July 27, 2005

The Honorable Thomas L. Stierwalt
Sandusky County Prosecuting Attorney
Sandusky County Courthouse
100 North Park Avenue, Suite 319
Fremont, Ohio 43420-2479

SYLLABUS: 2005-028

1. A board of county commissioners has no authority to impose upon a juvenile court a charge for rental of space for the court's operations, whether such space is in the courthouse or in another county building.

2. A board of county commissioners has a duty to appropriate funds requested by a juvenile court, so long as such funds are reasonable and necessary to the court's administration of its business, whether or not the program for which such funds are requested is a "traditional" juvenile court program.

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OPINION NO. 2005-028

The Honorable Thomas L. Stierwalt
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Dear Prosecutor Stierwalt:

You have submitted a request for an opinion of the Attorney General concerning the authority of the Sandusky County Board of Commissioners to charge the Sandusky Juvenile Court for the use of office space for programs of the Juvenile Court. You specifically ask:

1. Can a board of county commissioners require a common pleas court to pay rent or utilities for court operations within a county courthouse?

2. Can a board of county commissioners require a common pleas court to pay rent or utilities for court operations conducted in a county owned building outside of the courthouse?

3. Does there exist in Ohio law a distinction between the traditional operations of a juvenile court and nontraditional juvenile court-operated programs, such that where a county board of commissioners [is] required to house and fund the operation of traditional juvenile court operations, they are not required by law to house and fund the operation of nontraditional juvenile court operations such as community service, a day-reporting program for juvenile offenders, or drug court operations?

4. Does any authority exist under Ohio law that allows a county board of commissioners to withhold its approval to a grant application submitted by a court until the court agrees to pay rent or utility payments from those grant funds being applied for by the court for the court's use of a county-owned building for its operations?

Because your questions concern the powers of a board of county commissioners, we begin by noting that a board of county commissioners is a creature of statute with only those powers and duties imposed upon it by statute. *See Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993) ("[c]ounties ... may exercise only those powers affirmatively granted by the General Assembly"). The powers of a county's board of commissioners in relation to the county's courts, however, are not determined solely by statute, but are also limited by the principle that, "[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers." *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph one). *See generally State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955) (syllabus, paragraph one) ("[t]he legislative, executive and judicial branches of government are separate and distinct and neither may impinge upon the authority or rights of the others; such branches are of equal importance; and each in exercising its prerogatives and authority must have regard for the prerogatives and authority of the others").

With these broad principles in mind, let us turn to your specific questions. Your first question asks whether a board of county commissioners may require a common pleas court to pay rent or utilities for court operations within a county courthouse. Similarly, your second question asks whether a board of county commissioners may require a common pleas court to pay rent or utilities for court operations conducted in a county owned building outside of the courthouse. Because the analysis of both questions is nearly identical, we will address both questions together.

It is well established that, when a board of county commissioners has a duty to provide space for the operations of governmental entities, the board has no authority to charge such entities for rental of such space or for utilities used in that space, absent statutory authority to impose such a charge. *See* 2001 Op. Att'y Gen. No. 2001-024 (syllabus) ("[a] board of county commissioners may not charge a public body … for utility or rent expenses, unless there is express statutory authorization for the charge or authority implied from an express power"). We must, therefore, examine the statutory provisions governing a county's provision of space for the operation of courts.

Pursuant to R.C. 307.01(A), a board of county commissioners has a duty to provide, among other facilities, a courthouse and offices for county officers. The duties of a board of county commissioners with respect to the county's courts was summarized in *Commissioners of Trumbull County v. Hutchins*, 11 Ohio 369, 371 (1842), as follows:

> It is the legal duty of the county commissioners to furnish all things coupled with the administration of justice within the limits of their own county. It is their duty to furnish suitable and convenient buildings for holding court, *at the expense of the county*; . . . In fitting up their court rooms and offices, it is the duty of the commissioners to fit them up as court rooms and clerks' offices, and this requires that they should be supplied with, and contain those things which are

> necessary to enable the officers for whose public use they are fitted up, to perform their official duties. (Emphasis added.)

See, e.g., *State ex rel. Hillyer v. Tuscarawas County Bd. of Comm'rs*, 70 Ohio St. 3d 94, 637 N.E.2d 311 (1994) (affirming court of appeals' issuance of writ of mandamus to compel the county commissioners to provide, among other things, suitable court facilities for the county court). *See generally State ex rel. Hottle v. Board of County Comm'rs*, 52 Ohio St. 2d 117, 370 N.E.2d 462 (1977) (syllabus) ("[a] Court of Common Pleas located in the courthouse is entitled to additional space therein as against other governmental officers where it is shown that the space is reasonably necessary for the court's proper and efficient operation as distinguished from being merely desirable").

Specifically concerning facilities for a county's juvenile court, R.C. 2151.09 states:

> *Upon the advice and recommendation of the juvenile judge*, the board of county commissioners may provide by purchase, lease, or otherwise a separate building and site to be known as "the juvenile court" at a convenient location within the county which shall be appropriately constructed, arranged, furnished, and maintained for the convenient and efficient transaction of the business of the court and *all parts thereof* and its employees, including adequate facilities to be used as laboratories, dispensaries, or clinics for the use of scientific specialists connected with the court. (Emphasis added.)

Thus, R.C. 2151.09 authorizes a board of county commissioners to provide a separate building and site for the county's juvenile court and "all parts thereof," upon the advice and recommendation of the juvenile judge.

Neither R.C. 307.01(A) nor R.C. 2151.09, however, authorizes a board of county commissioners to impose a charge upon a court of common pleas, or any of its divisions, for rental of space or for the cost of utilities for court operations. *See* 1986 Op. Att'y Gen. No. 86-104 (syllabus) ("[p]ursuant to R.C. 307.01, the board of county commissioners is required to provide offices for the county children services board…. The board of county commissioners may not charge rent for office space it provides to the county children services board"). Had the General Assembly intended that a board of county commissioners charge a court for rent or utilities that the county must provide to the court, it could have easily expressed that intention as it has in other instances. *See, e.g.*, R.C. 307.09(A) (authorizing a board of county commissioners to sell, lease, or rent "real property belonging to the county and not needed for public use, including all or portions of buildings acquired by the board to house county offices"); R.C. 307.29 (stating, in part, "[t]he board of county commissioners may, by agreement with the city council, the director of public safety or his successor, or the person or board charged with the erection, maintenance, or repair of police stations, jails, police and municipal courthouse and courtrooms, *lease to* any municipal corporation in the county suitable quarters in county buildings, erected or to be erected, for municipal courts, police stations, prosecutors' offices, probationers' offices, and other similar municipal purposes" (emphasis added)).

In answer to your first two questions, we conclude that a board of county commissioners has no authority to impose upon a juvenile court a charge for rental of space for the court's operations, whether such space is in the courthouse or in another county building. *See generally In re Furnishings for Courtroom Two*, 66 Ohio St. 2d 427, 428, 423 N.E.2d 86 (1981) ("when a board of county commissioners refuses to appropriate funds or provide quarters and equipment reasonably requested by the court, a judge may seek to enforce his order by way of mandamus *or* by proceedings in contempt").

Your third question asks whether there is "a distinction between the traditional operations of a juvenile court and nontraditional juvenile court-operated programs, such that where a county board of commissioners [is] required to house and fund the operation of traditional juvenile court operations, they are not required by law to house and fund the operation of nontraditional juvenile court operations such as community service, a day-reporting program for juvenile offenders, or drug court operations?" The nature and scope of the county commissioners' duty to fund the operations of courts of common pleas and their divisions have been addressed by the courts on many occasions. As recently summarized by the Ohio Supreme Court in *State ex rel. Maloney v. Sherlock*, 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897 (2003), ¶¶ 25-26:

> "It is well settled that mandamus is an appropriate vehicle for enforcing a court's funding order." *State ex rel. Donaldson v. Alfred* (1993), 66 Ohio St.3d 327, 329, 612 N.E.2d 717. Common pleas courts and their divisions have inherent power to order funding that is reasonable and necessary to the courts' administration of their business. *State ex rel. Morley v. Lordi* (1995), 72 Ohio St.3d 510, 511, 651 N.E.2d 937 (probate court); *State ex rel. Lake Cty. Bd. of Commrs. v. Hoose* (1991), 58 Ohio St.3d 220, 221, 569 N.E.2d 1046 (juvenile court). "In turn, the board of county commissioners is obligated to appropriate the requested funds, unless the board can establish that the court abused its discretion by requesting unreasonable and unnecessary funding." *State ex rel. Wilke v. Hamilton Cty. Bd. of Commrs.* (2000), 90 Ohio St.3d 55, 60, 734 N.E.2d 811; *State ex rel. Avellone v. Lake Cty. Bd. of Commrs.* (1989), 45 Ohio St.3d 58, 61, 543 N.E.2d 478.
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> In effect, the courts' funding orders are presumed reasonable, and the board must rebut the presumption in order to justify its noncompliance with these orders. *State ex rel. Weaver v. Lake Cty. Bd. of Commrs.* (1991), 62 Ohio St.3d 204, 205, 580 N.E.2d 1090. "This presumption emanates from the separation- of-powers doctrine because courts must be free from excessive control by other governmental branches to ensure their independence and autonomy." *Wilke*, 90 Ohio St.3d at 60-61, 734 N.E.2d 811.

As the passage above shows, the test for determining whether a board of county commissioners must comply with a court's request for funds is whether the request is "reasonable and necessary to the court's administration of its business." *State ex rel. Lake County Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 221, 569 N.E.2d 1046 (1991). Moreover, the court's request is presumed to meet this test, unless the commissioners can prove that the

request does not. *See, e.g.*, *State ex rel. Rudes v. Rofkar*, 15 Ohio St. 3d 69, 71-72, 472 N.E.2d 354 (1984) ("it is beyond dispute that it is within the inherent power of courts of common pleas to require funding of their services and programs at a level that is both 'reasonable and necessary' to the administration of their business. At the same time, it is the duty of the board of county commissioners to provide such funds, unless the commissioners can prove that the court abused its discretion in submitting a budget that is both unreasonable and unnecessary"), *overruled on other grounds by State ex rel. Weaver v. Lake County Bd. of Comm'rs*, 62 Ohio St. 3d 204, 580 N.E.2d 1090 (1991).[1] Thus, so long as the requested funds are reasonable and necessary to the court's administration of its business, the commissioners have a duty to provide them.

What that means, of course, is that in order to decline the court's funding request, the commissioners would need to show either that (1) the program for which the court seeks funding is not part of the court's "administration of its business," or (2) if the program is part of the court's administration of business, the particular request is not "reasonable or necessary." For example, if the court were to request funding to operate a furniture store, the commissioners might conclude that such operations are not part of the court's "administration of its business," and thus decline the request on those grounds. Conversely, if the court were to request funding for ten plasma screen monitors in each courtroom to assist in trial presentations, the commissioners might conclude that, while trial presentations are undoubtedly part of the court's business, the expenditure is not "reasonable or necessary." In either case, of course, if the decision declining funding were challenged in court, the commissioners would bear the burden of proving that the item or program for which funding was requested was outside the court's business, or that the funding request was not reasonable or necessary, as the case may be. *See generally, e.g.*, 1998 Op. Att'y Gen. No. 98-005 (syllabus, paragraph one) (stating, in part, "[t]he juvenile judge can require the board of county commissioners to provide the juvenile judge with a telephone service option not provided to other county offices only if the provision of the service option is reasonable and necessary for the proper administration of the court. If the board of county commissioners opposes the provision of the service option, the board has the burden of demonstrating that the requested service option is unreasonable or unnecessary 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").

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[1] In *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph 3), the court determined that the portion of R.C. 2151.10 that calls for a juvenile court to bear the burden of proving that its appropriation request is reasonably necessary to meet all of its administrative expenses was unconstitutional as "an impermissible legislative encroachment upon the inherent powers of the judiciary." *See In re Furnishings for Courtroom Two*, 66 Ohio St. 2d 427, 423 N.E.2d 86 (1981) (finding a similar provision concerning courts of common pleas in R.C. 307.01(B) to be unconstitutional for the reasons stated in *Taulbee*).

As this discussion indicates, the question is not whether a given program for which a court requests funding is "traditional" or "nontraditional." Rather, the relevant inquiry is whether the program is part of the court's "administration of its business." Of course, if by "traditional programs" you are referring to programs that the courts have routinely performed for a number of years, it may be more likely that such programs would be recognized as part of the court's "administration of its business." By contrast, if a court is seeking funding for something it has never done before—something that is outside the scope of things courts typically do—there may be a greater likelihood that a reviewing court would find the new program to lie outside the court's "administration of its business." But, with regard to the question you ask, the important point is that the label "traditional" or "nontraditional" is not determinative on the funding issue. Rather, the key question is whether or not the program falls within the court's "administration of its business." If the program does, then it must be funded so long as the request is "reasonable and necessary" to that program.[2]

In answer to your third question, then, we conclude that, a board of county commissioners has a duty to appropriate funds requested by a juvenile court, so long as such funds are reasonable and necessary to the court's administration of its business, whether or not the program for which such funds are requested is a "traditional" juvenile court program. As we lack detailed information regarding the Genesis program, we are unable to assess whether or not that particular program is likely to meet this test. And, in any event, that decision is not the province of a formal opinion, but rather is more properly left to local officials.

Your fourth question asks whether a board of county commissioners may withhold its approval of a grant application submitted by a court until the court agrees to pay rent or utility payments from those grant funds being applied for by the court for the court's use of a county-owned building for its operations. You have not indicated in what capacity or for what purpose the county commissioners are being asked to sign the grant application or the nature of any obligations the county commissioners may be undertaking by signing a particular grant application for the court.[3] Without such information, it is not possible to determine whether a

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[2] Whether any juvenile court program, either "traditional" or "nontraditional," is reasonable and necessary to the court's "administration of its business" is a question of fact that cannot be answered by means of an opinion of the Attorney General. *See, e.g.*, 1998 Op. Att'y Gen. No. 98-005 (syllabus, paragraph 1) (stating in part, "[w]hether a particular [telephone] service option is reasonable and necessary [to the administration of a juvenile court] is a question of fact to be decided on a case-by-case basis"). *See generally* 1993 Op. Att'y Gen. No. 93-033 (syllabus, paragraph 1) (concluding, in part, that questions of fact "cannot be determined by means of an Attorney General opinion").

[3] In certain instances, both the court and the board of county commissioners undertake obligations with respect to grant moneys distributed to counties by the Department of Youth Services. For example, under R.C. 5139.34(C)(5): "As a condition of the continued receipt of state subsidy funds pursuant to this section, each county and the juvenile court that serves each

board of county commissioners possesses either the authority or a duty to sign such an application. As a general matter, however, if a juvenile court program for which the court requests funds is reasonable and necessary to the court's administration of its business, the county commissioners have a duty to fund the program. In such a case, the juvenile court's receipt of funding for such a program from a source other than the county would serve the interests of both the court and the board of county commissioners, in it capacity as appropriating authority for the county. *See generally* 1987 Op. Att'y Gen. No. 87-039, at 2-264 ("[p]ersons involved in the controversy should ... weigh the interests on both sides and seek a workable arrangement").

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

1. A board of county commissioners has no authority to impose upon a juvenile court a charge for rental of space for the court's operations, whether such space is in the courthouse or in another county building.

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county that receives an annual grant pursuant to this section shall comply with [R.C. 5139.43(B)(3)(b), (c), and (d)]." The condition established by R.C. 5139.43(B)(3)(d) reads, in part, as follows:

> If an audit that is performed pursuant to a fiscal monitoring program or another monitoring program described in this division determines that the juvenile court or the county used moneys in the county's felony delinquent care and custody fund for expenses that are not authorized under division (B) of this section, within forty-five days after the department notifies the county of the unauthorized expenditures, the *county either shall repay* the amount of the unauthorized expenditures from the county general revenue fund to the state's general revenue fund *or shall file a written appeal* with the department. (Emphasis added.)

2. A board of county commissioners has a duty to appropriate funds requested by a juvenile court, so long as such funds are reasonable and necessary to the court's administration of its business, whether or not the program for which such funds are requested is a "traditional" juvenile court program.

Respectfully,

JIM PETRO
Attorney General