

OPINION NO. 94-043**Syllabus:**

Should 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.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, July 14, 1994

You have requested an opinion on a matter arising from the following situation, described in your letter as follows:

This office recently issued a finding for recovery for payment of bar association dues against a municipal court judge. We based the finding for recovery upon Ohio Constitution, Article IV, Section 6, and 1983 Ohio Attorney General Opinion 83-042. While this opinion does not specifically mention "dues," it does address "fringe benefits" and "perquisites."

Your office subsequently indicated, however, that you have not yet issued a finding for recovery in this matter, pending resolution of this question by means of an opinion from this office. You therefore ask: "May a municipal court judge, county court judge, common pleas court judge or court of appeals judge have their professional association dues (including, but not limited to, bar associations and judges associations) paid for by a political subdivision?"

1983 Op. Att'y Gen. No. 83-042

1983 Op. Att'y Gen. No. 83-042 considered whether the state or various political subdivisions were authorized to pay on behalf of certain public officers and employees the registration fee required of all attorneys by the Supreme Court of Ohio. Concerning the authority of a municipality to make such a payment on behalf of a municipal court judge, Op. No. 83-042 stated at 2-161:

The authority of municipalities to expend funds for a public purpose is limited by the qualification that such purpose must be a *municipal* public purpose Under this principle, it might be concluded that, if there are no local provisions or applicable statutory provisions prohibiting such payment, a municipality may expend municipal funds to pay the registration fee on behalf of the judges of the

municipal court located within such municipality, provided that the legislative body of the municipality determines that such expenditure constitutes a valid municipal public purpose and that such decision is not manifestly arbitrary or unreasonable. (Various citations omitted.)

Concerning the authority of a county to pay the Supreme Court registration fee on behalf of a judge of the common pleas court or a county court in that county, Op. No. 83-042 concluded that, absent statutory authorization, the board of county commissioners, as a creature of statute, could not make such payments.

After discussing the authority of municipalities or counties to make such payments on behalf of the various judges, Op. No. 83-042 also examined the provisions of Ohio Const. art. IV, §6(B), which states in pertinent part:

The judges of the supreme court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall, at stated times, receive, for their services such *compensation as may be provided by law*, which shall not be diminished during their term of office The compensation of all judges of the courts of appeals shall be the same. Common pleas judges and judges of divisions thereof, and judges of all courts of record established by law shall receive such compensation as may be provided by law. *Judges shall receive no fees or perquisites*, nor hold any other office of profit or trust, under the authority of this state, or of the United States.¹ (Emphasis and footnote added.)

Op. No. 83-042 thus concluded that even if a particular political subdivision possessed sufficient authority to pay a judge's attorney registration fee, Article IV, §6(B) would prohibit the judge from receiving the benefit of such payment. Op. No. 83-042 reasoned as follows:

Pursuant to [Ohio Const. art. IV, §6(B)], municipal court judges are prohibited from receiving fees or perquisites, apart from their compensation established by law. *See* R.C. 1901.02 (municipal courts are courts of record); 1973 Op. Att'y Gen. No. 73-081. The term "perquisites," as used in Ohio Const. art. IV, §6(B) is not defined. However, a perquisite is commonly understood to mean: "something additional to regular profit or pay, resulting from one's position or employment, esp. something customary or expected." *Webster's New World Dictionary* 1060-1061 (2d college ed. 1978). It appears that payment of a municipal court judge's Supreme Court registration fee by a municipality under the theory that such payment promotes a municipal public purpose would fall within the definition of a perquisite. *See generally* [*State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976)] (health insurance premiums, not paid directly to the officer, but paid on his behalf, are fringe

¹ Pursuant to R.C. 1907.01, county courts are courts of record. Similarly, as stated in R.C. 1901.02(A), "municipal courts established by [R.C. 1901.01] ... are courts of record." All the judges about whom you ask, municipal court judges, county court judges, common pleas court judges, and judges of courts of appeal, are subject to the provisions of Ohio Const. art. IV, §6(B).

benefits). Ohio Const. art. IV, §6(B) would, therefore, prohibit a judge from receiving such a benefit.

Id. at 2-162.

Fees or Perquisites Prohibited by Ohio Const. art. IV, §6(B)

In *City of Kettering v. Berger*, 4 Ohio App. 3d 254, 448 N.E.2d 458 (Montgomery County 1982), the court considered, among other things, whether a municipal court judge's receipt of money from couples for whom he performed marriage ceremonies violated Ohio Const. art. IV, §6(B). The *Berger* court discussed the meaning of the word "perquisite," as follows:

All of the definitions of the term "perquisite" contemplate a profit to be secured by the officer out of the office he occupies, *in addition to his fixed compensation*. A "perquisite" is something gained from a place of employment over and above the ordinary salary or fixed wages for services rendered, especially a fee allowed by law to an officer for a specific service. (Emphasis added.)

Id. at 259, 448 N.E.2d at 463-64. Based upon this definition of "perquisite," the court found that the judge "would not have received any money from the marriage couples but for his role as a judicial officer in solemnizing a marriage. To the extent that appellant kept any monies for having performed the marriages, he was violating the constitutional mandates of Section 6, Article IV of the Ohio Constitution." *Id.*, 448 N.E.2d at 464. See also 1982 Op. Att'y Gen. No. 82-022 (syllabus) ("[a]lthough R.C. 2101.19 impliedly authorizes a probate court judge to sell marriage certificates providing the cost does not exceed one dollar, Ohio Const. art. IV, §6(B) prohibits the judge from retaining the proceeds personally. Such proceeds must be paid over to the county pursuant to R.C. 325.27").

The meaning of "perquisite," as used in Article IV, §6(B), was again examined in 1986 Op. Att'y Gen. No. 86-025, which discussed whether a judge could participate in an "in lieu of salary increase" pick up plan. Under such a plan, "[t]he employer assumes full payment of its employees' pension contributions without imposing a commensurate reduction in the salaries received by those workers, thereby giving rise to an increased financial burden on the employer." *Id.* at 2-131 (citation omitted). Op. No. 86-025 found that a judge's participation in such a plan would constitute a fringe benefit. See generally *State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692, 694 (1976) (for purposes of Ohio Const. art. II, §20, "[f]ringe benefits ... are valuable perquisites of an office, and are as much a part of the compensations of office as a weekly pay check"). Op. No. 86-025 also concluded that a judge's participation in an "in lieu of salary increase" plan would be "a profit ... secured by the officer out of the office he occupies," or a "perquisite," as defined in *Kettering*. Because a judge's participation in such a plan would constitute either compensation or a perquisite within the meaning of Article IV, §6(B), Op. No. 86-025 concluded that, in the absence of a statute authorizing a judge to receive the benefit of such plan as part of his compensation, the portion of Ohio Const. art. IV, §6(B) prohibiting a judge from receiving fees or perquisites prevented a judge from participating in the proposed plan.

Responsibility of Political Subdivisions to Fund Courts

Your question asks whether a political subdivision may pay the professional association dues of a municipal court judge, a county court judge, a common pleas court judge, or a court of appeals judge. Pursuant to statute, the state, counties, townships, and municipalities have responsibility for funding the operation of the state courts. For example, within R.C. Chapter 1901, the General Assembly has established several distinct methods by which municipal courts are funded by political subdivisions. Pursuant to R.C. 1901.024(A), the board of county commissioners of Hamilton County pays all of the costs of operation of the Hamilton County Municipal Court. R.C. 1901.024(D), however, states in pertinent part: "The board of county commissioners of a county in which a county-operated municipal court² is located shall pay all of the costs of operation of the municipal court." (Footnote added.) Other municipal courts are funded as provided for in R.C. 1901.026, which generally divides the operating costs of a municipal court with jurisdiction beyond the boundaries of the municipality in which it is located among the municipalities and townships within the territory of the court. *See also Lake County Board of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 221, 569 N.E.2d 1046, 1048 (1991) ("a board of county commissioners must provide the funds requested by a court of common pleas unless the board can show that the requested funding is unreasonable and unnecessary"); R.C. 1907.19 (duty of county commissioners to provide for each county court judge "suitable court and office space and all materials necessary for the business of the court, including a current set of the Revised Code"); R.C. 2501.181 (expenses of operating a court of appeals shall be borne by the counties in the district created by R.C. 2501.01). Accordingly, counties, cities, and various townships have certain responsibilities for funding the operations of the state courts about which you ask.

Payment of Professional Association Dues by Municipalities and Counties on Behalf of Judges

You specifically ask about the permissibility of payment by a political subdivision of professional association dues on behalf of judges within that political subdivision. A similar question was recently addressed in 1993 Op. Att'y Gen. No. 93-043, which concluded in the 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.

In addressing whether a judge's receipt of such payment would violate the provisions of Ohio Const. art. IV, §6(B), Op. No. 93-043 stated at 2-219:

The court has stated that the provision of free parking for the judges is part of a security plan for the court, which might well be judged a reasonable and necessary cost of operation of the court. The fact that the judges may also *benefit indirectly* from the security plan does not, however, render the implementation of such plan a "perquisite" to the judges. (Emphasis added.)

² See R.C. 1901.03(F) (defining "county-operated municipal court").

Information submitted to this office on behalf of various judges throughout the state indicates that a number of courts consider the payment of professional association dues on behalf of its judges a direct benefit to the operation of the court by keeping the judges informed about various developments in the law through the association's committee activities, publications, and other educational opportunities. Unlike the payment of a judge's attorney registration fee or the payment of various sums for a judge's participation in a "pick up in lieu of salary increase" plan, the payment of professional association dues on behalf of a judge may well be found to have value to the operation of the court itself, apart from any benefit to the judges of the court on whose behalf the dues are paid. Just as a court might determine that the payment of a judge's parking fees, as part of a security plan for the court, is, in certain circumstances, a "reasonable and necessary cost of operation of the court," it might also find the payment of dues to a professional association on behalf of a judge to be reasonable and necessary to the operation of the court.

Therefore, in the event that a municipal court, a county court, a court of common pleas, or a court of appeals determines that the payment of professional association dues on behalf of a judge of that court is part of the cost of operation of the court, to the extent that a political subdivision is responsible for funding the cost of operation of that court, it must comply with an appropriation request from the court for such costs, unless the political subdivision can show that the request is either unreasonable or not necessary for the proper administration of the court's business.³

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, should 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.

³ As noted in *State ex rel. Donaldson v. Alfred*, 66 Ohio St. 3d 327, 330, 612 N.E.2d 717, 720 (1993), a municipal court, unlike other courts, is not able to compel funding from a coordinate branch of government "if the General Assembly has placed discretion over a particular budget item with the municipal legislative authority." Here, however, no statute appears to place discretion over the payment of professional association dues with the municipal legislative authority.