

OPINION NO. 97-012**Syllabus:**

A board of county commissioners has no authority to approve or disapprove the travel expenses of a juvenile court judge. (1944 Op. Att'y Gen. No. 7006, p. 373, overruled; 1964 Op. Att'y Gen. No. 1296, p. 2-317, overruled to the extent it is inconsistent with this opinion.)

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Betty D. Montgomery, Attorney General, March 27, 1997

I have before me your opinion request in which you ask about the authority of the board of county commissioners with respect to travel by the county's juvenile court judge. You specifically question whether the judge must obtain the approval of the county commissioners to use funds appropriated to the court for travel purposes in order to pay for expenses the judge incurs in traveling out-of-state for training purposes.

As noted in your opinion request, the funding of the reasonable and necessary expenses of a juvenile court is a mandatory duty imposed upon each board of county commissioners. *See e.g., State ex rel. Weaver v. Lake County Bd. of Comm'rs*, 62 Ohio St 3d 204, 580 N.E.2d 1090 (1991); *State ex rel. Lake County Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 569 N.E.2d 1046 (1991). Your concern is not, therefore, the process by which appropriations are made to the juvenile court for various purposes, including travel expenses, but rather whether the juvenile judge must obtain the county commissioners' approval to pay the judge's expenses of out-of-state travel for training purposes even after funds have been appropriated to the court for travel purposes.

As a creature of statute, a board of county commissioners has only such authority as it has been granted by statute. *See State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Thus, it is first necessary to examine the county commissioners' statutory authority over the expenditure of funds for travel purposes.

The general rule concerning travel at county expense is that, except as otherwise provided by law, county officers, deputies, and employees are prohibited from attending any association

meeting, convention, or certain training sessions,¹ at county expense, "unless authorized by the board of county commissioners." R.C. 325.20(A).² R.C. 325.20(A) further states, "[i]f a majority of the members of the board approves the application, such expenses shall be paid from the moneys appropriated to such office for traveling expenses." Thus, R.C. 325.20(A) requires county personnel to obtain the approval of the county commissioners in order to use county funds, even though already appropriated for that purpose, to pay for travel expenses incurred in attending the specified activities, unless the payment of such expenses is "otherwise provided by law." See generally *State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967) (syllabus, paragraph two) ("[R.C. 325.20], which establishes the procedure for payment of travel expense money to public officials, is to be strictly construed"); 1969 Op. Att'y Gen. No. 69-090 (syllabus, paragraph one) (stating in part, "[R.C. 325.20] specifically prescribes the method to be used in obtaining expense funds for a convention trip or one of like manner").

In enacting R.C. 325.20, the General Assembly carefully defined the extent of the county commissioners' authority. First, R.C. 325.20(A) applies only to travel expenses of elected county officers, deputies, and employees that are to be paid from county funds. Similarly, only certain types of travel fall within the scope of R.C. 325.20(A). Thus, if a juvenile judge is not a county officer, as that term is used in R.C. 325.20(A),³ or if the travel is not for a purpose described in

¹ R.C. 901.10(B) authorizes the Director of Agriculture to call training sessions for local sealers of weights and measures "for the purpose of instructing them in the proper administration of weights and measures laws and rules adopted pursuant thereto," and provides for the payment of the traveling expenses incurred by such officials.

² R.C. 325.20(B) concerns approval by the board of county commissioners of certain out-of-state travel expenses that "will or may be paid for from funds in the delinquent tax and assessment collection fund created in section 321.261 [321.26.1] of the Revised Code or the real estate assessment fund created in section 325.31 of the Revised Code." Because the travel expenses you describe are not to be paid from the funds described in R.C. 325.20(B), that division has no application to your question and will not be addressed in this opinion.

³ Pursuant to R.C. 2151.07, a juvenile court is a court of record within the court of common pleas of each county. Thus, a juvenile judge is a judge of the court of common pleas. As acknowledged by the court in *State ex rel. Hess v. Rafferty*, 5 Ohio App. 463 (Henry County 1916), there is some confusion as to whether a common pleas judge is a state or county officer because the duties of a common pleas judge suggest that the judge's service is to both the state and the county in which the judge serves. Because a common pleas judge is elected by the electors of the county in which he serves and the county funds the operation of the common pleas court, a number of prior opinions have found a sufficiently close connection between a court of common pleas and the county that it serves to conclude that a common pleas judge is a county officer for the purposes considered. See, e.g., 1988 Op. Att'y Gen. No. 88-055 (syllabus, paragraph one) (finding a common pleas judge to be a county officer for purposes of R.C. 305.14 and R.C. 309.09 (representation by the county prosecuting attorney)); 1987 Op. Att'y Gen. No. 87-021 (finding a common pleas judge to be a county officer for purposes of R.C. 305.171, which authorizes the county commissioners to purchase group life insurance for, among others, county officers); 1985 Op. Att'y Gen. No. 85-014 (finding a common pleas judge to be a county officer for purposes of R.C. 309.09). *But see generally State ex rel. Justice v. Thomas*, 35 Ohio App. 250, 256, 172 N.E. 397, 398-99 (Marion County 1930) (a

R.C. 325.20(A) or is not to be paid for with county funds, a board of county commissioners has no authority under R.C. 325.20(A) with respect to approving travel expenses incurred by such judge. Finally, assuming for purposes of discussion that a juvenile judge is a county officer for purposes of R.C. 325.20, *see* note three, *supra*, if travel by a juvenile judge has been "otherwise provided by law," the approval scheme established by R.C. 325.20(A) has no application to the payment of such judge's travel expenses.

The application of R.C. 325.20 to travel by juvenile court personnel was addressed in 1964 Op. Att'y Gen. No. 1296, p. 2-317, which found R.C. 325.20 to have *limited* application to the travel expenses of a juvenile judge and other court staff, and concluded in the syllabus:

1. Under [R.C. 2151.10], a juvenile judge and such other officers and employees as he may designate may attend conferences at which juvenile or welfare problems are discussed *without securing the approval of the board of county commissioners under [R.C. 325.20]*.

2. Payment of the expenses of a juvenile judge, or such officers or employees as he designates, for attending conferences at which juvenile or welfare problems are discussed shall be upon the warrant of the county auditor pursuant to [R.C. 319.16], upon presentation of specifically itemized vouchers certified by the juvenile judge, as provided in [R.C. 2151.10], and *allowed by the board of county commissioners*.

3. *A board of county commissioners can only pass upon the reasonableness of expenses of a juvenile judge, or such officers or employees as he may designate, in attending conferences at which juvenile or welfare problems are discussed, provided that specifically itemized vouchers certified by the judge as stipulated in [R.C. 2151.10] are submitted to the board of county commissioners. (Emphasis added.)*

The opinion first examined former R.C. 2151.10, which stated in pertinent part:

The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the juvenile court, including reasonable expenses of the juvenile judge and such officers and employees as he may designate in attending conferences at which juvenile or welfare problems are discussed.... All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge.

1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953) (recodification of the General Code into the Revised Code); 1953 Revised Code of Ohio, vol. 2, Title 21, 174. 1964 Op. No. 1296 viewed this statutory language as specifically providing for the allowance of travel by a juvenile judge and juvenile court staff, and thereby creating an exception to the application of at least a

common pleas judge "is elected in the county in which he resides, and normally serves there, but is vested with state-wide jurisdiction. The state pays by far the greater part of his compensation; so that it is doubtful if he is, within the strict interpretation of the law, a county official"); 1971 Op. Att'y Gen. No. 71-075 (judges of the court of common pleas are "elected state officials" for purposes of R.C. 145.381, relating to membership in the public employees retirement system).

portion of R.C. 325.20. Under this reading, a juvenile judge and juvenile court staff need not obtain the approval of the county commissioners in order to travel at county expense.

1964 Op. No. 1296 did, however, find that R.C. 325.20 granted the county commissioners authority to review the *amount* of the court's travel expenses for "reasonableness." This conclusion was based upon the provisions of R.C. 319.16, which concerns the payment of funds from the county treasury. R.C. 319.16, in part, prohibits the county auditor from issuing a warrant for payment of any claim against the county, "unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal ... so authorized by law." The opinion concluded that the judge's certification of specifically itemized vouchers for expenses, as required by R.C. 2151.10, did not constitute an amount fixed by law or allowed by an officer or tribunal for purposes of R.C. 319.16, and thus approval by the board of county commissioners was necessary before payment could be made from the county treasury. The opinion concluded that although former R.C. 2151.10 empowered the juvenile judge to authorize travel by court personnel for the purposes stated therein, the county commissioners retained authority to determine a reasonable amount for such travel.⁴

After the issuance of 1964 Op. No. 1296, however, the General Assembly significantly amended R.C. 2151.10 in 1979-1980 Ohio Laws, Part I, 251 (Sub. S.B. 63, eff. July 26, 1979). The 1979 amendment requires the juvenile judge to submit to the county commissioners an annual request for an appropriation for the administrative expenses of the court, including necessary travel expenses. Pursuant to R.C. 2151.10, if the judge finds the amount appropriated to be insufficient, the judge may bring an action under R.C. Chapter 2731 for a determination of a reasonable amount to be appropriated. R.C. 2151.10 also places the burden on the juvenile judge "to prove that the appropriation requested is reasonably necessary to meet all administrative expenses of the court."

In reviewing this amendment to R.C. 2151.10, the court in *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 420, 423 N.E.2d 80, 82 (1981), found the change to be "a polar

⁴ 1944 Op. Att'y Gen. No. 7006, p. 373, concluded in the syllabus:

Under authority of [G.C. 1639-57 (analogous provision at R.C. 2151.10)], it is the duty of the board of county commissioners to appropriate for the payment of administrative expenses of the juvenile court or the juvenile department of the probate court sufficient moneys to meet its administrative expenses, including the reasonable expenses of the judge and probation officers in attending conferences at which juvenile and welfare problems are discussed. However, *before such moneys may be expended for such expenses, the board of county commissioners must find the necessity for such attendance and approve the expenditure of the moneys so appropriated for such purpose.* (Emphasis added.)

The then Attorney General reasoned that G.C. 1639-57 required only the appropriation of sufficient sums to pay the traveling expenses of the probate or juvenile judge and staff, while G.C. 2989-1 (analogous provision at R.C. 325.20) established the procedure for the *payment* of such expenses. 1944 Op. No. 7006, therefore, found the predecessor of R.C. 325.20 to authorize the county commissioners to review both the purpose and the amount expended for any travel by the court.

statutory scheme completely reversing the previous policy for the determination of judicial appropriations." The *Taulbee* court objected to the scheme's granting the county commissioners sole discretion to determine the amount of a juvenile court's appropriation, subject to review only in mandamus proceedings. As summarized by the court: "R.C. 2151.10 as it now reads, by its granting to a legislative body, to wit: the county commissioners, the 'power of the purse' over judicial administration, unconstitutionally restricts and impedes the judiciary in complete contradiction of our rudimentary democratic principles." 66 Ohio St. 2d at 421, 423 N.E.2d at 83. Based upon the doctrine of separation of powers among the three branches of government, the *Taulbee* court declared R.C. 2151.10 unconstitutional as "an impermissible legislative encroachment upon the inherent powers of the judiciary." 66 Ohio St. 2d 417, 423 N.E.2d 80 (syllabus, paragraph three).

At the same time, however, the *Taulbee* court stated that, "a reasonably exercised spirit of mutual cooperation among the various branches of government is essential, and, more importantly, ... the courts possess *inherent powers* to effectuate an orderly and efficient administration of justice without being financially or procedurally inhibited by the General Assembly." 66 Ohio St. 2d at 420-21, 423 N.E.2d at 82 (footnote omitted; emphasis in original). Thus, while the *Taulbee* court found R.C. 2151.10, cited by 1964 Op. No. 1296 as the source of a juvenile court's authority to determine independently its own travel needs, to be unconstitutional, it also found that a court possesses inherent authority to effectuate its orderly and efficient administration of justice without being "financially or *procedurally* inhibited by the General Assembly." *Id.* (emphasis added).⁵

In *State ex rel. Arbaugh v. Richland County Bd. of Comm'rs*, 14 Ohio St. 3d 5, 470 N.E.2d 880 (1984), the court reasserted its position that, although courts may voluntarily cooperate in the budget process, they have no constitutional duty to do so. As stated by the *Arbaugh* court, "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." 14 Ohio St. 3d at 6, 470 N.E.2d at 881. Again, however, the court strongly urged "that every reasonable effort be made, in the interests of intergovernmental cooperation, to adhere to the conventional legislatively promulgated budget

⁵ The inherent powers of courts to administer their own operations has been established by a long line of cases in which the Ohio Supreme Court has repeatedly held that courts cannot be impeded in their administration by the other branches of government. See, e.g., *State ex rel. Milligan v. Freeman*, 31 Ohio St. 2d 13, 285 N.E.2d 352 (1972); *State ex rel. Foster v. Bd. of County Comm'rs*, 16 Ohio St. 2d 89, 242 N.E.2d 884 (1968) (syllabus, paragraph one). With respect to the adequacy of court funding, it has been firmly established that a court of common pleas and its divisions possess the inherent authority to determine the amount that is reasonable and necessary to its administration, and that the county commissioners are under a mandatory duty to appropriate sufficient sums for that purpose. See, e.g., *State ex rel. Weaver v. Lake County Bd. of Comm'rs*, 62 Ohio St. 3d 204, 580 N.E.2d 1090 (1991); *State ex rel. Lake County Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 569 N.E.2d 1046 (1991); *State ex rel. Moorehead v. Reed*, 177 Ohio St. 4, 201 N.E.2d 594 (1964). Unlike the situation with other entities competing for county appropriations, "it is presumed that a court's request for funding is reasonable and necessary for the proper administration of the court." *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). See also *State ex rel. Britt v. Bd. of County Comm'rs*, 18 Ohio St. 3d 1, 2, 480 N.E.2d 77, 78 (1985).

process." *Id.* at 5, 470 N.E.2d at 880.

The reasoning of the *Taulbee* and *Arbaugh* courts, therefore, strongly suggests that the approval procedure established by R.C. 325.20(A) is a type of legislatively prescribed budgetary procedure, and that, just as a court's inherent powers include the authority to determine the amount reasonably necessary for its own operations, such powers also include the authority to determine whether and in what amount travel expenses will be incurred by the court.⁶ Accordingly, the determination as to whether a juvenile judge's out-of-state travel for training purposes is reasonable and necessary to the operation of the court, as well as the amount that is reasonable and necessary to spend for such purposes, is a matter that is "otherwise provided by law" for purposes of R.C. 325.20. Such determinations are not, therefore, subject to approval by the county commissioners under R.C. 325.20.

For the same reasons, I must disagree with the conclusion in 1964 Op. No. 1296 that the county commissioners have authority under R.C. 319.16 to approve the reasonableness of the amount of a court's travel expenses. R.C. 319.16 authorizes the county auditor to issue warrants upon the county treasury without approval of the amount by the board of county commissioners where the amount due "is fixed by law or is allowed by an officer or tribunal ... so authorized by law." Just as "it is presumed that a court's request for funding is reasonable and necessary for the proper administration of the court," *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), it must also be presumed that the expenses incurred by a court in traveling out-of-state for training purposes are reasonable and necessary. Thus, I conclude that R.C. 319.16 does not authorize a board of county commissioners to approve or disapprove travel expenses of a juvenile court judge. I must, therefore, overrule 1944 Op. Att'y Gen. No. 7006, p. 373, and, to the extent that it is inconsistent with this opinion, 1964 Op. Att'y Gen. No. 1296, p. 2-317.

Based on the foregoing, it is my opinion, and you are hereby advised that, a board of county commissioners has no authority to approve or disapprove the travel expenses of a juvenile court judge. (1944 Op. Att'y Gen. No. 7006, p. 373, overruled; 1964 Op. Att'y Gen. No. 1296, p. 2-317, overruled to the extent it is inconsistent with this opinion.)

⁶ See, 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) ("[s]hould 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").