OPINION 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.

To: James A. Philomena, Mahoning County Prosecuting Attorney, Youngstown, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion on the following question: "May a board of county commissioners pay for parking spaces at a private parking garage for the private vehicles of the common pleas judges?" Your opinion request states:

> We should note that the request has been made in pursuit of a security plan for the common pleas judges. The private parking garage is located one building over from the county courthouse and it has been represented to the county commissioners that the parking should be provided in the interest of a security plan to protect the judges. That being the case, we question whether the provision of parking may be ordered by the judges under the inherent power of the court, as established by [case law].

Also mentioned in your opinion request is Ohio Const. art. IV, §6, which prohibits common pleas court judges, among others, from receiving fees or perquisites apart from the compensation provided by law.

County Appropriations for the Operation of Common Pleas Court

The duties of a board of county commissioners with regard to appropriations for the court of common pleas located in that county was recently summarized in *Lake County Board of Commissioners v. Hoose*, 58 Ohio St. 3d 220, 221-22, 569 N.E.2d 1046, 1048 (1991), as follows:

> A court of common pleas in this state has the inherent authority to require funding which is reasonable and necessary to the administration of the court's business. *State, ex rel. Rudes, v. Rofkar* (1984), 15 Ohio St. 3d 69, 71-72, 15 OBR 163, 165, 472 N.E.2d 354, 356. This court has held, time and again, that it is incumbent upon the legislative authority to provide funds which are reasonable and necessary to operate a court which requests such funding. *See, e.g., State, ex rel. Giuliani, v. Perk* (1968), 14 Ohio St. 2d 235, 43 O.O.2d 366, 237 N.E.2d 397, and *State, ex rel. Arbaugh, v. Richland Cty. Bd. of Commrs.* (1984), 14 Ohio St. 3d 5, 14 OBR 311, 470 N.E.2d 880. Therefore, *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.* *State, ex rel. Britt, v. Bd. of Franklin Cty. Commrs.* (1985), 18 Ohio St. 3d 1, 2, 18 OBR 1, 2, 480 N.E.2d 77, 78. The burden of proof is clearly upon the party who opposes the requested funding. *Id.* In effect, it is presumed that a court's request for funding is reasonable and necessary for the proper administration of the court. The purpose of this "presumption" is to maintain and preserve a judicial system and judiciary that are independent and autonomous. (Emphasis added.)

Thus, the board of county commissioners must appropriate to the court the funds requested by the court, unless the board can demonstrate that such request is either unreasonable or not necessary to the proper administration of the court's business.

In the case of *State ex rel. Weaver v. Lake County Board of Commissioners*, 62 Ohio St. 3d 204, 206-07, 580 N.E.2d 1090, 1093 (1991), the court noted that a number of factors may bear on the question of whether a particular request by a court for funding is reasonable and necessary, and concluded that "government hardship may be considered, but is not enough *by itself* to establish an abuse of discretion in determining the required amount of court funding." (Emphasis added.) As further stated by the *Weaver* court, the fact that the county may not have unappropriated or unencumbered funds from which to make the appropriation to the court does not alter the county's duty to make the requested appropriation. *Id.* at 208, 580 N.E.2d at 1094.

Recently, however, in *State ex rel. Donaldson v. Alfred*, 66 Ohio St. 3d 327, 329-30, 612 N.E.2d 717, 719-20 (1993), the court again considered the propriety of a funding request by a court, and stated that:

> A court's ability to compel funding from a coordinate branch is not, however, unfettered. The financial condition of the funding authority, for example, is one factor in determining reasonableness....
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> .... Any determination of the reasonableness of a funding order must also take into account the need to preserve the proper balance of power among the three branches of government. (Citations omitted.)

In addition, the *Donaldson* court stated that a party may defeat a mandamus action to enforce a funding order by demonstrating that the structure or mechanism of that funding order has led, or may lead to, an improper use of the requested funds.

In the situation you describe, therefore, unless the board of county commissioners can demonstrate that the amount requested to be appropriated for the court of common pleas, including an amount claimed to be necessary for the payment of the cost of private parking for the common pleas judges, is either unreasonable or not necessary to the proper administration of the court's business, the board of county commissioners has a duty to appropriate the requested sum.

Prohibition of Ohio Const. art. IV, §6

Ohio Const. art. IV, §6 reads in pertinent part:

> (B) *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.... 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. (Emphasis added.)

You question whether the provisions of art. IV, §6 prohibit a common pleas court judge from receiving free parking as a "perquisite" of office.

"Pursuant to art. IV, §6(B), common pleas judges are entitled to such compensation as may be provided by law." 1987 Op. Att'y Gen. No. 87-021 at 2-138 (footnote omitted). Thus, a judge may ordinarily receive only those fringe benefits that are authorized by statute. *See, e.g.*, 1984 Op. Att'y Gen. No. 84-058 (syllabus, paragraph two) ("[j]udges of courts of common pleas may not participate in a 'pick up in lieu of salary increase' plan in the absence of statutory authority therefor"); 1983 Op. Att'y Gen. No. 83-042 (syllabus, paragraph five) (stating in part, "art. IV, §6(B) prohibits the judges from receiving the benefit of the payment of [the Supreme Court attorney registration] fee as a perquisite apart from the compensation established by law"). This prohibition arises from the language in Ohio Const. art. IV, §6(B), prohibiting a judge from receiving fees or perquisites.

The court in *City of Kettering v. Berger*, 4 Ohio App. 3d 254, 259, 448 N.E.2d 458, 463-64 (Montgomery County 1982), discussed the meaning of the word "perquisite," as used in art. IV, §6, 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.

See, e.g., 1982 Op. Att'y Gen. No. 82-022 at 2-68 ("any personal profit obtained by a probate court judge from the sale of marriage certificates by court personnel during regular working hours on court premises is a perquisite which is prohibited by Ohio Const. art. IV, §6"). Thus, absent express statutory authorization for the provision of free parking to a common pleas court judge, if the receipt of free parking were a "perquisite" of the office of common pleas court judge, art. IV, §6 would prohibit the judge from receiving that benefit.

Provision of Free Parking

In a number of instances, opinions of this office have concluded that, although a particular public entity is without authority to prescribe compensation for its employees, it may expend funds for a purpose authorized by statute even though such expenditure may indirectly benefit an employee of that entity. Under these circumstances, the benefit to the employee is not then characterized as a part of that employee's compensation. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-086 (syllabus, paragraph two) ("[t]he State Lottery Commission may expend public funds for the provision of meals for its employees and other persons at meetings of the Commission...only where the Commission has determined that the provision of such meals is necessary to the performance of a function or duty expressly or impliedly conferred upon the Commission by statute and if its determination is not manifestly arbitrary or unreasonable"); 1983 Op. Att'y Gen. No. 83-029 (syllabus) ("[i]f the Director of Transportation reasonably finds it necessary for the efficient operation of his Department, he may establish a procedure for

reimbursing Department employees for the loss, theft, or destruction of the employees' personal tools or equipment which are lost, stolen, or destroyed in the course of the owners' employment").

After noting that a state agency has no authority to grant its employees fringe benefits other than those provided for by statute,[1] Op. No. 83-029 discussed the permissibility of agency expenditures that may indirectly benefit agency employees, stating at 2-111:

> One criterion for determining whether a particular expenditure by a public employer for the benefit of an employee is proper is, therefore, whether the expenditure has a definite relationship to the employee's duties and whether the *primary benefit is for the public rather than the employee.*
>
> A similar analysis was adopted in 1977 Op. Att'y Gen. No. 77-090, in which my predecessor discussed whether a state agency, which either possesses the power to acquire and operate parking facilities or has acquired possession and control of such facilities through an agency statutorily empowered to act in this area, could provide its employees with free parking. The opinion stated, at 2-305: "If the primary purpose in providing the facility is the convenience of the state agency rather than an intention to directly benefit its employees, the provision of free parking would not constitute a fringe benefit." The opinion then concluded at 2-305:
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> > a state agency may not provide free parking to state employees as a fringe benefit. A state agency may, however, allow state employees to park free of charge on state property when it is necessary to the efficient operation of the state agency or when the acquisition and operation of the facility does not involve an additional direct monetary cost to the state.
>
> ....It is, therefore, apparent that an expenditure by a state agency may be proper if it is necessary to the efficient operation of the agency, even though an agency employee may indirectly benefit from such an expenditure. (Emphasis added.)

This analysis appears to apply as well to the situation about which you ask. 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.

Accordingly, the necessity of funding for a security plan to be implemented by the court of common pleas is subject to the same test as any other requested appropriation by the court. As long as the requested appropriation is reasonable and necessary, the county is obligated to comply with the court's requested appropriation.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, a board of county commissioners is obligated to comply with an appropriation request from the court of

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[1] 1983 Op. Att'y Gen. No. 83-029 was issued prior to the enactment of R.C. Chapter 4117 governing collective bargaining for public employers and public employees.

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.