of the pesticide used by the exterminator, the level of that substance was substantially less than the level permitted by the Occupational Safety and Health Administration (OSHA) for worker exposure. The private consultant conducted a second round of air sampling on November 10-12, 1996, and determined that the level of the substance was even less than that present in October, 1996. The county commission consulted with the manufacturer of the pesticide, which recommended that all walls and woodwork be cleaned with chlorine bleach solution. This was accomplished in latter-November, 1996 Upon reentering the building, the court employees continued to experience the same symptoms, and did not relocate into the building.

The county commission contacted the National Institute for Occupational Safety and Health (NIOSH), which made two inspections of the facilities, the first on February 5-6, 1997; and the second on April 3-4, 1997. The NIOSH issued a written report on August 25, 1997, indicating that low surface concentrations of pesticide indicators were found on samples collected in both inspections, although the concentrations of such chemicals in the samples in the annex decreased between the two

inspections. Airborne concentrations of pesticides measured in February, 1997, were below detectable levels. NIOSH opined that the health problems reported by employees of both buildings were not typical of problems generally associated with pesticide exposure. The NIOSH report recommended that future indoor pest treatments should not take place while the building is occupied; that access to the courthouse attic should be controlled and warning signs placed at all entrances, due to an accumulation of pigeon and bat droppings on the attic floor; and that a mechanical ventilation system be installed to provide sufficient conditioned outside air to building occupants. The NIOSH report noted, but did not recommend, that due to persistent positive pesticide results in exposed wood components (window sills, frames, door frames) of the building, that the only recourse for completely eliminating all pesticide residue in the building may be removal and replacement of such wood components.

On August 4, 1997, the Missouri Department of Natural Resources provided a letter to the state Risk Manager of the Office of Administration stating that three samples of paper from the courthouse were analyzed for the pesticide in question, and that the level of pesticide contamination of the paper was undetectable. However, in a letter dated January 6, 1998, the NIOSH stated that this sample result provided very little meaningful information, and no basis for additional remedial results. On September 18, 1997, an employee of the Missouri Department of Agriculture took various swabbings from computer equipment taken from judicial offices in the courthouse complex. These swabbings were tested at the University of Iowa Hygienic Laboratory, which in a series of reports dated December 4, 1997, did not detect the presence of various pesticides or pesticide ingredients.

Respondent's evidence indicated that a number of judicial employees developed physical symptoms, and linked these symptoms to pesticide exposure in the courthouse buildings. Several employees of the judicial offices filed workers' compensation claims, and evidence was presented that the employer's physician opined that their physical symptoms were not caused by pesticide exposure. However, no other evidence was presented connecting the symptoms experienced by the seventeen employees described by Respondent's witnesses with the workplace environment in the courthouse complex.

The county commission visited with the various judiciary officers in early June, 1997, and informed them that Petitioner would no longer pay further off-site expenses as of July 1, 1997. The State of Missouri then reimbursed the Petitioner for off-site expenses incurred for the months of July-September, 1997.

Petitioner witness, Presiding Commissioner Kohl, testified that Petitioner has sufficient money for Budget Year 1998 to install the mechanical air ventilation system recommended by NIOSH, and that the county commission intended to award bids for this system on June 15, 1998. Petitioner's witness anticipates that this system would be installed within 30-45 days of bid award, and Respondent's witness, Presiding Judge Belt, anticipates that the system would have to run an additional 30-45 days to purge the air in the buildings. Petitioner's witness also testified that Petitioner has sufficient funds during Budget Year 1998, and the county commission intends to seal off the courthouse attic area prior to September 1, 1998. Respondent's witness testified that he would be willing to relocate the judicial offices into the courthouse complex upon implementation of the NIOSH recommendations (although he indicated that he might again remove such offices should the physical symptoms reoccur). Petitioner's evidence indicated that the total amount of the disputed off-site and related expenses for Budget Year 1998 is $67,401.37.

Petitioner's witness testified that Petitioner challenged an equipment request for $13,334, which it thought was "...related to the MULES, for the court automation system..." (Tr., page 67), and had reduced this request to $1,033. Upon cross-examination, Petitioner's witness testified that he was mistaken and that the contested budget request was for a computer-assisted transcription system for the court reporter and a typewriter for the circuit judge, and not for court automation. Petitioner also challenged $15,748 in expenditures for "court automation" of the juvenile office, and reduced this request to $500. Petitioner challenged $22,709 in salaries for sheriff deputies and jailers. The petition filed in this matter states that the proposed salaries exceed the rate of increase granted to other county employees. No further evidence was presented at the hearing by Petitioner as relates to disputed court automation expenses or to the salaries for deputy sheriffs, jailers and juvenile employees. Counsel for Petitioner indicated that if the issues relating to the off-site expenses were resolved, that the other proposed expenses could be "worked out" by the parties (Tr., page 121).

Respondent presented evidence comparing the salaries of the sheriff's deputies and jailers with law enforcement officers in other counties and municipalities. Respondent's evidence indicated that the Macon County Sheriff has had difficulty attracting and retaining qualified personnel to fill such positions. Respondent's evidence also indicated that it sought a salary of $14,000 for Budget Year 1998 for the juvenile office secretary. Evidence indicated that this was a qualified employee with seven years experience. Respondent's evidence indicated that the secretarial salaries in the juvenile offices in surrounding circuits were substantially greater than the proposed salary. Respondent

presented no evidence in support of the proposed expenditures for the computer-assisted transcription system or the typewriter for the circuit court or the proposed "court automation" expenditures for the juvenile office.

Respondent presented evidence that a portion of the proposed operations expenditures contested by Petitioner represents a budget item for attorneys' fees for the Respondent resulting from legal representation of Respondent in a mandamus proceeding during Budget Year 1997. After the Budget Year 1997 approval process, Petitioner sought to terminate Respondent's off-site expenditures during the middle of the budget year. Respondent successfully contested Petitioner's action in the judicial system, but incurred legal fees in the process. Petitioner's witness testified that the county commission did not feel that this was a justified expenditure. The amount of this contested budget item is $5,500.

Petitioner is solvent and currently has adequate financial reserves. During Budget Year 1998, Petitioner anticipates depositing approximately $37,350 of revenues into reserves, and projects a budget surplus of $3,424.52, excluding consideration of the disputed expenditures. Petitioner's proposed 1998 budget, including the disputed expenditures, reflects expenditures in excess of revenues in the amount of approximately $140,000. Petitioner characterizes revenues collected prior to December 31, 1998, as "Other Net Resources Available as of December 31, 1998", and estimates this amount at $150,000 Petitioner indicated that it could borrow against these revenues in order to meet Budget Year 1998 expenditures. The amount of funds in issue will detrimentally affect the county budget and the county's ability to finance other proposed expenditures. Petitioner will generate sufficient income to meet its planned capital and operating expenditures exclusive of the disputed expenditures, and has met such expenditures in recent preceding years other than Budget Year 1996. There are no other issues brought to the Commission's attention by either party relating to the proposed and budgeted expenditures by the circuit court.

The Commission concludes that it has jurisdiction to hear and decide this matter. The Petitioner, as the governing body of Macon County, deemed the budget estimate of the Respondent to be unreasonable, and properly filed a petition for review with the Judicial Finance Commission pursuant to Section 50.640, RSMo Supp. 1997 and Commission rules.

Section 50.640.2, RSMo Supp. 1997, provides in relevant part that:

> "If a petition for review is filed, the circuit court shall have the burden of convincing the judicial finance commission that the amount estimated by it and included in the budget is reasonable. In determining if the circuit court estimate is reasonable, the judicial finance

commission shall consider the expenditures necessary to support the circuit court in relation to the expenditures necessary for the administration of all other county functions, the actual or estimated operating deficit or surplus from prior years, all interest and debt redemption charges, all capital projects expenditures, and the total estimated available revenues from all sources available for financing the proposed expenditures. In determining the reasonableness of any budget estimate involving compensation, the judicial finance commission shall also consider compensation for county employees with similar duties, length of services and educational qualifications."

In light of the absence of evidence comparing duties, qualifications and salaries of other county employees, the Commission takes notice of the statutory duties of the sheriff and the sheriff's deputies to attend to the courts and to provide the law enforcement function of county government. See generally, Chapter 57, RSMo. The Commission concludes that the statutory duties of the sheriff and sheriffs' deputies are unique and have no ready comparison to other county employees. The Commission concludes that these proposed salaries are reasonable and supported by evidence presented by Respondent comparing these salaries to the salaries of other similarly-situated county employees.

The Commission concludes that Petitioner has acquiesced to the reasonableness of the proposed sheriff's deputies' and jailers' salaries, and the proposed salary of the secretary for the juvenile office. Petitioner did not present evidence at the hearing of this matter explaining why it contested these proposed salaries and Petitioner's counsel's statement indicates that these are not particularly significant items in the proposed budget.

The Commission concludes that Respondent has failed to meet its burden to establish the reasonableness of the disputed portion of the proposed expenditures for the speech computer-assisted transcription system and the typewriter for the circuit judge and "court automation" for the juvenile office. Although cross-examination of Petitioner's witness indicated that the county commission was mistaken as to the nature of the expenditure for the circuit judge, no evidence was presented by Respondent in support of the reasonableness of these proposed expenditures.

The Commission concludes that the proposed expenditures for off-site space and offices for judicial officials incurred prior to implementation of the NIOSH recommendations are reasonable. Although Petitioner is required by Section 478.035, RSMo 1996, to "...provide suitable quarters for the respective circuit courts, including all divisions thereof..." [emphasis added], Section 15.3 of Article V of the Constitution provides that the presiding judge of each judicial circuit "... shall have general administrative authority over the court and its divisions". The Commission concludes that the

presiding judge's authority extends to determining whether the quarters provided by the county are suitable as is required by law. However, the Commission retains jurisdiction to determine the reasonableness of the presiding judge's budget request regarding the suitability of the quarters provided by the county, pursuant to Sections 50.640 and 477.600, RSMo Supp. 1997 and Commission rules.

The Commission further concludes that the proposed expenditure for attorneys' fees in connection with the 1997 judicial action by Respondent is reasonable. This judicial action occurred as a result of Petitioner unlawfully and unilaterally reducing the circuit court budget during Budget Year 1997, and attempting to return the judicial offices to quarters deemed unsuitable by the presiding judge.

Therefore, the Commission decides that the Respondent's budget recommendations regarding sheriff's deputies' and jailers' salaries in the total amount of $230,738 for Budget Year 1998 ($22,709 of which is disputed) are reasonable. The Commission decides that Respondent's budget recommendations regarding the annual salary of the secretary in the juvenile office in the total amount of $14,000 are reasonable. Petitioner failed to present evidence contesting such salary recommendations other than the allegations in the Petition, but Respondent presented evidence of the reasonableness of such salaries as compared to salaries for similar positions in other counties. Furthermore, the contested salary increases reflect an extremely small amount as compared to the total county budget and the portion of that budget devoted to the circuit court.

The Commission decides that the disputed offsite expenses in the amount of $44,935 are reasonable for expenses anticipated prior to implementation of the NIOSH recommendations, but are not reasonable in the amount of $22,466.37 for expenses anticipated subsequent to implementation of the NIOSH recommendations after September 1, 1998. In light of the continuing physical symptoms described by the various judicial officers and employees, which were verified and treated by physicians, and the recommendations by the NIOSH regarding the physical conditions of the facilities and employee health, the Respondent was and is acting reasonably in removing the judicial employees from the courthouse buildings, pending implementation of the NIOSH recommendations. However, upon implementation of the NIOSH recommendations, there is no evidence before the Commission that would substantiate continuing removal from the courthouse buildings. Respondent indicates that it would return its offices to the courthouse complex upon implementation of such recommendations. The mechanical air ventilation system recommended by NIOSH should be installed and given

sufficient time to purge the building air, and the courthouse attic sealed, prior to September 1, 1998, and the proposed budget items for off-site expenses are proportionally reduced.

The Commission decides that the proposed expenditure in the amount of $5,500 for attorneys' fees relating to the 1997 judicial action filed by Respondent against Petitioner is reasonable. These legal fees were incurred as a result of and subsequent to Petitioner reducing the circuit court budget during Budget Year 1997, and attempting to return the judicial offices to unsuitable quarters.

The Commission decides that the reasonableness of Respondent's budget recommendations regarding the computer-assisted transcription system and the typewriter for the circuit judge, and the "court automation" expenses for the juvenile office, in the disputed total amount of $27,549, were not supported by any evidence, and are therefore deemed unreasonable.

The Commission decides that the remaining proposed expenditures in dispute in this matter are unreasonable. Respondent presented no or inadequate evidence in explanation or support of such proposed expenditures and therefore did not demonstrate the reasonableness of such proposed expenditures as is required by law. Such proposed expenditures are therefore deemed unreasonable.

Dated this 24th day of July, 1998.

All concur.

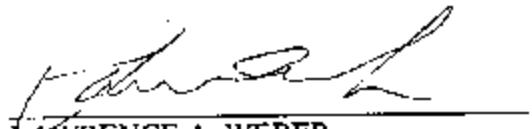
JUDICIAL FINANCE COMMISSION

Honorable Robert G. Dowd, Jr., Chair

Honorable David Coonrod
Honorable Gerald Jones
Honorable Byron Kinder
Honorable Edith Messina
Honorable Floyd McBride
Honorable Rick Thornburg

Honorable Marshall Pile, not participating

Copies mailed by certified mail, return receipt requested, this 17th day of July, 1998, to: D. Keith Henson, Paule, Camazine & Blumenthal, 165 North Meramec Avenue, 6th floor, St. Louis, MO 63105, Attorney for Petitioner; and R. Timothy Bickhaus, P.O. Box 451, Macon, MO 63552-0451, Attorney for Respondent.



LAWRENCE A. WEBER
Commission Counsel