JUDICIAL FINANCE COMMISSION
State of Missouri

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

St. Louis County, Missouri, et al., Petitioner,	)	
vs.	)	No. 85-0008
Judicial Circuit No. 21, St. Louis County, 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 18, 1985, by St. Louis County, Petitioner hearin, seeking the determination that the County is not legally obligated to provide the funds for attorneys' fees requested by the Circuit Court.

Pursuant to § 50.640.2 RSMo Supp. 1984, a settlement conference was held on February 11, 1985, at the St. Louis County Government Center, Clayton, Missouri, with Commission member, Honorable Floyd McBride, in attendance. There was no resolution of the issue at that time.

Prior to the conference, Mr. F. William McCalpin of the firm of Lewis and Rice petitioned the Commission for leave to intervene. Such permission was granted.

Following written notice to the parties and intervenor, a hearing was held on April 12, 1985, at the Supreme Court Building, Jefferson City, Missouri. At the hearing, Petitioner was represented by Thomas Wehrle, St. Louis County Counselor. Mr. McCalpin presented his own case. Judge Robert Campbell, newly elected Presiding Judge of the 21st Judicial Circuit also entered an appearance and testified before the Commission.

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 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, 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. Intervenor F. William McCalpin was the attorney who represented Presiding Judge William Corrigan and other circuit judges in the legal proceedings brought against them by 12 of the 13 associate circuit court judges.

4. On June 8, 1984 the 21st Judicial Circuit Court voted en banc to make certain changes in the Local Court Rules of the 21st Judicial Circuit. The changes concerned election of the Presiding Judge and the supervision of files and docketing procedures.

5. On June 25, 1984, the associate circuit judges filed a petition for writ of prohibition in the Missouri Court of Appeals for the Eastern District challenging the amendments to the Local Court Rules of the 21st Circuit and naming Judge Corrigan, Robert Ruhland and Raymond Clifford, Circuit Clerk, as respondents. The Eastern District ordered the matter transferred to the Supreme Court.

6. The associate circuit court judges subsequently filed a petition for declaratory judgment in the Eastern District Court of Appeals, naming 20 circuit court judges, including Judge Corrigan, as respondents. This cause was also transferred to the Supreme Court by the Eastern District.

7. In July, 1984, a petition for injunction and declaratory judgment was filed by the associate circuit judges, naming 13 circuit judges, including Judge Corrigan, as respondents.

8. On July 27, 1984, plaintiff associate circuit judges filed a motion for a temporary restraining order and preliminary injunction.

9. Attempts were made to move this entire dispute to the Supreme Court in the exercise of its original injunction, under the supervisory authority conferred by Article V, Sections 4 and 8 of the Missouri Constitution. The attempts were unsuccessful.

10. In June, 1984, Judge Corrigan made demand on the County Counselor's office to represent him in the writ proceedings and to defend him and the circuit judges named as respondents in the other actions pending against them. The Counselor refused the request, as he had refused the request of the associate circuit judges to represent them in bringing these actions, on the grounds that it was an internal "squabble".

11. Judge Corrigan requested representation from the Attorney General's office to defend the writ and the suit for declaratory judgment. The decision of the Deputy Attorney General was to deny representation on the grounds that the suits were an "internal matter...there was no statutory obligation to represent the judges."

12. Judge Corrigan then retained F. William McCalpin of the firm of Lewis and Rice with the understanding that Mr. McCalpin would look only to the county for payment of his fees, not individually to the judges who were to be his clients.

13. Line Item 2011 in the Circuit Court's budget is for Professional Services. The description of that line item limits payments from that account to psychiatrists, interpreters and guardians ad litem.

14. Attorneys' fees have never been included in Line Item 2011. In the past, payment of fees has been accomplished by a special requisition at the time the final bill for services is rendered.

15. The normal procedure for procuring payment of a funding request in St. Louis County is to make a requisition to the

Accounting Department, which will be referred to the Budget Office to determine if it is appropriate. Final approval or disapproval is made by the Director of Administration.

16. No request has been made of the Accounting Department to pay the fees in question.

17. The proposed 1985 budget request for the 21st Judicial Circuit was first submitted to the County in early August, 1984.

18. On November 14, 1984, Judge Corrigan requested that $20,000.00 be added to the proposed $176,000.00 balance in Account 2011, Professional Services, to cover attorneys' fees incurred by Mr. McCalpin.

19. On November 16, 1984, the Circuit Court en banc voted to recommend inclusion of an additional $20,000.00 in Account 2011, but the amount was to be divided as follows: "$10,000.00 for Mr. McCalpin for services already rendered and $10,000.00 for fees resulting in other litigation which may be filed against the Court en banc".

20. The State Legal Expense Fund, § 105.711 RSMo Supp. 1984 et seq, was enacted into law, replacing the State Tort Defense Fund, on September 28, 1983.

21. The present Attorney General has not yet taken a position on coverage of the State Legal Expense Fund or representation under it.

22. The Office of Administration, which helped to draft the the legislation which created the State Legal Expense Fund, confirms that that legislation specifically contemplated payment of amounts

other than damage claims. The use of the terms "claims or judgment" was intended to enable the Fund to be used to pay attorneys' fees in proceedings such as injunction actions where no claim for actual money damages had been made. However, the situation of paying attorneys' fees for a state officer, not represented by the Attorney General, was not specifically contemplated at the time of drafting because, in the usual case, the Attorney General would be handling representation of the officer.

CONCLUSIONS OF LAW

I.

The Judicial Finance Commission has jurisdiction over this proceeding pursuant to Section 477.600 RSMo Supp. 1984 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. (Emphasis added).

III.

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.

IV.

Section 105.711 RSMo Supp. 1984 provides in part:

1. There is hereby created a "State Legal Expense Fund" which shall replace the "Tort Defense Fund" and which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The State of Missouri, or any agency thereof, pursuant to section 537.600, RSMo; or

(2) Any officer or employee of the state of Missouri or any agency thereof, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency thereof, provided the moneys in this fund shall not be available for payment of claims made under Chapter 287, RSMo.

V.

Section 105.716 RSMo Supp. 1984 provides, in part:

Any investigation, defense, negotiation, or compromise of any claim covered by sections 105.711 to 105.726 shall be conducted by the attorney general.

VI.

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

VII.

The issue before the Commission, the payment of circuit judges attorneys' fees for defense of legal actions pertaining to the administration of the circuit court, can be refined into three questions: First, whether legal representation for certain circuit judges to defend against suits involving the constitutionality of administrative procedures in the circuit court, the construction of statutes and the determination of the authority of a presiding circuit judge is necessary for the functioning of the circuit court. Second, if representation is found to be necessary, whether the resulting attorneys' fees "shall be paid out of the treasury of the county in which the court is held...." § 476.270 RSMo 1978. Third, whether, if found to be the type of necessary expenditure traditionally funded out of the county treasury, whether this is now prohibited by Article X, Section 21 of the Missouri Constitution, the Hancock Amendment.

As to the question of the necessity of legal representation to the functioning of the circuit court, we are guided by the recent Supreme Court ruling on the reasonableness of other attorneys' fees for the same circuit in a previous budget year: "expenditures arising from a lawsuit that results from the exercise of judicial

authority and discretion are proper expenditures of the circuit court." In re The 1984 Budget for the Circuit Court of St. Louis County, Missouri, 687 S.W. 2d 896, 901 (Mo banc 1985).

The lawsuits which triggered the attorneys' fees in the cause before the Commission involved the validity of the Constitution and statutes of the State of Missouri. Each of the several actions filed during the summer of 1984 required a determination of whether certain local court rules of the 21st Circuit comported with applicable constitutional and statutory provisions. The Supreme Court, in ultimately deciding these issues, clarified the function and importance of local court rules:

> "[B]y local rule, not inconsistent with the Constitution, Supreme Court rule or statutes, a circuit court may provide, inter alia, for procedures for the administrative, budgetary, accounts, records and personnel workings of the entire circuit court and its divisions..."
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> "...the presiding judge possesses a substantial variety of powers...[however] local rules adopted by a majority of the circuit judges may direct how these powers are to be implemented...[T]he presiding judge in exercising the administrative powers must abide by the local court rules as adopted by the circuit judges."

Gregory v. Corrigan, 685 S.W. 2d 840, 843 (Mo banc 1985).

Petitioner contends that because both plaintiffs and respondents in the litigation were judges from the same circuit and the issues involved the internal workings of the court, the matter was merely an internal "squabble" for which legal representation and the attendant fees are not justified. We cannot agree. The subject matter of the litigation went to the very heart of the operation of a court. What more logical parties to any such action than the judges of that court? Furthermore, while we are aware that the

Supreme Court's supervisory powers raise the option of administrative consideration of the dispute and that the Court has recommended, in the future, that disputes of this sort be presented to the Supreme Court in the first instance, we note that the Supreme Court has not foreclosed the "application of regular judicial processes" in situations such as this. Gregory v. Corrigan, Id. at 3. Furthermore, the Supreme Court's own actions in handling this matter have sanctioned the use of litigation in determining the validity of these local court rules.[2]

We must conclude that the formulation and adoption of valid court rules are essential to the functioning of a circuit court and therefore, that defense expenses incurred in litigation involving challenges to those rules are necessary and proper expenditures of a circuit court.

VII.

Having determined that these fees were necessary to the operation of the circuit court, we now address the question of responsibility for their funding.

Intervenor McCalpin relies on § 476.270 RSMo 1978 to contend that the county is responsible for payment of these fees, as it is for all expenditures of the circuit court. However, we are mindful that that statute specifically exempts out situations "as otherwise provided by law". Since the passage into law of the

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[2]This Commission not only heard testimony that attempts to have the Supreme Court handle the case under its supervisory powers were unsuccessful, but also notes that the Court itself appointed the trial judge who finally heard the case.

State Legal Expense Fund, § 105.711 RSMo Supp. 1984 et seq., provision for payment of legal expenses would seem to fall four-square into this exception.

In determining the issue before us we are mindful that statutory construction is a matter of law. Staley v. Missouri Director of Revenue, 623 S.W. 2d 246 (Mo. 1981). In reviewing and seeking to harmonize the statutory law in this case, we do not attempt to usurp the role of a court but only to determine the reasonableness of the demand made on the county budget here in as thorough a fashion as possible.

When studying legislation to determine the intent of the legislature, in requiring counties to fund most of their circuit court expenditures, we will consider similar or related subject matter where such related statutes shed light upon the meaning of the statute in question, even though such statutes are found in different chapters and were enacted at different times. Weber v. Missouri State Highway Commission, 639 S.W. 2d 825 (Mo. 1982). Provisions of a statute having special application to a particular subject will be deemed a qualification to another statute general in its terms. City of Raytown v. Danforth, 560 S.W. 2d 846 (Mo. 1977).

Section 105.711.2 establishes that "[m]oneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against...any officer or employee of the State of Missouri... upon conduct of such officer or employee arising out of and performed in connection with his or her official

duties on behalf of the state..."

Section 105.716.1 RSMo Supp. 1984 goes on to say that "[a]ny defense of any claim covered by the State Legal Expense Fund shall be conducted by the attorney general...."

These sections of the State Legal Expense Fund would seem to demonstrate an intent on the part of the legislature to no longer require counties to shoulder the specific responsibilities of paying any judgment entered against state officials such as judges, or of providing for their legal representation.[3] The Fund was in full force and effect at the time Judge Corrigan requested legal representation from the Attorney General's office. Testimony before this Commission established that the Fund coverage was not limited to suits for money damages but, that the drafters definitely contemplated a much broader umbrella of coverage.[4] The litigation for which Judge Corrigan sought to be defended included a writ of prohibition and suits for declaratory judgment. Not only Judge Corrigan but other state employees were named defendants. The issues in the case presented questions of statutory interpretation and claims of constitutional violations. That the plaintiffs were also state employees--judges of the same circuit--would not seem to necessarily imply frivolousness nor should it fatally taint the

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[3]This conclusion is not inconsistent with our finding that attorneys' fees for representing Judge Corrigan and the court, which were requested in 1984, were reasonable and necessary. At the time those attorneys were retained and their legal fees were incurred, the State Legal Expense Fund was not the law. In re 1984 Budget for the Circuit Court of St. Louis County, 687 S.W. 2d at 900.

[4]In support of this argument, we note that the name of this Fund was changed from State Tort Defense Fund to State Legal Expense Fund.

proceedings. Were a state employee to sue his or her supervisor for some form of job discrimination or harassment, the contention that the matter was merely an "internal squabble" could not be considered a viable excuse for denying coverage.

We must conclude that the legislature intended to remove the financial burdens arising from lawsuits against judges from the local governing bodies and have the state assume responsibilities, including the that of legal representation. Therefore, the inclusion of this item in that portion of the court's budget which is funded by the county is not necessary.[5]

IX.

Having found that the request for attorneys' fees is not reasonable under the law, we need not reach the question of the applicability of the Hancock Amendment. There is also no need to address the propriety of the means used to contract for legal services here. See In re The Budget of the Circuit Court of St. Louis County, 687 S.W. 2d at 899.

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[5]We do not wish to preclude the possibility that a court and a local government may agree to the funding of a line item for legal representation in a court's budget. We only address here the situation where a county objects to such an item.

DECISION

Payment of defense expenses incurred in litigation involving challenges to local court rules is a necessary and proper expenditure for a circuit court. However, St. Louis County is not required to fund this type of expenditure because the legislature has now provided another means of funding, The State Legal Expense Fund.

Dated this 4th day of June, 1985

Honorable Robert G. Dowd, Chairman

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