

February 14, 2000

OPINION NO. 2000-009

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-7697

Dear Prosecutor Baxter:

You have requested an opinion regarding the manner in which a board of county commissioners appropriates funds for the domestic relations division within the court of common pleas.¹ According to information provided by your office, your request concerns the specificity with which a board of county commissioners may make an appropriation for this division of the court. It is our understanding that the county commissioners' appropriation to the court is divided into categories, *e.g.*, personnel, administrative services, and within these categories, the commissioners have specified subcategories among which the sum allocated to the category is divided. As mentioned in your request, the court would like to receive a general appropriation that it may allocate as it chooses, without returning to the county commissioners for the transfer of moneys from one item to another within the court's appropriation.

Your concern with the permitted level of detail contained in an appropriation measure appears to lie, in part, in the relationship between the appropriation of county moneys and the ability to expend such moneys. As summarized in 1985 Op. Att'y Gen. No. 85-050 at 2-181, "[c]ounty funds may not

¹ In Erie County there are two common pleas court judges. R.C. 2301.02(B). One of these judges is "elected and designated as judge of the court of common pleas, division of domestic relations." R.C. 2301.03(N). In Erie County the domestic relations judge also has "all the powers relating to juvenile courts, and shall be assigned all cases under [R.C. Chapter 2151], parentage proceedings over which the juvenile court has jurisdiction, and divorce, dissolution of marriage, legal separation, and annulment cases, except cases that for some special reason are assigned to some other judge." *Id.*

be expended until they have been appropriated as provided in R.C. Chapter 5705 and public funds may be spent only for the purpose for which they are appropriated. *See* R.C. 5705.10; R.C. 5705.38; R.C. 5705.39; R.C. 5705.41.” In order to address your concerns, it may be useful to begin by briefly examining the budgeting process that precedes the adoption of a county’s annual appropriation measure.

The duty to adopt a county’s annual tax budget is imposed by R.C. 5705.28(A) upon its board of county commissioners, as the taxing authority of the county. *See generally* R.C. 5705.01(A) and (C) (defining “subdivision” and “taxing authority” for purposes of R.C. Chapter 5705). In order to assist the board of county commissioners in the performance of this duty, “the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of [the county] shall file with the [board] ... before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, *in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state.*” R.C. 5705.28(C)(1) (emphasis added). *See generally* R.C. 5705.29 (requiring the tax budget to contain specific information “*in such detail as is prescribed by the auditor of state, unless an alternative form of the budget is permitted under [R.C. 5705.281]*”).²

Once the county commissioners adopt the tax budget,

the tax budget must be submitted to the county auditor, R.C. 5705.30, who presents to the county budget commission “the annual tax budgets submitted to him under [R.C. 5705.01-47].” R.C. 5705.31. The county budget commission then, *inter alia*, “adjust[s] the estimated amounts required from the general property tax for each fund, as shown by budgets, so as to bring the tax levies required therefor within the limitations specified in [R.C. 5705.01-47], for such levies, but no levy shall be reduced below a minimum fixed by law. The commission may revise and adjust the estimate of balances and receipts from all sources for each fund and *shall determine the total appropriations that may be made therefrom.*” R.C. 5705.32 (emphasis added). The budget commission then certifies its action to the taxing authority of each subdivision or taxing unit. R.C. 5705.34.

1994 Op. Att’y Gen. No. 94-007 at 2-26 (footnote omitted). Pursuant to R.C. 5705.35(A), the certification of the budget commission shall, with certain exceptions, “show the various funds of such subdivisions” and set forth on the credit side of each fund the estimated unencumbered balances and receipts, and, if a tax is levied for the fund, the estimated revenue to be derived from the levy. On the

² R.C. 5705.281 provides for the county budget commission to waive the requirement to adopt a tax budget for certain subdivisions in limited circumstances. This opinion will be limited, however, to a discussion of appropriation measures adopted by a county that is not subject to R.C. 5705.281.

debit side of each fund, the certification shall show the total appropriations that may be made from such fund. R.C. 5705.35(A). Thereafter, based upon the tax budget, as reviewed and adjusted by the county budget commission, and the official certificate of estimated resources or amendments thereto, as prepared by the county budget commission, the board of county commissioners must adopt the county's appropriation measure. R.C. 5705.38(A).³

In the event that a county's anticipated revenues or expenses change, its appropriation measure may be amended or supplemented in accordance with R.C. 5705.40.⁴ In addition, R.C. 5705.40 authorizes the transfer of funds from one appropriation item to another by resolution of the board of county commissioners. *See generally* 1994 Op. Att'y Gen. No. 94-007 at 2-27 (“[w]ith respect to appropriations made by a county, therefore, the board of county commissioners alone has the authority to transfer funds among appropriation items”). Accordingly, once a board of county commissioners has appropriated funds in a particular manner, any change “from one appropriation item to another,” R.C. 5705.40, may be made only by resolution of the board.

³ R.C. 5705.392, in part, authorizes a board of county commissioners to adopt, as part of its annual appropriation measure, a county spending plan “setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund.” R.C. 5705.392 further provides:

The spending plan shall be classified to set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and within each, the amount appropriated for personal services. Each office, department, and division shall be limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan. The schedule established in the spending plan shall serve as a limitation during a quarter on the making of contracts and giving of orders involving the expenditure of money during that quarter for purposes of [R.C. 5705.41(D)].

⁴ R.C. 5705.40 states in pertinent part:

Any appropriation ordinance or measure may be amended or supplemented, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation and that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation. Transfers may be made by resolution or ordinance from one *appropriation item* to another. (Emphasis added.)

As used in R.C. 5705.40, the term “appropriation item” is not defined by statute. The only statutory provision addressing the detail to be included in the annual appropriation measure is contained in R.C. 5705.38, which states, in pertinent part, that an appropriation measure “shall be classified so as to set forth *separately* the amounts appropriated for *each office, department, and division*, and, *within each*, the amount appropriated for *personal services*.” R.C. 5705.38(C) (emphasis added). Cf. R.C. 5705.28(C)(1) (requiring participants in a subdivision’s revenues or appropriation to submit “an estimate of contemplated revenue and expenditures for the ensuing fiscal year, *in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state*” (emphasis added)); R.C. 5705.29 (requiring taxing authorities to include in the tax budget the categories of information described therein “in such detail as is prescribed by the auditor of state”). Thus, in the adoption of the county’s annual appropriation measure, a board of county commissioners must separately identify the amounts appropriated to each office, department, or division within the county, and within each such office, department, and division, the amount appropriated for personal services. R.C. 5705.38(C).

It is our understanding that, according to Ohio Auditor of State Bulletin No. 97-010, local governments, including counties, have a number of options in determining the level of detail they will include in their “appropriated budget[s].”⁵ The rationale appears to be that R.C. 5705.38(C) prescribes the minimum detail a taxing authority, such as a board of county commissioners, must include in its annual appropriation measure, and that the taxing authority may, in a reasonable exercise of its discretion, further particularize the purposes for which each office, department, and division may spend its appropriated moneys, subject, of course, to any statutory requirements to the contrary, *see, e.g., State ex rel. Ball v. Bd. of County Comm’rs*, 159 Ohio St. 114, 111 N.E.2d 255 (1953) (mandatory appropriations for boards of elections).

Because your question concerns the appropriation of funds to a court, we must review certain principles applicable to the funding of courts, as established by a number of cases, most of which concerned the adequacy of funding for the courts. As explained in *State ex rel. Lake County Bd. of Comm’rs v. Hoose*, 58 Ohio St. 3d 220, 221-22, 569 N.E.2d 1046, 1048 (1991):

⁵ Auditor of State Bulletin No. 97-010 describes the levels of specificity, ranging from the least specific to the most specific, from which a taxing authority may choose in formulating its “appropriated budget,” as follows: fund, function, department, activity, object, and subobject. According to the bulletin, “[t]he lowest level at which a government’s management may *not* reassign resources without legislative approval is known as the ‘legal level of control.’” Auditor of State Bulletin No. 97-010 at 2. It appears, therefore, that the legal level of control described in the bulletin refers to an “appropriation item,” as that term is used in R.C. 5705.40. Bulletin No. 97-010 does not, however, suggest the level at which a board of county commissioners may describe the appropriation made to a division of the court of common pleas.

A court of common pleas in this state has the inherent authority to require funding which is reasonable and necessary to the administration of the court's business. *State, ex rel. Rudes, v. Rofkar* (1984), 15 Ohio St. 3d 69, 71-72, 15 OBR 163, 165, 472 N.E.2d 354, 356. This court has held, time and again, that it is incumbent upon the legislative authority to provide funds which are reasonable and necessary to operate a court which requests such funding. *See, e.g., State, ex rel. Giuliani, v. Perk* (1968), 14 Ohio St. 2d 235, 43 O.O.2d 366, 237 N.E.2d 397, and *State, ex rel. Arbaugh, v. Richland Cty. Bd. of Commrs.* (1984), 14 Ohio St. 3d 5, 14 OBR 311, 470 N.E.2d 880. Therefore, *a board of county commissioners must provide the funds requested by a court of common pleas unless the board can show that the requested funding is unreasonable and unnecessary.* *State, ex rel. Britt, v. Bd. of Franklin Cty. Commrs.* (1985), 18 Ohio St. 3d 1, 2, 18 OBR 1, 2, 480 N.E.2d 77, 78. The burden of proof is clearly upon the party who opposes the requested funding. *Id.* In effect, it is presumed that a court's request for funding is reasonable and necessary for the proper administration of the court. The purpose of this "presumption" is to maintain and preserve a judicial system and judiciary that are independent and autonomous. (Emphasis added.)

Thus, unlike the funding requests of most other entities to which a board of county commissioners appropriates funds, a court's request for funds must be honored by the county commissioners, unless the county commissioners show that the request is unreasonable and unnecessary.

We are not aware of any judicial decisions directly addressing whether a board of county commissioners may divide its appropriation to a court of common pleas into various appropriation items to which fixed sums are allocated, or whether a court must obtain the approval of the board of county commissioners before transferring moneys from one item in the appropriation to another.⁶ A number of cases, however, have addressed the duty of a court to participate in other aspects of the county's budgetary processes.

Although the Ohio Supreme Court has decided that a court's cooperation in the legislative budget process is not an absolute prerequisite to the legislative authority's duty to provide for the court's reasonable and necessary expenses, it has also firmly established that a court should, whenever possible, cooperate in the legislative budget process. *See, e.g., State ex rel. Arbaugh v. Richland County Bd. of Comm'rs*, 14 Ohio St. 3d 5, 5, 470 N.E.2d 880, 880 (1984) (concluding that a court need not follow legislative budget procedures, and "may modify its budget at any time presupposing such modification is otherwise reasonable and necessary," but also urging "that every reasonable effort

⁶ R.C. 307.01(B), which sets forth the procedure by which courts request and receive appropriations, was found to be unconstitutional in the case of *In re Furnishings and Equipment*, 66 Ohio St. 2d 427, 423 N.E.2d 86 (1981). Division (B) of R.C. 307.01 has not since been amended.

be made, in the interests of intergovernmental cooperation, to adhere to the conventional legislatively promulgated budget process”); *State ex rel. Giuliani v. Perk*, 14 Ohio St. 2d 235, 237, 237 N.E.2d 397, 399 (1968) (finding that a court’s submission of a budget estimate for a particular item is not an absolute prerequisite to an appropriation therefor by the county commissioners, and stating, “[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”). Rather, as stated by the *Hoose* court, “a board of county commissioners must provide the funds requested by a court of common pleas unless the board can show that the requested funding is unreasonable and unnecessary.” 58 Ohio St. 3d at 221, 569 N.E.2d at 1048.

It would appear that the judicial standard of reasonableness and necessity for determining the extent of a legislative authority’s duty to appropriate funds requested by a court necessarily requires a court to include in its request for funds some description of the purposes for which the funds are requested. *See generally* 1998 Op. Att’y Gen. No. 98-005 (the presumption that a court’s request for funding is reasonable and necessary also applies to particular services for which the court requests funds). Without any explanation of the purposes for which a court is requesting funds, the legislative authority would be unable to demonstrate that such a request is unreasonable or unnecessary. *See State ex rel. Britt v. Bd. of County Comm’rs*, 18 Ohio St. 3d 1, 3, 480 N.E.2d 77, 79 (1985) (“we have never suggested that a court has unfettered discretion to act without reason in composing its budget.... This standard of review necessarily entails a determination as to whether the court of common pleas abused its discretion in requesting budgetary amounts”).⁷

Moreover, it appears that it is common practice for courts to specify the amounts needed for particular expenses. For example, in *State ex rel. Donaldson v. Alfred*, 66 Ohio St. 3d 327, 612 N.E.2d 717 (1993), a dispute arose over an order issued by the municipal court judge for the payment

⁷ In reviewing the appellate court’s issuance of a writ of mandamus requiring a board of county commissioners to comply with a court’s funding order, the court in *State ex rel. Avellone v. Bd. of County Comm’rs*, 45 Ohio St. 3d 58, 62, 543 N.E.2d 478, 482 (1989), commented on the court of appeals’ failure to admit certain evidence offered by the county commissioners, as follows:

A board of county commissioners must be given ample opportunity to show that a common pleas court abused its discretion in making an appropriation request. All relevant evidence should be considered, even if its relevance is only marginal. Permitting the admission of such evidence increases a board’s chances of carrying its burden of proof, but does not impede the preservation of judicial autonomy. It thus prevents the constitutionally mandated balance of power between the governmental branches from being tipped too far in favor of the judiciary.

of \$10,000 for the payment of private counsel for the court, and for the payment of additional sums in \$10,000 increments, as necessary. In acknowledging the unusual nature of such an order, the *Donaldson* court stated “[n]ormally, funding orders take the form of periodic, line-item budgets for court staff, office space and equipment,” but approved the order under the particular circumstances. 66 Ohio St. 3d at 332, 612 N.E.2d at 721. As more fully explained in his dissent in *Donaldson*, Justice Sweeney commented:

A typical funding order directs the funding authority to pay only specified expenses incurred or to be incurred by the court, such as the appropriation of funds for an *annual and detailed line-item budget* or the payment of *specified* supplies, equipment, additional personnel, or salary increases.

66 Ohio St. 3d at 333, 612 N.E.2d at 722 (emphasis added). *See also, e.g., State ex rel. Morley v. Lordi*, 72 Ohio St. 3d 510, 651 N.E.2d 937 (1995) (where the probate judge had requested funding for three categories of expenses which the county failed fully to fund, the Ohio Supreme Court determined that, absent a showing that the probate court abused its discretion in making its request, the county was required to provide the requested funds); *State ex rel. Britt v. Bd. of County Comm’rs* (common pleas court budget request contained salary figures for various job categories); *State ex rel. Avellone v. Bd. of County Comm’rs* (domestic relations judge’s budget request reflected the amount needed for supplies and a separate amount for equipment, as well as setting forth the need for additional personnel to be hired at salaries specified by the court).⁸ Thus, it appears that courts generally submit to the legislative authorities some form of budget that explains the need for the funds requested.

Review of the cases in which court funding has been addressed reveals no prescribed method by which a board of county commissioners must structure its appropriation to a court of common pleas. Rather, the facts presented in most such cases suggest that it is common practice for a court to include

⁸ *See generally, e.g.,* 1996 Op. Att’y Gen. No. 96-015 (syllabus) (“[a] board of county commissioners is obligated to comply with an appropriation request from the court of common pleas for implementation of a courthouse security plan, unless the board demonstrates that the request is either unreasonable or unnecessary for the proper administration of the court’s business”); 1994 Op. Att’y Gen. No. 94-043 (syllabus) (“should a court include in its budget as a cost of operation of the court an amount for payment of professional association dues on behalf of a judge of that court, to the extent that a political subdivision is responsible for the payment of the court’s operating costs, it has a duty to appropriate the requested sum, unless it can show that the request is unreasonable or not necessary for the proper administration of the court’s business”); 1993 Op. Att’y Gen. No. 93-043 (syllabus) (“[a] board of county commissioners is obligated to comply with an appropriation request from the court of common pleas for the payment of the cost of private parking for the judges of that court, unless the board can show that the request is either unreasonable or not necessary for the proper administration of the court’s business”).

in its request for funds a statement of amounts needed for particular items of court expense and for the legislative authority to provide funds in accordance with the court's request. *See, e.g., State ex rel. Morley v. Lordi; State ex rel. Donaldson v. Alfred; State ex rel. Arbaugh v. Richland County Bd. of Comm'rs.* Although *State ex rel. Giuliani v. Perk* found a court's submission of a budget estimate for a particular item of expense not to be an absolute prerequisite to an appropriation therefor by the county commissioners, no case of which we are aware suggests that a court is entitled to receive all funds it requests with absolutely *no* showing of the purposes for which such funds will be used. *See generally State ex rel. Donaldson v. Alfred* (syllabus) (“[w]here an investigation of municipal court personnel has not yet resulted in criminal charges, where the acts for which counsel is requested fall within the court's normal duties, *where a funding order explicitly states the nature of the services being requested*, and where a conflict prevents the municipality from providing representation, the court is entitled to funding for such representation” (emphasis added)); *State ex rel. Arbaugh v. Richland County Bd. of Comm'rs*, 14 Ohio St. 3d at 6, 470 N.E.2d at 881 (“a court does not have unfettered discretion to act without reason in making its *budget*.... 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” (emphasis added; various citations omitted)).

Because the judicially created test of reasonableness and necessity for determining the extent to which a court is entitled to funding suggests that a court is to prepare some form of budget or to include in its request for funds some information as to the purposes for which such funds are requested, we find no reason that the county commissioners may not structure its appropriation to the court to reflect the sums appropriated for the various categories of expense covered by the appropriation. The board of county commissioners may not, however, so structure its appropriation to a court that the court is prevented from exercising control over court operations. *See generally State ex rel. Lake County Bd. of Comm'rs v. Hoose* (denying a writ sought by the county commissioners to prohibit the juvenile court judge from paying court employees in such sums as would prematurely exhaust the juvenile court's appropriation on the basis that the issuance of the writ would have prevented the judge from exercising his authority to direct the operations of his court). Moreover, in accordance with *State ex rel. Arbaugh v. Richland County Bd. of Comm'rs*, should a court's needs change from those reflected in its original budget, it may request a modification of its budget, and, unless the county commissioners can show that such modification is unreasonable and unnecessary, the board of county commissioners must accordingly modify the court's appropriation.

It is, therefore, my opinion, and you are hereby advised that:

1. Based upon the request for funds submitted by the court of common pleas, a board of county commissioners may structure its appropriation to the court to reflect the sums appropriated for the various categories of expenses covered by the appropriation, provided that such appropriation does not interfere with the judge's exercise of control over court operations.

2. Should a common pleas court's funding needs change from those reflected in its original budget, it may request a modification of its budget, and, unless the board of county commissioners can show that such modification is unreasonable and unnecessary, the board must accordingly modify the court's appropriation.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 14, 2000

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-7697

SYLLABUS:

2000-009

1. Based upon the request for funds submitted by the court of common pleas, a board of county commissioners may structure its appropriation to the court to reflect the sums appropriated for the various categories of expenses covered by the appropriation, provided that such appropriation does not interfere with the judge's exercise of control over court operations.
2. Should a common pleas court's funding needs change from those reflected in its original budget, it may request a modification of its budget, and, unless the board of county commissioners can show that such modification is unreasonable and unnecessary, the board must accordingly modify the court's appropriation.