JUDICIAL FINANCE COMMISSION

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65102

O R D E R

In re Circuit Court Budget of the 21st Judicial Circuit of the State of Missouri

St. Louis County, Petitioner	)	
vs.	)	No. 84-0004
Judicial Circuit No. 21, St. Louis County, Missouri, et al., Respondent	)	

I, Judge Robert G. Dowd, Presiding Officer of the Judicial Finance Commission of the State of Missouri, certify that the attached opinion is a full, true and complete record of the decision of the Judicial Finance Commission, entered of record on the 29 day of May, 1984, in the above-captioned cause.

Given under my hand this 29 day of May, 1984.

Presiding Officer

Judicial Finance Commission
State of Missouri

St. Louis County, Petitioner	)	
vs.	)	No. 84-0004
Judicial Circuit No. 21, St. Louis County, Missouri, et al. Respondent	)	

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

STATEMENT OF THE CASE

This matter appears before the Judicial Finance Commission upon a complaint filed on January 11, 1984, by St. Louis County, Petitioner herein, seeking the determination that the County is not legally obligated to provide any of the five disputed budget items requested by the Circuit Court as detailed below.

Pursuant to § 50.640.2 RSMo Supp. 1983, a settlement conference was held on February 7, 1984, at the St. Louis County Government Center, Clayton, Missouri, with Commission members Judge Floyd McBride and Judge Gene Huckstep in attendance. There was no resolution of the issues at that time. Following this settlement conference, an offer of settlement was made by the County but rejected by the Court.

Subsequent to the conference, Ms. Shulamith Simon and Mr. Mark Arnold of the firm of Husch, Eppenberger, Donohue, Elson & Cornfeld, and Mr. Godfrey Padberg of the firm of Padberg, McSweeney, Slater & Merz petitioned the Commission for leave to intervene. Such permission was granted.

Following written notice to the parties and intervenors, a hearing was held on March 2, 1984, at the Supreme Court Building, Jefferson City, Missouri. At the hearing, the parties and intervenors stipulated to the relevant facts contained in a jointly filed stipulation. Petitioner was represented by Thomas Wehrle, St. Louis County Counselor. Judge William Corrigan spoke for the Circuit Court on the issues of liability insurance and travel funds. Ms. Simon and Messrs. Arnold and Padberg spoke to the issues of attorneys fees for the Court and Judge Corrigan.

FINDINGS OF FACT

1. Petitioner St. Louis County, Missouri, is a body corporate and politic and a county of the first class of the State of Missouri, operating under a charter form of government adopted pursuant to the provisions of Article VI, Section 18 of the Constitution of the State of Missouri. Petitioner Gene McNary is the duly elected and and acting County Executive of St. Louis County, Missouri. The other petitioners are the duly elected and acting members of the County Council of St. Louis County, Missouri.

2. Respondent 21st Judicial Circuit of St. Louis County is the Circuit Court of St. Louis County (the "Circuit Court"), comprising 20 circuit judges and 13 associate judges. The individual respondents are respectively the duly appointed and acting circuit judges and associate circuit judges of the 21st Judicial Circuit.

3. The items in dispute in connection with the 1984 budget of the Circuit Court are as follows:

a. funding in the amount of $350.00 for premiums for professional liability insurance policies for Judges Ninian M. Edwards and Melvyn W. Wiesman;

b. funding in the amount of $19,000.00 for the out of town travel of the 20 circuit judges and the director of judicial administration;

c. funding in the amount of $55,603.02, for payment of the Circuit Court's attorneys fees in the cause styled Kathleen Marafino v. Circuit Court of St. Louis County, 537 F. Supp. 206 (E.D. Mo 1982), aff'd 707 F.2d 1005 (8th Cir. 1983) (hereinafter the Marafino case);

d. funding in the amount of $44,254.22 for the payment of the Circuit Court's attorneys fees in the cause styled Mary Susan Goodwin v. William M. Corrigan, et al., 555 F. Supp. 658 (E.D. Mo 1982), No. 83-1161, 83-1162, 83-1163 (8th Cir. March 6, 1984) (hereinafter the Goodwin case);

e. funding in the amount of $26,613.95 for the payment of the attorneys fees of Judge William M. Corrigan, separately named as a defendant in the Goodwin case;

f. funding in the amount of $600.00 for professional liability insurance for certain employees of the Juvenile Court.

4. The percentage increase in the proposed Circuit Court budget for 1984 over the 1983 budget estimate was less than the percentage increase in the entire proposed 1984 County budget over the 1983 County budget.

5. St. Louis County does not contend that the items in dispute in the Circuit Court's budget are unreasonable when compared with the expenditures necessary for the administration of all other county functions.

6. The Circuit Court made no request for travel funds for

the thirteen associate circuit court judges because these judges do not participate in submitting a unified court budget to the County. No associate circuit court judge requested travel funds in his own divisional budget.

7. The parties have made efforts to reach an agreement on the matters in dispute. On February 15, 1984, the County sent a written offer of settlement to the Court through the auspices of the Commission. The terms of the offer were:

a. the request for liability insurance for Judges Edwards and Weisman was refused as duplication of protection offered by the State Legal Expense Fund, § 105.710 et seq., RSMo Supp. 1983;

b. the amount of $2600.00 would be added to the previously appropriated amount of $1400.00 to raise the travel fund available to the 20 circuit judges to $4000.00;

c. the sum of $25,000.00 for the attorneys' fees in the Marafino case would be paid;

d. the sum of $15,000.00 for the attorneys' fees in the Goodwin case would be paid;

e. no amount would be advanced for Judge Corrigan's personal attorney in the Goodwin case, as this was deemed to be a personal benefit to the Judge;

f. professional liability insurance for the employees of the Juvenile Court working in the detention facility would be provided;

g. if an offer of settlement on any one of the above items was not accepted by the Court, the offer of settlement on the remaining items would be withdrawn.

The Circuit Court responded that overall it could not accept the non-negotiable terms. It was willing to accept the proposal to provide professional liability insurance for employees of the Juvenile Court and willing to discuss a small reduction in the bills submitted by Husch, Eppenberger, Donohue, Elson & Cornfeld and Padberg, McSweeney, Slater & Merz in exchange for

immediate payment. The Court was also willing to discuss the other items.

10. During the period of 1979 - 1980, a reorganization of the Juvenile Court resulted in a reduction in personnel of approximately forty (40) people.

11. The case of Kathleen Marafino v. the 21st Judicial Circuit was filed on November 17, 1978, and was tried on March 30 and 31, 1981. The District Court entered its judgment in favor of defendants on March 29, 1982. The judgment was affirmed by the United States Court of Appeals for the Eighth Circuit on June 13, 1983.

12. The Marafino case sought relief against the Circuit Court in its official capacity and against St. Louis County. At the time judgment was rendered in the case, all individual defendants had been dismissed from the suit. The specific relief prayed for included back pay, attorneys' fees, and an order requiring defendants to employ plaintiff as a staff attorney in the Juvenile Court.

13. Judge Franklin Ferris was Presiding Judge of the 21st Circuit Court and Judge Ninian Edwards was Juvenile Court Judge at the time the events which culminated in the filing of the suit occurred.

14. The Circuit Court retained Shulamith Simon and the firm of Husch, Eppenberger, Donohue, Elson and Cornfeld as its counsel to represent the Circuit Court, in its official capacity, in the Marafino case. The billings submitted by counsel, totalling $55,603.02, included all charges for preparation for and trial of the case and handling of the appeal and included cash outlays of $3,128.85. Copies of the billings were submitted to the

Commission.

15. St. Louis County adopted the brief prepared by the law firm for the Circuit Court on appeal in the Marafino case. The County's attorney was present during the trial, but the Circuit Court's attorney handled all trial examination.

16. The County refused to agree to an out of court settlement in the Marafino case.

17. The case of Mary Susan Goodwin v. William M. Corrigan, et al, was filed on October 16, 1980 and was tried commencing May 5, 1982. The Goodwin case sought relief against Judge William Corrigan as a separately named defendant, and against the Circuit Court in its official capacity. The specific relief sought included attorneys fees and an order reinstating plaintiff as a hearing officer in the Juvenile Court after her job had been eliminated during the Court reorganization and she had been reassigned. St. Louis County was originally a separate defendant in the Goodwin case. Its motion to dismiss was sustained. Thereafter, it was named as a defendant on a third party complaint filed by the Circuit Court seeking indemnification for any monetary award entered against the Circuit Court.

18. Judge James Ruddy was Presiding Judge of the 21st Circuit and Judge William Corrigan was Juvenile Court Judge at the time the events which culminated in the filing of the suit occurred.

19. The St. Louis County Counselor entered his appearance for St. Louis County, the Circuit Court and Judge Corrigan on November 10, 1980. He withdrew as attorney for Judge Corrigan on December 17, 1980 and as attorney for the Circuit Court on March 20, 1981.

20. The suit consisted of a Title VII Count which was heard by the Judge and a § 1983 Count which was tried before a jury. On May 7, 1982, the jury found in favor of the plaintiff and against defendant Corrigan. On December 30, 1982, the District Court issued its judgment, finding in favor of plaintiff and against the Circuit Court, and finding in favor of the Circuit Court on its third party complaint against St. Louis County. Judge Corrigan, the Circuit Court and St. Louis County all filed appeals from the adverse rulings as to them to the United States Court of Appeals for the Eighth Circuit.

21. In March, 1984, the Eighth Circuit issued its judgment finding in favor of plaintiff and against defendant Corrigan but remanded the claim against the Circuit Court and the County to the trial court for reconsideration of the proper allocation of burden of proof.

22. The County Counselor advised the Circuit Court that the County would not pay a judgment entered against the Circuit Court or any judge of the Court in the Goodwin case.

23. The Circuit Court retained Shulamith Simon and the firm of Husch, Eppenberger, Donohue, Elson & Cornfeld to represent the Circuit Court, in its official capacity, in defense of the Goodwin action. The billings submitted by counsel, in the sum of $44,254.22, included all charges for preparation for and trial and handling of the appeal of the Goodwin case, except for time and expenses in connection with oral argument of the appeal. Said billing included cash outlays of $4,139.22. A copy of the billings was submitted to the Commission.

24. The Attorney General informed Judge Corrigan that his office could not represent him in the Goodwin case.

25. Judge Corrigan retained Godfrey Padberg and the firm of Padberg, McSweeney, Slater and Merz to represent his interests individually in the Goodwin case. Padberg, McSweeney, Slater & Merz submitted a billing in the amount of $34,018.98, which included all charges for preparation for and trial of case and handling of appeal and which also included cash outlays of $3,036.08. A copy of the billing was submitted to the Commission.

26. The County did not receive the actual bills for the attorneys' fees in question, only a budget request for payment of the fees.

27. The County did not request from the Circuit Court additional documentation for the budget request for attorneys' fees.

28. Shulamith Simon and the firm of Husch, Eppenberger, Donohue, Elson & Cornfeld have represented the Circuit Court in previous matters, principally involving budget disputes with St. Louis County and issues as the the right of control over the employees and facilities of the Juvenile Court. In each of these prior instances, the bills submitted by counsel were paid by St. Louis County. The source of the funds was either appropriations from the unappropriated balance of the County General Fund or transferred from the Emergency Fund to an account of the Circuit Court en banc. Those cases included:

(a) juvenile court budget case, State ex rel. Judges for the 21st Judicial Circuit v. St. Louis County, 603 S.W.2d 545 (Mo Banc 1980)

Fee	$ 9,500.00
Expenses	738.33
	$10,238.33

The County appropriated the funds for this bill on November 26, 1980.

(b) circuit clerk's budget case, In Re 1980 Budget of circuit clerk of St. Louis County, 601 S.W.2d 30 (Mo. banc 1980)

Fee	$ 3,150.00

(c) 1979 budget case, In Re 1979 Budget of Juvenile Court of St. Louis County, 590 S.W.2d 900 (Mo. banc 1979)

Fee	$ 9,320.00
Expenses	831.58
	$10,151.58

(d) quo warranto case, State ex rel. St. Louis County v. Edwards, 589 S.W.2d 283 (Mo. banc 1979)

Fee	$ 9,750.00
Expenses	654.06
	$10,404.06

(e) 1976 budget case, In Re Budgets (1976) of Circuit Court, et al., Case No. 59, 426 (Mo. banc 1976) Unreported

Fee	$ 3,900.00
Expenses	232.35
	$4,132.35

In the 1976 case, the Missouri Supreme Court directed St. Louis County to pay the Circuit Court's Legal Fees.

29. The State Legal Defense Fund was created by Section 105.710 et seq., RSMo Supp. 1983. Senate Bill 275 was passed by the General Assembly in 1983, and became effective September 28, 1983.

30. Between 1979 and 1982, the Circuit Court had unexpended appropriations, which were returned to St. Louis County, in the following amounts:

CALENDAR YEAR	JUDICIAL ADMINISTRATION	CIRCUIT COURT	TOTAL
1982	$ 512,122.00	$ 30,943.00	$ 543,064.00
1981	132,338.00	25,406.00	157,744.00
1980	100,260.00	16,107.00	116,367.00
1979	98,177.00	41,164.00	139,341.00

Figures for calendar year 1983 are not yet available, but the parties expect that there will be unexpended appropriations returned to St. Louis County by the Circuit Court.

Conclusions of Law

I

This Commission has jurisdiction over this proceeding pursuant to Section 477.600 RSMo Supp. 1983 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.

II

Section 476.270 RSMo 1978 provides as follows:

> All expenditures accruing in the circuit courts, except salaries and clerk hire which is payable by the state, except all expenditures accruing in the municipal divisions of the circuit court, and except as otherwise provided by law, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands.

III

Section 478.023 RSMo Supp. 1983 provides:

> All of said salaries and expenses herein provided for circuit and associate circuit judges shall be paid out of the state treasury and shall constitute the total compensation for all duties performed by, and all expenses of, said judges, and there shall be no further payment made to or accepted by said judges for the performance of any duties required to be performed by them under the law.

IV

Article X, Section 21 of the Missouri Constitution provides:

> The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency or counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

V

The intervenors in this cause, the attorneys whose fees are at issue, have an interest in these proceedings different from that of the general public. Judicial Finance Commission Rule of Practice and Procedure 13.09.

VI

The essential issue in the first count before the Commission is whether the request for liability insurance for two judges of the circuit court is reasonably necessary for the functioning of the circuit court, and if found to be reasonable, whether it constitutes an expenditure of the court for which the county is financially responsible.

The Missouri Supreme Court has recently addressed this identical issue, as it was presented in the 1983 St. Louis County Circuit Court budget dispute. In the 1983 dispute the circuit court requested liability insurance for each of the court's 33 judges. The Commission decided that such insurance was a reasonably necessary expenditure of the court system which the county was obligated to pay. At the time of that decision, no alternative protection was available to the circuit court judges. The Supreme Court in a de novo review of the case, acknowledged that, "the swelling of judges' administrative responsibilities coupled with the trend toward narrowing judicial immunity may well warrant extending liability insurance coverage to judges and treating the cost of such insurance as a necessary court expense." In Re The 1983 Budget for the Circuit Court of St. Louis County, Missouri, 665 S.W.2d 943, 944 (Mo. banc 1984). However, the Court decided that the newly enacted State Legal Defense Fund, §§ 105.711 et seq.,

RSMo Supp. 1983, now provides comprehensive protection for "judges in the performance of their official duties and responsibilities." "In the absence of a showing that the coverage under [the State Legal Expense Fund] is so inadequate as to jeopardize the orderly operation of the courts, we cannot conclude that the acquisition of a separate insurance policy constitutes a reasonable cost of the circuit court chargeable to the county." Id. at 945.

The Supreme Court's ruling on the 1983 budget dispute is dispositive of this issue in the 1984 budget dispute.

VII

Petitioners next contend that the circuit court's increase in its travel budget, from $1,400.00 for 33 judges and the court administrator in 1983 to $19,000.00 for the twenty circuit judges and the administrator in the 1984 budget, is not reasonably necessary for the court to carry out its judicial functions. This issue also arose in the 1983 budget dispute when one judge requested an increase in his individual travel budget.

The circuit court has the burden of convincing the Commission that this amount is reasonable. § 50.640 RSMo Supp. 1983. It has not carried that burden. There has been no showing of necessity here. As we observed in our consideration of the issue last year, in order to maintain a high level of judicial competency, judges should attend seminars which will keep them abreast of rapid developments in the law. Training and continuing education can afford more than just a personal benefit to a judge. It serves as a benefit to all those who rely on his expertise. However, while an increase in funding over the meager sum of $1400.00 for training which may involve out-of-state travel might be desirable, the court must demonstrate a factual need for that "increase". In Re

1980 Budget of the Circuit Court of St. Louis County, 601 S.W.2d 10, 11 (Mo. banc 1980). No attempt has been made to document such a need here. There is no reference to the available seminars, courses of study or symposiums offered by a wide variety of professional organizations dedicated to judicial training. There is no showing of opportunities missed or hardship incurred by judges who did not have adequate funding available to them in the past. There is no justification for a sudden dramatic increase in the budget item from $1400 to $19,000. The circuit court has not carried its burden. There has been no demonstration that this expenditure is lawful. State ex rel. Judges for the Twenty-Second Judicial Circuit v. the City of St. Louis, 494 S.W.2d 39, 41 (Mo. banc 1973). Therefore, the county is not obligated to fund it. State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1967).

VIII

The county next submits that it is not legally obligated to pay fees totalling $99,857.24 for legal representation of the circuit court in both the Marafino and Goodwin cases because these causes were civil rights suits. Petitioner reasons that there is no statutory discretion granted the circuit court to compel funding for defense of civil rights actions, the county has never previously funded attorneys' fees for defense of civil rights cases and funds to pay attorneys' fees incurred in the defense of civil rights suits are not reasonably necessary for the operation of the court.

We decline to adopt such a myopic reading of either the statutes or the case law. Section 476.270, RSMo 1978, dictates that all lawful expenditures of the circuit court shall be

funded by the county. Case law has interpreted the term "lawful expenditures" to include those fixed by statute or absolutely reposed in the court's discretion, those previously authorized by the local government unit and those reasonably necessary for the court to carry out its functions. State ex rel. Judges of The Twenty-Second Judicial Circuit v. The City of St. Louis, 494 S.W. 2d at 41.

The county has a long tradition of paying attorneys' fees to private firms (often the same firm intervening here) to represent the circuit court in litigation. To attempt to distinguish the present cases from those in the past on the basis of the cause of action which is involved would seem to be a splitting of legal hairs. Both of these suits emanated from the official administrative responsibilities of judges acting as officers of the court. The official nature of judicial administrative decisions has been recognized in Missouri. Pogue v. Swink 284 S.W.2d 868 (Mo. 1955). Whether approving a budget proposal or approving a personnel decision, the exercise of judicial discretion is required for the continued functioning of the court. To argue that defense of a suit which seeks to challenge the exercise of that discretion is not reasonably necessary for the operation of the court flies in the face of common sense and legal tradition.

Intervenors Simon and Arnold for the firm of Husch, Eppenberger have established a factual need to support the funding of this budget request.[1]

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[1] The County has only challenged the funding of this budget request, claiming it could not determine the reasonableness of the request because of the lack of supporting documentation by the Circuit Court. It has not specifically raised an objection to the amount of these very high fees.

IX

The county next contends it is not legally obligated to fund respondents' budget request of $26,613.95 to pay Judge William M. Corrigan's personal attorney in the Goodwin case because such fees are not lawful expenditures arising in the circuit court within the meaning of § 476.270 RSMo 1978. It submits that the expenditures were incurred by the Judge in the defense of allegations asserted against him in his personal capacity and only after the Judge refused representation by the County Counselor's Office. Payment of such fees would be a personal benefit to the Judge and as such prohibited by law.

We cannot agree. The Goodwin case involved reassignment of a juvenile court hearing officer within the court system. Traditionally, judges have shouldered the responsibility of appointing and removing officers whose existence is necessary to the court. 46 Am Jur.2d § 27 at 113. It has been clearly established in Missouri that personnel decisions regarding court staff involve

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Intervenors have provided the Commission with time sheets supporting the fees incurred here and have testified that the actual expenses were far greater than those finally billed to the court. While there is no indication that had the same persuasive effort been made earlier, during the budget negotiations with the County, it would have produced agreement on this issue, the effort should have been made.

Intervenor Arnold argues that with the establishment of the Finance Commission, existing case law, including that requiring a court to persuade the county of the reasonableness of its budget requests, is no longer persuasive authority; with the enactment of the legislation creating the Finance Commission, the only showing of reasonableness the circuit court must make is to the Commission.

We cannot agree. The whole thrust of this legislation is to create an atmosphere of conciliation in which disputes can be reconciled before resorting to judicial proceedings. The interpretation offered by Intervenor would foreclose the dialogue necessary for this process. See In Re The 1983 Budget For The Circuit Court of St. Louis, 665 S.W.2d at 944.

the exercise of judicial discretion. Pogue v. Swink, 284 S.W.2d at 872. Other jurisdictions have also acknowledged the responsibilities of judges to supervise the administrative processes of judicature. In Re Kuflik, 342 F.2d 421 (2nd Cir. 1965). In the exercise of these duties the judge acts not on his own behalf but as an officer of the court. His authority and power are incident to and grow out of the power of the court itself. Department of Public Works v. Legg, 29 N.E.2d 515, 517 (Ill. 1940). Therefore, expenditures stemming from a lawsuit which results from the exercise of that power are proper expenditures of the circuit court and not merely a personal benefit to the judge.

Petitioner further alleges that legal representation was made available to Judge Corrigan by the County Counselor's Office but that he rejected it to seek his own counsel. In acknowledging that it initially was willing to represent Judge Corrigan, the county contradicts its own argument that it cannot legally be expected to pay for Judge Corrigan's defense. Had Judge Corrigan accepted the county's offer, his attorney's "fees" would have willingly been paid by the county in the form of salary to an assistant county counselor. However, we cannot conclude that such representation would have been appropriate in this case. The adversary relationship between Judge Corrigan and the county which existed throughout this litigation would seem to give rise to a question of conflict of interest on the county's part had it represented him. In Missouri it is well established that sound public policy requires that an attorney should not represent conflicting interests. Gardine v. Cottey, 230 S.W.2d 731, 740 (Mo. banc 1950); State v. Crockett, 419 S.W.2d 22, 29 (Mo. 1967). Our Supreme Court's Rule 4 addresses this specific issue when it says:

> A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests.

Missouri Supreme Court Rule 4 at EC 5 - 15.

Courts have the inherent power to incur expenses to preserve their existence and protect the orderly administration of business when necessary personnel are not provided by conventional methods. State ex rel. Geers v. Lashly, 449 S.W.2d 598 (Mo. 1970). On the facts in evidence here we cannot find that alternative representation was available to Judge Corrigan. As we have already found that the fees were properly related to court functions, we conclude that the necessity for this budget item has been established by intervenor Padberg.

X

The final budget request under dispute is the amount of six-hundred dollars ($600.00) for professional liability insurance in the Juvenile Court Children's Building budget. There is little evidence presented to the Commission to demonstrate who exactly could be covered by this insurance policy, other than a reference during the hearing to detention officers.

Certainly, personnel who are entrusted with the supervision of juveniles in our court system may run the same, if not higher risks, as other court personnel. However, no record has been made to give the Commission the factual basis required to establish the necessity of this budget request. In Re 1980 Budget of The Circuit Court of St. Louis County, 601 S.W.2d at 11. Once again, the circuit court has failed to carry its burden of proof. § 50.640 RSMo Supp. 1983. Therefore, on this point the county must prevail.

XI

Finally, petitioner contends that funding of any of these budget requests is prohibited by Article X, Section 21 of the Missouri Constitution, (the Hancock Amendment); neither the circuit court nor the Judicial Finance Commission, as state agencies, can mandate payment of these requests from the county. As we have held that no reasonable necessity has been established for the liability insurance or the increase in travel funds, we need not address this point with regard to those items. However, we will address it as it impacts both on the fundings of Intervenors' attorneys' fees, the requests which were established to be reasonably necessary expenditures of the court, and on the role of the Finance Commission. In doing so we are mindful that an administrative body or even a quasi-judicial body is not and cannot be a court in a constitutional sense. It has no judicial power and cannot declare the law. State Tax Commission v. Administrative Hearing Commission, 641 S.W.2d 69, 75 (Mo. banc 1982).

However, as with all quasi-judicial bodies, we are required to investigate facts, hold hearings and draw conclusions from them as a basis for an official action and to exercise discretion of a judicial nature. Black's Law Dictionary 1121 (5th ed. 1979); State ex rel. Hon. Gene McNary, et al. v. Hon. Samuel J. Hais, No. 65426, Slip op. at 3 (Mo. banc May 15, 1984); State ex rel. State Highway Commission v. Weinstein, 322 S.W.2d 778, 784 (Mo. banc 1959). Consideration of the question is consistent with the exercise of this discretion.

Petitioner cites State ex rel. Sayad v. Zych, 642 S.W.2d 907 (Mo. banc 1982) for the proposition that the Hancock Amendment prohibits state agencies such as the St. Louis Police Board and, in this case the circuit court, from mandating a budget increase

which constitutes a new or increased level of activity over the agency's 1980-81 budget level. First, we cannot agree that the court is merely another state agency within the ambit of Hancock. The judiciary is a separate coequal branch of government. MO. CONST. art. V, § 1. The Hancock Amendment is both a spending and taxing limitation on the legislative and executive branch of government only. It is clear from the language of Hancock that it was intended to address only the constitutional taxing power as it is exercised by the general assembly for state purposes. MO. CONST. art. X, § 1. It does not control the functioning of that third branch of government, the judiciary.

Next, assuming arguendo that Hancock did apply to the courts, it does not offer Petitioner the protection it seeks in this instance. The County has appropriated funds for payment of private attorneys' fees for the Circuit Court before and after the Hancock Amendment had been in full force and effect. Therefore, the County can hardly claim that this is a new activity. Nor can we accept the contention that this is an increased level of activity because the actual cost is more than previous appropriations for attorneys' fees. There are very few expenditures necessary for the operations of courts or counties which have not increased in dollar amount over the last four years. When utility costs rise, use may be modified, but cannot be stopped entirely. Common sense dictates that the same principle apply here. Adequate representation against legal attack may be more costly than in the past, but it is still as necessary an expenditure as in the past. The sums billed here have been adjusted by the attorneys to reduce the burden on the parties.

Therefore, even if the county were a state agency for purposes of the Hancock Amendment, the facts of this situation would seem to preclude the application of Hancock.

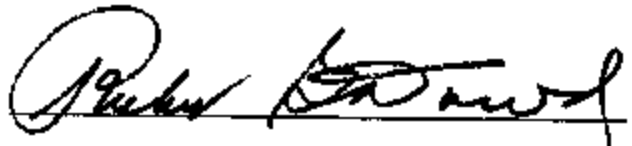
Finally, petitioner claims that Hancock prohibits the Finance Commission from mandating payment from the County. We do not mandate payment here. To do so would usurp the inherent power of the courts to compel payment for all reasonably necessary expenditures of court. State ex rel. Weinstein v. St. Louis County, 421 S.W.2d 249, 255 (Mo. banc 1967). Our role is only to determine, by mediation or, if necessary, adjudication, the reasonableness of the disputed budget requests when the parties involved cannot reach agreement on that point. §§ 50.640 and 477.600 RSMo Supp. 1983. In Re The 1983 Budget For The Circuit Court of St. Louis, 665 S.W.2d at 944.

Decision

It is the decision of this Commission that Petitioner St. Louis County is not obligated to fund the premium for professional liability insurance for Judges Edwards and Weisman or for the employees of the Juvenile Detention Center. Furthermore, the County is not obligated to increase funding for travel for the twenty Circuit Court judges.

However, the County is obligated to fund the budget requests for attorneys' fee arising out of the Goodwin and Marafino cases, as documented before the Commission.

DATED this 29 day of May, 1984



Honorable Robert G. Dowd, Chairman

Judicial Finance Commission
State of Missouri

St. Louis County, Petitioner	)	
vs.	)	No. 83-0004
Judicial Circuit No. 21, St. Louis County, Missouri, et al., Respondent	)	

DISSENT

Article X, Section 21 of the Missouri Constitution (the Hancock Amendment) requires the state to fund any new activity or service or any increase in the level of an activity or service beyond that which had been required of the counties by law in fiscal year 1980. In our opinion each budget request presented here represents either a new activity or an increased level of activity and, as such, is prohibited by Hancock. Because the majority finds that only the requests for attorneys' fees have been established as reasonably necessary we will only specifically address those items.

In the past St. Louis County has paid private attorneys who have represented the Circuit Court in litigation against the County. However, the record indicates that the amount of the fees requested this year far exceeds anything advanced in past fiscal years. In fact, this year's total request for the firm of Husch, Eppenberger, Donohue, Elson & Cornfeld exceeds the sum total of documented requests for the years 1976 through 1980.

We don't have a ready definition of "increased level of activity", but we know it when we see it. It is obvious

that this is an increase which the Hancock Amendment was enacted to protect counties against. Boone County Court v. State of Missouri, 631 S.W.2d 321, 325 (Mo. banc 1982). Furthermore, it is clear to us that the Circuit Court is a state agency. Our Supreme Court has previously declared the St. Louis Board of Police Commissioners to be a state agency for the purposes of Hancock. State ex rel. Sayad v. Zych, 642 S.W.2d 907 (Mo. banc 1982). The Circuit Court here bears many similarities to the Police Board. Both perform state functions, both have primarily been funded by the respective local governments, both have similar budgetary processes. McNeal v. Roach, 520 S.W.2d 69 (Mo. banc 1975). The constraints of Sayad should be applied to the circuit courts as well as to the Police Board.

The Circuit Court has requested not only payment for the court's attorneys in the civil rights litigation over the past several years, but payment for Judge Corrigan's personal attorney in the Goodwin case. Judge Corrigan retained this attorney after turning down an offer of representation by the County. We cannot see how this can be viewed as anything but a personal benefit to the Judge who is a state employee. As such, it should be funded by the State. 478.023 RSMo Supp. 1983. The court as a state agency cannot mandate payment from the county.

Since the Hancock Amendment became law, we have had a whole new ballgame in this state. State agencies and state employees can no longer expect to mandate additional

financial responsibilities for the counties.[1] It is time we all played ball by the new rules.

Honorable Douglas Haile
Honorable Gene Huckstep
Honorable Archie McGee

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[1] We, however, agree with the majority in observing that the Finance Commission is in no way mandating payment of anything here. Our function is to determine the reasonableness of the circuit court's budget request. It is the court itself which holds the power to mandate payment after we have established the reasonable necessity of the request.