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A Policy Statement describes as objectively and accurately as possible the position of the Ohio Judicial Conference. Typically policy statements are developed by a standing committee of the Ohio Judicial Conference and presented to the full Executive Committee for their consideration. All policy statements are approved by the full Executive Committee of the Ohio Judicial Conference. The Ohio Judicial Conference prepares these statements to clarify and explain the position the Judicial Conference has taken with regard to a particular issue that the Judicial Conference has determined relevant to the administration of justice.

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Ohio Judicial Conference Policy Statement

POLICY STATEMENT ON SEPARATION OF POWERS SPECIAL PROJECT FUNDS AND OTHER COURT FUNCTIONS

Prepared by

Ohio Judicial Conference Court Administration Committee

Approved by

Ohio Judicial Conference Executive Committee

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The Ohio Judicial Conference has a longstanding tradition of analyzing the judicial impact of legislation and identifying instances where statutes or procedures impinge upon the doctrine of "separation of powers" that is embodied in the framework of the Ohio Constitution, the U.S. Constitution, and the system of representative government and constitutional democracy. In the current situation we have identified three instances where Enacted Amended Substitute House Bill 153 violates the Ohio Constitution.

(1) Court Special Project and Other Restricted Funds. Enacted Amended Substitute House Bill 153 modifies Sections 1901.261, 1901.262, 1907.261, 1907.262, 2151.541, 2301.031, 2303.201 of the Ohio Revised Code to expand the appropriation authority of the funding authority over certain restricted court funds. These sections were originally established to permit courts to collect certain restricted funds for use by the Ohio courts for special projects, computerization and legal research, dispute resolution programs, and other restricted purposes. These accounts are funded by court costs that the courts set and assess on individual cases. No taxpayer funds are utilized. These limited funds do not flow from the General Fund of the board of county commissioners or other local funding authority, but are internally generated by the courts themselves. These funds cover expenses that otherwise would be the responsibility of the local funding authority.¹ While the General Assembly did not have to establish these funding streams, it did so in part to reduce tensions between the local courts and the local funding authority. Giving Ohio judges direct access to monies necessary to operate Ohio's courts significantly reduces the court's reliance on the local general fund.

This funding stream is entirely consistent with separation of powers in that it preserves the independence of the judiciary and reduces the court's reliance on county or municipal revenue and the opportunity of local funding authorities to encroach on the judge's power to operate the court. House Bill 153's provision to subject the expenditure of those funds to the appropriation authority of the local funding authority is an unconstitutional maneuver that undermines the separation of powers and potentially subjects the courts to pressure from funding authorities to follow the priorities of the funding authority rather than be guided by the court's own priorities. Case law has consistently recognized that local funding authorities cannot substitute their own spending priorities for those of the court when it

¹ Even if there were no restricted funds, courts can mandate that the funding authority pay all reasonable and necessary costs of operating the courts.

comes to how the court should be operated.² The authority to operate the court and make determinations as to the appropriate level of funding needed to operate the court, are decisions that are within the exclusive authority of the courts. These are matters about which the courts have the constitutional obligation to protect and preserve from interference from another branch or level of government. These principles are at the heart of the separation of powers framework endorsed by the Founding Fathers in the Federalist Papers, and evident in Federalist Paper #52:

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department [branch of government] should have a will of its own The great security against a gradual concentration of the several powers in the same department [branch of government], consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others Ambition must be made to counteract ambition. (Federalist #52)

The creation of the restricted court funds is not inconsistent with the separation of powers. The Ohio General Assembly may at any time eliminate the statutory authorization for the courts to collect and spend the restricted funds. However, if the Ohio General Assembly creates the stream of funding for the courts, then the General Assembly may not give another entity (local funding authority) control over the courts through that funding stream. To do that would be to violate the separation of powers and would, in effect, give control of the judicial branch of government to another branch.

The Ohio Judicial Conference is resolute in its determination that Enacted Amended Substitute House Bill 153 is unconstitutional to the extent that it subjects the common pleas general division, domestic relations, juvenile, probate and municipal/county court special project and other restricted funds to an appropriation by the local funding authority. The Ohio Judicial Conference recommends that the Ohio General Assembly remove this infirmity from Ohio law at sections 1901.261, 1901.262, 1907.261, 1907.262, 2151.541, 2301.031, and 2303.201 of the Ohio Revised Code.

Some members of the Ohio legislature may not realize that all information concerning the special project funds has always been a public record available for review in the office of the funding authority of a court. Requiring an appropriation of these funds by the funding authority does not alter the current transparency and accountability of the court in collecting and expending these funds.

Until such time as these provisions are removed or declared unconstitutional, the Ohio Judicial Conference recommends that judges comply with the Ohio Revised Code requirement that the court make an annual report available to the public listing the use of these funds. We suggest that annually each court request the county or city auditor to submit the report summarizing the monies collected and deposited in the restricted funds, the amount and type of expense for which the restricted funds have been expended, and the total amount remaining in each of the court's restricted funds. This report, even though available in the office of the county or city auditor, should also be available at Ohio courthouses in the event that a member of the public requests this information.

(2) Definition of “county offices.” Enacted Amended Substitute House Bill 153 modifies Section 305.23 to add a definition of “county offices” to the Ohio Revised Code. This new definition includes within that definition clerks of court. This definition is a violation of the separation of powers doctrine. Court clerks are an essential component of the Ohio court system and, as such, operate under the direction of the court, not the county commissioners. This

² In *State ex rel Johnston v. Taulbee*, 66 Ohio St. 2d 417 (1981), the court directed that the Ohio General Assembly may not expand the discretion that local funding authorities have over court funding. The court said that it was unconstitutional for the legislature to encroach on the judicial authority to determine the court's funding needs and to impede the judiciary in the administration of justice. To grant the county commissioners the “power of the purse” over judicial administration “unconstitutionally restricts and impedes the judiciary in complete contradiction of rudimentary democratic principles.” Also see *State ex rel Weaver v. Lake County Board of Commissioners* (1991), *State ex rel Donaldson v. Alfred* (1993), *State ex rel Wilke v. Hamilton County* (2000), *State ex rel Pike v. Hoppel, Board of Commissioners of Columbiana County* (2000), *State ex rel Maloney v. Sherlock* (2003).

principle is both an obvious statement of fact as well as confirmed statutorily in the Ohio Revised Code at section 2303.26. Similarly obvious is that Ohio judges are within the judicial branch of government and cannot be included in the definition of “county offices.” Both juvenile and probate judges serve as the clerk of their own courts. By having this kind of broad definition of “county offices,” the Ohio General Assembly includes courts within the entities that are placed under the control of the county commissioners. This definition as applied to courts and clerks of court is unconstitutional since judges and clerks are in a separate branch of government and the Ohio Constitution provides that authority over the courts is vested in the Supreme Court of Ohio and governed by the Supreme Court of Ohio’s Rules of Superintendence. The Ohio General Assembly cannot use Ohio statutes to transfer a constitutionally granted power from the judicial branch of government to the county government. The Ohio Judicial Conference advises the Ohio General Assembly to remove clerks of court from the definition of “county office.” This will avoid unnecessary and expensive confrontation and litigation.

Despite the fact that it is unconstitutional for the Ohio General Assembly to include Ohio judges and clerks within the definition of “county offices” for purposes of centralizing county services, the Ohio Judicial Conference encourages courts to voluntarily participate in any consolidation of county services that would save the county money. The court should benefit from local consolidated services whenever possible, as long as to do so would be consistent with court rules and further the administration of justice.

(3) Court records and management of those records. Enacted Amended Substitute House Bill 153 modifies Section 305.23, 307.847, and 307.84 of the Ohio Revised Code to authorize the county commissioners to establish centralized services and authorizes a county automatic data processing board to coordinate the management of information resources of the county and records. The local courts are governed by Supreme Court Rules of Superintendence and Court Rules of Practice and Procedure. Courts (judges and/or clerks) cannot be statutorily required to participate in any county automatic data processing system that would be in conflict with Supreme Court rules governing court records, information management, and information technology. This provision is a concrete example that strikes at the core of the problem. It attempts to subject the courts and the clerks of court to control by the county commissioners in violation of the Ohio Constitution. Not only are there the constitutional implications mentioned above, but there are practical consequences as well. Most prominent is that the operational efficiencies and cost savings that underpin the decision to consolidate county services would be undermined by requiring the courts to adopt county case management procedures. This is an area that the Supreme Court Rules of Superintendence would govern and that should remain in the exclusive domain of the Supreme Court of Ohio. It makes no sense for the local courts to use county procedures for the management of case files, especially when the Supreme Court has occupied the field by developing several rules governing the management and retention of court records.³ It would be inefficient to require the courts to set up two parallel or duplicative systems for managing case files, one to be part of the county system and one to meet Supreme Court guidelines for the management of cases. The Ohio Supreme Court has an Advisory Committee on Case Management which is studying the collection and reporting of case statistics as well as case management. There has been some discussion of the Supreme Court creating a state hosted case management system to be made available for all local courts to utilize. When this project proceeds, there will be a direct conflict with the statute leading to increased costs to the county and unnecessary litigation. It is more appropriate for courts to cooperate with guidance from the Supreme Court than to subject courts to management determinations made by county officers.

The Judicial Conference recommends that courts be able to voluntarily use county systems when courts believe consolidation with local agencies would generate operational efficiencies and cost savings. State law should not encourage local funding authorities to unconstitutionally assert their will over court operations.

³ Rules of Superintendence 26, 26.01, 26.02, 26.03, 26.04, 26.05 cover the subject of the management and retention of court records, including the administrative records of the courts. Superintendence Rule 35 creates a case management section of the Supreme Court. Superintendence Rules 44-47 apply to the Supreme Court records. Superintendence Rule 78 governs case management in probate cases involving decedent estates, guardianships, and trusts.