



COUNTY ADVISORY BULLETIN

CAB

Published by: County Commissioners Association of Ohio

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BULLETIN 1997-02

MAY 1997

COUNTY/MUNICIPAL COURT REVISIONS (AMENDED SUBSTITUTE HOUSE BILL 438)

INTRODUCTION

Am. Sub. H.B. 438, sponsored by the Honorable Mike Wise (15th district), was generally passed to create more parity between county courts and municipal courts. That is, the bill makes the operation of county courts more similar to the operation of municipal courts by adopting provisions found in existing law for municipal courts. The bill increases the salaries of judges in county and municipal courts and made several other changes related to the operation of those courts such as changing the qualifications for county court judges; changing the presiding judge of county courts and amending their monetary and subject matter jurisdictions; granting judges the authority to appoint various court employees; requiring boards of county commissioners to provide health care coverage for county court judges; and establishing new guidelines regarding the assessment of court fees in county and municipal courts. The bill also permits county and municipal courts to establish dispute resolution procedures and makes other changes relative to county and municipal court law. This CAB highlights the non-salary provisions of the bill and provides you with answers to some questions that have already been asked regarding H.B. 438 and its changes to court law. For information on the provisions of the bill as it relates to salaries refer to CAB 96-2, March, 1996.

COUNTY COURT LAW CHANGES

1. NEW QUALIFICATIONS FOR COUNTY COURT JUDGES

Prior to Am. Sub. H.B. 438 county court judges were required to be qualified electors and residents of the county court district in which they are seeking to be elected or appointed “during their term of office”. The bill requires county court judges to be qualified electors and residents of the county court district “at the time of filing” a nominating petition for the

office or at the time of appointment to the office. The bill also increased the number of years in which a county court judge must be admitted to the practice of law and engaged in the practice of law in Ohio preceding appointment or the commencement of a term of office from two years to six. The new language regarding these issues can be found in section 1907.13 of the Revised Code.

2. PRESIDING JUDGE/JURISDICTIONAL MATTERS

Generally under current law, the presiding judge of the county court of common pleas was responsible for dividing county courts with more than one judge into individual districts and was responsible for assigning court jurisdiction and location. The bill changes the current language that determines who is the “presiding and administrative judge” in county court districts with one or more judges; makes some changes relative to who is the acting judge when judges are absent; and authorizes the presiding judge of the county court, rather than a court of common pleas judge, to divide the county court district into areas of separate jurisdiction and reassign areas of court jurisdiction and location; and makes other changes relative to subject jurisdiction matters. The new language regarding these issues can be found in sections 1907.031, 1907.131, 1907.14, and 1907.15 of the Revised Code.

Beyond the salary increases discussed in the March, 1996 CAB, Section 1907.16 (B) and (C) of the Revised Code requires the county to pay the presiding judge of a county court who is also the administrative judge of the court an additional \$1,500 annually.

Q. Who is the presiding Judge in a court district with more than one judge?

A. In a county court district having two judges, the judge having the longest tenure as a judge of that county district shall be designated as the presiding and administrative judge for that district unless otherwise agreed by the judges. In a county court district having three or more judges, the judges of the court shall select the presiding and administrative judge (Section 1907.131).

Q. Does the presiding judge have the authority to divide the county court into jurisdictions and or move the physical location of the court?

A. In counties having more than one county court judge, the presiding judge of the county court may divide the county court district into areas of separate jurisdiction and may designate the location at which each judge shall hold court. In assigning the areas of separate jurisdiction, the presiding judge shall make each area of separate jurisdiction as equal in population and case load to others in the district as is possible under the altered conditions (Section 1907.15 (A)(1)). This language differs with the language for county courts that only have one judge, those judges need the concurrence of the board of county commissioners before designating different locations, whereas courts with two or more judges do not (Section 1907.15 (A)(3)). It is also our understanding that the physical location of the court must be located within the boundaries of the court district. Note CCAO hopes to change the above language regarding the physical location of courts with more than one judge so that they will also need the concurrence of the board of county

commissioners before designating a new location.

Q. Who signs the lease agreement for a county court, the judge or commissioners?

A. It is our understanding that the commissioners make the lease arrangements and sign the lease with the concurrence of the presiding judge. We will be looking further into this matter but there is little precedence given this is new law as it pertains to county courts.

3. COUNTY COURT JUDGES HIRING OF COURT EMPLOYEES AND BAILIFFS

The bill authorizes the judge(s) of a county court to appoint interpreters, mental health professionals, probation officers, an assignment commissioner, a deputy assignment commissioner, typists, stenographers, statistical clerks, bookkeepers, official court reporters, and other aides on a full-time, part-time, per diem, hourly, or other basis. These employees shall serve at the pleasure of the appointing judge(s) and receive compensation as prescribed by the board of county commissioners from the county treasury or other authorized funds. Probation officers, assignment commissioners, and official court reporters are unclassified civil service employees as are all other court employees. The new language regarding this issue can be found in section 1907.201 of the Revised Code.

The bill also authorizes the judge(s) of a county court to appoint a bailiff on a full-time or part-time basis. The bailiff shall receive compensation as prescribed by the appointing judge, payable in semimonthly installments from the treasury of the county or other authorized fund. The bill also makes other changes relative to bailiffs (see section 1907.53 of the Revised Code for these changes).

Q. Can a judges hire probation officers, bailiffs and other court employees without the approval of the board of county commissioners?

A. The answer is yes. Section 1907.201 allows the judge or judges of a county court to appoint interpreters, mental health professionals, probations officers, assignment commissioners, and court aides such as typists, stenographers, clerks, and so forth. However, with the exception of bailiffs, that section also makes it clear that the compensation of those court employees is to be prescribed by the board of county commissioners. Section 1907.53 allows judges to hire bailiffs. The compensation of bailiffs, as noted above, are prescribed by the presiding judge not the board of commissioners.

Q. Can judges court order pay for new court employees that they hire without the approval of the board of county commissioners?

A. As stated above judges can hire probation officers, bailiffs, and other court employees listed above. Their pay, with the exception of bailiffs, is to be determined by the board of county commissioners. Thus, judges can order you to pay the salaries of these court employees but the commissioners are to have the authority to decide how much. If the judge court orders you to pay more than what you believe is a "reasonable" salary/budget then you can refuse to pay anything above what you feel is appropriate. Judges then have mandamus powers relating to the court budget, similar to those of the courts of common

pleas. Generally the board of county commissioners have the burden of proof as to what is a “reasonable” budget request. As you know there is a lot of case law regarding courts and commissioners on this sort of issue and most often the courts have prevailed. However, there is no case law that has tested the new language for county courts as it pertains to the salaries of court employees. That language being the ability for the “county commissioners to prescribe the compensation of those particular county court employees”. This language should give you more leverage in a mandamus action. Whether or not a court would prevail because of their inherent separation of powers, it remains to be seen. Additional information on court budget mandamus actions can be found in the CCAO Handbook for Commissioners (Section 7, Chapter 98) as it relates to courts of common pleas and court courts.

Q. Who has the authority over probation officers and bailiffs and who is responsible for training?

A. Probation officers and bailiffs serve at the pleasure of the judge. It is clear in Section 1907.201(A) that probation officers have all the powers of deputy sheriffs or regular police officers and shall perform any duties as prescribed by the judge or judges of the court. Bailiffs shall perform services similar to those performed by the sheriff for court of common pleas and shall perform any other duties that are required by rule of court (Section 1907.53 (C)(1)). Note that the language regarding the training requirements for a probation officer in a municipal court (Section 1901.33 (C)) to carry a firearm was not duplicated in the county court law. We believe this was likely an oversight, but it goes without saying that for liability purposes you should be certain that any probation officers who are carrying firearms have the proper training. CCAO also hopes to correct this likely oversight with future legislation.

4. HEALTH CARE COVERAGE FOR COUNTY COURT JUDGES

The bill requires county commissioners, after consultation with the judges of the county court, to procure group health care coverage for the judges and their spouses and dependants from insurance companies authorized under Ohio Law to engage in the business of insurance, certified or licensed medical care corporations or health care corporations, or certified health maintenance organizations. If the county provides group health care coverage for its employees, the county is required to provide group health care coverage for county court judges, if possible, through that same policy. The bill defines “health care coverage” as “sickness and accident insurance or other coverage of hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, and prescription drugs or any combination of those benefits or services”. The bill also requires the portion of costs, premiums, or charges for the group health care coverage that is not paid by the judges of the court, or all the costs, if the judges will not be paying any portion of the coverage, to be paid out of the county treasury. The new language regarding this issue can be found in section 1907.161 of the Revised Code.

5. NEW AUTHORIZATION FOR JUDGES TO COLLECT COURT FEES

Prior to Am. Sub. H.B. 438, section 1907.25 of the Revised Code authorized county courts to only assess court fees for programs and services that were similar to programs and services offered by courts of common pleas. The court fees could not exceed the fees charged at the common pleas level. The bill repealed section 1907.25 of the Revised Code and generally replaced it with section 1907.24(D). Section 1907.24(D) authorizes county courts to make the determination that additional funds are necessary to pay for special projects of the court and allows the courts to assess additional fees on the filing of each criminal and civil action or judgement, to pay for the projects. The projects may include the acquisition of additional facilities or the rehabilitation of existing facilities, to pay for the costs of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, and other related services. All moneys collected under these provisions must be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project. If a specific fund is terminated because of the discontinuance of a program, the county court may order that moneys remaining in the fund be transferred to another account to be used for a similar purpose. Note we have attached to this CAB a table from the Supreme Court on "Local Permissive Filing Fees" which include the new collectible fees mentioned above.

MUNICIPAL COURT LAW CHANGES

1. PRESIDING JUDGE/JURISDICTIONAL MATTERS

Generally the bill makes the same changes described above under "*County Court Law Changes, Presiding Judge/Jurisdiction Matters*". The bill also makes some changes in the compensation of judges that are appointed by the Chief Justice of the Supreme Court to serve as additional municipal court judges when the volume of cases requires it (see section 1901.10(B)).

2. MUNICIPAL COURT EMPLOYEES

Under existing law judges of a municipal court could appoint interpreters, probation officers, psychiatrists, and other court employees. The bill permits municipal court judges to appoint "other court aides" on full-time, part-time, hourly, or other basis. The board of commissioners of counties that have county-operated municipal courts are required to pay the compensation of these employees (see section 1901.33(A)).

3. NEW AUTHORIZATION FOR JUDGES TO COLLECT COURT FEES

Generally the bill allows municipal court judges to collect fees for the same purposes and manner as described above under "*New Authorization for Judges to Collect Fees*" (see section 1901.26). Note we have attached to this CAB a table from the Supreme Court on

“Local Permissive Filing Fees” which include the new collectible fees mentioned above.

OTHER CHANGES AFFECTING COUNTY AND MUNICIPAL COURTS

1. MONETARY AND SUBJECT JURISDICTION CHANGES

The bill increases the general monetary jurisdiction for civil actions in county and municipal courts from \$3,000 and \$10,000 respectively to \$15,000. The bill also increases the monetary jurisdiction of a small claims division of a county and municipal court from \$2,000 to \$3,000. In addition to the monetary jurisdiction changes, the bill expanded the subject jurisdiction of county courts and made some minor modifications in the subject jurisdiction of municipal courts. See sections 1901.17 to 1901.19 (A)(4), 1907.03 to 1907.09, 1925.02(A)(1), and 1925.10(A) of the Revised Code for the changes in monetary and subject jurisdiction.

2. DISPUTE RESOLUTION PROCEDURES

The bill permits each county and municipal court to establish procedures for the resolution of disputes between parties including mediation. Courts that establish dispute resolution procedures may assess a reasonable fee on each civil or criminal action filed in their court for the purpose of implementing the procedures. All monies collected from fees assessed for dispute resolution shall be paid into the county treasury if the court is a county court or a county-operated municipal court, and to the municipal treasury if the court is a municipal court operated by a municipality. County treasurers who receive the funds from dispute resolution fees must place the funds in a separate fund to be disbursed upon an order of the court. If the court determines that the amount of the moneys in the fund is more than sufficient for the purpose of dispute resolution, the court may declare a surplus in the fund and expend the surplus moneys for other appropriate court expenses. See sections 1901.262 and 1907.262 of the Revised Code for the changes regarding dispute resolution. Note we have attached to this CAB a table from the Supreme Court on “Local Permissive Filing Fees” which include the new collectible fees mentioned above.

ACKNOWLEDGMENT

CCAO would like to thank Rick Dove, Associate Director for Legal and Legislative Services, Ohio Supreme Court; Janet Gross, Legislative Liaison, Ohio Judicial Conference; and Rocky Saxbe, Legislative Agent, Ohio Municipal and County Court Judges for their help with this bulletin.

If you have any questions regarding the court law changes made in Am. Sub. H.B. 438 or have any questions related to this CAB please contact Mike Toman, CCAO Research Associate, at (614) 221-5627 or email him at mtoman@ccao.org.

LOCAL PERMISSIVE FILING FEES

PURPOSE (CITATION)	TYPE AND AMOUNT OF FEE: APPLICABILITY	METHOD OF DISTRIBUTION	SURPLUS AND USE
Court computerization, computerized legal research, or both. (R.C. 1901.261, 1907.261, 2303.201). Effective: 1993.	Civil filing fee not to exceed \$3. Applies to all courts.	Paid into county or municipal treasury and disbursed pursuant to court order.	If moneys exceed purpose for which fee was imposed, court may declare a surplus and expend the surplus for other appropriate technological expenses of the court.
Computerization of the clerk of court's office. (R.C. 1901.261, 1907.261, 2303.201). Effective: 1993.	Civil filing fee not to exceed \$10. Applies to all courts	Paid into county or municipal treasury and disbursed pursuant to court order. Subject to appropriation by county or municipal legislative authority.	No provision to declare a surplus.
Dispute resolution programs. (R.C. 1901.262 and 1907.262). Effective: 1/1/97 (municipal courts); 7/1/97 (county courts).	Reasonable filing fee on all civil and criminal cases. Applies to municipal and county courts only.	Paid into county or municipal treasury and disbursed pursuant to court order.	If moneys exceed purpose for which fee was imposed, court may declare a surplus and expend the surplus for other appropriate expenses of the court.
Special projects of the court, including, but not limited to acquisition or rehabilitation of additional facilities, acquisition of equipment, hiring and training of staff, community service programs, mediation or dispute resolution services, employment of magistrates, other related services. (R.C. 1901.26 (B) and 1907.24 (B)). Effective: 7/1/97.	Filing fee on all civil and criminal cases. Applies to municipal and county courts only.	Paid into county or municipal treasury for deposit in a general special projects fund or specific special projects fund. Disbursed pursuant to court order, not to exceed actual cost of a specific project.	If specific fund is terminated, court may transfer remaining moneys to another fund established for a similar purpose.

