



## JUDICIAL FINANCE COMMISSION

In Re: Circuit Court Budget of the 45th Judicial )  
Circuit of the State of Missouri, )  
)  
LINCOLN COUNTY COMMISSION, )  
Dan Colbert, Presiding Commissioner, ) Case No. 16-0077  
Eugene Galloway, Commissioner, Dist. 1, )  
Matt Bass, Commissioner, Dist. 2 )  
)  
Petitioner, )  
)  
v. )  
)  
FORTY-FIFTH JUDICIAL CIRCUIT, )  
Chris Kunza-Mennemeyer, Presiding Judge )  
)  
Respondent. )

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

This matter comes before the Judicial Finance Commission (“the Commission”) upon a petition for review filed January 29, 2016 by the Lincoln County Commission against the Circuit Court of the 45th Judicial Circuit. The parties dispute the reasonableness of \$35,000 requested by the circuit court for legal fees. The circuit court has explained that “[t]he [c]ourt is now budgeting its own attorney fees for reason that it has had to engage the services [of] an attorney on more than one occasion due to matters with the commission.”

On March 24, 2016, the Commission held an extended settlement conference pursuant to Commission Rule 11.03 and section 50.640.2 RSMo. (Supp. 2013).<sup>1</sup> Settlement efforts proved

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<sup>1</sup> All statutory references are to RSMo. (Supp. 2013) except as otherwise indicated.

unsuccessful. Both parties agreed to submit the dispute to the Judicial Finance Commission via affidavits and briefing. We have reviewed and considered the voluminous filings.

The Commission's review is governed by section 50.640.2 which provides in relevant part:

If a petition for review is filed, the circuit court shall have the burden of convincing the judicial finance commission that the amount estimated by it and included in the budget is reasonable. In determining if the circuit court estimate is reasonable, the judicial finance commission shall consider the expenditures necessary to support the circuit court in relation to the expenditures necessary for the administration of all other county functions, the actual or estimated operating deficit or surplus from prior years, all interest and debt redemption charges, all capital projects expenditures, and the total estimated available revenues from all sources available for financing the proposed expenditures. In determining the reasonableness of any budget estimate involving compensation, the judicial finance commission shall also consider compensation for county employees with similar duties, length of service and educational qualifications.

Section 477.600 sets out this Commission's authority, and provides, *inter alia*, 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 request. The total 2016 budget the circuit court originally requested from Lincoln County was \$947,581.33. After negotiations, the parties reached agreement on all budget line items—except the circuit court's request for attorney's fees—for a total circuit court budget of \$914,393.51. The amount remaining in dispute is \$35,000 that the circuit court has requested for legal fees.

“[A]ttorney's fees are permissible expenses as a matter of law . . .” *Cooper County v. Eighteenth Judicial Circuit*, Consolidated Case Nos. 03-0064 and 04-0066, at 6. In general, attorney's fees for defense of the circuit court are considered to be reasonable expenditures within the meaning of section 50.640. *Cooper County v. Eighteenth Judicial Circuit*, Case No. 03-0064, at 2 (rev'd on other grounds, *Cooper County v. Eighteenth Judicial Circuit*, 124 S.W.3d

466 (Mo. banc 2004)). For example, the Commission and our Supreme Court have found attorney's fees for the circuit court reasonable in *Macon County Commission v. Forty-First Judicial Circuit*, Case No. 98-0051; *St. Louis County v. Judicial Circuit No. 21*, Case No. 84-0004; and *In re the 1984 Budget for the Circuit Court of St. Louis County*, 687 S.W.2d 896, 901 (Mo. banc 1985). In affirming this Commission, which had approved the expenditure of attorney's fees on behalf of the Circuit Court of St. Louis County, the Supreme Court noted that section 476.270 RSMo. (1978)<sup>2</sup> stated "[a]ll expenditures accruing in the circuit courts . . . shall be paid out of the treasury of the county in which the court is held . . . ." *Id.* at 899. The Court continued:

Under judicial interpretation of this provision, "expenditures" means lawful expenditures, defined as follows:

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.

*Id.* The Court found in that case that the attorney's fees in question came within both the second and third categories. *Id.*

The circuit court's \$35,000 budget request for legal fees includes \$8,475 in attorney's fees incurred as of April 1, 2016 for representation in its case filed in November 2015, *State ex rel. Mennemeyer v. Lincoln County*, Case No. 15L6-CC00150. The circuit court in that case seeks a writ of mandamus directing Lincoln County to pay Jesse Granneman for work completed in his capacity as the Juvenile Officer's attorney in the first quarter of 2015. The Commission agrees that the circuit court's request for \$8,475 in legal fees incurred in pursuing payment for legal services rendered by the Juvenile Officer's attorney is reasonable. Attorney's fees incurred

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<sup>2</sup> Section 476.270 remains unchanged since 1978.

in obtaining payment for legal representation for the Juvenile Officer is reasonably necessary for the court to carry out its function. The county commission contends that the circuit court lacks standing to file the writ action against it. But simply because the county commission challenges standing does not necessarily render the litigation and the request for legal fees unreasonable.

However, the Commission further determines to be unreasonable the remaining \$26,525 requested by the circuit court for legal fees. This amount encompasses, although it is apparently not limited to, attorney's fees for the instant Judicial Finance Commission action, a prospective action against the Lincoln County Sheriff's Department, and a prospective action for payment of court-appointed guardians ad litem and parent attorneys in juvenile cases.

The court's total requested amount includes \$12,060 incurred as of April 15, 2016 for attorney's fees in the instant Judicial Finance Commission action. In briefing the issue of legal fees for the circuit court in these proceedings, the county acknowledged that it "has a separate line item in its annual budget to pay such attorney fees." Therefore, this item would not be paid from the circuit court budget. It would be paid from the county's budget. Because funding is available from another source, attorney's fees need not be appropriated to the circuit court.

The Commission finds unreasonable the court's request for an undetermined amount in prospective attorney's fees because the circuit court may sue the Lincoln County Sheriff's Department. This potential litigation involves a dispute over whether the sheriff's department will serve the court's orders to show cause without prepayment of service fees. This dispute arose in January 2016, after the circuit court had already requested \$35,000 for legal fees for its 2016 budget.

Likewise, we find unreasonable the court's request for an unspecified amount in prospective attorney's fees for litigation the circuit court may pursue to compel the county's

payment of court-appointed attorneys serving as guardians ad litem and parent attorneys in juvenile matters in 2016. These potential expenses are very different from most future expenses outlined in a proposed budget. Normally, future expenses such as salaries, rent, utilities, and supplies are regularly occurring and largely predictable. However, we find these potential litigation expenses entirely speculative.

We again recommend, as we did in last year's mediated settlement, that the parties meet regularly and confer openly about budgetary needs.

The Commission finds reasonable the circuit court's request for \$8,475 for legal fees in the case of *State ex rel. Mennemeyer v. Lincoln County*, Case No. 15L6-CC00150, and orders payment to the circuit court accordingly. The Commission finds unreasonable the remaining \$26,525 contained in the court's 2016 budget request for legal fees.

Dated this 2<sup>nd</sup> day of June, 2016.

JUDICIAL FINANCE COMMISSION



The Honorable Lawrence E. Mooney, Chair  
The Honorable Karen M. Miller  
The Honorable David Miller  
The Honorable Paul Koeper  
The Honorable Steve Hobbs  
The Honorable David Evans  
The Honorable Gloria Clark Reno