



Judicial Impact Statement

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Judicial Authority to Operate the Court, Make Hiring Decisions, and Compensate Court Personnel

Seeking Sponsor

TITLE INFORMATION

The Ohio Judicial Conference seeks legislation to clarify the text of the Ohio Revised Code to accurately reflect the inherent power of courts to determine the necessary and reasonable funding for their efficient operation, including the setting of salaries of court personnel.

The Ohio Judicial Conference seeks the removal of changes to Ohio Revised Code sections 307.01, 2101.11 and 2151.10 that were enacted in Senate Bill 63 (1979) and subsequently declared unconstitutional.¹ These unconstitutional changes increased the discretion of county commissioners over court funding decisions and thus “unconstitutionally restricted and impeded the judiciary in complete contradiction of rudimentary democratic principles.”

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

The Ohio Judicial Conference also seeks changes to Title 19, Sections 1901.31, 1901.33, 1901.331, 1901.36, 1907.20, and 1907.201 to clarify that municipal and county courts, have the inherent powers as judges of the common pleas courts granted by the Ohio Constitution to set the salary of court personnel.²

IMPACT SUMMARY

¹ *State v. Taulbee* (1981), *Slaby v. Summit County Council* (1983) and *Wilke v. Hamilton County Board of Commissioners* (2000).

² *The State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), *State ex rel. Donaldson v. Alfred* (1993), and *The State ex rel. Judges of Toledo Municipal Court v. Mayor of Toledo* (2008).

Even though the courts declared Senate Bill 63 unconstitutional, the changes brought about by Senate Bill 63 are still in the text of Ohio Revised Code Sections 307.01, 2101.11, and 2151.10. The Ohio Judicial Conference and the County Commissioners Association of Ohio believe that preservation of the unconstitutional provisions within statutory text creates confusion over which provisions are valid. To remove the unconstitutional text would create clarity in the law, decrease tension between courts and their funding authorities, and improve public confidence in the courts.

Clarifications to Ohio Revised Code Sections 1901.31, 1901.33, 1901.331, 1901.36, 1907.20, and 1907.201 similarly will clarify the meaning and constitutionality of provisions that apply to the municipal/county courts, create consistency between the authority of common pleas and municipal/county judges with regard to their power to set the compensation of court employees, and improve public confidence in judges, courts, and the judicial system.

BACKGROUND

There are tensions between courts and local funding authorities which especially intensify when local dollars are shrinking. Some of this tension is a natural byproduct of determining what is reasonable and necessary to operate Ohio courts. There is other tension resulting from honest confusion over the budget process and the presumptions about the relative balance of power.

Tension over funding decisions increases during recessionary periods and results in an increased number of inquiries for help from judges to the Ohio Judicial Conference, from county commissioners to the CCAO, and from municipal funding authorities to the Ohio Municipal League. Similarly, there are increases in requests for assistance from the Commission on Dispute Resolution and from the mediation and dispute resolution section of the Supreme Court of Ohio. There are also an increased number of disputes that make their way to the Ohio Supreme Court for final resolution.

The Ohio Judicial Conference has taken several steps over the years to assist judges, in understanding the budget process. There has been an article included in the Ohio Judges Resource Manual. The Judicial Conference has also held educational panels on this subject as part of our Annual Meeting. Most recently, the Judicial Conference formed a "collaborative project" with county and city funding authorities. Our purpose was to promote understanding and partnership between the parties and avoid costly lawsuits. We have conducted joint training and mediation/budget clinics statewide, resulting in mostly successful models of judges and their funding authority working cooperatively to solve funding disputes. In the course of these training opportunities, we have learned that many county commissioners, and even some judges, are unaware that portions of R.C. 307.01, 2101.11, and 2151.10 are no longer valid, having been declared unconstitutional.

JUDICIAL IMPACT

(1) Funding the operation of the court. When the court declares a statute unconstitutional, the statute has no legal force. It is null and void. It does not matter that the unconstitutional language stays in the code; it does not have the force of law. It is unusual for the General Assembly to re-write the statute after it has been declared unconstitutional. Rather the easier and more common practice is to take no action which leaves matters where they stood prior to the unconstitutional enactment.

In Senate Bill 63 the Ohio General Assembly attempted to expand the authority of the county commissioners over the funding decisions of the courts. When this expanded authority was declared unconstitutional, the law returned to its pre-Senate Bill 63 status. Despite the legal change, the Ohio General Assembly did not remove the unconstitutional text.

The remaining text creates confusion. Most people reading R.C. 307.01, for example, will assume that the ordinary meaning is correct. The language of the statute requires courts to follow certain procedures in submitting their funding requests to the funding authority, it specifically limits the contempt power of the courts, and it shifts the burden of proving that the courts' budget is reasonable and necessary to the courts. These three provisions were declared unconstitutional in *Taulbee*.

In *State, ex rel. Johnston v. Taulbee, et al* (1981) 66 Ohio St.2d 417, 423 N.E.2d 80, the Ohio Supreme Court recognized the long standing constitutional principle that there are three branches of government. It stated "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 functions and cannot be directed, controlled or impeded therein by other branches of the government. (Paragraph two of the syllabus in *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, 46 N.E.2d 865, approved and followed.)"

The *Taulbee* court stated that lawmakers could not give what amounted to the court's inherent powers to control the operation of the courts as an independent branch of government to the county commissioners. The *Taulbee* court quoted from *Hale v. State* (1896) 55 Ohio St. 210, 45 N.E.199, "The difference between the jurisdiction of courts and their inherent powers is too important to be overlooked. In constitutional governments their jurisdiction is conferred by the provisions of the constitutions and of statutes enacted in the exercise of legislative authority...Here, the people possessing all governmental power, adopted constitutions completely distributing it to appropriate departments. They created courts, and, in some instances, authorized the legislatures to create others. The courts so created and authorized have all the powers which are necessary to their efficient action, or embraced within their commonly received definition. * * * In making the constitutional distribution of the powers of government, the people assumed that the several departments would be equally careful to use the

powers granted for the public good alone. Accordingly we have the familiar and generally accepted doctrine that none of the several departments are subordinate, but that they are co-ordinate.* * *” The *Taulbee* court also quoted from *State ex rel. Giuliani v. Perk* (1968), 14 Ohio St.2d 235, 237 N.E.2d 397, that “the public interest is served when courts co-operate with executive and legislative bodies in the complicated budgetary processes of government. However, such voluntary cooperation should not be mistaken for a surrender or diminution of the plenary power to administer justice which is inherent in every court whose jurisdiction derives from the Ohio Constitution. Thus, such a transfer of power in S.B.63 violated the very tenets of a constitutional democracy with checks and balances.

While a sophisticated and experienced legal scholar could easily determine that the actual text of R.C. 307.01 had been legally examined and interpreted to be the opposite of what the words say, there remains confusion about what the correct law is for funding courts which results in a hothouse for germinating tension between the county commissioners and judges in any budget negotiation.

Perhaps the most consequential of the confusions is what happens when the judge disagrees with the funding authority over the amount that is reasonable and necessary to operate the court. Senate Bill 63 was an attempt to expand the county commissioners’ authority in this area by saying that the “burden shall be on the court of common pleas to prove that the appropriation requested is reasonably necessary to meet all its administrative expenses.” Subsequent legal decisions erased the unconstitutional provisions, and it is misleading that they are still on the books. While the words say that the county commissioners’ appropriation is presumed accurate unless the judge can prove the amount inadequate, in actuality the rule of law is that the judge’s determination of what it takes to operate the court is presumed to be reasonable and necessary. It is the county commissioners that have the burden to prove that the judge has made an error or otherwise acted without reason. By presuming that the judge is correct, this standard prevents the funding authority from imposing its judgment for the court’s judgment. The presumptions favor the judge, not the commissioner, and render the written text null and void.

Retaining unconstitutional provisions is confusing to everyone, and contributes to mistrust between the local courts and the funding authority. To remove the unconstitutional language would reduce unnecessary tension between judges and their funding authorities. Moreover, it would improve the understanding, cooperation, and partnership of these elected officials and enhance the chances of both parties reaching a compromise on the court budget. It would be more likely to result in compromise and far less likely to trigger an expensive and contentious mandamus action under Chapter 2731. Improvements in the cooperation between government officials would enhance public perceptions of government and improve public confidence in government. Often times, after a dispute between two elected officials, the electorate fails to return either party to office on Election Day. The Ohio Revised Code should be updated to reflect existing rule of law. It is the right thing to do and the impact will promote

greater clarity in the law. Furthermore, this clarification should increase the potential for cooperation and partnership between judges and their funding authorities, and improve public confidence in the smooth and efficient operation of government and administration of justice.

(2) Setting the salary of court personnel.

The United States has a long tradition of limited government and protection of the people from government power is at the cornerstone of democratic government. Our Framers developed a tripartite system where government power was divided into three branches of government with some overlapping and some independent powers. This very system is at the heart of the changes the Judicial Conference is seeking in this initiative. One of the most important tools that a branch of government has to protect itself from the encroachment of another branch of government is control over the branch itself. It is essential for judges to be able to determine what is necessary to operate their own courts, and not be dependent on the legislative branch for deciding that question. This principle is the rule of law under our Constitution as determined by the Ohio Supreme Court in the *Taulbee* case as well as other cases coming both before and after this decision.

Hiring and compensating court personnel are essential components of court operations. The authority to hire and compensate court personnel is paramount to those powers that are inherent to the court, and must be protected from the encroachment of another branch of government. While the common pleas courts enjoy such control over the compensation of their employees, there are statutes that prohibit the municipal/county courts from exercising this inherent authority. Municipal courts and their divisions have inherent power to order funding that is reasonable and necessary to the courts' administration of their business. *State ex rel. Cleveland Mun. Court v. Cleveland City Council* (1973), 34 Ohio St.2d 120, 63 O.O.2d 199, 296 N.E.2d 544. The Judicial Conference believes that the limitations imposed upon the municipal and county courts to hire and compensate court personnel is unconstitutional, especially given that the common pleas and municipal/county courts have the same constitutional authority. Similarly, the inconsistent treatment creates confusion for the public and for people that work in the court system. This confusion undermines public confidence in the courts, the judges, and the legal system as a whole. The recommended changes meet constitutional standards, will reduce the tension between the courts and their funding authorities and will promote public confidence in the law and in the administration of justice.

RECOMMENDATION

(1) Funding the Operation of the Court

The Ohio Judicial Conference recommends that Ohio Revised Code Sections 307.01, 2101.11, and 2151.10 be amended to reflect the case law of *State v. Taulbee* (1981), *Slaby v. Summit County Council* (1983) and *Wilke v. Hamilton County Board of Commissioners* (2000). These cases specifically declare Senate Bill 63 (1979) unconstitutional and the proposed changes to R.C. 307.01, 2101.11, and 2151.10 are intended to restore the

statutory text that existed prior to enactment of Senate Bill 63. The proposed text modifications are attached. We have also attached Senate Bill 63 for your reference. Furthermore, there is extensive case law that establishes the legal principle that municipal/county courts have the same inherent powers enjoyed by the common pleas court. As a result, the Judicial Conference has proposed changes to R.C. 1901.31, 1901.33, 1901.331, 1901.36, 1907.20, and 1907.201 which are attached. These changes, especially those to 1901.36, are necessary in order to save these provisions from the same constitutional infirmity that undermined the integrity of R.C. 307.01, 2101.11, and 2150.10 when amended by Senate Bill 63 in 1979.

(2) Setting the Salary of Court Personnel

The Ohio Judicial Conference recommends that Ohio Revised Code Sections 1901.31, 1901.33, 1901.331, 1901.36, 1907.20, and 1907.201 be amended to reflect the case law of *Taulbee* and its progeny, as well as *The State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), *State ex rel. Donaldson v. Alfred* (1993), and *The State ex rel. Judges of Toledo Municipal Court v. Mayor of Toledo* (2008). Taken together, these cases articulate for municipal and county courts what *Taulbee* meant for the general, domestic relations, juvenile, and probate divisions of common pleas courts. The changes recommended will present a consistent message regarding the statutory powers of common pleas courts and municipal/county courts with regard to the judge(s) power to establish the compensation of court personnel. This power is an essential expression of the judge's inherent power to determine the resources and personnel that the judge needs to operate the court.

- ✓ The changes to R.C. 1901.31 give municipal court judges the statutory power to set the compensation of clerks of court.
- ✓ The changes to R.C. 1901.33 and 1907.201 give municipal court and county court judges, respectively, the statutory authority to set the compensation of court interpreters, mental health professionals, probation officers, assignment commissioners, deputy assignment commissioners, court aides, typists, stenographers, statistical clerks/bookkeepers, and official court reporters.
- ✓ The changes to R.C. 1901.331 give municipal court judges the statutory authority to set the compensation of employees of the housing or environmental divisions of municipal courts, including the chief specialist, specialists, referees, and other employees and officers of the housing or environmental division of the municipal court.
- ✓ The changes to R.C. 1901.36 give municipal court judges the statutory authority to set the compensation of any other employees, and authority to determine the form books, dockets, books of record, supplies, and other expenses that are necessary for the proper operation or administration of the court.
- ✓ The changes to 1907.20 give county court judges the power to appoint and prescribe the compensation of a clerk; to establish branch offices of the clerk; and the power to appoint and prescribe the compensation of a special deputy clerk to administer each branch office.