

**OPINION NO. 87-039****Syllabus:**

1. A board of county commissioners may, for the purpose of preserving and protecting county property, establish policies and procedures governing the use of coffee pots, refrigerators, and microwave ovens within portions of county buildings that are furnished to municipal and common pleas courts. Such policies and procedures may not, however, operate so as to interfere with the proper and efficient operation of the courts.
2. Whether the use of coffee pots, refrigerators, and microwave ovens is necessary for the proper and efficient operation of the courts is a question of fact, which cannot be resolved by means of an opinion of the Attorney General.
3. Policies and procedures established in accordance with paragraph one, above, may be enforced by the confiscation of privately-owned appliances used in conflict with such policies and procedures, with the return of the appliances to their owners conditioned upon agreement that the appliances will not again be used in a manner that conflicts with appropriate policies or procedures, provided that such confiscation does not interfere with the proper and efficient operation of the courts.

---

**To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 4, 1987**

I have before me your request for an opinion concerning the rights and duties of the county commissioners and the rights and duties of judges for the county with respect to the use and regulation of certain types of appliances within the portions

of county buildings that are provided to house the courts. Your specific questions are these:

1. Where the county commissioners maintain courthouse buildings and facilities to house the courts within those buildings, is the Board of County Commissioners empowered to forbid the use of coffee pots, refrigerators, or microwave ovens in the court operational areas if the courts determine such appliances are necessary for efficient operation of the courts?

2. Are electrical appliances such as coffee machines, refrigerators, and microwave ovens necessary for the proper and efficient operation of the courts to the extent that the Board of County Commissioners is without authority to control their use?

3. May the county commissioners lawfully confiscate privately owned appliances from court designated operational areas?

The situation with which you are concerned involves judges of the Miami County Court of Common Pleas, see R.C. 2301.01; R.C. 2301.02, and also judges of the Miami County Municipal Court, see R.C. 1901.01; R.C. 1901.02. Both of these courts are housed in county buildings. Your letter describes the existing controversy as follows:

Prior to September, 1986, all of the [judge's] offices and their operational offices maintained coffee machines for their staff and also for juries. In addition, some judicial offices also maintained refrigerators and microwave ovens so that their employees could prepare lunches and consume refreshments at their offices, saving employees time and expense. The Common Pleas Court maintained a coffee pot for the Petit and Grand Jury in the jury rooms when juries were deliberating. The county commissioners provide a snack bar in the basement of the Safety Building where employees and the public can purchase coffee, sandwiches, snacks and soft drinks.

In September, 1986, a small fire erupted in the jury room of one of the Common Pleas Court judges. Significant smoke damage resulted in the jury room, judge's office and courtroom. The cause of the fire was attributed to a coffee machine and/or napkin which was located in the jury room. In the following days, the county commissioners ordered all appliances in both the Safety Building and the Courthouse be removed by a certain date or the appliances would be confiscated. Accordingly, the commissioners did confiscate some privately owned appliances from judicial offices. This action by the commissioners brought immediate response by the judges. The judges contend that the commissioners have no authority to regulate their use of coffee pots, refrigerators, or microwave ovens located within the court operational areas of the buildings, since removal of same interferes with the [efficient] operation of the Courts. The Board of County Commissioners [takes] the position that since the courts are located within [buildings] owned by the county, the county commissioners are empowered to regulate equipment used

throughout these buildings. In addition, the commissioners are concerned for the safety of the public and the employees as well as problems procuring fire and liability insurance.

To the extent that this controversy involves questions of fact, I am unable to resolve it by means of a formal opinion. I can, however, set forth relevant principles of law that may be applied to particular factual situations.

The Miami County Commissioners are given statutory responsibility for providing accommodations for the Miami County Court of Common Pleas and the Miami County Municipal Court. R.C. 307.01(A) states, in part:

A courthouse, jail, public comfort station, offices for county officers, and a county home shall be provided by the board of county 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. (Emphasis added.)

See also R.C. 305.22 ("[u]ntil proper buildings are erected for the permanent seat of justice in a county, the board of county commissioners shall provide a suitable place for holding the courts of such county"); R.C. 311.07 ("[u]nder the direction and control of the board of county commissioners, [the county] sheriff shall have charge of the court house"). Pursuant to R.C. 1901.03, the Board of County Commissioners of Miami County is the "legislative authority" of the Miami County Municipal Court. R.C. 1901.36(A) states, in part:

The legislative authority of a municipal court shall provide suitable accommodations for the municipal court and its officers. The legislative authority of a county-operated municipal court may pay rent for the accommodations.

....  
 ...[The legislative authority] shall provide all necessary form books, dockets, books of record, and all supplies including telephone, furniture, heat, light, and janitor service, and for such other ordinary or extraordinary expenses as it considers advisable or necessary for the proper operation or administration of the court. (Emphasis added.)

See State ex rel. Taylor v. City of Delaware, 2 Ohio St. 3d 17, 18, 442 N.E.2d 452, 453 (1982) (R.C. 1901.36 "is mandatory in its terms").

You have informed me that the Miami County Court of Common Pleas and Miami County Municipal Court are housed in two county buildings. It is clear that the county commissioners have an interest in assuring that the buildings remain safe, in good repair, and able to adequately house the courts. See R.C. 307.02 ("[t]he board of county commissioners of any county, in addition to its other powers, may...construct, enlarge, improve, rebuild, equip, and furnish a courthouse..."); 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 and financial interests"); 1983 Op. Att'y Gen. No. 83-081. Implicit in the power to preserve and protect county buildings is the power to institute policies and procedures that reduce fire risks and insure the safe operation of facilities within the buildings. See generally, e.g., 1973 Op. Att'y Gen. No. 73-057 at 2-218 (county commissioners have implied authority "to perform acts to preserve the corporate property of the county over which they have control").

The powers of the county commissioners to protect and preserve county buildings must, however, be evaluated in relation to the interests of the judiciary in having facilities that permit the proper and efficient operation of the courts. The principle that the functions of the judicial branch of government must remain independent from the other branches of the government has been expressed as follows:

1. 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. (Paragraph one of the syllabus in State, ex rel. Foster, v. Bd. of County Commrs., 16 Ohio St. 2d 89, approved and followed.)
2. 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 functions and cannot be directed, controlled or impeded therein by other branches of the government. (Paragraph two of the syllabus in State, ex rel. Foster, v. Bd. of County Commrs., 16 Ohio St. 2d 89, approved and followed.)

State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus). It has, thus, been found that 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. See State ex rel. Johnston v. Taulbee; Zangerle v. Court of Common Pleas, 141 Ohio St. 70, 40 N.E.2d 865 (1943) (syllabus, paragraph three) (courts of general jurisdiction "may exercise control over the courthouse to the extent required to assure the provision, equipment and maintenance in the courthouse of rooms and facilities essential for their proper and efficient operation"); 1976 Op. Att'y Gen. No. 76-064. But see In re Rooms and Facilities of the Common Pleas Court of Marion County, 162 Ohio St. 345, 123 N.E.2d 521 (1954) (syllabus) ("[i]n view of the provisions of the Ohio statutes, the Common Pleas Court has no power to order the county commissioners to provide an elevator and a shaft therefor in its courthouse even where it has determined that such elevator is essential to the efficient performance of the functions of that court").

I am aware of no authority discussing the precise question you have raised--that is, the authority of the county commissioners to prohibit the use of coffee pots, refrigerators, or microwave ovens in the areas occupied by the courts, or the authority of the courts to insist upon the use of such appliances. I note, however, that State ex rel.

Bittikofer v. Babst, 97 Ohio St. 64, 66, 119 N.E. 136, 137 (1917), contains the following discussion:

The judicial power is a separate and independent department of government, and when a building is erected, and the whole or part thereof is provided or assigned by the building commission to the use of this independent department of government, such building, or such part as may be so assigned, naturally and necessarily comes within the control of that department, otherwise, a conflict of authority might seriously impede the administration of justice.

Undoubtedly the county commissioners have some jurisdiction or control over the entire building, but the extent of that jurisdiction and control is clearly defined by the statutes requiring them to furnish and maintain the building and provide light and heat therefor....

See also Commissioners of Trumbull County v. Hutchins, 11 Ohio 368, 371 (1842) (courtrooms should "contain those things which are necessary to enable the officers for whose public use they are fitted up, to perform their official duties").

A question similar to yours was considered by my predecessor in Op. No. 76-064. There the issue concerned the authority of the probate judge with respect to the decoration or maintenance of courthouse grounds, the exterior of the courthouse, and portions of the interior of the courthouse not allocated exclusively to the court. Op. No. 76-064 adopted a standard of reasonable necessity for evaluating the power of a court to compel decoration, maintenance, or the provision of space and facilities, and concluded, in the syllabus:

1. A probate court has inherent power to acquire and control the ordinary facilities necessary and essential for its proper and efficient operation.

2. The inherent power of a court to control the courthouse and its facilities may be exercised only to acquire necessary as distinguished from desirable quarters, space and facilities.

3. Under the terms of R.C. 307.01, the power to determine size, style and expense of a courthouse is vested in the board of county commissioners. The exercise of inherent judicial power relative to such matters is permissible only where essential to the proper and efficient operation of the court.

See generally In re Furnishings and Equipment for the Judge, Courtroom and Personnel for Courtroom Two, 66 Ohio St. 2d 427, 423 N.E.2d 86 (1981); State ex rel. Hottle v. Board of County Commissioners, 52 Ohio St. 2d 117, 370 N.E.2d 462 (1977); State ex rel. Finley v. Pfeiffer, 163 Ohio St. 149, 126 N.E.2d 57 (1955).

In accordance with the authorities discussed above, I conclude that a board of county commissioners may, for the purpose of preserving and protecting county property, establish policies and procedures governing the use of appliances--in particular, coffee pots, refrigerators, and microwave ovens--within portions of county buildings that are furnished to municipal and common pleas courts. Such policies and procedures may not, however, operate so as to interfere with the proper and efficient operation of the courts.

The question whether the use of the appliances in question is necessary for the proper and efficient operation of the courts is a question of fact that I am unable to resolve by means of this opinion. Similarly, the extent to which a prohibition of such appliances, or some other regulation of their use, is necessary to assure the safety of the county buildings housing the courts is a question of fact that may affect the resolution of this controversy. It is generally appropriate for factual determinations to be made on the local level. Persons involved in the controversy should, thus, weigh the interests on both sides and seek a workable arrangement. See generally State ex rel. Arbaugh v. Richland County Board of Commissioners, 14 Ohio St. 3d 5, 5, 470 N.E.2d 880, 880 (1984) (urging "that every reasonable effort be made [by the courts], in the interests of intergovernmental cooperation, to adhere to the conventional legislatively promulgated budget process"); State ex rel. Finley v. Pfeiffer (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"); State ex rel. Krakowski v. Stokes, 16 Ohio App. 3d 62, 66, 474 N.E.2d 695, 699-70 (Cuyahoga County 1984) (stating that the administrative judge and the clerk of court "should work together in order that each may efficiently carry out his duties" and "should rise above their differences, however engendered, and should be motivated to follow the spirit of [an applicable rule] in the interest of the public"); 1986 Op. Att'y Gen. No. 86-057 at 2-317 (stating that the township trustees and township clerk "should work together to establish a system which permits the township books to be maintained safely and made available to the public, while allowing both the board of trustees and the clerk to perform their duties in an efficient manner").

You have also asked whether the county commissioners may lawfully confiscate privately-owned appliances from areas allocated to the courts. I assume that, by use of the word "confiscate," you refer to a taking of appliances that are being used in a manner that conflicts with existing policies or procedures, with the understanding that the appliances will be returned to their owners upon agreement that they not again be used in any manner that would conflict with appropriate policies or procedures. As discussed above, the standard for determining whether particular policies or procedures are permissible is whether they interfere with the proper and efficient operation of the courts. The same standard applies to methods of enforcing such policies or procedures. Thus, a scheme for confiscating privately-owned appliances in order to enforce safety rules governing the use of appliances in areas occupied by the courts is permissible if the rules are proper and if the confiscation procedure does not interfere with the proper and efficient operation of the courts.

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

1. A board of county commissioners may, for the purpose of preserving and protecting county property, establish policies and procedures governing the use of coffee pots, refrigerators, and microwave ovens within portions of county buildings that are furnished to municipal and

common pleas courts. Such policies and procedures may not, however, operate so as to interfere with the proper and efficient operation of the courts.

2. Whether the use of coffee pots, refrigerators, and microwave ovens is necessary for the proper and efficient operation of the courts is a question of fact, which cannot be resolved by means of an opinion of the Attorney General.
3. Policies and procedures established in accordance with paragraph one, above, may be enforced by the confiscation of privately-owned appliances used in conflict with such policies and procedures, with the return of the appliances to their owners conditioned upon agreement that the appliances will not again be used in a manner that conflicts with appropriate policies or procedures, provided that such confiscation does not interfere with the proper and efficient operation of the courts.