

Appeal No. SC98442

SUPREME COURT OF MISSOURI

THE BOARD OF COMMISSIONERS OF THE COUNTY OF FRANKLIN, STATE OF MISSOURI; TIM BRINKER, PRESIDING COMMISSIONER; TODD BOLAND, FIRST DISTRICT COMMISSIONER; DAVE HINSON, SECOND DISTRICT COMMISSIONER; and ANGELA GIBSON, AUDITOR OF THE COUNTY OF FRANKLIN, STATE OF MISSOURI

Appellants

v.

TWENTIETH JUDICIAL CIRCUIT OF THE STATE OF MISSOURI,
by the Honorable I.I. Lamke, Presiding Judge,

Respondent

Petition for Review from the Judicial Finance Commission

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

This action stems from Appellant Board of Commissioners of Franklin County, Missouri's ("Franklin County Commission") petition to this Court seeking review of the Missouri Judicial Finance Commission's ("JFC") order dismissing the Franklin County Commission's petition for review filed with the JFC. LF325-326; LF007-300. The Franklin County Commission filed its petition for review pursuant to Section 477.600.7, RSMo., Supreme Court Operating Rule 12-23.01, and Supreme Court Rule 100.02, all of which provide this Court with jurisdiction to review the JFC's order. The Franklin County Commission filed its petition for review in this Court on March 24, 2020, within thirty days of the JFC's February 24, 2020 order dismissing the Franklin County Commission's petition. LF325-326; LF327-353.

STATEMENT OF FACTS

The Parties

Franklin County is a first-class county within the State of Missouri. LF325; LF328, ¶ 2. Franklin County is one of three counties located within the Twentieth Judicial Circuit. LF007, ¶ 2; LF328, ¶ 4. Appellants comprise the Board of Commissioners of Franklin County and the County Auditor.

Respondent is the Twentieth Judicial Circuit (“Twentieth Circuit”). The Honorable I.I. Lamke (“Judge Lamke”) is the presiding judge of the Twentieth Circuit. LF008, ¶ 3; LF301.

The Circuit Court Budget

In August or September 2018 and in conjunction with the 2019 budget process, the Franklin County Commission informed Judge Lamke that beginning in 2020, Franklin County would only fund the Juvenile Court portion of the Twentieth Circuit’s budget in the required amount of its “maintenance of effort funding” (“MOE”) as set forth in Section 211.393.6, RSMo. LF008, ¶ 6. The Franklin County Commission also informed Judge Lamke that in accordance with Sections 211.382 and 211.393 beginning in 2020, Franklin County would no longer pay for the compensation to and benefits for two employees whose services were performed solely for the Juvenile Court of the Twentieth Circuit. LF008, ¶¶ 7, 8. The Franklin County Commission advised Judge Lamke if the Twentieth Circuit wanted to continue to utilize the services of these employees solely for the Juvenile Court, their compensation and benefits should be sought from the state in accordance with Section 211.393.6. LF008, ¶¶ 7, 8.

Approximately one year later, the Franklin County Commission and Judge Lamke met to discuss the Twentieth Circuit's budget for 2020 as required by Section 50.642. LF008, ¶ 10. The Franklin County Commission again informed Judge Lamke that Franklin County would only fund the statutorily required "MOE" amount for the Juvenile Court. LF009, ¶ 11. Judge Lamke acknowledged this position. LF009, ¶ 12. On August 30, 2019, the Franklin County Commission further informed the Twentieth Circuit's Chief Juvenile Officer by letter that starting in 2020, Franklin County would only agree to fund the statutorily required "MOE" for the Juvenile Court. LF009, ¶ 13; LF055.

Despite the advanced and repeat notice of the Franklin County Commission's position for the 2020 budget, the Twentieth Circuit submitted a budget that included funding by Franklin County for \$716,346.15 for the Juvenile Court. LF009, ¶ 13; LF055. This amount was more than 77% of the Twentieth Circuit's total budget and well in excess of Franklin County's "MOE," which was only \$333,523. LF009, ¶¶ 14-15; LF019-054.

In accordance with Section 211.393.6 and the JFC's holding in *Cooper County, Missouri v. Eighteenth Judicial Circuit*, Case Nos. 03-0064 and 04-0066 (Before the Judicial Finance Commission), the Franklin County Commission allocated the amounts set forth in the budget as to every other category of the budget other than the Juvenile Court category. LF009, ¶ 16; LF056-300. The Franklin County Commission budgeted for the "MOE" amount, which was \$333,523, for the Juvenile Court portion of the budget. LF010, ¶ 17. The Franklin County Commission gave formal approval of this budget on December 31, 2019. LF333, ¶ 34.

***The Twentieth Circuit's Writ Petition to the
Missouri Court of Appeals, Eastern District***

Without prior notice, on January 27, 2020, the Twentieth Circuit filed a petition for writ of mandamus with the Missouri Court of Appeals, Eastern District challenging Franklin County's allotted 2020 budget for the Juvenile Court. LF010, ¶ 18; LF321-324; A3-21. The Court of Appeals entered a preliminary order two days later, on January 29, 2020, ordering the Franklin County Commission to file an answer and suggestions in opposition, which the Franklin County Commission did on February 5, 2020. A3-7; A22-42. The following day, the court made the writ permanent and ordered Franklin County to appropriate and disburse the amount requested by the Twentieth Circuit in its proposed budget for the Juvenile Court and to retroactively pay the salaries and benefits for the two employees who worked exclusively for the Juvenile Court. A3-7. The Court of Appeals released its opinion on February 11, 2020. A3-7; A43-51.

Thereafter, the Franklin County Commission pursued post-opinion motions, including to modify the opinion, for rehearing, and to transfer to this Court. A3-7; A52-53; LF321-324. Each of those motions was denied, including this Court's April 18, 2020 denial of the request to transfer (SC98399). A54.

The Franklin County Commission's Petition for Review by the JFC

On February 18, 2020, the Franklin County Commission filed a Petition for Review with the JFC. LF007-300. The Franklin County Commission argued that pursuant to Section 211.393.6, Franklin County rightfully allocated only the "MOE" amount for the Juvenile Court and pursuant to Sections 211.382 and 211.393.3(3),

Franklin County rightfully ceased payment of compensation and benefits to the two employees working solely for the Juvenile Court. LF015. The Franklin County Commission further put forth the good cause that warranted filing for review with the JFC outside the timeline in Operating Rule 12-9.05. LF017.

On February 24, 2020, the JFC ordered the petition dismissed, finding that the petition was untimely filed and that because of the writ issued by the Missouri Court of Appeals, Eastern District, the JFC had no authority.¹ LF325-326; A1-2. The petition for review filed in this Court followed. LF327-353.

¹ The day after the JFC dismissed the petition for review—February 25, 2020—the Twentieth Circuit filed a motion to dismiss the Franklin County Commission’s petition for review with the JFC. LF301-324.

POINTS RELIED ON

- I. The JFC erred in dismissing the petition for review, because the Franklin County Commission had good cause to file the petition after January 1 so that it was timely, in that the dispute was not confirmed and ripe for review until after January 1, 2020.**

Section 50.640, RSMo.

Section 211.382, RSMo.

Section 211.393, RSMo.

Supreme Court Operating Rule 12-9.05

- II. The JFC erred in dismissing the petition for review, because the JFC had authority to hear the dispute, in that the opinion of the Missouri Court of Appeals, Eastern District on the Twentieth Circuit's writ petition did not deprive the JFC of authority to hear the budgetary dispute.**

Section 477.600, RSMo.

State ex rel. Kiely v. Schmidei, 583 S.W.2d 236 (Mo. App. W.D. 1979)

Bandy v. State, 847 S.W.2d 93 (Mo. App. W.D. 1992)

State v. Graham, 13 S.W.3d 290 (Mo. banc 2000)

III. The JFC erred in dismissing the petition for review, because the Franklin County Commission is entitled to an order finding the county’s budget allocation to the Juvenile Court is proper, in that the Franklin County Commission calculated the “MOE” allocation pursuant to the formula in Section 211.393, and cannot be compelled to pay for Juvenile Court employees who should be paid by the state or to pay in excess of the “MOE.”

Supreme Court Operating Rule 23.01

Section 211.393, RSMo.

In RE: Cooper County Budget of the 18th Judicial Circuit of the State of Missouri,
Nos. 03-00064 and 04-00064 (Before the Judicial Finance Commission)

Cooper County v. Circuit Court of the 18th Judicial Circuit of Missouri,
124 S.W.3d 466 (Mo. banc 2004)

ARGUMENT

- I. The JFC erred in dismissing the petition for review, because the Franklin County Commission had good cause to file the petition after January 1 so that it was timely, in that the dispute was not confirmed and ripe for review until after January 1, 2020.**

Standard of Review

Section 477.600.7, RSMo. provides for review by this Court of the JFC's decision, specifically stating, "[t]he supreme court shall consider the petition for review *de novo*." (Emphasis added). In *Bosley v. Berra*, this Court clarified, "[i]n reviewing the decision of the Judicial Finance Commission, § 477.600 provides that this Court shall consider the petition for review *de novo*. However, in view of the Commission's statutory function as arbiter of circuit court budget disputes, (citation omitted), this Court does not engage in any close reconsideration of the Commission's conclusions with respect to reasonableness of circuit court expenditures where the basis for such conclusions is apparent from the record." 688 S.W.2d 353, 354 (Mo. banc 1985).

The issues for consideration by this Court do not include "reconsideration of the Commission's conclusions with respect to reasonableness of the circuit court expenditures." As a result, this Court's review should be *de novo*.

Argument

The JFC erred in dismissing the Franklin County Commission's petition for review as untimely. The Franklin County Commission had good cause for filing its petition after January 1, 2020, in which case the petition was timely filed.

In its February 24, 2020 order, the JFC stated:

Supreme Court of Missouri Operating Rule 12-9.05(a) requires counties of the first classification to file any petition for review by January 1. Petitioners filed their Petition for Review on February 18, 2020. Petitioners' petition for review is dismissed because it was untimely filed and because no good cause was shown by Petitioners for failure to file the petition for review by January 1, 2020.

A1-2; LF325-326. The JFC did not allow for briefing on the issue of good cause, nor did it hear evidence on the issue of good cause. LF325-326. Additionally, despite that Supreme Court Operating Rule 12-21.05 requires the JFC to issue an opinion "stating the reasons for its decision," the JFC did not provide any reasoning or explanation for finding there was no good cause. LF325-326.

Timely Filing After January 1, if Good Cause

Operating Rule 12-9.05 provides: "[e]xcept for good cause shown, a petition shall be filed according to the following schedule: (a) counties of the first classification and charter counties, January 1[.]" (Emphasis added). Thus, though petitions are generally required to be filed by January 1, if there is good cause, the petition may still be timely filed after January 1 as well as after formal approval of the county's budget. *See Bosley*, 688 S.W.2d at 356 (stating, "the Commission's jurisdiction is [not necessarily] limited

only to financial disputes occurring before the start of the budget year or before the approval of the budget...”).

Operating Rule 12-9.05 does not define the term “good cause.” However, this is a frequently used term that has a “well-known meaning at common law.” *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971); *PharmFlex, Inc. v. Division of Employment Sec.*, 964 S.W.2d 825, 830 (Mo. App. W.D. 1997). The appellate courts of Missouri have stated specifically when addressing use of the term “good cause” that, “[w]hen the General Assembly does not include a definition of a term but it has a common law meaning, we presume that the General Assembly intended that meaning.” *State ex rel. Nixon v. Hughes*, 281 S.W.3d 902, 910 (Mo. App. W.D. 2009) (quoting *Morgan v. Garth*, 273 S.W.3d 55, 59 (Mo. App. W.D. 2008)). Thus, it should be presumed the definition of the term “good cause,” as used in Operating Rule 12-9.05, was intended to include the common law definition of this term.

Common Law Definition of Good Cause

Missouri common law defines the term “good cause” as “encompass[ing] the occurrence of mistakes or conduct that is not intentionally or recklessly designed to impede the judicial process.” *Central America Health Sciences Univ., Belize Medical College v. Norouzian*, 236 S.W.3d 69, 76 (Mo. App. W.D. 2007) (quoting *Brueggemann v. Elbert*, 948 S.W.2d 212, 214 (Mo. App. E.D. 1997)). Courts have further explained “good cause” is what an “average person, who acts with reasonableness and in good faith, would decide.” *PharmFlex*, 964 S.W.2d at 831 (quoting *Wingo v. Pediatric & Adol.*

Med. Consultants, 932 S.W.2d 898, 899 (Mo. App. E.D. 1996); *Clark v. Labor & Indus. Rel. Comm’n*, 875 S.W.2d 624, 627 (Mo. App. W.D. 1994)).

Other appellate courts have turned to dictionaries in the quest to define the term “good cause.” Dictionaries define the term as “‘substantial reason,’ one that affords a legal excuse. Legally sufficient ground or reason.” *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (citing BLACK’S LAW DICTIONARY (5th Ed.)). Dictionaries also define the term “good cause” as “a cause or reason sufficient in law: one that is based on equity or justice or that would motivate a reasonable man under all the circumstances.” *Davis*, 469 S.W.2d at 4-5 (citing WEBSTER’S THIRD NEW INT’L DICTIONARY (2nd Ed.)).

Further, good cause “depends on the circumstances of the individual case.” *Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963). And, the term is interpreted “liberally to serve its remedial purpose and to avoid manifest injustice.” *Central America*, 236 S.W.3d at 76 (quoting *Stroup v. Leipard*, 948 S.W.2d 212, 214 (Mo. App. E.D. 1997)).

Dispute Relating to “MOE” Funding, Not Reasonableness

Before analyzing whether the Franklin County Commission’s February 18, 2020 petition for review was timely and whether it had good cause to file its petition after January 1, 2020, it is critical to first understand the nature of the dispute placed before the JFC. The petition for review was not a reasonableness challenge under Section 50.640.

Rather, the dispute was brought under Section 211.393. The budgetary dispute could not have been brought to the JFC by the Franklin County Commission before the

December 31, 2019 adoption of the budget and was in fact not known to the Franklin County Commission until well after adoption of the budget.

Some background on the difference between a Section 50.640 reasonableness challenge and a Section 211.393 dispute is instructive at the outset of this analysis. Section 50.640 pre-dates Section 211.393 and applies to the entirety of a circuit court's budget. Section 50.640 provides as follows:

1. Except as otherwise provided in this section, all offices, departments, courts, institutions, commissions or other agencies spending moneys of the county shall perform the duties and observe the restrictions set forth in sections 50.540 to 50.630 relating to budget procedure and appropriations. The estimates of the circuit court, including all activities thereof and of the circuit clerk, shall be transmitted to the budget officer by the circuit clerk. The estimates of the circuit clerk shall bear the approval of the circuit court. The budget officer or the county commission shall not change the estimates of the circuit court or of the circuit clerk without the consent of the circuit court or the circuit clerk, respectively, but shall appropriate in the appropriation order the amounts estimated as originally submitted or as changed, with their consent.

2. If the county governing body deems the estimates of the circuit court to be unreasonable, the governing body may file a petition for review with the judicial finance commission on a form provided by the judicial finance commission after the estimates are included in the county budget. An amount equal to the difference between the estimates of the circuit court and the amounts deemed appropriate by the governing body shall be placed in a separate escrow account, and shall not be appropriated and expended until a final determination is made by the judicial finance commission under this subsection. The form provided by the judicial finance commission shall include an opportunity for the governing body and the circuit court to state their positions in a summary fashion. 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. The judicial finance commission shall immediately order a settlement conference to determine if the matter can be resolved before ordering briefs and oral argument. The judicial finance commission, to the maximum extent practicable, shall resolve the dispute prior to the beginning of the fiscal year in question, however, if the dispute is submitted within ninety days of the end of the fiscal year, the commission shall resolve the dispute within ninety days of the beginning of the subsequent fiscal year. The county governing body may file and prosecute a petition for review without representation by counsel.

(Emphasis added). Section 50.640 requires that should the county disagree with the reasonableness of the circuit court's budget, then it should file a petition for review with the JFC before unilaterally changing the budget proposed by the circuit court. *Twentieth Judicial Circuit of the State of Missouri v. Board of Commissioners of the County of Franklin*, 911 S.W.2d 626, 628 (Mo. banc 1995). Accordingly, a petition for review of such a reasonableness challenge would likely be filed prior to the county formally adopting its budget.

Here, there was no challenge by the Franklin County Commission as to the reasonableness of the Twentieth Circuit's budget as a whole. Rather, the challenge was

narrower and was a challenge to the Twentieth Circuit's claim that Franklin County was required to fund the Juvenile Court with an amount in excess of the "MOE," as calculated under the formula provided by Section 211.393.

Prior to 1998, juvenile court employees of single county circuits were state employees, but juvenile court employees of multicounty circuits were not. However, in 1998, the General Assembly enacted Section 211, 382, which provides as follows:

As a provider of programs and services to children and families at the local level, the juvenile court system may recruit and retain qualified professionals to provide vital services to children in local communities and to the citizens of the state. In order to provide these critical services, an enhanced partnership between the state and the counties shall be established. This partnership provides greater assistance to both single and multicounty circuits by the state assuming the juvenile court employees of the multicounty circuits as state employees while maintaining the current status of juvenile court employees in a single county circuit in which all juvenile court employees are provided with retirement and other fringe benefits at the time of this enactment.

(Emphasis added). As Section 211.382 makes clear, in 1998 the General Assembly sought to create an "enhanced partnership between the state and the counties" by assuming the same employment and financial obligations for juvenile court employees in multicounty circuits as it had already been maintaining in single county circuits. This included making all juvenile court employees of a multicounty circuit state employees as well as providing them with "retirement and other fringe benefits." Section 211.382, RSMo.

Section 211.393 (relevant parts revised in 1998) provides in part:

For purposes of this section, the following words and phrases mean:

(2) “Juvenile court employee”, any person who is employed by a judicial court in a position normally requiring one thousand hours or more of service per year;

Juvenile court employees in multicounty circuits shall be subject to the following provisions:

(2) Juvenile court employee positions added after December 31, 1997, shall be terminated and not subject to the provisions of subdivision (1) of this subsection, unless the office of the state courts administrator requests and receives an appropriation specifically for such positions;

(3) The salary of any juvenile court employee who becomes a state employee, effective July 1, 1999, shall be limited to the salary provided by the state of Missouri, which shall be set in accordance with guidelines established by the state pursuant to a salary survey conducted by the office of the state courts administrator, but such salary shall in no event be less than the amount specified in paragraph (a) of subdivision (1) of this subsection. Notwithstanding any provision to the contrary in subsection 1 of section 211.394, such employees shall not be entitled to additional compensation paid by a county as a public officer or employee. Such employees shall be considered employees of the judicial branch of state government for all purposes.

No juvenile court employee employed by a single or multicounty circuit shall be eligible to participate in the county employees' retirement system fund pursuant to sections 50.1000 to 50.1200.

Each county in every circuit in which a juvenile court employee becomes a state employee shall maintain each year in the local juvenile court budget an amount, defined as "maintenance of effort funding", 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. The juvenile court shall provide a proposed budget to the county commission each year. The budget shall contain a separate section specifying all funds to be expended in the juvenile court. Such funding can be used for contractual costs for detention services, guardians ad litem, transportation costs for those circuits without detention facilities to transport children to and from detention and hearings, short-term residential services, indebtedness for juvenile facilities, expanding existing detention facilities or services, continuation of services funded by public grants or subsidy, and enhancing the court's ability to provide, prevention, probation, counseling, and treatment services. The county commission may review such budget and may appeal the proposed budget to the judicial finance commission pursuant to section 50.640.

(Emphasis added). Hence, effective July 1, 1999, all juvenile court employees in multicounty circuits became state employees. In fact, Section 211.393.3(2) makes clear that only with OSCA's approval could any juvenile court employee positions be created after December 31, 1997. Similarly, Section 211.393.3(3) makes clear all juvenile court employees are to be paid solely by the State of Missouri.

Despite assuming from the county the financial obligations of paying juvenile court employees, the General Assembly also wanted to ensure that counties would not simply abandon all support for juvenile court expenses and redirect the monies they were previously paying for salaries of juvenile court employees to other areas. Hence, the General Assembly passed Section 211.393.6, which sets forth a minimum amount of funding for juvenile court expenses for which the counties remained responsible. Section 211.393.6 refers to this as “maintenance of effort funding” under the notion that the counties would maintain efforts commensurate with what they were providing at the time to continue to support juvenile courts. Section 211.393.6 then sets forth an “MOE” formula that is based on the amount counties were spending on salaries in 1997 minus any amount the counties might be receiving through state reimbursement.

Thus, for more than twenty years a county’s legal obligations as to the juvenile court portion of the circuit court’s budget is no longer based on the reasonableness inquiry that applies to the other circuit court budget divisions, but rather is based on the county’s “MOE” calculation. Though a county can opt to fund more than its “MOE” amount for juvenile court expenses, it cannot be compelled to do so regardless of how reasonable the expenses over the “MOE” amount may or may not be. *In RE: Cooper County Budget of the 18th Judicial Circuit of the State of Missouri*, Nos. 03-00064 and 04-00064 (Before the Judicial Finance Commission).

Section 50.640 has no application to this matter, as the only amounts at issue are the Juvenile Court portion of the Twentieth Circuit’s budget that is controlled by Section 211.393. Specifically, the issue before the JFC was a legal one and not one of

reasonableness, namely whether Franklin County is responsible for funding more than the “MOE,” as calculated in the formula provided in Section 211.393.6.

Good Cause

In accordance with the common law definition of the term “good cause” used in Operating Rule 12-9.05 and in accordance with Section 211.393, the Franklin County Commission had good cause to file its petition for review with the JFC after January 1. The dispute over the amount of the “MOE” was not clear until after January 1, 2020, when the Twentieth Circuit refused to accept the Franklin County Commission’s “MOE” allocation. Justice and equity warranted a substantive review of the dispute rather than dismissal as untimely.

The Franklin County Commission did not formally approve its own budget, including the “MOE” allocation for the Juvenile Court, until December 31, 2019. LF333, ¶ 34. The County Budget Law, Sections 50.525 *et seq.*, RSMo., which dictates the process by which the Franklin County Commission must formally approve its budget does not require formal approval by January 1. Rather, Section 50.610 requires that “the budget shall be adopted and the appropriation order finally made at least ten days after the beginning of the fiscal year.” (Emphasis added). Section 50.010 defines Franklin County’s “fiscal year” as commencing on January 1. Thus, Franklin County was required to approve its budget by January 10, 2020 and was well within its statutory deadline when it approved the budget on December 31, 2019.

But, formal approval of the budget on December 31, 2019 effectively foreclosed the ability to file a petition for review with the JFC by January 1, 2020 because upon

adoption of the budget, it was still unknown that the Twentieth Circuit would not accept the Franklin County Commission's "MOE" allocation. As such, Operating Rule 12-9.05, which sets the filing deadline of January 1, is inconsistent with—if not in violation of—Section 50.610. To comply with the January 1 deadline in Operating Rule 12-9.05, the Franklin County Commission would had to have filed its petition for review before the dispute was even clear or ripe for review. As such, the January 1 deadline was impossible for the Franklin County Commission to comply with under these circumstances.

That there was a dispute over the Juvenile Court's budget was not clear until after January 1, 2020. It was not apparent the Twentieth Circuit would not accept Franklin County's "MOE" allocation (which it was forewarned would be the Juvenile Court's budget) until it filed its writ petition in the Missouri Court of Appeals, Eastern District. This was when the Franklin County Commission first became aware the Twentieth Circuit would ignore Section 211.393.6 and that a solid budgetary dispute existed between the two parties.

In fact, the Twentieth Circuit did not file its writ petition until January 27, 2020—twenty-one days after the January 1 deadline in Operating Rule 12-9.05. As a result, the need for review by the JFC did not even exist on January 1, 2020. This fact made it impossible for the Franklin County Commission to comply with the January 1 deadline of Operating Rule 12-9.05.

The purpose of the JFC is to mediate and resolve circuit court budget disputes. Section 477.600.5, RSMo. It has authority to hear not only reasonableness challenges

under Section 50.640, but also disputes as to “any budget or item in the budget.” Section 477.600.5, RSMo. Therefore, even though this budget dispute between the Franklin County Commission and the Twentieth Circuit is not a reasonableness challenge contemplated under Section 50.640, the JFC still has the authority to hear the dispute. But some budget disputes, including this one, do not arise and become clear by the January 1 deadline of Operating Rule 12-9.05—which logically is why Operating Rule 12-9.05 contemplates out-of-time filings.

There is a preference for courts to adjudicate cases on the merits. *See Sprung v. Negwer Materials, Inc.*, 775 S.W.2d 97, 100 (Mo. banc 1989) (affirming trial court’s refusal to set aside a default judgment, but stating “the law favors a trial on the merits”); *Brungard v. Risky’s, Inc.*, 240 S.W.3d 685, 686 (Mo. banc 2007) (stating public policy favors “the resolution of cases on the merits”). Similarly, there should be a preference for the JFC (and this Court) to adjudicate circuit court budget disputes—even those that are not on the reasonableness of the budget under Section 50.640—on the merits rather than dismissing them on a procedural technicality such as a filing deadline. Operating Rule 12-9.05 clearly contemplated such a preference by allowing good cause to override the January 1 deadline.

Here, equity and justice warranted review by the JFC (and now this Court) of the merits of this budgetary dispute rather than deferring a decision on the merits due to a technicality. *See Davis*, 469 S.W.2d at 4-5 (stating good cause is “one that is based on equity or justice”). This is especially the case under these circumstances, because given the nature of this budgetary dispute, timely review by the JFC was impossible.

The Franklin County Commission filed its petition for review immediately upon learning there was a dispute (when the Twentieth Circuit filed its writ petition) and the Court of Appeals, Eastern District would not decide the merits of the dispute (when it issued its opinion on the writ petition). The Franklin County Commission filed its petition for review with the JFC within a week of the Court of Appeals' decision.

This quick filing with the JFC once it was clear the budgetary dispute existed and was ongoing (*i.e.*, had not been decided on the merits by the Court of Appeals, Eastern District) demonstrates the Franklin County Commission acted in good faith by filing its petition for review with the JFC on February 18, 2020. It did not do so after January 1, 2020 to intentionally impede the review process. *See PharmFlex*, 964 S.W.2d at 831 (finding good cause is what an “average person, who acts with reasonableness and in good faith, would decide”); *Central America*, 236 S.W.3d at 76 (stating good cause includes “conduct that is not intentionally or recklessly designed to impede the judicial process”).

The Franklin County Commission had good cause to file its petition for review after January 1, 2020. The JFC erred in dismissing the petition as untimely. This Court should reverse the JFC's dismissal and conduct a *de novo* review of the petition or remand with guidance.

II. The JFC erred in dismissing the petition for review, because the JFC had authority to hear the dispute, in that the opinion of the Missouri Court of Appeals, Eastern District on the Twentieth Circuit’s writ petition did not deprive the JFC of authority to hear the budgetary dispute.

Standard of Review

The standard of review applicable to Point I is also applicable to Point II.

Argument

The JFC erred in dismissing the Franklin County Commission’s petition for review due to the Missouri Court of Appeals, Eastern District’s opinion in Case No. ED108658. The Court of Appeals’ opinion did not deprive the JFC of authority to hear the Franklin County Commission’s petition for review.

In its February 24, 2020 Order, the JFC stated: “because of the existing superseding judgment and opinion of the Missouri Court of Appeals, Eastern District, in ED108658, the Judicial Finance Commission is without authority to act on the petition for review.” A1-2; LF325-326. The JFC once again did not allow briefing on the issue or provide reasoning or an explanation for its finding it lacked authority. LF325-326.

**The Missouri Court of Appeals, Eastern District’s Opinion
Did Not Preclude Subsequent Filing with the JFC**

In the Missouri Court of Appeals, Eastern District’s February 11, 2020 opinion on the Twentieth Circuit’s writ petition, the court found: “[w]e find the JFC review is mandated and necessary.” A51. However, it did not address the merits of the dispute—which was whether Franklin County’s funding obligations for the Juvenile Court portion

of the Twentieth Circuit's budget was limited to the statutory "MOE" amount. A43-51, by omission. The Court of Appeals instead held the Twentieth Circuit was entitled to mandamus relief because the Franklin County Commission had not filed a petition for review with the JFC, which the court held was mandated and necessary. A51.

In fact, nothing in the Court of Appeals' opinion precluded the Franklin County Commission from filing a subsequent petition for review with the JFC. And, as discussed in Point I, the Franklin County Commission was within its time to do so. The Court of Appeals' statement that "the JFC review is mandated and necessary" implies ultimate resolution of the dispositive issue lies with the JFC, and ultimately this Court, which by statute reviews the decisions of the JFC. Presumably, this is why the Court of Appeals did not discuss the merits of the disputed issue and interpret Section 211.393.

Because the Franklin County Commission was not precluded from filing a subsequent petition for review with the JFC, this is exactly what the Franklin County Commission did. The JFC had authority to adjudicate the budgetary dispute before it.

The Missouri Court of Appeals, Eastern District's Opinion
Did Not Deprive the JFC of Authority

The Court of Appeals' opinion did not deprive the JFC of authority to hear and rule on the merits of the budgetary dispute brought before it by the Franklin County Commission. Neither the statute empowering the JFC nor the "law of the case" rule mandated dismissal by the JFC.

No Interference with Statutory Authority

Section 477.600.5, RSMo. provides the JFC “shall...[e]xamine...any budget or item in the budget estimated by the court[.]” Section 477.600.6(1) further authorized the JFC to conduct hearings, take testimony, summon witnesses, and subpoena records and documents. Upon hearing the evidence, the JFC is required to issue a written opinion that states “clearly the reason for its decisions.” Section 477.600.5(2). There is nothing in Section 477.600 or the Operating Rules providing that the JFC’s authority can be disturbed by the Court of Appeals ruling on a writ petition.

Critical is that the Court of Appeals did not consider evidence in its process; it did not adjudicate the dispute. In fact, the very function of a writ of mandamus is to enforce, not to establish a claim of right; the office of the writ is to execute, not adjudicate. *State ex rel. Kiely v. Schmidli*, 583 S.W.2d 236, 237 (Mo. App. W.D. 1979). Thus, the court’s quest was (or should have been) to enforce a claim of right, which it found was the right to adjudication by the JFC. It did not rule (or should not have ruled) the Twentieth Circuit was allowed under the law to effectively ignore the “MOE” provisions in Section 211.393.

The Court of Appeals preserved the budgetary apportionment to the Twentieth Circuit and indicated adjudication of the budgetary dispute with the JFC was necessary. A43-51. The court did not interfere with the JFC’s statutory authority to adjudicate the dispute and examine the budget at issue.

No “Law of the Case”

The Court of Appeals’ holding also did not establish the “law of the case.” Under this doctrine, “the appellate decision becomes the law of the case in subsequent proceedings of the same cause. Its operation normally precludes re-examination of issues decided in the original appeal.” *Bandy v. State*, 847 S.W.2d 93, 94 (Mo. App. W.D. 1992). However, it is not applicable where, as here, there was no ruling on the merits of the issues. *Id.*

Here, it is undisputable the Court of Appeals did not rule on the merits of the budgetary dispute between the Franklin County Commission and the Twentieth Circuit regarding Section 211.393. A43-51. Rather, the court made a ruling on procedural issues. And, it did so with limited briefing, no oral argument, and absolutely no evidence before it. A30-7; A43-51. Because the court never heard or considered the merits of the dispute, it could not have ruled on the merits. As such, the court’s opinion cannot act as the “law of the case” on issues such as the substantive arguments of the parties and the construction of Section 211.393.

Opinion in Error

Even if the Missouri Court of Appeals, Eastern District’s opinion holds precedential value under the “law of the case” doctrine, review of that decision is warranted here. The Court of Appeals’ holding was in error.

The “law of the case” doctrine is one of “policy and convenience, a concept that involves discretion.” *Bandy*, 847 S.W.2d at 94. “Appellate courts do have discretion to consider an issue when there is a mistake, a manifest injustice, or an intervening change

of law.” *State v. Graham*, 13 S.W.3d 290, 293 (Mo. banc 2000). Thus, review is warranted when the initial holding was in mistake or there is manifest injustice.

For example, in *Holt v. State*, successive appeals involved an appeal from a judgment of conviction and an appeal from denial of post-conviction relief on the same conviction. 433 S.W.2d 265, 268 (Mo. 1968). On the first of the two appeals, this Court refused to consider the merits of a claim for error because of the untimely filing of a motion for a new trial. *Id.* In the second appeal, when presented with the same substantive claim, this Court recognized it had erred in finding the motion for new trial was untimely and it determined the merits of the substantive claim presented in the first appeal. *Id.*

As further example, in *Laclede Inv. Corp. v. Kaiser*, the Missouri Court of Appeals, Eastern District initially opined the plaintiff was a third-party beneficiary to a limited partnership agreement that was the subject of the case. 596 S.W.2d 36, 41 (Mo. App. E.D. 1980). The parties did not brief this issue of third-party beneficiary status but focused on other issues. *Id.* The Court of Appeals determined on a subsequent appeal that:

[its] prior opinion was incorrectly decided, that [its] prior decision on that issue is out of harmony with other decisions, that the issue was incorrectly decided out of inadvertence arising from inadequate briefing, that adherence to the incorrect ruling will cause manifest injustice to the rights of the parties, and such adherence will create a precedent having serious and unwarranted consequences to the law of contracts. It is [its] conclusion that this case presents an exception to the “law of the case” doctrine and that [it is] therefore free to correctly decide the issue.

Id. The court found the plaintiff was in fact not a third-party beneficiary to the contract and reversed with direction to enter judgment for defendants. *Id.* at 43.

The standard for a writ in mandamus requires “an existing, clear, unconditional legal right in relator, and a corresponding present, imperative unconditional duty upon respondent, and a default upon respondent. *Kiely*, 583 S.W.2d at 237. The right sought to be enforced must be clearly established and presently existing. *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. banc 1994) (citing *State ex rel. Commissioners of the State Tax Comm’n v. Schneider*, 609 S.W.2d 149, 151 (Mo. banc 1980)). A writ of mandamus is not appropriate to establish a legal right, but only to compel performance of a right that already exists. *Chassaing*, 887 S.W.2d at 576 (citing *State ex rel. Brentwood School Dist. V. State Tax Comm’n*, 589 S.W.2d 613, 614 (Mo. banc 1979)). Mandamus is discretionary, and not a writ of right. *Chassaing*, 887 S.W.2d at 576 (citing *Norval v. Whitesell*, 605 S.W.2d 789, 791 (Mo. banc 1980)).

Thus, to support its issuance of the writ of mandamus, the Missouri Court of Appeals, Eastern District was required to first find the Twentieth Circuit had an existing right to the budget appropriation in excess of the “MOE.” To support its finding the Franklin County Commission had a “clear, unequivocal and present duty to include [that] contained in [the] circuit court’s budget estimate in the county’s appropriations to the circuit court and to do without modification” the court relied upon the case of *Twentieth Judicial Circuit v. Board of Commissioners of Franklin County*. A46-47; 911 S.W.2d 626 (Mo. banc 1995). However, such reliance was misplaced.

The *Twentieth Circuit* case involved the budget for the 1995 fiscal year and the reduction of salaries for juvenile court employees. *Twentieth Circuit*, 911 S.W.2d at 627. This Court held under Section 50.640 the county could not unilaterally change the circuit court’s budget but should have requested a “reasonableness” review by the JFC. *Id.* at 628.

Critically, the *Twentieth Circuit* case did not involve an “MOE” calculation under Section 211.393. In fact, the pertinent provisions of Section 211.393 were not even the law until the section was amended in 1998, which was after this Court’s opinion in the *Twentieth Circuit*. The *Twentieth Circuit* case involved only a reasonableness challenge under Section 50.640.

Here, however, there is not a challenge to the reasonableness of the Twentieth Circuit’s budget under Section 50.640. Rather, the Franklin County Commission is asserting the law as promulgated in Section 211.393 that it does not have to employ Juvenile Court employees—who should be employed by the state—and it does not have to apportion more to the Juvenile Court’s budget than the “MOE.” This is the assertion of a different right and claim than in the *Twentieth Circuit* case, so that case does not hold the precedential value the Court of Appeals claimed.

There is no real clarity as to the procedures to follow when the circuit court chooses to ignore the provisions of Section 211.393, such as here. As a result, there was no “clearly established and presently existing” right of the Twentieth Circuit to a Juvenile Court budget in excess of the “MOE.” *Chassaing*, 887 S.W.2d at 576 (“The right sought

to be enforced must be clearly established and presently existing”). The Missouri Court of Appeals, Eastern District erred in its holding.

The Court of Appeals also discussed *Cooper County v. Circuit Court of 18th Judicial Circuit of Missouri*, because in that case the county filed a request for review by the JFC and this Court reviewed the JFC’s holding on appeal. 124 S.W.3d 466 (Mo. banc 2004). However, there is no discussion by this Court in the *Cooper County* case holding the county must file for review with the JFC when the circuit court ignores Section 211.393, or risk losing the ability to hold the circuit court to the provisions of Section 211.393. In fact, there is no authority requiring that when the circuit court refuses to follow Section 211.393, the county must file for review by the JFC under Section 50.640.

Because the Twentieth Circuit here refused to set its budget to comply with the “MOE” (as it was requested to do) and essentially chose to ignore Section 211.393, the duty to file the petition for review with the JFC should have fallen on the Twentieth Circuit rather than the Franklin County Commission. The operating rules encompass such a possibility.

Operating Rule 12-7.05 specifies that the presiding judge or attorney for the circuit court must sign any petition, complaint, protest or other pleading filed by the circuit court in the JFC. Because this operating rule includes a provision for the circuit court to file a petition or complaint, this contemplates an action being brought by the circuit court. Similarly, Operating Rule 12-9.01(b) specifically references a petition for review that is filed by a circuit court.

However, instead of requiring the Twentieth Circuit to initiate the JFC's review, the Court of Appeals allowed the Twentieth Circuit to use the courts and the writ process as a weapon against Franklin County. Although finding the JFC was the mandatory forum for adjudication of the dispute, the Court of Appeals did not require the Twentieth Circuit to initiate the JFC proceeding despite its various opportunities to do so. Instead the Court of Appeals mistakenly issued a mandamus when in fact there was no established right to enforce. This is a manifest injustice.

Further, the Franklin County Commission did not acquiesce to the ruling of the Court of Appeals or otherwise waive the right to challenge this ruling. The Franklin County Commission sought transfer to this Court, but this Court declined the invitation to review the holding—as it has discretion to do. *See e.g., Graham*, 13 S.W.3d at 293 (finding the parties acquiesced in the prior court of appeals decision because they did not seek transfer to this Court); *see also* MO.R.APP.P. 83.04. However, in declining transfer of the case from the Court of Appeals, no review by this Court was conducted. Review now is both proper and necessary because the opinion of the Court of Appeals was in part grounds for the JFC's dismissal of the Franklin County Commission's petition for review—and if the Court of Appeals' opinion was made in error, then logically the JFC's dismissal relying on the Court of Appeals' opinion was also in error.

As such, the JFC (and this Court) are the proper place for review of the merits of the dispute, and the Court of Appeals' decision did not foreclose the JFC's authority to hear and decide the disputed issue. The JFC had authority to hear and decide the disputed issue related to Section 211.393. The JFC erred in dismissing the petition. As

such, this Court should reverse the JFC's dismissal and conduct a *de novo* review of the petition or remand with guidance.

III. The JFC erred in dismissing the petition for review, because the Franklin County Commission is entitled to an order finding the county's budget allocation to the Juvenile Court is proper, in that the Franklin County Commission calculated the "MOE" allocation pursuant to the formula in Section 211.393, and cannot be compelled to pay for Juvenile Court employees who should be paid by the state or to pay in excess of the "MOE."

Standard of Review

The standard of review applicable to Point I is also applicable to Point III.

Argument

Having chosen to dismiss the petition for review on procedural issues, the JFC did not issue a ruling on the merits of the budget dispute before it. However, had it done so, the JFC should have ruled in favor of the Franklin County Commission, finding pursuant to Section 211.393, RSMo. that the Franklin County Commission was not required to compensate Juvenile Court employees and the Franklin County Commission properly calculated the "MOE." Under the law, Franklin County was not required to apportion more than that to the Juvenile Court. Upon review this Court should hold the same.

**This Court has Authority to Issue a Ruling on the Merits
or Remand with Guidance**

Supreme Court Operating Rule 23.01 provides: "[o]n receipt of the written opinion of the commission, dismissal of the case by the commission, or on refusal of the commission to accept a petition for review, the circuit court or the county governing body may seek review by the Supreme Court by filing a petition for review in the Supreme

Court[.]” (Emphasis added); *see also* Section 477.600.7 stating: “[u]pon receipt of the written opinion of the commission or upon refusal of the commission to accept a petition for review, the circuit court or the county governing body may seek a review by the supreme court by filing a petition for review in the supreme court[.]” (emphasis added). Notably, Operating Rule 23.01 discusses filing a “petition for review” with this Court to instigate review of the JFC’s holding, much as Operating Rule 12-9 discusses filing a “petition for review” with the JFC to initiate review of the budgetary dispute. Use of “petition for review” in both operating rules cannot be overlooked.

Under the statutory construction doctrine of *in pari materia*, statutes (or rules) that relate to the same subject matter are to be read together to determine their meaning. *KC Motorcycle Escorts, LLC v. Easley*, 53 S.W.3d 184, 187 (Mo. App. W.D. 2001). Following the *in pari materia* doctrine, the same type of filing is required to instigate review by this Court as to initiate review by the JFC—logically indicating this Court was intended to provide the same type of review as the JFC. This reading, along with Section 477.600.7, which requires *de novo* review by this Court, demonstrates review by this Court may include the ability to summarily issue a ruling on the budgetary dispute—even when on review of a dismissal by the JFC. *See e.g.*, MO.R.APP.P. 84.14 (the appellate court shall “give such judgment as the court ought to give” and “shall dispose finally of the case”); *American Civil Liberties Union of Missouri v. Ashcroft*, 577 S.W.3d 881 (Mo. App. W.D. 2019) (appellate courts can give such judgment as the trial court ought to give in lieu of remanding for entry of judgment; this is particularly appropriate for judgments where the salient facts are not in dispute, but the only dispute is the legal significance of

the facts); *Anderson v. Mantel*, 171 S.W.3d 774, 781 (Mo. App. S.D. 2005) (directly rendering the proper judgment rather than remanding for entry of judgment).

Here, there is no dispute of fact, only a dispute on the enforcement of Section 211.393. This Court can rule on such a legal issue.

This is especially the case as Operating Rule 12-1.03 provides: “[t]his Court Operating Rule 12 shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.” The dispute between a county and circuit court over the required “MOE” for juvenile courts is an ongoing dispute. Should no clear direction on the merits of the dispute be provided and in relatively short order, the dispute is likely to continue year after year, including for fiscal year 2021—the budgeting of which is due to start shortly. This Court should render a finding on the merits of the dispute.

Franklin County was Not Required to Compensate Juvenile Court Employees

Section 211.282 makes clear that all Juvenile Court employees from July 1, 1999 and forward in multicounty circuits are deemed to be state employees for purposes of salary, retirement, and fringe benefits. That being the case, the Franklin County Commission was under no obligation to pay for either the salaries or the benefits of employees of the Juvenile Court. In fact, it appears the hiring of these employees by the Twentieth Circuit was contrary to Section 211.393.3(2), which requires all new Juvenile Court positions to be authorized and appropriated by OSCA. Regardless, the Franklin County Commission is under no obligation to continue to pay for Juvenile Court personnel that, if authorized to be employed at all, must be state employees.

This issue is significant because of the disproportionately high impact the Juvenile Court expenses had on the whole budget of the Twentieth Circuit. The Juvenile Court portion of the estimated budget was more than ten times that of the circuit court division of the budget, and represents more than 77% of the total circuit court budget estimate. LF009, ¶¶ 14-15; LF019-054. A major reason for this is the salaries and fringe benefits budgeted by the Juvenile Court of personnel that should be state employees under Sections 211.282 and 211.393.

Franklin County is not required to pay for the salary of the juvenile office employees who should be state employees under Chapter 211, and the Twentieth Circuit's improper inclusion of them in the Juvenile Court budget estimate adds significantly to the difference between the "MOE" amount and the Juvenile Court's budget estimate.

The Franklin County Commission's "MOE" Allocation was Proper

The legal issue presented to this Court was actually addressed and resolved more than a decade ago, in an opinion by the JFC (after guidance from this Court). This decision is dispositive here.

In *In RE: Cooper County Budget of the 18th Judicial Circuit of the State of Missouri*, Nos. 03-00064 and 04-00064 (Before the Judicial Finance Commission) ("*Cooper County*"), the JFC issued its Findings of Fact, Conclusions of Law and Decision on the issue of whether a county was responsible for more than its "MOE" amount. A69-86. *Cooper County* involved an initial budget challenge to the JFC under Section 50.640 – as to a 2003 budget – which was then appealed to this Court. A69;

Cooper County v. Circuit Court of the 18th Judicial Circuit of Missouri, 124 S.W.3d 466 (Mo. banc 2004). This Court then remanded the case back to the JFC for further adjudication of the 2003 budget. *Cooper County*, 124 S.W.3d at 469.

In the meantime, a budget dispute also arose as to the 2004 budget that was brought to the JFC, so the JFC consolidated the two cases into one. A69. The main issue addressed in *Cooper County* was whether the county was responsible for services expenses, including the salary of a deputy juvenile officer, when the county had already fulfilled its “MOE” funding obligations. A74.

The JFC first noted that it had, in prior cases, held that counties in multicounty circuits were per se exempt from funding any services growth, regardless of the source of the growth funding. A75. The JFC then made clear that its “general review of factual reasonableness under section 50.640, RSMo, must be guided by the specific calculation of maintenance of effort under section 211.393, RSMo.” A75. The JFC then evaluated the budget—as adopted by the county—and the county’s “MOE” amount. A75. The JFC concluded that the budget the county adopted was higher than the required “MOE” funding amount. A75. This meant, according to the JFC, that “the county already has volunteered to exceed its maintenance of effort requirement ... even before the new expenses the court was seeking to have the county pay for.” A75-76. The JFC’s analysis in arriving at this conclusion is instructive:

Since [the county] has in fact exceeded its maintenance of effort amount, it is not reasonable to compel [the county] to exceed this amount since 211.393, RSMo, specifically relieves counties of growth in the juvenile budget beyond the specified maintenance of effort amount. Therefore, as to any

amount included in its budget that exceeds its maintenance of effort amount, the county has the discretion as to whether or not the particular item shall be funded. In essence, maintenance of effort acts as a mandatory minimum level for funding that the county can choose to exceed but cannot be ordered to exceed. To require the county to exceed this amount by an additional \$17,384 in order to pay for the second half of the deputy juvenile officer's salary in this case, as [sought] in this case, would be unreasonable under 50.640, RSMo, in light of the fact that the county has already gone beyond its statutory requirements as set forth in section 211.393, RSMo.

A76.

In other words, the "MOE" funding required by Section 211.393.6 trumps the reasonableness test in Section 50.640 such that, even if reasonable, a county is under no obligation to pay amounts above its "MOE" amount. A74-76. In fact, the JFC stated that to conclude otherwise would render Section 211.393.6 completely meaningless. A75. In specifically addressing the relationship between Section 50.640 and Section 211.393.6, the JFC stated, "[t]he Supreme Court of Missouri has held that 'the primary rule of statutory construction is to ascertain intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning.'" A76. (quoting *Wolf Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988)). The JFC went on to state that it presumed Section 211.393.6 had meaning "and that the meaning of that section was to mandate the maintenance of a specific amount for juvenile services, and no more than that specific amount." A77.

Cases decided before the 1998 change in the law when Sections 211.282 and 211.393.6 were enacted have absolutely no relevance or application here, as they applied

to situations in which the only inquiry—even as to the juvenile court portion of the circuit court’s budget—was the reasonableness inquiry under Section 50.640.

Cooper County is directly on point and remains the applicable law. Here, it is irrelevant whether the Twentieth Circuit’s budget estimate was reasonable, as the Franklin County Commission cannot be compelled to pay more than its “MOE” amount. This is why the Franklin County Commission did not (and did not need to) make a reasonableness challenge to the JFC, because by adopting a budget that satisfied its “MOE” amount, it complied with its juvenile budget obligations as a matter of law.

Though Section 211.393, like Section 50.640, also allows for a reasonableness challenge to be made to the JFC, which could arise if items within the budget are thought to be unreasonable apart from the issue of the “MOE” amount, that situation is simply not present here, such that the Franklin County Commission was under absolutely no obligation to make a challenge to the JFC, and the decision not to do so in no way increases the Franklin County Commission’s obligations above the “MOE” amount it adopted in the 2020 Juvenile Court budget.

Applicable law makes clear the Franklin County Commission properly funded the juvenile portion of the Twentieth Circuit budget, and that amount cannot be increased based on there being no challenge filed with the JFC. As the “MOE” amount was appropriated by the Franklin County Commission, this became the proper—and maximum required—amount of the Juvenile Court portion of the Twentieth Circuit’s budget, as a matter of law.

As such, this Court should issue an order finding the Franklin County's budget allocation to the Juvenile Court was proper. This Court should hold pursuant to Section 211.393 that all Juvenile Court personnel in the Twentieth Circuit should be paid by the state and for all purposes the Franklin County Commission's "MOE" of \$333,523 was proper. Alternatively, the Franklin County Commission requests that the Court remand to the JFC for review in accordance with its opinion.

CONCLUSION

The JFC erred in dismissing the Franklin County Commission's petition for review. The petition was not untimely because good cause existed for its filing after January 1, 2020. The JFC also had authority to hear the petition because the Missouri Court of Appeals, Eastern District's opinion on the Twentieth Circuit's writ petition did not deprive the JFC of authority. The JFC's dismissal of the petition for review should be reversed.

Finally, upon review of the petition for review this Court should hold pursuant to Section 211.393 that all Juvenile Court personnel in the Twentieth Circuit should be paid by the state and for all purposes the Franklin County Commission's "MOE" of \$333,523 was proper. Alternatively, the Franklin County Commission requests that the Court remand to the JFC for review in accordance with its opinion.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I certify this brief complies with the provisions of Rules 55.03 and 84.06(b). This brief contains 10,997 words, including the cover, the certificate required by Rule 84.06(c), and the signature block. Counsel has relied upon the word-counting utility of Microsoft Word in making this certification.

I further certify that a copy of this brief was filed electronically on July 1, 2020 using the Court's electronic filing system, causing automated delivery to counsel of record in this matter.

/s/ Mark C. Piontek