

IN THE SUPREME COURT OF MISSOURI

**COOPER COUNTY, MISSOURI,
A BODY POLITIC AND CORPORATE,
BY AND THROUGH ITS GOVERNING BODY, THE
COUNTY COMMISSION OF
COOPER COUNTY, MISSOURI,**

Petitioner/Respondent

vs.

Supreme Court No. SC85312

**CIRCUIT COURT OF THE 18TH
JUDICIAL CIRCUIT OF MISSOURI,
DONALD BARNES
PRESIDING CIRCUIT JUDGE,**

Respondent/Appellant.

**ON APPEAL FROM
THE JUDICIAL FINANCE COMMISSION
OF THE STATE OF MISSOURI
CASE NO. 03-0064**

APPELLANT'S BRIEF

Submitted by:

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CIRCUIT COURT OF THE 18TH
JUDICIAL CIRCUIT OF MISSOURI,
DONALD BARNES PRESIDING CIRCUIT
JUDGE**

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JURISDICTIONAL STATEMENT

This is a Petition for Review from a decision by the Judicial Finance Commission declaring a portion of Appellant's budget as submitted to Respondent to be unreasonable.

This Court has jurisdiction to review the decision of the Judicial Finance Commission pursuant to §477.600.7, RSMo.

STATEMENT OF FACTS

This case comes before the Court following a decision by the Judicial Finance Commission on the issue of whether the Cooper County Commission is required to fund the salary of a deputy juvenile officer as budgeted by the Circuit Judge of the Eighteenth Judicial Circuit. Prior to 2003, the salary of the deputy juvenile officer has been paid by a state grant made by the Division of Youth Services. This state grant funded the position for the first half of the calendar year 2003, but the grant was set to expire on or about June 30, 2003. Anticipating loss of funding, the Circuit Court added the salary to the budget estimate as submitted to the Cooper County Commission. The Circuit Court also budgeted \$5,000 for attorney fees to litigate the issue of reasonableness before the Judicial Finance Commission and to have any unfavorable decision reviewed by this Court. (L.F. p. 8).

The county filed a Petition for Review with the Judicial Finance Commission under §50.640, RSMo. 1995, contesting the reasonableness of budgeted salary and attorney fees. (L.F. pp. 3-6). There was no hearing held before the Judicial Finance Commission in this case. The Judicial Finance Commission concluded that there were no controverted areas of material fact dividing the parties and concluded that the issues before the Commission were questions of law. The Judicial Finance Commission ruled that the funding request to pay Deputy Juvenile Officer Colycott was unreasonable as a matter of law. The Judicial Finance Commission found the budgeted attorney fees to be unreasonable. (L.F. pp. 181-184). It is from these findings and decisions by the Judicial Finance Commission that Respondent seeks review.

In 1998, the Missouri Legislature passed §211.393, RSMo. 1998, dealing with compensation of juvenile officers and juvenile court budgets. (Appendix A7). The statute provided that “juvenile court employees” would become state employees on or after July 1, 1999. The statute excepted from the definition of “juvenile court employee” any person “whose position was funded in whole or in part by public or private grant.” §211.393.1(2). Because of this limit of §211.393, Deputy Juvenile Officer Colycott did not become a state employee. The continuation of the deputy juvenile officer’s employment has been dependent on continuation of the grant funding on a year-to-year basis.

The grant application to the Division of Youth Services describes the nature and necessity of the services provided by Deputy Juvenile Officer Colycott. (L.F. pp. 149-151). The trend of rising juvenile crime and numbers of troubled youth and families in crisis have placed impossible demands on delivery of the basic personal services of the chief deputy juvenile officer in Cooper County. The number of referrals to the Cooper County Juvenile Office increased from 241 in 1993, to 504 in 1999, and 464 in 2000. Referrals of juveniles under the age of 12 increased from 26 in the year 1995 to 95 in the year 2000. If the chief deputy juvenile officer of Cooper County were the sole staff person, she would be responsible for all intake and assessment of all referrals, the conducting of all informal adjustment conferences, supervision of all status offenders in adjudication and non-adjudication, all violating juveniles, and the preparation for appearances at all court hearings. These extensive responsibilities for one deputy juvenile officer would result in less than adequate intake and assessment of referrals and supervision services being provided. Because

of this, a dire need exists in Cooper County for an additional deputy juvenile officer to assist with correcting consistent contact with juvenile law violators. During his employment, the deputy juvenile officer has worked full-time in Cooper County providing supervision of probation services to juveniles that have been adjudicated or are under suspended order of commitment to the Division of Youth Services. In addition, the deputy juvenile officer provides direct supervision to juveniles for all violations in status offenses under the informal adjustment process. Additionally, the deputy juvenile officer arranges for and approves work and administration of the Community Service Program and Restitution Recovery. (L.F. pages 149 to 151.)

The deputy juvenile officer began processing referrals in 1996. In 1998 and 1999, approximately 80% of the total referrals were initially handled by the deputy juvenile officer, allowing the chief deputy juvenile officer to concentrate on child abuse and neglect cases, status offenders and judicial actions. The deputy juvenile officer handled over 229 referrals involving direct action in the calendar year 2000. The deputy juvenile officer responds to after-hour calls on a weekly rotational basis with the chief deputy juvenile officer. The addition of the deputy juvenile officer has brought considerable improvements in the response time to referrals, the thoroughness in which they are handled and the timeliness of the dispositions. (L.F. pages 149 to 151.)

In 1997, the Cooper County Commission addressed the issue of funding the deputy juvenile officer position in the event grant funding was discontinued. In the Budget Message, the County stated “looking further ahead to 1998 and 1999, if grant funding is discontinued,

appropriations from General Revenue will be increased by . . . \$33,315.87 for the Juvenile Office. This increased funding will be necessary in order to keep the current personnel who are now paid entirely or partially through grant funding in the . . . Juvenile Office.” (L.F. p. 145).

With the grand funding unavailable beginning in 2003, the Circuit Court looked to the County for the funding. The County then filed its Petition for Review which has now brought the issues before this Court.

POINTS RELIED ON

I.

THE JUDICIAL FINANCE COMMISSION ERRED IN DECIDING THAT AS A MATTER OF LAW PAYMENT BY THE COUNTY OF A DEPUTY JUVENILE OFFICER SALARY WAS UNREASONABLE BECAUSE §211.393 DOES NOT AS A MATTER OF LAW PROHIBIT PAYMENT OF THE REASONABLE PERSONNEL EXPENSES OF THE CIRCUIT COURT UNDER §50.640 IN THAT §50.640 REQUIRES A COUNTY TO PAY EXPENSES OF THE CIRCUIT COURT THAT ARE NECESSARY TO CARRY OUT THE ESSENTIAL FUNCTIONS OF THE CIRCUIT COURT (I.E. THAT ARE NOT UNREASONABLE).

In re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900 (Mo. banc 1980).

State ex rel. Judges for the Twenty-Second Judicial Circuit, 494 S.W.2d 39 (Mo. banc 1973).

State ex rel. Twenty-Second Judicial Circuit v. Jones, et al., 823 S.W.2d 471 (Mo. banc 1992).

State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1970).

§50.640, RSMo. 1995.

§211.393, RSMo. 1998.

§211.382, RSMo. 1998.

II.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT AS A MATTER OF LAW §211.393 PROHIBITED COOPER COUNTY FROM BEING OBLIGATED TO PAY THE SALARY BECAUSE THE CIRCUIT COURT HAD THE INHERENT POWER TO HIRE THE JUVENILE OFFICER AND HAVE HIS SALARY PAID BY THE COUNTY IN THAT THE JUVENILE OFFICER WAS REASONABLY NECESSARY FOR THE JUVENILE COURT TO CARRY OUT ITS FUNCTION.

State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1970).

Smith v. Thirty-Seventh Judicial Circuit of Missouri, 847 S.W.2d 755 (Mo. banc 1993).

§50.640, RSMo. 1995.

§211.393, RSMo. 1998.

§476.270, RSMo. 1978.

§211.394, RSMo 1988.

III.

THE JUDICIAL FINANCE COMMISSION ERRED IN DECLINING TO AWARD ATTORNEY'S FEES TO THE CIRCUIT COURT IN THAT:

- A) AN AWARD OF ATTORNEY'S FEES WAS WARRANTED UNDER §476.270 BECAUSE THE FEES WERE INCURRED IN THE PROCESS OF BRINGING LEGITIMATE ISSUES BEFORE THE JUDICIAL FINANCE COMMISSION; AND**
- B) AN AWARD OF ATTORNEY'S FEES WAS REQUIRED BY §476.270 AS A MATTER OF LAW BECAUSE THE STATUTE STATES THAT ATTORNEY'S FEES "SHALL" BE PAID OUT OF THE TREASURY OF THE COUNTY IN WHICH THE COURT IS HELD.**

§476.270, RSMo. 1978.

ARGUMENT

I.

THE JUDICIAL FINANCE COMMISSION ERRED IN DECIDING THAT AS A MATTER OF LAW PAYMENT BY THE COUNTY OF A DEPUTY JUVENILE OFFICER SALARY WAS UNREASONABLE BECAUSE §211.393 DOES NOT AS A MATTER OF LAW PROHIBIT PAYMENT OF THE REASONABLE PERSONNEL EXPENSES OF THE CIRCUIT COURT UNDER §50.640 IN THAT §50.640 REQUIRES A COUNTY TO PAY EXPENSES OF THE CIRCUIT COURT THAT ARE NECESSARY TO CARRY OUT THE ESSENTIAL FUNCTIONS OF THE CIRCUIT COURT (I.E. THAT ARE NOT UNREASONABLE).

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but accords its conclusions regarding reasonableness of Circuit Court expenditures that decree of deference due in light of its legislative genesis and statutory functions. Bosley v. Berra, 688 S.W.2d 353, 355[3], (Mo. banc 1985).

Under the statutory scheme, authority to hire and fix compensation for juvenile court employees is vested in the Circuit Court subject only to change by the Judicial Finance Commission. §211.351, RSMo. 1995; §50.640, RSMo. The reason the Circuit Court has this power concerning its personnel is that if the Circuit Court did not have such power, then the legislative department would be able to determine and control the ability of the judicial department to function simply by limiting the number of employees of the Circuit Court.

Circuit Court of Jackson Cty v. Jackson Cty, 776 S.W.2d 925, (Mo. App. 1989).

Pursuant to §50.640, RSMo., budget estimates of juvenile court employees are submitted to the County Commission, and the Commission shall not change those estimates and shall appropriate the amounts estimated as originally scheduled by the Circuit Court. The County can file a Petition for Review with the Judicial Finance Commission if it deems the Circuit Court estimates to be unreasonable. The Judicial Finance Commission is to then conduct a hearing to determine whether the Circuit Court estimate is reasonable under the circumstances. The statute sets forth specific factors to be considered by the Commission in determining if the Circuit Court estimate is reasonable. §50.640, RSMo.

In State ex rel. Twenty-Second Judicial Circuit, 823 S.W.2d 471 (Mo. banc 1992), this Court gave a history of how the test of reasonableness and the process of review developed. Prior to creation of the Judicial Finance Commission, the reasonableness of the Circuit Court estimates was evaluated under a standard of whether the proposed expenditures were “lawful.” In reviewing whether an expense was lawful, three categories of expenses were deemed appropriate: (1) those fixed by statute or absolutely reposed in the court’s discretion; (2) those the local government unit is required to provide because such expenditures were authorized previously; and (3) those reasonably necessary for the court to carry out its function. State ex rel. Twenty-Second Judicial Circuit, 494 S.W.2d 39 (Mo. banc 1973); In Re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900 and State ex rel. Twenty-Second Judicial Circuit, 823 S.W.2d 471. In Budget of St. Louis Cty, the Court analyzed the necessity of the expenses by applying a test of whether a reduction or

deletion of the budget items would seriously impair the Juvenile Court's delivery of services. 590 S.W.2d at 901. It has been generally recognized by this Court that employees which are reasonably necessary to carry out the functions of the Juvenile Court shall be provided. State ex rel. Judges for the Twenty-Second Judicial Circuit, 494 S.W.2d at 41. This Court has also pointed out that if a budget item was previously funded by the county in other fiscal years it is to receive a favorable presumption for approval. Budget of St. Louis County, 590 S.W.2d at 902.

Because §50.640 originally provided no procedure for review, the Court by decision in State ex. rel. Weinstein v. St. Louis County, 451 S.W.2d 99 at 102 (Mo. banc 1970) stated that "If ...the county council deems (the budget estimates) unreasonable, the county council may file a petition for review and final determination of such questions in this court . . ."

In 1982, the statute was amended to create the Judicial Finance Commission. The Commission was vested with authority to determine whether the Circuit Court budget estimates were reasonable. The Commission was to provide a more expedited and less formal proceeding to review the reasonableness of Circuit Court budgets. If a part party was dissatisfied with the Commission's decision, the statute authorized review before this Court. §477.600.7, RSMo.; State ex rel. Twenty-Second Judicial Circuit, 823 S.W.2d 47; State ex rel. Judges for the Twenty-Second Judicial Circuit, 494 S.W.2d 39.

Section 50.640 does not appear to create a new test for determining reasonableness beyond that previously declared by judicial decisions of this Court. The statute does provide specific factors that the Commission is to consider in making its decision on the issue of reasonableness. Those factors include the amount of expenditures needed by the Circuit

Court in relation to amounts needed for other county functions, and also the revenue available from all sources for financing the Circuit Court expenditures. The issue before this Court has nothing to do with the ability of the County to pay the budget compensation as the County has more than sufficient funds to pay the compensation that was previously funded by a grant.

The issue in the present case is whether the salary budgeted by the Circuit Court for the salary of Deputy Juvenile Officer Colycott is reasonable. It is agreed that the salary amount was properly submitted to the County and the salary was appropriated. The County Commission timely filed a Petition for Review with the Judicial Finance Commission. The salary amount was escrowed as provided by statute pending decision by the Commission.

The Judicial Finance Commission declined to conduct a hearing as provided for in §50.640, RSMo. The Commission decided that there were no controverted areas of material fact and that the only issues before the Commission were questions of law. The Commission concluded that as a matter of law the County could not be required to pay the salary of Deputy Juvenile Officer Colycott because the State of Missouri had assumed payment of salaries of certain juvenile court officers upon passage of House Bill 971 (codified at 211.393).¹ (Append. A3, L.F. 182). The Commission concluded that the statute did not permit a county to be required to pay for “personal services.”

Section 211.393 provided that, effective July 1, 1999, certain employees of the

¹The Commission relied on its prior decision in Stone County Commission v. Thirty-Ninth Judicial Circuit, Case No. 99-0054.

juvenile offices of the various counties would become state employees. This statute transferred employee status to the state of persons who at that time were “juvenile court employees.” The statute did not state that all juvenile employees were to become state employees. The statute specifically excluded all positions that were being funded by a public or private grant. §211.393.1(2), RSMo. Because Deputy Juvenile Officer Colycott’s salary was being funded by a grant he did not become a state employee.

The statute also provided that in every circuit in which a juvenile court employee became a state employee, the county was required to maintain in the juvenile court budget an amount defined as “maintenance of effort funding” in an amount not less than:

“the total amount budgeted for all employees of the juvenile court including any juvenile officer, deputy juvenile officer, or other juvenile court employees in calendar year 1997, minus the state reimbursements as described in this section received for the calendar year 1997 personnel costs for the salaries of all such juvenile court employees who become state employees.”

§211.393.1(6), RSMo.

From the specified funding, the statute allowed the funding to be used for specified purposes, including “continuation of services funded by public grant or subsidy, and enhancing the court’s ability to provide prevention, probation, counseling and treatment services.”

§211.393.1(6), RSMo.

Since 1996, Deputy Juvenile Officer Colycott’s salary had been paid through the Division of Youth Services under a juvenile diversion program. Under §211.393, RSMo.,

because of the exception in the statute, Deputy Juvenile Officer Colycott's salary was not assumed by the state in 1999. Because Deputy Juvenile Officer Colycott's salary was not assumed by the state, and because continuation of the grant money was not assured, the Circuit Court submitted Deputy Juvenile Officer Colycott's salary as part of its budget beginning in the calendar year 2000. The Cooper County Commission filed its first Petition for Review in that year and has done so each year to the present. In each year except the present, the grant was eventually renewed and the County Commission paid the difference in Deputy Juvenile Officer Colycott's salary not covered by the grant money.

In its Petition for Review, the County Commission does not question that Deputy Juvenile Officer Colycott's position is essential for the Juvenile Court to carry out its functions. Deputy Juvenile Officer Colycott's essential function within the Juvenile Office is described in the grant application submitted to the Division of Youth Services for the 2002–2003 fiscal year. As stated in the grant application, the need for Deputy Juvenile Officer Colycott's services is "dire." The County Commission in its 1997 budget message acknowledged the need for the County to fund the deputy juvenile officer position in the calendar years 1998 and 1999 if grant funding became unavailable. The Judicial Finance Commission in its 2001 decision between the parties noted in a footnote that it was sensitive to the need for Deputy Juvenile Officer Colycott's services and the "dilemma" that this matter has created. Cooper County Commission v. Eighteenth Judicial Circuit, Case No. 01-0059 (Before the Judicial Finance Commission).

The factual circumstances of this controversy are unique to Cooper County and

potentially would not be applicable to any other Missouri county. The County Commission has as its presiding officer the same Presiding Commissioner who entered into the original grant contract with all of the future obligations arising therefrom, including the possibility that the County would eventually be responsible for meeting the salary requirements of the grant staff position. This Presiding Commissioner has never made a formal objection to the Judiciary's salary request as found in the Division of Youth Services grant proposals. Nor has there ever been a formal objection to the salary applicable to the qualifications required to serve in the grant position.

The issue here is whether in fact §211.393 prohibits a county from paying the salary of juvenile court personnel as a matter of law. Does §211.393 prohibit the Judicial Finance Commission from declaring the salary reasonable under §50.640? When the legislature passed §211.393 it may have intended to transfer the burden of paying juvenile officer salaries to the state as a general rule, but the statute did not transfer the obligation for all deputy juvenile officer salaries to the state. The statute does not set forth any specific restrictions on a county being obligated to pay such salaries if they are reasonable expenditures required of the Circuit Court under §50.640.

The "maintenance of effort funding" described in §211.393.1(6) is a minimum level of funding required of each affected county. There is nothing in §211.393 which limits the Circuit Court's entitlement to budget and to have appropriated expenses for personnel that are reasonably necessary to carry out the essential functions of the Juvenile Office. The statute cannot be interpreted to limit a county's obligation to pay for personal services or

personnel that are reasonably necessary. In fact, as part of House Bill 971, the legislature also enacted §211.382, RSMo. 1998, which specifically provides for the Juvenile Court to recruit and higher personnel to provide vital services to children as part of a partnership which was to be established between the state and the counties.

The Court is faced with construing the various statutes to harmonize with each other. Whether the term “in pari materia” should be applied to this analysis is unknown to this author. However, statutes dealing with the same subject matter are to be construed together even though the statutes are set forth in different chapters and enacted at different times; provided, when one statute issue deals with the subject in general terms and the other deals with the subject in a more specific way, the two are to be harmonized together with the specific statute prevailing to the extent of any redundancy between the two. State ex rel. Director of Revenue v. Gaertner, 32 S.W.3d 564 (Mo. banc 2000).

Section 211.393 RSMo. can be harmonized with Section 50.640 by finding that Section 211.393 does not actually create a prohibition against counties being required to pay the salaries of juvenile court personnel under all circumstances. However, if in fact §211.393 is interpreted to create such a prohibition, and therefore is in conflict with §50.640, then §50.640 should prevail on the issue. Section 50.640 specifically vests control of the Circuit Court budget with the Circuit Court subject only to review by the Judicial Finance Commission or this Court. The specific purpose of §50.640 is to keep the legislative division from having control over the Circuit Court budget. To find the provisions of §211.393 controlling would thwart the specific purpose of §50.640 and place control of the

Circuit Court budget with the legislature.

For the foregoing reasons, the decision of the Judicial Finance Commission should be reversed. Appellant requests the Court determine the budgeted salary to be reasonable, or alternatively, that the case be remanded to the Judicial Finance Commission for factual review and the hearing of evidence on the issue of reasonableness.

II.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT AS A MATTER OF LAW §211.393 PROHIBITED COOPER COUNTY FROM BEING OBLIGATED TO PAY THE SALARY BECAUSE THE CIRCUIT COURT HAD THE INHERENT POWER TO HIRE THE JUVENILE OFFICER AND HAVE HIS SALARY PAID BY THE COUNTY IN THAT THE JUVENILE OFFICER WAS REASONABLY NECESSARY FOR THE JUVENILE COURT TO CARRY OUT ITS FUNCTION.

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but accords its conclusions regarding reasonableness of Circuit Court expenditures that decree of deference due in light of its legislative genesis and statutory functions. Bosley, 688 S.W.2d 353, 355[3].

The Judicial Finance Commission interpreted §211.393 as a prohibition against counties being obligated to pay for “personal services” by employees within the Cooper County Juvenile Office. If this interpretation is deemed correct, the statute usurps the inherent power of the Circuit Court to control its own employees. Mo. Const. art. II, §1; State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99. As stated by Judge Price in a concurring opinion in Smith v. Thirty-Seventh Judicial Circuit of Missouri, 847 S.W.2d 755 at 760 (Mo. banc 1993):

“The circuit courts occupy a unique position in our scheme of government.

The Court has the inherent authority to select, appoint, and control its own

staff. State ex rel. St. Louis County v. Edwards, 589 S.W.2d 283, 288-9 (Mo. banc 1979); Weinstein, 451 S.W.2d 99, 102. This inherent authority is derived from the constitutional separation of the powers of government into three distinct departments.” Mo. Const. art. II, §1; Weinstein, 451 S.W.2d at 101.

In Weinstein, the Court’s inherent power was specifically held to apply to hiring of juvenile court personnel. The Court observed that such authority in the Circuit Court is grounded on the fundamental restriction against the legislature encroaching on the powers of the judicial branch. To function, the Court needs a necessary staff of personnel and must have the right to appoint a necessary staff. That right cannot be denied by the legislative branch of government. The inherent power of the Court to hire personnel is not unrestrained. The authority extends to the Court the right to select and hire employees that are “reasonably necessary to carry out its functions of care, discipline, detention, and protection of children who come within its jurisdiction, and to fix their compensation.” Weinstein, 451 S.W.2d 99.

The necessity of Deputy Juvenile Officer Colycott to the functioning of the Juvenile Court is described in the grant application submitted to the Division of Youth Services for the 2002-2003 fiscal year. As stated in the grant application, the need for Deputy Juvenile Officer Colycott’s services is “dire.” The trend of rising juvenile crime and numbers of troubled youth and families in crisis have placed impossible demands on delivery of the basic personal services of the chief deputy juvenile officer in Cooper County. The number of referrals to the Cooper County Juvenile Office increased from 241 in 1993, to 504 in 1999, and 464 in 2000. Referrals of juveniles under the age of 12 increased from 26 in the year

1995 to 95 in the year 2000. If the chief deputy juvenile officer of Cooper County were the sole staff person, she would be responsible for all intake and assessment of all referrals, the conducting of all informal adjustment conferences, supervision of all status offenders in adjudication and non-adjudication, all violating juveniles, and the preparation for appearances at all court hearings. These extensive responsibilities for one deputy juvenile officer would result in less than adequate intake and assessment of referrals and supervision services being provided. Because of this, a dire need exists in Cooper County for an additional deputy juvenile officer to assist with correcting consistent contact with juvenile law violators. (L.F. pages 149 to 151.)

During his employment, the deputy juvenile officer has worked full-time in Cooper County providing supervision of probation services to juveniles that have been adjudicated or are under suspended order of commitment to the Division of Youth Services. In addition, the deputy juvenile officer provides direct supervision to juveniles for all violations in status offenses under the informal adjustment process. Additionally, the deputy juvenile officer arranges for and approves work and administration of the Community Service Program and Restitution Recovery. (L.F. pages 149 to 151.)

The deputy juvenile officer began processing referrals in 1996. In 1998 and 1999, approximately 80% of the total referrals were initially handled by the deputy juvenile officer, allowing the chief deputy juvenile officer to concentrate on child abuse and neglect cases, status offenders and judicial actions. The deputy juvenile officer handled over 229 referrals involving direct action in the calendar year 2000. The deputy juvenile officer responds to after-hour calls on a weekly rotational basis with the chief deputy juvenile officer. The

addition of the deputy juvenile officer has brought considerable improvements in the response time to referrals, the thoroughness in which they are handled and the timeliness of the dispositions. (L.F. pages 149 to 151.)

With the passage of §211.393 in 1998 the state assumed payment of salaries for almost all juvenile officers. Prior to the change, the counties paid the balance of the compensation not paid by the state. §476.270, RSMo. 1978; §211.394, RSMo 1988.

Deputy Juvenile Officer Colycott's salary was not assumed by the state because of an exception contained in §211.393 for positions being funded by public or private grant. §211.393.1(2). When the grant funding ran out in 2003, this left the Circuit Court without funds to pay for Deputy Juvenile Officer Colycott. The Circuit Court included Deputy Juvenile Officer Colycott's salary in its budget estimate submitted to the Cooper County Commission. The county then filed a Petition for Review with the Judicial Finance Commission requesting that the budget estimate be deemed unreasonable.

The Judicial Finance Commission did not have a hearing to determine whether Deputy Juvenile Officer Colycott's services were reasonably necessary to the Juvenile Court carrying out its function. This was because of the Commission's belief that it could not make such a finding under the law due to the provisions of §211.393 enacted by the legislature in 1998. Such belief is contrary to this Court's description of the Circuit Court's inherent power as stated in Weinstein.

The Judicial Finance Commission had authority under §50.640 to find the salary expense reasonable if it believed Deputy Juvenile Officer Colycott's services were reasonably necessary to the function of the Juvenile Court. This is so because of the

“inherent power” held by the Circuit Court to hire personnel reasonably necessary for it to function. The Judicial Finance Commission was not constrained by §211.393 from making this finding because the legislature did not have authority to interfere with the Court’s inherent power involving the issue.

The Circuit Court requests an order declaring the salary of Deputy Juvenile Officer Colycott to be reasonable and paid by the County. Alternatively, the Circuit Court requests that the matter be remanded to the Judicial Finance Commission for a factual hearing on the reasonableness and necessity of Deputy Juvenile Officer Colycott’s position and salary.

III.

THE JUDICIAL FINANCE COMMISSION ERRED IN DECLINING TO AWARD ATTORNEY'S FEES TO THE CIRCUIT COURT IN THAT:

- A) AN AWARD OF ATTORNEY'S FEES WAS WARRANTED UNDER §476.270 BECAUSE THE FEES WERE INCURRED IN THE PROCESS OF BRINGING LEGITIMATE ISSUES BEFORE THE JUDICIAL FINANCE COMMISSION; AND**
- B) AN AWARD OF ATTORNEY'S FEES WAS REQUIRED BY §476.270 AS A MATTER OF LAW BECAUSE THE STATUTE STATES THAT ATTORNEY'S FEES "SHALL" BE PAID OUT OF THE TREASURY OF THE COUNTY IN WHICH THE COURT IS HELD.**

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but accords its conclusions regarding reasonableness of Circuit Court expenditures that decree of deference due in light of its legislative genesis and statutory functions. Bosley, 688 S.W.2d 353, 355[3].

The Judicial Finance Commission declined to award the Circuit Court its attorney fees as submitted by its budget request to the County. The Circuit Court had budgeted \$5,000.00 as anticipated attorney fees, believing that litigation of the underlying issues would be necessary both before the Judicial Finance Commission and this Court.

In its decision, the Commission pointed out that it had ruled on an identical question between the parties in 2001 under Case No. 01-0059, and that the Circuit Court should have known the outcome of the instant case when the current Petition for Review came before the Commission. The Commission also reasoned that to award attorney's fees would promote "perineal litigation of this identical issue at infinitum." (Append. A4, L.F. 183).

The Circuit Court acknowledges that in fact it did believe the outcome of the instant case before the Commission would quite possibly be as it decided. However, the Circuit Court disagrees that the awarding of attorney fees would promote perineal litigation or that an award of attorney fees under the present circumstances is unreasonable.

This identical issue has been before the Commission beginning with the year 2000. In each year, except the current year, the Division of Youth Services grant funding of Deputy Juvenile Officer Colycott's position became known to the Circuit Court near the time of the Commission's final ruling. In the years 2000 and 2002, availability of the Division of Youth Services grant was known in time for the case then before the Commission to be dismissed or settled without ruling by the Commission. In 2001, the Commission entered a decision on the issue at approximately the identical time the Circuit Court was verbally advised that the Division of Youth Services grant would be forthcoming for that year. Because of the availability of Division of Youth Services grant funding, the issue became moot and the Circuit Court felt it inappropriate and unnecessary to pursue a review of the decision before this Court.

The current case presents different circumstances. The Division of Youth Services

grant was in fact terminated and not forthcoming. The County's Petition for Review went before the Commission and the Commission ruled identical to its decision in 2001. (L.F. pp. 181-184). However, because there was no grant funding for 2003, the Circuit Court pursued review before this Court because a justiciable controversy existed due to the lack of grant funding.

The Circuit Court included \$5,000.00 in the budget based on informal advice from the Division of Youth Services that there was a reasonable certainty the grant funding would not be available in 2003. The Circuit Court anticipated that the issue would not become moot as it had in prior years, and that it was quite likely the circumstances would necessitate the issue being brought before this Court.

Appellant does not believe that the decision by the Commission in 2001 prevents it from seeking review by this Court in regard to the 2003 budget request. Section 50.640 sets up a procedure for review that is to occur on a yearly basis. One of the factors to be considered in determining whether the budget request is reasonable is "the total estimated available revenues from all sources available for financing the proposed expenditures." §50.640, RSMo. Because of discontinuation of the Division of Youth Services grant funding in 2003, there is a distinct change in the revenues available to fund Deputy Juvenile Officer Colycott's position. Different circumstances exist now that did not exist in 2001.

The Circuit Court believes that Deputy Juvenile Officer Colycott's position is essential for the Juvenile Court to carry out its functions. The Circuit Court's actions in this case bring a legitimate issue before this Court. This action was pursued only out of a sense of obligation by the Circuit Court to carry out the duties entrusted to the judges of the

18th Judicial Circuit.

Section 476.270 provides that expenditures accruing in the Circuit Court “shall” be paid out of the county treasury in which the court is held. The language of the statute is mandatory. Without the obligation of the county to pay these attorney fees, the Circuit Court would be significantly handicapped in bringing these issues before the Court. The issues brought before this Court go to the fundamental powers of the Circuit Court arising from our Constitution, and the extent to which the legislature may limit the functions of the judiciary.

For the foregoing reasons, the Circuit Court requests an order directing that its attorney’s fees be paid and be deemed reasonable. Alternatively, the Circuit Court requests a determination that the incurring of attorney fees in the present case is reasonable, and a remanding of the case to the Commission to determine the appropriate amount of attorney fees to be awarded.

CONCLUSION

Appellant requests a determination by this Court that §211.393 does not as a matter of law prohibit the Judicial Finance Commission from determining that the amount budgeted by the Circuit Court for Deputy Juvenile Officer Colycott's salary is reasonable under §50.490, and additionally, and an order directing that its attorney's fees be deemed reasonable and be paid. Alternatively, Appellant requests a remand to the Judicial Finance Commission for a factual determination on the issue of reasonableness as to both Deputy Juvenile Officer Colycott's salary and Appellant's attorney fees.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify by my signature that two true and complete copies of the foregoing Appellant's Brief, together with a floppy disk, were served this 21st day of September, 2003, by depositing the same in the U.S. Mail, postage prepaid and properly addressed to Mr. William McCullah, Attorney for Petitioner, P.O. Box 370, Forsyth, MO 65653.

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APPENDIX

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