

## OPINION NO. 89-029

**Syllabus:**

1. A board of county commissioners has the primary duty to maintain and clean the facilities of the court of common pleas. A board of county commissioners has the authority to hire and employ such personnel required to maintain and clean the facilities of the court of common pleas pursuant to R.C. 305.16, provided that the court does not exercise its inherent right of control of court facilities by hiring and employing its own personnel to maintain and clean the court facilities.
2. A court of common pleas may hire and employ personnel required to maintain and clean the facilities of the court of common pleas where the court determines the proper and efficient administration of justice requires that the maintenance and cleaning of court facilities should be performed by court personnel and not by personnel under the control of the board of county commissioners.

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**To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 15, 1989**

I have before me your request for my opinion regarding the authority of a court of common pleas to hire maintenance and janitorial personnel to staff a building housing court facilities.<sup>1</sup> Specifically you ask:

1. Where a county owns a facility designated as a Domestic Relations and Juvenile Court Center which houses the Domestic Relations Division of the Court of Common Pleas, the Trumbull County Bureau of Support, and the juvenile detention cells, who has the legal authority to hire maintenance, cleaning and janitorial staff for the facility?
2. If the board of county commissioners desires to employ such personnel pursuant to Ohio Revised Code Section 305.16, does this preclude hiring of such personnel by the judges of the court of common pleas, domestic relations division?

You have stated, as additional factual background, that the building is owned by Trumbull County and houses only the above listed facilities. Pursuant to R.C. 301.35, the designated child support enforcement agency for Trumbull County is a bureau within the court of common pleas and is the Trumbull County Bureau of Support referred to in your first question.

The board of county commissioners is statutorily required to provide quarters, facilities and equipment necessary for the operation of the common pleas court. R.C. 307.01(A) states in pertinent part:

*A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county*

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<sup>1</sup> Although a common pleas judge is a state officer for some purposes, see *Tymcio v. State*, 52 Ohio App. 2d 298, 369 N.E.2d 1063 (Franklin County 1977), *motion to certify record overruled*, No. 74-456 (Ohio Sup. Ct. September 9, 1977), I have previously concluded that a common pleas judge is a county officer whom the county prosecuting attorney is obligated by R.C. 309.09 to advise and represent. 1988 Op. Att'y Gen. No. 88-055; 1985 Op. Att'y Gen. No. 85-014. I may, therefore, render my opinion pursuant to R.C. 109.14. See also 1988 Op. Att'y Gen. No. 88-008 (the authority of the Attorney General to advise extends only to matters that relate to the official duties of the office being advised.)

*commissioners when, in its judgment, any of them are needed. The buildings and offices shall be of such style, dimensions, and expense as the board determines.... The board shall also provide equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices....*

The duty to provide accommodations for the court of common pleas is set forth in *Commissioners of Trumbull County v. Hutchins*, 11 Ohio 369 (1842). The court stated:

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 the 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.

11 Ohio at 371. Further, the county commissioners must "provide a suitable place for the holding of the courts." *State ex rel. Hottle v. Board of County Commissioners of Highland County*, 52 Ohio St. 2d 117, 119, 370 N.E.2d 462, 464 (1977). The "primary and paramount purpose" of the courthouse referred to in R.C. 307.01(A) is to "furnish the rooms and facilities essential for the proper and efficient performance of the functions of the courts". *Hottle*, 52 Ohio St. 2d at 119-120, 370 N.E.2d at 464. *Accord*, *Zangerle v. Court of Common Pleas of Cuyahoga County*, 141 Ohio St. 70, 82, 46 N.E.2d 865, 870 (1943); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 65, 119 N.E. 136, 137 (1917) ("the primary purpose of the courthouse is to provide a permanent seat of justice").<sup>2</sup>

While the courthouse is primarily intended to house the courts as the seat of justice in the county, it need not be used exclusively for court purposes. Offices for county officers may be located in the courthouse. *Hottle*, 52 Ohio St. 2d at 119,

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<sup>2</sup> You have not raised and, therefore, this opinion does not address the propriety of housing court of common pleas facilities in buildings other than the county courthouse. See *Zangerle v. Court of Common Pleas of Cuyahoga County*, 141 Ohio St. 70, 83, 46 N.E.2d 865, 870 (1943) ("no authority is vested by statute in the county commissioners to provide permanent quarters for court purposes outside the courthouse"); *Dittrick v. Barr*, 22 Ohio L. Rep. 289, 294 (Ct. App. Cuyahoga County 1924), *motion to certify record overruled*, 22 Ohio L. Rep. 241 (1924) ("[t]here is no statutory authority given to the board to provide for rooms outside the court house for court purposes, or to make public expenditure therefor, except pending the erection of such a structure"); 1974 Op. Att'y Gen. No. 74-032 at 2-143 ("courts of general jurisdiction must be lodged in the courthouse"); 1965 Op. Att'y Gen. No. 65-91 (syllabus, paragraph three) ("[a] board of county commissioners is without authority to provide permanent rooms and facilities for the performance of the function of a court of domestic relations in a place other than the courthouse"); 1919 Op. Att'y Gen. No. 776, p. 1422, 1423 ("[a] court house has been provided for Hocking county and is now fit for occupancy. That being the case there is no authority vested in the commissioners to expend public funds in providing and maintaining a place for judicial purposes elsewhere, whether it be denominated a court room, judge's chambers, or judge's office"); R.C. 2151.09 ("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").

370 N.E.2d at 464 ("the county commissioners are authorized by statute to provide offices for the county officials and may do this, either in a separate building or in the courthouse"); *Babst*, 97 Ohio St. at 65, 119 N.E. at 137.

The board of county commissioners, as a general rule, is charged with the management and control of county property. 1987 Op. Att'y Gen. No. 87-039. See *Dall v. Cuyahoga County Building Commission*, 14 Ohio N.P. (n.s.) 209, 211 (C.P. Cuyahoga County 1913) (the board of county commissioners "is representative and guardian of the county, having the management and control of its property"). Custody and control of county property carries the duty of care and maintenance. *Dittrick v. Barr*, 22 Ohio L. Rep. 289, 289-290 (Ct. App. Cuyahoga County 1924) ("[t]hat the board of county commissioners, under the law have control and custody of the court house itself as well as other public buildings of the county, there can be no question, because by virtue of their office the care and maintenance of public property within its jurisdiction is lodged in that body"). The duty of the commissioners to manage and control county property includes the duty to provide cleaning and janitorial services. 1917 Op. Att'y Gen. No. 80, p. 187 ("[t]he county commissioners are the legal custodians of the court house and it is their duty to see that the entire building...is kept clean"). The board of county commissioners is expressly authorized to hire such necessary maintenance, cleaning and janitorial personnel as are required for any county building. Such authority is vested in the commissioners by R.C. 305.16, which states that "[t]he board of county commissioners may employ a superintendent, and such watchmen, janitors, and other employees as are necessary for the care and custody of the court house, jail, and other county buildings, bridges, and other property under its jurisdiction and control." See 1933 Op. Att'y Gen. No. 801, p. 679, 680 ("the county commissioners may appoint janitors for the court house").

While the duty of the county commissioners is to provide maintenance, cleaning and janitorial services to common pleas court facilities pursuant to their duty to manage and control county property and pursuant to their authority to employ janitors and maintenance personnel, an exception to the general rule operates so that the board of county commissioners does not have full control over the facilities occupied by the common pleas court. The full control is vested in the commissioners only as to facilities *not* occupied by the court. See *Hottle*, 52 Ohio St. 2d at 119, 370 N.E.2d at 464 ("the county commissioners are authorized by statute to provide offices for the county officials and may do this, either in a separate building or in the courthouse, and have control over these offices") (emphasis added); *Babst*, 97 Ohio St. at 65, 119 N.E. at 137 ("the county commissioners have full control over these offices [for the county officers], whether located in the courthouse or in a separate building"). Both *Hottle* and *Babst*, after citing the language discussing the commissioners' control of the facilities of the county officers, emphasize that the primary purpose of the courthouse is to provide a permanent seat of justice and state that the court's facilities are the exclusive domain of the courts. "The part so assigned [to the courts] is as much within the control and jurisdiction of the courts as if the whole building were devoted exclusively to judicial purposes." *Babst*, 97 Ohio St. at 66, 119 N.E. at 137. "There can be no question but that the power of the county commissioners over the court house is paramount, excepting only where the courts, for the purpose of administering justice, assert the claim and necessity for the use and occupancy of the rooms; and this right of the courts is supreme and must prevail." *Dittrick*, 22 Ohio L. Rep. at 292.

The right to control the maintenance of court facilities was expressly approved by the Ohio Supreme Court in *Zangerle*, 141 Ohio St. at 70, 46 N.E.2d at 865 (syllabus, paragraph three) (the court of common pleas "may exercise control over the courthouse to the extent required to assure the...maintenance in the courthouse of rooms and facilities essential for their proper and efficient operation"). Subsequently, the Ohio Supreme Court expansively stated: "[a]ssuredly, a court of general jurisdiction has great inherent power to...control the ordinary facilities which are essential to secure and safeguard the free and untrammelled exercise of its functions." *State ex rel. Finley v. Board of County Commissioners*, 163 Ohio St. 149, 154, 126 N.E.2d 57, 61 (1955). Under *Finley* the power of the court of common pleas to control maintenance must be evaluated against a standard of reasonable necessity. 1976 Op. Att'y Gen. No. 76-064 at 2-216.

The prime concern evident in the authorities discussing the court's right to exclusive control of its own facilities is premised upon a separation of powers whereby the court is to be free from interference with its independent exercise of proper and efficient judicial functions. This principle of non-interference was summarized by the Ohio Supreme Court as follows:

The 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.

Courts 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 function and cannot be directed, controlled or impeded therein by other branches of government.

*State ex rel. Johnson v. Taulbee*, 66 Ohio St. 2d 417, 421, 423 N.E.2d 80, 83 (1981). See *State ex rel. Foster v. Wittenberg*, 16 Ohio St. 2d 89, 92, 242 N.E.2d 884, 886 (1968) ("proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it may well be said that it is the duty of such other branches of government to facilitate the administration of justice by the judiciary"); *Zangerle*, 141 Ohio St. at 70, 46 N.E.2d at 865 (syllabus, paragraph two); Op. No. 87-039 at 2-262 ("a court is entitled to the provision of such facilities, and the control over such facilities, as may be necessary for the proper and efficient operation of the court").

The common pleas court, thus, has the right to control its facilities, to the extent that proper and efficient administration of justice requires. If the court determines that maintenance, cleaning and janitorial services for the court's facilities should be under the control of the court in order to facilitate the efficient administration of the court, such personnel may be hired by the court. Otherwise, the board of county commissioners is required to supply maintenance, cleaning and janitorial services. Whether the commissioners supply the personnel or supply the funds in the court's budget for personnel under the court's supervision, the commissioners have met their duty to maintain and keep clean the court facilities.

In addition to the inherent power of the court to hire such personnel as the proper and efficient administration of justice requires, R.C. 2151.13 specifically authorizes the juvenile judge to "appoint such...other employees as are necessary...." If maintenance, cleaning and janitorial personnel are determined by the juvenile judge to be "necessary", the juvenile court may hire and employ such personnel.

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

1. A board of county commissioners has the primary duty to maintain and clean the facilities of the court of common pleas. A board of county commissioners has the authority to hire and employ such personnel required to maintain and clean the facilities of the court of common pleas pursuant to R.C. 305.16, provided that the court does not exercise its inherent right of control of court facilities by hiring and employing its own personnel to maintain and clean the court facilities.
2. A court of common pleas may hire and employ personnel required to maintain and clean the facilities of the court of common pleas where the court determines the proper and efficient administration of justice requires that the maintenance and cleaning of court facilities should be performed by court personnel and not by personnel under the control of the board of county commissioners.