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1991 Iowa AG LEXIS 23, *

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF IOWA

91-6-2(L)

1991 Iowa AG LEXIS 23

June 21, 1991

CORE TERMS: inherent power, courtroom, modification, indispensable, functioning, suitable, courthouse, county board of supervisors, lock, board of supervisors, personnel, invoking, statutory construction, statutory authority, county authority, judicial power, tape recorder, appropriating, communicated, cooperation, supervisors, impairment, cosmetic, entity, impede, bind

SYLLABUS:

[*1]

COUNTIES; COURTS: [Iowa Code §§ 602.1303](#); 331.361(4). The county board of supervisors has the statutory authority to provide suitable district court facilities, however, if a court determines that a courtroom modification is necessary for the immediate, necessary, efficient and basic functioning of the court then that item must be paid from county funds. The grounds for invoking the court's inherent power to secure indispensable goods, facilities and services must be clearly communicated. If the district court judge cannot find that the lock was necessary for the immediate, necessary, efficient and basic functioning of the court, the court system should stand the expense.

REQUESTBY:

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OPINIONBY:

KATHY MACE SKINNER, Assistant Attorney General

OPINION:

This is in response to your request for an opinion regarding a bill submitted by a district court judge to the board of supervisors. Specifically, you asked whether the county must pay for a minor modification of a courtroom facility. The judge had a lock installed on the door between the courtroom and the adjacent area containing the judge's chambers and witness [*2] rooms during a major felony trial without consultation with the board of supervisors. The supervisors believe the modification was not needed and a fire inspector has concluded that the use of the lock violates fire safety restrictions.

An Attorney General's opinion does not determine factual questions but is to decide a specific

question of law or statutory construction. 1972 Op.Att'yGen. 686. An opinion is intended to resolve a question of state law by the use of statutory construction or legal research. Further, the Attorney General has no authority to review a judicial decision. Consequently, the Attorney General does not render opinions which could interfere with the jurisdiction of a court. However, we can opine on the tests the Iowa Supreme Court would likely apply to determine a county's liability for paying an expense administratively proposed by a district court judge. See generally, Annot., Power of Court-Funds for Judicial Purposes, 59 A.L.R.3d 569 (1974).

Two general rules exist in nearly all state jurisdictions regarding local courtroom facilities. The duty is imposed on cities or counties where courts are held to provide suitable rooms for that purpose. [*3] The courtroom and courthouse premises are subject to the control of the court, and the court may impose restrictions when necessary to protect and facilitate the proper administration of the judicial system.

These rules are codified in Iowa as follows:

The county board of supervisors shall:

(h) Provide facilities of the district court in accordance with § 602.1303.

Iowa Code § 331.361(5).

A county shall provide courtrooms, offices, and other physical facilities which in the judgment of the board of supervisors are suitable for the district court, and for judicial officers of the district court, the clerk of the district court, juvenile court officers, and other court employees.

Iowa Code § 602.1303(1)(a).

Even after the court system became a state entity, the statutory authority to provide courtroom facilities remained with the county. The county authority for the courtroom itself has been addressed, (Wadsworth v. Board of Sup'rs of Linn County, 6 N.W.2d 877 (Iowa 1943); 1972 Op.Att'yGen. 358) but the question of what constitutes a "suitable" facility for the court has not been addressed. The judgment of suitability is to be made by the county board of supervisors [*4] except when the court overrides this judgment with certain findings.

We have previously opined on the issue of which entity controls the hours the courthouse is open, concluding that while the county board of supervisors has some discretion in the methods used to meet its statutory obligation of providing suitable facilities for the district court, this discretion must be exercised so as not to impede an accessible court system. Op.Att'yGen. #90-3-4(L). The Supreme Court has recognized that courts have inherent power to procure indispensable personnel, equipment and facilities, noting that "nothing must impede the immediate, necessary, efficient, and basic functioning of the courts." Webster County Board of Supervisors v. Flattery, 268 N.W.2d 869, 873 (Iowa 1978). n1

n1 Inherent judicial power, as applied in Iowa, is addressed in: Iowa Civil Liberties Union v. Critelli, 244 N.W.2d 563, 568-69 (Iowa 1976); Pottawattamie County Dept. of Social Serv. v. Landau, 210 N.W.2d 837, 840 (Iowa 1973); Webster County Board of Supervisors v. Flattery, 268 N.W.2d 869 (Iowa 1978).

The question of payment for court facilities and personnel and whether the courts can bind the [*5] state or county for payment is more complex. Iowa decisions reveal that a court can commit the public treasury in a narrow area without violating the separation of powers when it determines that it cannot function due to default of the appropriating branch. White v. Polk Co., 17 Iowa 413 (1864); Seaton v. Polk Co., 59 Iowa 626, 13 N.W. 725 (1882). But as noted in Webster County Board of Supervisors v. Flattery, 289 N.W.2d at 879 (Uhlenhopp concurring

opinion), the type of cases which arise demonstrate that appropriating authorities and judges may disagree on how much money the judicial branch should have.

Courts have been cautious in asserting inherent power when it affects another branch of government. Intragovernmental cooperation remains the best means of resolving financial difficulties in the face of scarce societal resources and differences of opinion regarding judicial procedures. Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners, 241 N.W.2d 781, 786 (Minn. 1976). The authority of a judge to bind the county or the state is never broader than the necessity which prompts its exercise. Judges for the Third Judicial Cir. v. [*6] County of Wayne, 172 N.W.2d 436, 441 (Mich. 1969). When a judicial need is certified or otherwise documented it enables a reviewing court to find a proper exercise of the inherent power. Only if the harmonious cooperation among the three branches of government breaks down may it become necessary for the judiciary to exercise inherent power to provide indispensable facilities. Webster Co., 268 N.W.2d at 874. (Other citations omitted). Without facts to support a judge's conclusions that the services "were necessary", the reviewing court cannot determine that the judicial power was invoked for the "immediate, necessary, efficient and basic functioning of the court." See, Webster County Board of Supervisors v. Flattery, 268 N.W.2d at 877.

Other jurisdictions have specifically addressed the court's power as it relates to disputes with a city or county authority to fund courtroom modifications. An Ohio court was held to have no inherent power to require county commissioners to install an elevator in the courthouse. While the court was not utterly powerless to require the furnishing of reasonable improvement and facilities which might be necessary to enable it to carry [*7] on its important governmental functions in a proper and respectable manner, no precedent was found which recognized any inherent power of a court to provide a substantial addition to its courthouse building, especially where applicable statutes provided that other officers were to have discretionary powers with respect to determining courthouse style, dimensions, and expense. Committee for Marion County Barr Ass'n v. County of Marion, 123 N.E.2d 521 (Ohio 1954). Other cases have held the court was without authority to change carpeting or to make provision at public expense for refurnishing and rearranging a courtroom. See, Annot., Power of Court-Funds for Judicial Purposes, 59 A.L.R.3d 569, 601-605 (1974). This discretion as to the character and kind of improvements needed and as to the amount of money required to be expended, was vested solely in the municipality, to be exercised in a manner consistent with its statutory duties.

In facts somewhat similar, a court in another jurisdiction responded to a bill to pay \$ 86 for a tape recorder and tapes the retailer had sold to a trial judge for use in recording criminal trials. The judge certified that the tape recorder was [*8] necessary to prevent closing of the criminal court because no reporter was available to record the proceedings. ". . . [A]mong the inherent powers possessed by every judge is the power to protect his court from impairment resulting from inadequate facilities or a lack of supplies or supporting personnel, to correct such an impairment, a judge may, even in the absence of a clearly applicable statute, obtain the required goods or services by appropriate means, including arranging himself for their purchase and ordering the responsible executive official to make payment." O'Coin's, Inc. v. Treasurer of County of Worcester, 287 N.E.2d 608, 612 (Mass. 1972); see also, Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners, 241 N.W.2d 781, 785 (Minn. 1976).

Obviously, cosmetic changes in a courtroom are of a different character than safety features added for security purposes. Normally when a court proposes to invoke the inherent power on its own motion an evidentiary record to support the conclusion is made stating exigent circumstances requiring prompt action to preserve the court's operation. It is incumbent upon a court invoking inherent power to secure [*9] indispensable goods, facilities and services to do so in a manner which clearly communicates and demonstrates to the public the grounds for the court's action. Webster County, 268 N.W.2d at 874 (other citations omitted). n2


n2 Some jurisdictions have adopted procedures for the initial determination by a lower court that only an inherent power order can provide constitutionally necessary funds. First, exhaustion of established legislative procedures to obtain desired funds should precede any court order. Second, the judge considering an order should obtain the written approval of the chief judge of his or her court. The Michigan Supreme Court requires both notice and prior approval by the State Court Administrator before an inherent power order may issue. See, Wayne Circuit Judges v. Wayne County, 190 N.W.2d 228, 242 (Mich. 1971), cert. denied, 405 U.S. 923 (1972). See also, McCain v. Grant Parish Police Jury; Judicial Use of the Inherent Powers Doctrine to Compel Adequate Judicial Funding, 46 Louisiana L.R. 157 (1985); The Court's Inherent Power to Compel Legislative Funding of Judicial Functions, 81 Mich. L.R. 1687, 1695 (June 1983).

Assuming arguendo, [*10] the judge determined that the lock was necessary for the "immediate, necessary, efficient and basic functioning of the court," his action would be a reasonable exercise of the court's power. The grounds for invoking the inherent power to secure indispensable goods, facilities and services must be clearly communicated. In that case the county is responsible for payment. If, however, no such finding is justified or if the courtroom modifications were simply cosmetic, convenient or desirable, this crosses into the board of supervisor's function and it is their decision whether the modification is paid from county funds.


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