May 27, 2003

The Honorable Jeffrey H. Manning
Lorain County Prosecuting Attorney
226 Middle Avenue, 4th Floor
Elyria, Ohio 44035

SYLLABUS: 2003-020

Lorain County is required by R.C. 1901.32 and R.C. 1901.11 to pay two-fifths of the compensation of all bailiffs appointed by the Elyria Municipal Court and the Lorain Municipal Court, absent a showing by the county that a court has acted unreasonably or abused its discretion by employing more than one bailiff.

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OPINION NO. 2003-020

The Honorable Jeffrey H. Manning
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Dear Prosecutor Manning:

You have asked for an opinion regarding the extent to which a county is obligated to fund the compensation of more than one bailiff for a municipal court. The Lorain Municipal Court and Elyria Municipal Court each have two full-time judges, and each judge has a bailiff. You wish to know whether the county is required by R.C. 1901.32 and R.C. 1901.11 to contribute to the compensation of both bailiffs, or only one bailiff, for each court.

We begin by noting that municipal courts are creatures of statute, *see* R.C. 1901.01, and as such have only those powers conferred by statute, either expressly or by necessary implication. *See Hemmelgarn v. Berning*, 10 Ohio App. 3d 60, 460 N.E.2d 677 (Mercer County 1983); 1997 Op. Att'y Gen. No. 97-049. *See also* Ohio Const. art. IV, § 1 (vesting judicial power in a supreme court, courts of appeals, courts of common pleas, and "such other courts inferior to the supreme court as may from time to time be established by law"); *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 32, 222 N.E.2d 798 (Stark County 1966) ("[u]nder the Ohio Constitution, Section 1, Article IV, the state Legislature has the power to create Municipal Courts and to provide for their maintenance and employees"); 1980 Op. Att'y Gen. No. 80-014 at 2-66 ("the Ohio Constitution allows only the General Assembly to govern the municipal court system"). A municipal court is authorized to appoint "a bailiff who shall receive the annual compensation that the court prescribes payable in semimonthly installments from the same sources and in the same manner as provided in section 1901.11 of the Revised Code." R.C. 1901.32(A)(1).[1] R.C. 1901.11(C) provides that three-fifths of the compensation of a municipal

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[1] In a two-judge municipal court, the presiding judge exercises the statutory authority given to a "court" to prescribe compensation. *State ex rel. Heeter v. Mullenhour*, 51 Ohio St. 2d 145, 147, 364 N.E.2d 1382 (1977). *See* R.C. 1901.15. (The court notes in *Heeter* that, where a municipal court consists of three or more judges, the term "court" refers to a majority vote of the judges. *Id. See* R.C. 1901.16(C).)

court judge is payable from the city treasury and two-fifths is payable from the treasury of the county in which the municipal corporation is situated.[2] Thus, the county is responsible for paying two-fifths, or forty percent, of a bailiff's compensation. *See generally State ex rel. O'Farrell v. New Philadelphia City Council*, 57 Ohio St. 3d 73, 565 N.E.2d 829 (1991) (the municipal court judge, and not city council, is empowered to determine the bailiff's compensation). *See also State ex rel. Cramer v. Board of County Commissioners*, 18 Ohio St. 3d 157, 159, 480 N.E.2d 443 (1985) ("R.C. 1901.32(A) permits the court to appoint and set the salary of bailiffs").

The General Assembly has created municipal courts in the cities of Lorain and Elyria, both of which are located in Lorain County. R.C. 1901.01(A).[3] The Lorain Municipal Court and Elyria Municipal Court each have two full-time judges, R.C. 1901.08, and two bailiffs (one for each judge). You wish to know whether the county must pay two-fifths of the compensation of both bailiffs in the Lorain and Elyria Municipal Courts, or whether its obligation is limited to paying its share of the compensation of only one bailiff for each court.

The case of *State ex rel. Musser v. City of Massillon*, 12 Ohio St. 3d 42, 465 N.E.2d 400 (1984) is crucial to an analysis of your question. In *Musser*, the Massillon Municipal Court employed three bailiffs (one designated as chief bailiff), and sought funding for salary increases for the three bailiffs as well as for the employment of an additional bailiff.[4] The city refused the appropriation requests, and the municipal court judges brought an action in mandamus seeking to compel the city and city council to provide the appropriations requested by the court. The supreme court ruled:

> [R.C. 1901.32(A)] vests sole discretion for the hiring and compensation of bailiffs with the court. Thus, respondents [the city and city council] have a mandatory duty to provide the funding requested, unless respondents demonstrate the request is unreasonable or an abuse of discretion.… Here, respondents have

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[2] However, all of the compensation of the judges of a county-operated municipal court is payable from the treasury of the county in which the court is located. R.C. 1901.11(C). Neither the Elyria nor the Lorain Municipal Court is a county-operated municipal court. *See* R.C. 1901.03(F) (listing the county-operated municipal courts). *See also* R.C. 1901.02; R.C. 1901.024; R.C. 1901.32(A)(3).

[3] The Lorain Municipal Court has jurisdiction within the municipal corporations of Lorain and Sheffield Lake, and within Sheffield township, in Lorain County. R.C. 1901.02. The Elyria Municipal Court has jurisdiction within the municipal corporations of Elyria, Grafton, LaGrange, and North Ridgeville, and within Elyria, Carlisle, Eaton, Columbia, Grafton, and LaGrange townships, in Lorain County. *Id.*

[4] The Massillon Municipal Court has two full-time judges. R.C. 1901.08.

> not provided evidence that the hiring of an additional bailiff or the salary increases to former bailiffs constitute an abuse of discretion, but have only alleged in defense of all claims that the city is facing economic hardship. As in *Durkin*, this allegation is insufficient to justify denial of the funding.[5] (Footnote added.)

Id., 12 Ohio St. 3d at 44. Thus, the supreme court not only implicitly supported the authority of the municipal court to employ more than one bailiff, it found that the city had a mandatory duty to provide its share of the bailiffs' compensation as requested by the municipal court, absent a showing of unreasonableness or abuse of discretion.[6] *See also* 1997 Op. Att'y Gen. No. 97-049 at 2-306 (stating, in reliance on *Musser*, that, "it appears that R.C. 1901.32(A)(1) authorizes the court to hire and fix the compensation of an additional bailiff").

As you point out in your opinion request, however, only the judges of the Hamilton County Municipal Court have explicit statutory authority to hire more than one bailiff.[7] The

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[5] In *State ex rel. Durkin v. City Council*, 9 Ohio St. 3d 132, 134, 459 N.E.2d 213 (1984), the court held, with regard to the compensation of deputy clerks of a municipal court, that, "where the statute [R.C. 1901.31(H)] vests sole discretion over a budgetary item in a body or individual other than the local legislative authority ... the legislative authority has a mandatory duty to fund the item," with the limitation "that the request must be reasonable and not an abuse of discretion." The *Musser* court also relied upon *State ex rel. Cleveland Municipal Court v. Cleveland City Council*, 34 Ohio St. 2d 120, 125-26, 296 N.E.2d 544 (1973), wherein the court concluded that under R.C. 1901.31, which states that the compensation for the clerk of the municipal court (like that of the bailiff) be provided for in the manner set forth in R.C. 1901.11, the city's legislative authority has a duty "to appropriate the city's portion of all money requested" for this purpose.

[6] *Musser*, *Durkin*, and *Cleveland Municipal Court* (and the precedent they cite) all emphasize that legislative authorities have a constitutional mandate to sufficiently fund the courts. *See, e.g., State ex rel. Durkin v. City Council*, 9 Ohio St. 3d at 135 ("[t]he doctrine of separation of powers requires that the funds necessary for the administration of justice be provided to the courts," and "[t]he courts' authority to effectuate the orderly and efficient administration of justice without monetary or procedural limitations by the legislature is said to be within the inherent powers of the courts"); *State ex rel. Cleveland Municipal Court v. Cleveland City Council* (syllabus, paragraphs one and two) ("[a]bsent an express statutory duty, the legislative authorities of a municipal corporation are not required to allocate all funds sought for the administration of justice by a municipal court," but the "appropriate governmental authority must allocate its portion of those funds necessary to facilitate the administration of justice by its municipal court").

[7] *But cf.* R.C. 1901.32(B) (in the Cleveland Municipal Court, the "clerk, the chief deputy clerks, the probation officers, one private secretary, one personal stenographer to the clerk, and

Hamilton County Municipal Court is excepted from division (A)(1) of R.C. 1901.32 and governed by division (A)(3), which authorizes the clerk of court to appoint and fix the compensation of the bailiff and deputy bailiffs. Division (A)(3) further provides that, "[e]ach judge of the Hamilton county municipal court may appoint a courtroom bailiff, each of whom shall receive the compensation payable in semimonthly installments out of the treasury of Hamilton county that the court prescribes." *See* R.C. 1901.08 (the Hamilton County Municipal Court has fourteen full-time judges).

Application of the rule of statutory construction, "expressio unius est exclusio alterius," supports the assertion that division (A)(3) of R.C. 1901.32, authorizing each judge of the Hamilton County Municipal Court to hire a court bailiff, in addition to the appointment of a bailiff by the clerk of court, indicates a legislative intent that that all other municipal courts be limited to one bailiff (except perhaps the Cleveland Municipal Court, *see* note 7, *supra*). *See Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (the rule of statutory construction, "expressio unius est exclusio alterius," means that "'the expression of one thing is the exclusion of the other,'" and "[u]nder this maxim, 'if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded'" (citations omitted)). *See also Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections).

Furthermore, this interpretation is supported by the language used in division (A)(1) of R.C. 1901.32 authorizing a municipal court to appoint "a bailiff." This reference to "a bailiff" would appear to mean that *one* bailiff is to be appointed, especially when contrasted with the language authorizing a municipal court to appoint "deputy bailiffs," in the plural, R.C. 1901.32(A)(2). *See Webster's Third New International Dictionary* 1 (1993) (defining the indefinite article, "a," as "a function word before most singular nouns"). *See also* R.C. 1.42 (in interpreting a statute, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage").

Nonetheless, the language of division (A)(3) was part of R.C. 1901.32 at the time *Musser* was decided. *See* 1979-1980 Ohio Laws, Part II, 3168 (Am. H.B. 640 eff. June 20, 1980). And, as set forth in note 7, *supra*, R.C. 1901.32(B) implicitly recognizes the ability of each judge in the Cleveland Municipal Court to hire a personal bailiff, by providing that they are in the unclassified service of the city of Cleveland, even though the judges of the Cleveland Municipal Court are not expressly given the statutory authority to hire a courtroom or personal bailiff as are the judges of the Hamilton County Municipal Court.

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one personal bailiff to each judge are in the unclassified civil service of the city of Cleveland") (emphasis added). The Cleveland Municipal Court has thirteen full-time judges. R.C. 1901.08.

Therefore, we conclude that both the Elyria Municipal Court and Lorain Municipal Court are authorized to employ more than one bailiff, and Lorain County is required by R.C. 1901.32(A)(1) and R.C. 1901.11(C) to pay two-fifths of the compensation of all bailiffs appointed by these courts, absent a showing by the county that a court has acted unreasonably or abused its discretion by employing more than one bailiff. *See State ex rel. Durkin v. City Council*, 9 Ohio St. 3d 132, 134, 459 N.E.2d 213 (1984) (the party claiming that the court's budget request is unreasonable or an abuse of discretion bears the burden of demonstrating such a claim). *See generally State ex rel. Britt v. Board of County Commissioners*, 18 Ohio St. 3d 1, 480 N.E.2d 77 (1985).

As a final matter, we note that 1997 Op. Att'y Gen. No. 97-049 concluded that, if a municipal court decided that "the appointment of an additional bailiff under R.C. 1901.32(A)(1) is a special project that would benefit the efficient operation of the court, the hiring of such additional bailiff may be funded with the moneys generated by the fee imposed in accordance with the first paragraph of [R.C. 1901.26(B)(1)], special projects fund moneys." (Syllabus, paragraph one).[8] The court may, therefore, choose to fund the compensation of additional bailiffs through a fee imposed pursuant to R.C. 1901.26. If it does not so choose, however, the county and city remain responsible for funding the compensation of all bailiffs hired by the court as set forth in R.C. 1901.32(A)(1) and R.C. 1901.11(C).

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[8] R.C. 1901.26(B)(1) reads in part:

> The municipal court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.
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> ….
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> All moneys collected under division (B) of this section shall be paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a general special projects fund or a fund established for a specific special project….

In conclusion, it is my opinion, and you are advised that, Lorain County is required by R.C. 1901.32 and R.C. 1901.11 to pay two-fifths of the compensation of all bailiffs appointed by the Elyria Municipal Court and the Lorain Municipal Court, absent a showing by the county that a court has acted unreasonably or abused its discretion by employing more than one bailiff.

Respectfully,

JIM PETRO
Attorney General