JUDICIAL FINANCE COMMISSION
STATE OF MISSOURI

ST. LOUIS COUNTY, Petitioner,	)	
vs.	)	No. 83-0002
JUDICIAL CIRCUIT NO. 21, ST. LOUIS COUNTY, MISSOURI, et al., Respondents.	)	

COUNT I, DISSENT

Petitioner contends that both State ex rel Sayad vs. Zyche, 647 S.W.2d 907 (Mo. banc 1982) and Boone County Court vs. State of Missouri, 631 S.W.2d 321 (Mo. banc 1982) preclude a requirement that the county expend funds for this liability insurance. We must agree.

The Missouri Supreme Court in Sayad rejected a request for budget increases from the St. Louis Board of Police Commissioners on the grounds that the Police Board was a state agency and therefore the requests for the funds constituted a state mandated increase in the level of county activity. The circuit court in the present case is also a state agency, regulated by the legislature. Furthermore, the judges and clerks of the court are state employees, § 478.013 RSMo 1978. Clearly, then, the strictures of Sayad apply here.

Petitioner cites the Boone County case for the proposition that the funding request constitutes an increase in the county's level of activity or service and is therefore prohibited. This requested insurance item has never been included in any previous budget. The purpose of the Hancock Amendment is to prevent the state from requiring local government to assume a greater proportion of currently shared financial responsibilities and to eliminate the state's power to mandate new or increased levels of service or activity performed by local government without state funding. Id. at 325. This request does constitute a new activity. Therefore, it is clear

that the Hancock Amendment was meant to apply in this situation.

Judges McGee, Haile, and Huckstep

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COUNT II, DISSENT

Continuing judicial education is necessary and has been recognized by the Supreme Court of the United States as vital to the judiciary. Judicial training takes many forms, from the formal sessions at the National Judicial College in Reno, Nevada, down through seminars, conferences, and meetings.

Family law is a vital part of the law. Juvenile and family matters effect the very fabric of our society. The Foundation of National Council of Juvenile and Family Court Judges deal with family and juvenile problems on a national scale. Their meetings, conferences, and seminars constitute valuable judicial training.

To have a member of the circuit court on the board of trustees of such an organization and to have the Court benefit from his feedback to the Court gained at such conferences, seminars, and meetings, is a valuable judicial training experience and certainly assists the Court in carrying out its functions.

The funds made available to the Twenty-first Judicial Circuit at St. Louis County for judicial training purposes are paltry indeed. In today's economy the sum of $1,400 for 33 judges is absurb on its face.

In addition, it has been the budgetary custom in St. Louis County for each judge to submit his own budget for his divisional needs and for the Court En Banc to submit a budget for the overall general needs of the Court. This has been the custom and practice in St. Louis County for several years. Judge Edwards has complied with this custom

by requesting travel money for judicial training in his individual divisional budget.

Therefore, the request is reasonable and necessary and in conformity with the budgetary custom of St. Louis County, and St. Louis County is obligated to fund the travel expenses requested by Judge Edwards in his divisional budget.

Judges Sanders and Yeaman

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vs.	)	NO. 83-0002
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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 6, 1983 by St. Louis County, Petitioner herein, seeking the determination that the County is not legally obligated to provide professional liability insurance for each judge in the 21st Judicial Circuit nor obligated to provide funds for out-of-town travel as requested by the Honorable Ninian Edwards.

Pursuant to § 50.640.2 RSMo Supp. 1982, a settlement conference was held on March 18, 1983 at the St. Louis County Government Center, Clayton, Missouri with Commission members Judge James Sanders and Judge Gene Buckstep in attendance. There was no resolution of the issues at that time.

Following written notice, a hearing was held on May 17, 1983 at the Supreme Court Building, Jefferson City, Missouri. At the hearing Respondent's Motion to Dismiss was denied. The parties stipulate to the relevant facts as contained in Petitioner's stipulation of facts. Petitioner was represented by Thomas Wehrle, St. Louis County Counselor. Robert Ruhland spoke for the Circuit Court. The Honorable Ninian Edwards presented his own case.

Findings of Fact

1. Petitioner St. Louis County is a first class county of the State of Missouri operating under a charter form of government.

2. Respondents are the 21st Judicial Circuit of St. Louis County

and Judge Ninian Edwards, the duly elected and acting Circuit Judge of Division 12 of the 21st Judicial Circuit.

3. The 21st Judicial Circuit Court is composed of 20 circuit court judges and 13 associate circuit court judges. Judge William Corrigan is currently Presiding Judge.

4. Circuit judges receive their salaries from the State of Missouri.

5. The fiscal year 1983 circuit court budget filed with the county included a request for funding in the amount of three hundred fifty dollars ($350.00) per judge to pay the premium for a professional liability insurance policy so as to provide each judge with this type of insurance coverage.

6. The judges, as part of their responsibilities, supervise juvenile court personnel, including social workers, bailiffs, court reporters, and secretaries. These people are county employees.

7. At least one suit brought by a county employee against the circuit court is pending in federal court. The judgment in that case holds the county liable for attorneys' fees incurred by the judges.[1]

8. The county already maintains liability insurance coverage on doctors, prosecuting attorneys, police officers, jailors, dentists, nurses and ambulance drivers, among others. The annual expense to the county is $769,310.00. All of these individuals are county employees.

9. The county denied the court's request for liability insurance and deleted the item from the final budget.

10. Judge Arthur Litz was Presiding Judge of the circuit court at that time. Judge Litz advised the Chairman of the St. Louis County City Council in writing that the court did not accept this reduction but would agree to all other reductions in the court en banc budget.

11. In addition to the court en banc budget, each judge submits a separate budget for his division, which covers individual expenditures,

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[1] Mary Susan Goodwin v. Circuit Court of St. Louis County, No. 80-1740-C(5) (E.D. Mo. Dec. 30, 1982).

such as robes, memberships, in-state travel, and law library.

12. Judge Ninian Edwards, in his separate Division 12 budget for fiscal year 1983 requested seven hundred fifty dollars ($750.00) for out-of-town travel to the Board of Trustees of the National Council of Family and Juvenile Court Judges.

13. Judge Edwards has made similar requests in his fiscal year 1980, 1981 and 1982 budgets. Each request has been denied.

14. Judge Edwards, in a letter to the Chairman of the County Council, advised that he did not accept this reduction in his division budget.

15. The county already funds an out-of-town travel item as an expenditure in the court's en banc budget. In the fiscal year 1983 budget $1,000 is allotted for the 33 judges. $400 is allotted to the judicial administrator.

16. The amount funded by the county for out-of-town travel up until 1978 averaged approximately eight hundred dollars ($800.00) per judge.

17. Out-of-state travel funds are used for training at institutions such as the National Council of Family and Juvenile Court Judges and the National Judicial College.

Conclusions of Law

I

This Commission has jurisdiction over this proceeding pursuant to Section 477.600 RSMo Supp. 1982 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. 1982 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 of 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 essential issues in the first count before this Commission are whether the request for liability insurance for the circuit court judges 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.

In deciding these questions the Commission must first determine whether Respondent has met its burden of establishing that the insurance is reasonably necessary for the functioning of the circuit court. Section 50.640 provides, in part, "that the budget officer or the county court shall not change the [budget] estimates of the circuit court" as long as those estimates are lawful. State v. St. Louis County, Mo, 421 S.W.2d 249 (banc 1967). Lawful expenditures are:

> 1. Those the General Assembly has fixed by statute or absolutely reposed in the court's discretion.
>
> 2. Those the local government unit . . ., which is required to provide the funds to meet such expenditures, may have authorized previously, with or without request . . .
>
> 3. Those reasonably necessary for the court to carry out its functions . . . .

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).

In determining whether an expenditure is reasonably necessary, an attempt should be made to show factual need. In re 1980 Budget of the Circuit Court of St. Louis County, 601 S.W.2d 10, 11 (Mo. banc 1980). Such a need has been demonstrated here.

Judges have traditionally been able to rely on the doctrine of judicial immunity to protect themselves from personal liability for their official acts. However, the trend of authority today is to limit such immunity to acts of a strictly judicial nature. Stump v. Sparkman, 435 U.S. 349 (1978).

The defense of judicial immunity is a very broad one but it does not afford any protection to a judge in non-judicial activities. Lynch v. Johnson, 420 F.2d 818 (6th Cir. 1970).

Respondent contends that in the course of their official duties they function in administrative roles as well as judicial roles, by supervising large numbers of county employees. The requested insurance would provide protection from liability in such situations and would benefit not only the judges but also the County of St. Louis and the citizens of St. Louis County, who could be found liable for actions performed by these judges in their official capacity. Such suits have already occurred. Therefore, there is an existing need which makes the request for the funds reasonable.

VI

Section 476.270 RSMo 1978 mandates that all expenditures accruing in the circuit courts, except salaries and clerk hire, which is payable by the state, shall be paid out of the treasury of the county in

which the court is held. Section 478.032 RSMo Supp. 1982 limits the compensation of judges for performance of any duties required under the law to their salaries and expenses, which are to be paid out of the state treasury. The insurance requested here cannot properly be called merely a personal benefit to the individual judges. It is a reasonably necessary expenditure of the court system, which the county is obligated to pay. That the judges receive their personal compensation from the state and are not county employees is not dispositive here. They perform their duties for the benefit of the people of St. Louis County. The county can be held liable for acts performed by the judges in their official capacity.

We hold that the request for liability insurance is a lawful expenditure of the circuit court, payable by the county.

VII

There remains the question of whether this request for funds constitutes a state mandated increase in the level of activity required of the county. If so, it is prohibited by Article X, Section 21 of the Missouri Constitution (the "Hancock Amendment").

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 vs. Administrative Hearing Commission, 641 S.W.2d 69, 75 (Mo. banc 1982). However, this constitutional question impacts on the reasonableness of the request for county funds. We therefore proceed to address it.

Petitioner contends that both State ex rel Sayad v. Zych, 642 S.W.2d 907 (Mo. banc 1982) and Boone County Court v. State of Missouri, 631 S.W.2d 321 (Mo. banc 1982) preclude a requirement that the county expend funds for this liability insurance.

We decline to find either case controlling.

The Missouri Supreme Court in Sayad rejected a request for budget increases from the St. Louis Board of Police Commissioners on the grounds that the request for the funding constituted a state mandated increase in the level of county activity because the Police

Board was a state agency. In the present case, it is clear the judges of the circuit court receive their salaries from the state and are therefore state employees. However, the circuit court can be distinguished from the Police Board in Sayad. The judiciary is not a "state agency," it is a separate and coequal branch of government. Article V, Section 1, Missouri Constitution. The Board was established by the general assembly and acknowledged in case law to be a state agency. State ex rel. St. Louis Police Commissioners v. St. Louis County Court, 34 Mo. 546 (1864); State ex rel. Howes v. Mason 54 S.W. 524 (1899). Its members are appointed by the governor. The general assembly has delegated to this Board one of its "primordial" powers: the police power for the protection of the people. State ex rel Sayad v. Zych, 642 S.W.2d at 912. Finally, the Board directs the activities of a police force whose members are officers of the state of Missouri, not county employees. § 84.330 RSMo 1978.

VIII

Petitioner relies on Boone County for the proposition that the funding request constitutes an increase in the county's level of activity or service and is therefore prohibited.

In the Boone County case a salary increase for second class county collectors was mandated by the general assembly. § 54.420 RSMo Supp. 1981. If the request here were for a salary increase, it is clear that the constraints of § 478.023 RSMo Supp. 1982 and the language of the Hancock Amendment, as construed in the Boone County case, would foreclose its consideration.

However, the county court is obligated to pay all lawful expenditures accruing in the circuit court. State ex rel. the Judges for the 22nd Judicial Circuit v. The City of St. Louis, 494 S.W.2d at 40. As we construe this request, it is a lawful expenditure of the circuit court, reasonably necessary in fact to carry out the responsibilities of the court to the citizens of the county.

This request is neither a salary nor an expense personal to the judges. It is not mandated by legislation emanating from the general assembly or by an agency wielding the specially delegated police powers of the general assembly. The thrust of the Hancock Amendment

is both a spending and taxing limitation on the legislative and executive branch of government. The judiciary is a separate but coequal branch of government not within the ambit of Hancock. It is clear from the language of Hancock that it was not intended to apply in this situation. Therefore, we hold that the Hancock Amendment, which addreses itself only to constitutional taxing power as it is exercised by the general assembly for state purposes, does not control. Article X, Section 1, Mo. Constitution.

IX

The question presented in the second count of this petition is whether the county is legally obligated to satisfy Judge Ninian Edward's request for $750.00 in out-of-state travel funds. St. Louis County has appropriated the sum of $1,400.00 as the circuit court's total travel allowance, for the benefit of the 33 circuit judges and the Director of Judicial Administration. Judge Edwards requests an additional $750.00 in out-of-town travel funds allocated to his Division budget to cover his own travel expenses.

The burden of proof to establish that this request is reasonable is on Respondent Edwards. Section 50.640 RSMo Supp. 1982. He must show that the requested funds are necessary to carry out his functions as a circuit court judge. State ex rel. Judges of the 22nd Judicial Circuit v. City of St. Louis, 494 S.W.2d at 41. Such a necessary expenditure accruing in the circuit court would properly be paid out of the county treasury. § 476.270 RSMo 1978.

In order to maintain a high level of judicial proficiency, judges are required to attend judicial seminars in order to keep abreast of the 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, the out-of-town travel for which these funds have been requested actually involves attendance at a Board meeting of the National Council of Juvenile and Family Court Judges. Judge Edwards is not a juvenile court judge. He does contend that much of his time is devoted to family law matters. However, every Circuit judge is necessarily involved in the area of family law. Therefore,

without more, we cannot say that Judge Edwards has demonstrated a unique need for these funds.

The desirability of an increased level of funding for training involving out-of-state travel is evident in light of the large number of individuals who must share in the paltry funds now made available by the county. However, desirability is not the issue. Judge Edwards must show a factual need to carry his burden of proof. This he has not done.

X

Section 478.023 RSMo 1982 states that all of the salaries and expenses of judges shall be paid out of the State Treasury and shall constitute the total compensation for all duties performed and all expenses of said judges. Without a showing of necessity, we must conclude that the allocation of additional travel funds, above and beyond the Circuit Court en banc's allocation, to enable Judge Edwards to attend a meeting of the Board of Trustees of the Foundation of National Council of Juvenile and Family Court Judges would constitute an additional expense for Judge Edwards. The request for such payment from the county is therefore prohibited by the provisions of § 487.023 RSMo 1982.

XI

Petitioner also contends that the county is not legally obligated to provide these travel funds because the funds so requested constitute a state mandated increase in the level of activity required of the county. Since Respondent has not shown the reasonable necessity of the expense, it is unnecessary to reach this issue.

Decision

It is the decision of this Commission that Petitioner St. Louis County is obligated to fund the premium for a professional

liability insurance policy for Respondent Judges.

It is further decreed that Petitioner St. Louis County is not obligated to fund the out-of-town travel expenses of Respondent Edwards and that the item in the budget of Respondent Edwards for such expenses may be deleted.

DATED this ____ day of _____, 1983.

_____
Hon. Robert G. Dowd
Chairman