

**BEFORE THE JUDICIAL FINANCE COMMISSION
STATE OF MISSOURI**

THE BOARD OF COMMISSIONERS OF)
THE COUNTY OF FRANKLIN, STATE OF)
MISSOURI; TIM BRINKER, PRESIDING)
COMMISSIONER; TODD BOLAND, FIRST)
DISTRICT COMMISSIONER; DAVE)
HINSON, SECOND DISTRICT)
COMMISSIONER; and ANGELA GIBSON,)
AUDITOR OF THE COUNTY OF)
FRANKLIN, STATE OF MISSOURI,)

Petitioners,)

v.)

Case No. 20-0081

TWENTIETH JUDICIAL CIRCUIT OF THE)
STATE OF MISSOURI, by the Hon. I. I.)
Lamke, Presiding Judge,)

Respondent.)

ORDER OF DISMISSAL

The Missouri Judicial Finance Commission (“Commission”) met on February 24, 2021, to hear the parties’ arguments on the Respondent Twentieth Judicial Circuit’s Motion To Dismiss And Objections To The Commission Taking Evidence On Or Deciding Issues Not Raised In The Petition For Review (“Motion to Dismiss”).

BACKGROUND

This matter comes before the Commission upon a Petition for Review timely filed on December 18, 2020 by the Board of Commissioners of Franklin County and Angela Gibson, Auditor of Franklin County (“Petitioners”), against the Twentieth Judicial Circuit of the State of Missouri, the Honorable I. I. Lamke, Presiding Judge

(“Respondent”). Petitioners’ Petition for Review raises objections to the Respondent’s Juvenile Division budget for calendar year 2021 pursuant to sections 211.382 and 211.393 RSMo. After being granted a motion for extension of time to file a response, Respondent filed his Response to the Petition for Review on January 7, 2021.

Subsequently, pursuant to section 50.640.2 RSMo, the Honorable Robert M. Clayton III (“Commission Chair”) and ranking Commission Member, the Honorable Paul Koeper (“Ranking Member”), engaged in personal outreach efforts with the parties and their attorneys in search of opportunities to amicably resolve the dispute through settlement discussions. The Commission Chair also spoke with both attorneys regarding whether the nature of the parties’ disagreement was a question of law or a question of fact. The parties through counsel agreed to formally participate in Commission-mediated sessions. The Commission Chair and Ranking Member convened the first pre-hearing settlement conference with the parties on January 11, 2021. This conference failed to achieve settlement and the matter was set for full evidentiary hearing on February 24, 2021; however, the parties agreed to conduct a second pre-hearing settlement conference, which was held on January 26, 2021. These discussions also did not produce a settlement.

Following the second unsuccessful settlement conference, the full Commission convened on February 4, 2021, in public session to discuss preparations for the evidentiary hearing scheduled for February 24, 2021. On February 4, the Commission discussed: the issues raised in the Petition for Review and Response to the Petition for Review involving “maintenance of effort” (“MOE”) funding levels; the terms of a

procedural order; the admissibility or inadmissibility of settlement information exchanged during the statutorily-mandated settlement process; and other pre-hearing matters.

During public session on February 4, 2021, the Commission also discussed the issue of MOE funding pursuant to sections 211.382 and 211.393 RSMo, and the interplay with section 50.640.2 RSMo, the statute governing the Commission and its authority. The Commission discussed whether MOE funding required in sections 211.382 and 211.393 RSMo establishes a minimum or maximum for Franklin County (“Franklin County” or “County”) in funding Respondent’s Juvenile Division budget. The Commission, having consulted with its counsel, unanimously concluded MOE refers to a minimum level of County funding rather than a maximum and that, pursuant to section 50.640.2 RSMo, the Commission had the authority to require the County to fund Respondent’s Juvenile Division budget greater than the MOE amount if the evidence established the amount was *reasonable*. Section 50.640.2 RSMo.

The Commission issued a procedural order to the parties on February 4, 2021, for additional filings in anticipation of the full evidentiary hearing set for February 24, 2021.

On February 11, 2021, Respondent filed his Motion to Dismiss Petitioners’ Petition for Review, alleging in relevant part that: “the Commission does not have the authority to (1) decide the narrow issues the [Petitioners have] asked the Commission to determine or (2) take evidence on or decide reasonableness issues that [Petitioners] did not dispute during the budget process or plead in the[ir] Petition for Review.”

On February 15, 2021, the Commission stayed its February 4 procedural order and ordered Petitioners to show cause by February 22, 2021, why their Petition for Review should not be dismissed for the reasons outlined in Respondent's Motion to Dismiss. The Commission cancelled the full evidentiary hearing set for February 24, 2021, and instead ordered oral arguments on Respondent's Motion to Dismiss to be heard on that date.

On February 22, 2021, Petitioners filed their response ("Response to the Motion to Dismiss") arguing:

A. The Commission has the authority to determine that it is unreasonable for Petitioners to contribute more than the [MOE] to the Juvenile Court budget or to pay for Juvenile Court personnel[;]

B. Respondent's Motion to Dismiss should be denied because the Board has sufficiently pled facts establishing that [Respondent's] budget is unreasonable and apprised the Commission and Respondent of the relief it seeks[;]

C. The Commission should hear evidence on all disputes between the Board and Respondent that have been raised in the Petition and at the mediation and pre-hearing conferences between the parties.

Petitioners' Response to the Motion to Dismiss alternatively requests "the Commission GRANT Petitioners leave to submit a First Amended Petition, and for such other and further relief as the Commission deems just and proper."

On February 24, 2021, counsel for the parties appeared for argument before the Commission on Respondent's Motion to Dismiss. Following argument, the Commission convened in public executive session for discussion of the issues raised in the Motion to Dismiss and Petitioners' Response to the Motion to Dismiss.

DISCUSSION

With respect to a first-class county such as Franklin County, section 50.540.1 RSMo provides the process for determining funding for a circuit court's juvenile division budget begins with the court submitting its proposed budget by September 1 in the previous calendar year. A circuit court and county governing body can meet and confer on the budget if there are disagreements on appropriate funding levels. *See* section 50.640.1 RSMo. If the circuit court does not agree to amendments suggested by the county governing body, the governing body may file a petition for review before this Commission alleging the proposed budget is unreasonable. Section 50.640.1-.2 RSMo. The Commission has the authority to determine the reasonableness of the circuit court's proposed budget in ordering the appropriate funding levels. Section 50.640.2.

In this case, Respondent timely submitted his proposed Juvenile Division budget for calendar year 2021 in the total amount of between \$637,458 and \$680,278.15; Petitioners' Petition for Review asserts the total amount was \$637,458 (including \$52,108 for personnel services) and Respondent's Response to the Petition for Review asserts the total amount was \$680,278.15 (including \$41,823.15 for a diversion grant). Petitioners then filed their Petition for Review alleging any budget amount greater than Franklin County's MOE of \$333,523 is unreasonable. Petitioners further objected to several parts of the Juvenile Division budget and other offline budget amounts as causing Franklin County to fund more than its MOE. The dispute as alleged by the parties suggests a difference in position by over \$300,000.

Petitioners' Petition for Review before this Commission asserts any Juvenile Division budget amount greater than its MOE is, on its face, unreasonable. In support of their position, Petitioners rely on: sections 211.382 and 211.393 RSMo; a previous Commission decision styled as *Cooper County, Missouri v. Eighteenth Judicial Circuit*, Case Nos. 03-0064 and 04-0066 ("Cooper County"); and Cooper County's majority report indicating any funding level greater than MOE is unreasonable or unlawful.

In Respondent's Response to the Petition for Review, he asserts "MOE funding [is] a floor for counties, and not a ceiling." In support of his position, Respondent relies on: Cooper County's minority report; and *Twentieth Judicial Circuit by Lamke v. Board of Commissioners of County of Franklin*, 597 S.W.3d 761, 762 (Mo. App. E.D. 2020). Respondent also argues there is no authority for the proposition that a previous decision by this Commission is an authoritative declaration of law.

Moreover, in Respondent's Motion to Dismiss Petitioners' Petition for Review arguing that "the Commission's authority is limited to considering whether a circuit court's budget is reasonable," Respondent supports his position with authorities including: *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621, 622 (Mo. banc 1995); section 477.600 RSMo; section 50.640 RSMo; and Missouri Supreme Court Operating Rule 12.

This Commission is being asked to resolve a question of law interpreting sections 211.382 and 211.393 RSMo. As previously found during public session, the Commission concluded it has the authority to enforce a county's funding levels greater

than the county's MOE if it believes those funding levels are reasonable. We reject the legal argument made by Petitioners that any funding level greater than MOE is, on its face, unreasonable.

Second, regardless of our previous finding, Petitioners may still argue unreasonableness in Respondent's Juvenile Division budget by making specific references to unreasonableness in particular line items, whether in terms of payroll, personnel, expense and equipment, or otherwise. Such a challenge must be made to the specific items in the budget so that the Commission can hear evidence of reasonableness from the Respondent or unreasonableness by Petitioners. In this case, Petitioners' Petition for Review does not make specific references to unreasonableness in any particular, specific line items in Respondent's budget or argue a particular line item is unnecessary or duplicative in addressing the needs of the constituents who interact with the Juvenile Division; instead, Petitioners have chosen to pursue a legal strategy only arguing that anything greater than the County's MOE is unreasonable on its face.

Following the February 24, 2021 oral arguments on Respondent's Motion to Dismiss Petitioners' Petition for Review, the Commission remained in the open public meeting and conducted its executive session. The Commission held a full and public discussion and reiterated its conclusion that the MOE funding is a floor and not a ceiling on the Petitioners' funding obligations. The Commission discussed dismissing the Petition for Review due to the narrow legal question it raised, i.e., Petitioners' seeking a declaration that they cannot be compelled to allocate and pay more than the

MOE amount and that they are under no obligation to pay any additional amounts.

Petitioners' Petition for Review argued that *anything* over the MOE funding is unreasonable on its face-without any reference to particular items Petitioners alleged were unreasonable. The financial dispute is over \$300,000, more than fifty percent of the Juvenile Division's budget. But the Commission has no way to ascertain what line items in the budget are allegedly unnecessary, excessive, or otherwise unreasonable.

Petitioners argue the Petition for Review is adequate in that settlement negotiations provided Respondent with advance notice which items were allegedly unreasonable. But settlement discussions are generally inadmissible when parties to a dispute have a hearing on the merits. *See Vogt v. Emmons*, 181 S.W.3d 87, 94-95 (Mo. App. E.D. 2005). And this belated strategy ignores the pleading rules established by our Supreme Court to put the Respondent on notice which budgetary items are being contested. Petitioners argue, in the alternative, for leave to file a first amended petition. This matter has been pending for nearly three months, the conclusion of the first fiscal quarter is approaching, and multiple settlement conferences have failed to produce an agreement. Additionally, aside from the MOE amount of \$333,523, this Commission is unaware what part of the remaining difference of over \$300,000 Petitioners believe is unreasonable. Allowing Petitioners to amend their pleadings at this stage and introduce new issues related to reasonableness of all amounts in excess of MOE would require the Commission to stand in the place of both parties and rewrite fifty percent of the Juvenile Division's budget, which is not the proper role of the Commission. Rather, the Commission exists to address narrow issues of the

reasonable needs of a circuit court and the obligations of a county to fund those needs.
See section 50.640.2 RSMo.

Based on the foregoing, the Commission dismisses Petitioners' Petition for Review and denies Petitioners leave to submit a first amended petition.

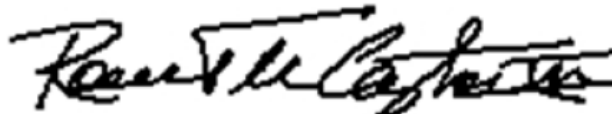
Section 476.270 RSMo also requires this Commission to address the request for attorney's fees filed by Respondent. Respondent has filed such a request with attached billing statements and an affidavit in support of those fees as reasonable. The Commission also required Petitioners' attorneys to submit a statement of incurred fees as a reference point in determining the reasonableness of Respondent's fee request. Respondent seeks payment from the treasury of Franklin County, pursuant to section 476.270 RSMo, and attorney's fees and expenses in the amount of \$14,913.55. Petitioners' incurred fees as filed amount to \$18,241.91. The Commission finds that Respondent's fee request is less than amounts incurred by Petitioners and the blended hourly rates are comparable.

The Commission finds Respondent's fee request is reasonable and hereby orders said fees, in the amount of \$14,913.55, paid by the treasury of Franklin County. Section 476.270 RSMo.

Dated this 11th day of March, 2021

All concur.

Judicial Finance Commission

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written in a cursive style.

The Honorable Robert M. Clayton III, Chair

The Honorable Paul Koeper

The Honorable Steve Hobbs

The Honorable Roger M. Prokes

The Honorable Janet M. Thompson

The Honorable Michael W. Noble

The Honorable Marco Roldan