

OPINION NO. 2001-020**Syllabus:**

Summit County charter, article X, which creates and prescribes the powers and duties of the Summit County audit committee and the department of internal auditing, vests no authority in that committee or department with respect to the Summit County Court of Common Pleas, probate division.

To: Sherri Bevan Walsh, Summit County Prosecuting Attorney, Akron, Ohio
By: Betty D. Montgomery, Attorney General, May 30, 2001

You have requested an opinion concerning the authority of the Summit County department of internal auditing with respect to the probate division of the Summit County Court of Common Pleas. According to information provided with the request, the Summit County charter was recently amended to include article X, which establishes a county audit committee and a department of internal auditing. Pursuant to Summit County charter, art. X, § 10.01, the county audit committee¹ is created "to provide internal auditing to assist" county officers and entities that are "funded in whole or in part with county funds, in providing to the taxpayers of Summit County efficient and effective services."

Article X of the Summit County charter also provides for the creation of a department of internal auditing, which "shall serve under the direction of, and perform such functions on behalf of," the county audit committee, as the committee directs. Summit County charter, art. X, § 10.02. Because the operations of the Summit County Court of Common Pleas and its divisions are "funded in whole or in part" by Summit County, *see State ex rel. Slaby v. Summit County Council*, 7 Ohio App. 3d 199, 454 N.E.2d 1379 (Summit County 1983), you ask whether article X, §§ 10.01 and 10.02 of the Summit County charter confer authority upon the Summit County audit committee and the department of internal auditing with respect to the Summit County Court of Common Pleas, probate division.

Before examining your specific question, let us briefly examine the nature of Summit County's authority as a charter county. As a general rule, counties are creatures of statute with only those powers and duties vested in them by the General Assembly. *Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 621 N.E.2d 696 (1993). Pursuant to Ohio Const. art. X, § 3, however, Summit County has adopted a charter through which it exercises home rule authority.² *See generally* 1989 Op. Att'y Gen. No. 89-106 (discussing home rule authority).

¹Pursuant to Summit County charter, art. X, § 10.01, the county audit committee consists of the county treasurer, the county auditor, the county executive, the president of county council, and a Summit County resident who is appointed by the county executive and approved by a majority of the county council.

²Ohio Const. art. X, § 3 states, in pertinent part:

Every ... charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their

According to Ohio Const. art. X, § 3, Summit County has authority, “through properly adopted charter provisions, to restructure its government with respect to both the form of county government and its offices,” so long as the charter provides for the exercise of all powers and the performance of all duties imposed by statute on counties and county officers. 1994 Op. Att’y Gen. No. 94-095 at 2-469. In addition, through the adoption of its charter, Summit County has achieved “the authority to exercise those powers of local self-government and police and sanitary powers granted to municipalities.” 1985 Op. Att’y Gen. No. 85-047 at 2-171.

The authority of a county to exercise the powers of local self-government and other municipal powers through the adoption of a charter, however, is subject to certain limitations. As stated in 1989 Op. Att’y Gen. No. 89-106 at 2-517:

Ohio Const. art. X, § 3 provides that the powers and duties statutorily delegated to counties and county officers *in their capacity as administrative arms of the state* are not affected by the adoption of municipal powers, including the municipal home-rule authority provided in Ohio Const. art. XVIII, § 3 (municipalities have “powers of local self-government” and local police power, within prescribed limitations). (Emphasis added; footnote omitted.)

Among the well-established exclusions from municipal home rule authority is the creation and regulation of courts.³ As explained by the court in *State ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St. 468, 473-74, 147 N.E. 647, 649 (1925):

The judicial power of the state is distinct from the executive and the legislative, and as one of the highest elements of sovereign power can only be created in strict conformity to the manner indicated by the rules laid down in the expression given to sovereignty by the people themselves, to wit, the Constitution. This judicial power has been cared for by the organic law, and is beyond the control of municipalities, which, after all, are only agents of the state for local

election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both.

³See, e.g., *Cupps v. City of Toledo*, 170 Ohio St. 144, 163 N.E.2d 384 (1959) (syllabus, paragraph one) (“[t]he authority granted to municipalities by Section 3 of Article XVIII, Ohio Constitution, to ‘exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws’ and, by Section 7 of Article XVIII, to ‘frame and adopt or amend a charter for its government and * * * exercise thereunder all powers of local self-government’ does not include the power to regulate the jurisdiction of courts established by the Constitution or by the General Assembly thereunder”).

governmental purposes. *Section 1, Article IV*,⁴ is a special provision of the Constitution that has to do with the creation of courts, and as such *supersedes the general power of local self-government*, as granted in Section 3, Article XVIII. (Footnote and emphasis added.)

The independence of the courts from municipal home rule authority was further detailed in *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929), the syllabus of which reads, in pertinent part, as follows:

1. The sovereignty of the state in respect to its courts extends over all the state, including municipalities, whether governed by charter or general laws.
2. None of the various provisions of Article XVIII of the Constitution of Ohio are effective to abridge the sovereignty of the state over municipalities in respect to its courts.
3. The legislature has the exclusive power to create courts inferior to the Courts of Appeals.
4. The power to create a court carries with it the power to define its jurisdiction and to provide for its maintenance.

Specifically concerning the independence of the judicial branch of government with respect to fiscal matters, the Ohio Supreme Court declared the following in *State ex rel. Arbaugh v. Richland County Bd. of Comm'rs*, 14 Ohio St. 3d 5, 5-6, 470 N.E.2d 880, 881 (1984):

This court has held without equivocation that “[t]he public interest is served when courts co-operate with executive and legislative bodies in the complicated budgetary processes of government. However, such voluntary co-operation should not be mistaken for a surrender or diminution of the plenary power to administer justice which is inherent in every court whose jurisdiction derives from the Ohio Constitution.” *State, ex rel. Johnston, v. Taulbee* (1981), 66 Ohio St. 2d 417, 422 [20 O.O.3d 361] (citing *State, ex rel. Giuliani, v. Perk* [1968], 14 Ohio St. 2d 235, 237 [43 O.O.2d 366]). Consequently, appellee’s assertion that the court of common pleas, as a co-equal partner in government, is *constitutionally obliged* to follow the budget process of the county board of commissioners is simply wrong.

We recognize that the power to control what a court spends, or to totally regulate the process of obtaining funds, ultimately becomes the power to control what the court does. Such a principle is an anathema to an independent judiciary. On the other hand a tripartite balance of power exists that must be respected. To this extent it is axiomatic that a court should cooperate, whenever possible, with the legislative budget process. Moreover, a court does not

⁴Ohio Const. art. IV, § 1 states: “The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.”

have unfettered discretion to act without reason in making its budget. In the spirit of separation of powers we have promulgated a test of "reasonableness and necessity" to maintain the sovereignty of our respective powers when a budget conflict arises. The burden is on the party who opposes the allocation of funds to demonstrate that the court abused its discretion in promulgating a budget which is both unreasonable and unnecessary. *State, ex rel. Musser, v. Massillon* (1984), 12 Ohio St. 3d 42; *State, ex rel. Durkin, v. Youngstown City Council* (1984), 9 Ohio St. 3d 132, 134-135.

Although the Summit County charter does not describe the specific tasks to be performed by the Summit County audit committee and the department of internal auditing, it is clear that neither the committee nor the department may control what the Summit County Court of Common Pleas spends or "totally regulate the process of [the court's] obtaining funds." 14 Ohio St. 3d at 6, 470 N.E.2d at 881.

It may be useful also to note that, the relationship between the legislative branch of Summit County government and, among others, the Summit County Court of Common Pleas, probate division, was specifically addressed in *State ex rel. Slaby v. Summit County Council*. In the *Slaby* case, the Summit County Court of Appeals provided a comprehensive discussion of the case law establishing the long-standing principle that, "[c]ourts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and *cannot be directed, controlled or impeded* therein by other branches of the government." *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, 46 N.E.2d 865 (1943) (syllabus, paragraph two) (emphasis added). See *State ex rel. O'Connor v. Davis*, 139 Ohio App. 3d 701, 713-14, 745 N.E.2d 494, 504 (Summit County 2000) ("the administration and operation of a system of courts has been found to be a matter of state sovereignty"), *appeal dismissed*, 91 Ohio St. 3d 1415, 741 N.E.2d 142 (2001).

Because a county's home rule authority under Ohio Const. art. X, § 3 is no greater than that granted to municipalities by Ohio Const. art. XVIII, § 3, a county's home rule powers are similarly limited by Ohio Const. art. IV, § 1 with respect to the creation and regulation of courts. See generally, e.g., 1996 Op. Att'y Gen. No. 96-043 (syllabus) ("[n]either the Summit County Charter nor rules adopted thereunder, may vest the County Executive, through a Human Resource Commission, with the authority to establish personnel policy or make personnel decisions for the Summit County Court of Common Pleas, probate division"). We conclude, therefore, that Summit County charter, art. X, which creates the Summit County audit committee and the department of internal auditing and prescribes the powers and duties of those entities, vests no authority in either the committee or the department with respect to the Summit County Court of Common Pleas, probate division.

Based upon the foregoing, it is my opinion, and you are hereby advised that, Summit County charter, article X, which creates and prescribes the powers and duties of the Summit County audit committee and the department of internal auditing, vests no authority in that committee or department with respect to the Summit County Court of Common Pleas, probate division.