

OPINION NO. 76-064

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.

To: R. David Picken, Madison County Pros. Atty., London, Ohio
By: William J. Brown, Attorney General, September 8, 1976

I have before me your request for my opinion in respect to the authority of a probate judge in matters of decoration and maintenance of a county courthouse and the courthouse grounds. Your question reads as follows:

"1. What jurisdiction does the Probate Judge have regarding the decoration or maintenance of the exterior of the county Courthouse and Courthouse grounds.

"2. What jurisdiction does the Probate Judge have regarding the decoration or maintenance of the interior of the County Courthouse where such decoration or maintenance deals with those common hallways, offices, etc. which are not a part of the physical enclosure of Probate Court?"

The question of what control over facilities and equipment is to be exercised by a court of general jurisdiction has been considered by the Ohio Supreme Court on a number of occasions. See Bittikofer v. Babst, 97 Ohio St. 64 (1917); Zangerle v. Court of Common Pleas, 141 Ohio St. 70 (1943); In Re Rooms and Facilities of the Common Pleas Court of Marion County, 162 Ohio St. 345 (1954); State, ex rel. Finley v. Pfeiffer, 163 Ohio St. 149 (1955).

These decisions reflect a recognition of the independence of the judicial power in a tripartite form of government. Under the provisions of R.C. 307.01, however, the authority to determine, for example, whether a courthouse shall be erected at all and, if so, of what size and style it shall be is vested in the boards of county commissioners. These decisions, therefore, have of necessity balanced the duties and authority vested in the boards of county commissioners against the necessity of an independent judicial power.

The duty and authority of the county commissioners in respect to courthouses is specified by R.C. 307.01. In pertinent part, these provisions read as follows:

"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. Such buildings and offices shall be of such style, dimensions, and expense as the board determines."

As discussed in both State, ex rel. Bittikofer v. Babst, supra, and Zangerle v. Court of Common Pleas, supra, although the questions of when a courthouse is to be provided and of what style, size and expense a courthouse shall be are left to the discretion of the commissioners, courts of general jurisdiction inherently possess all powers necessary to secure and safeguard the free and untrammled exercise of their judicial function and cannot be directed, controlled or impeded therein by other branches of the government.

Thus, in Zangerle, supra, the Court concluded that courts of general jurisdiction may pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and 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 the Court's proper and efficient operation.

The situation involved in Zangerle, however, was essentially a question as to the right of use of courthouse space and the Court subsequently limited Zangerle's very broad language concerning a court's right of control. In Re Rooms and Facilities of the Common Pleas Court of Marion County, supra, and State, ex rel. Finley v. Pfeiffer, supra.

As discussed in the Marion County decision, the situation in Zangerle did not involve any right of the court to compel remodeling or even the repair of any part of the courthouse. The Court in Marion County looked to the discretion vested in the board of county commissioners by what is now R.C. 307.01 and concluded that the Common Pleas Court has no power to order the county commissioners to provide an elevator and a shaft therefore in its courthouse, even where it has determined that such elevator is essential to the efficient performance of the functions of that court.

In State ex rel. Finley v. Pfeiffer, the Court expanded upon the distinctions drawn in Marion County. In discussing the balance necessary between the judicial power of control and the authority vested in the commissioners the Court commented at pp. 154-155:

Assuredly, a court of general jurisdiction has great inherent power to acquire and control the ordinary facilities which are essential to secure and safeguard the free and untrammelled exercise of its function. However, that inherent power can not be exercised except for the acquisition of necessary as distinguished from desirable quarters and space. . . . Many ridiculous results would ensue if the inherent power of the Court was not confined to the acquisition of the space and facilities essential for its proper and efficient operation.

Under the criteria set forth by the Court in Pfeiffer, supra, the power of a court of general jurisdiction to compel decoration, maintenance or the provision of space and facilities must be evaluated against a standard of reasonable necessity.

Turning to your specific questions, I would first note that the Pfeiffer decision explicitly recognized that a probate court is a court of general jurisdiction. Further, under the amendments of R.C. 2101.01 by House Bill No. 7, effective November, 1969 and Senate Bill No. 145, effective 1/1/76, the probate court is now a division of the court of common pleas. It is clear, therefore, that a probate court is a court of general jurisdiction and possesses the inherent power recognized in the above discussed decisions of the Supreme Court of Ohio.

The questions you present, therefore, must be evaluated in light of the criteria of reasonable necessity set forth in Pfeiffer, supra. Under the provisions of R.C. 307.01, the power to determine the style, size and expense of a Courthouse

is vested in the county commissioners. Insofar as your questions represent matters of decoration and style, it would appear that the question of decoration - whether of the exterior of the Courthouse, of its offices and hallways, or of the physical enclosure of the court - is one left to determination by the commissioners. On the other hand, the probate court has the inherent power to acquire and control the ordinary facilities which are essential for its proper and efficient operation. It seems clear that this power does, in certain circumstances, extend beyond the actual physical enclosure of the court to the common hallways the exterior, grounds, etc.

The test, then, which must be applied in determining what authority a probate judge has in respect to decoration and maintenance of the courthouse, whether interior or exterior, is whether an exercise of the inherent power of the court in a particular matter is warranted because such decoration or maintenance is necessary and essential to the operation of the court. Where necessity exists, the power of the court may extend beyond the actual physical enclosure of the court's chambers, however, desirability does not alone constitute necessity.

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

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.