

California Supreme Court was confronted with a similar question. A maintenance company sought to compel the state to pay a claim for services rendered under a contract whereby the company had agreed to furnish labor and materials necessary to clean the windows of certain state buildings throughout the year. The California Controller refused to issue his payment warrant on the ground that the agreement was void in violation of the civil service provisions of the California Constitution. The Court upheld the decision of the controller, stating *inter alia*:

"... It is unreasonable that the same character of state service should be rendered by civil service employees in one part of the state, and be a subject of independent contract in another part of the state. If this agreement is valid there is nothing to prevent similar agreements from being made with relation to other janitor service, gardening, typing, and many other branches of service now accepted as subject to civil service. To sanction such an agreement would destroy the effectiveness of the enactment of the people in creating a Civil Service Act."

Therefore, it is my opinion that, without prior approval from the Civil Service Commission, the Department of Management and Budget is prohibited by Const 1963, art 11, § 5, from authorizing payment vouchers for services rendered pursuant to janitorial contracts where the personal services may practicably be performed by governmental employees in the classified service.

FRANK J. KELLEY,
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761221.1

PAROLE AND PROBATION: Attendance of annual conference by probation officers.

A county has a duty to pay probation officers the actual and necessary expenses of attending the annual conference of probation officers.

Opinion No. 5091

December 21, 1976.

Hon. Alvin J. DeGrow
State Senator
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You have requested my opinion as to whether a county has a duty to pay probation officers the necessary expenses of attending the annual conference of probation officers.

The legislature requires holding an annual conference of state probation officers to consider the subject of probation. Necessary expenses incurred by each attending probation officer should be paid by the county treasury. Reimbursement, moreover, by the county, pursuant to 1927 PA 175; MCLA 771.1 *et seq*; MSA 28.1131 *et seq*, is mandatory, not permissive. 1927 PA 175, § 24, *supra*, provides:

"There shall be held an annual conference of the probation officers of the state at such time and place as shall be designated by the assistant director in a written notice thereof given at least a month in advance of the date selected. Such conference shall consider legislation and any and all matters pertaining to the subject of probation, to the end that a uniform system of conduct, duties and procedure be established. Each probation officer shall be paid from the county treasury his actual and necessary expenses in the attendance at the conference." (Emphasis supplied)

The county has no power to nullify the statutory right of probation officers to reimbursement. The legislature established the county's duty to reimburse, and the county may not frustrate the will of the legislature.

This holding follows from analysis of decisions in analogous cases. In *Wayne County Circuit Court Judges v Wayne County*, 15 Mich App 713, 726-727 (1969), the Court stated:

"Having in mind the financial circumstances of most counties of this State, we do not think the legislature meant to vest in the county boards of supervisors the discretion to determine whether the legislation regarding probation officers . . . would be implemented.

"In a somewhat analogous case, *Sturgis v. County of Allegan* (1955), 343 Mich 209, a county superintendent of schools sought to compel payment of his salary. The county's defense was that the superintendent's salary as fixed by the board of education was subject to the approval of the board of supervisors. The relevant statute authorized the board of education to employ a county superintendent of schools and to fix his salary. It was further provided that the portion of his compensation to be paid from county funds (p 213) 'shall be paid by the county treasurer after the same have been authorized by the county board of education from such amounts as may be appropriated therefor by the county board of supervisors.' The Michigan Supreme Court held that the statutory right of the board of education to hire and fix the salary of a school superintendent could not be frustrated by the failure of the county board of supervisors to appropriate the necessary funds. The Court directed the county to pay the school superintendent's salary.

"The attorney general in OAG 1958, No 3192, p 41, construed an act which provided that the county board of social welfare may employ a director who 'shall receive such compensation as shall be fixed by the board and approved by the county board or boards of supervisors.' The opinion of the attorney general focused on the fact that the statute there under consideration conferred authority on the board of supervisors to 'approve' the compensation awarded by the county board of social welfare. He ruled, nevertheless, on the authority of *Sturgis*:

"We think the conclusion must be that the county board of supervisors has no power, by arbitrarily withholding approval of compensation, to nullify the statutory right of the county board of social welfare to select and appoint a director. * * *

"the legislature has placed the responsibility for selection of a

director and for fixing his compensation upon the welfare board, and the county supervisors are not empowered to assume, by indirection, such authority as will nullify the will of the legislature with respect to appointment and fixing of compensation.' ”

See also *The People ex rel. Bristow v Supervisors of Macomb County*, 3 Mich 475 (1855); *The Board of Metropolitan Police of the City of Detroit v The Board of Auditors of Wayne County*, 93 Mich 306 (1892); *Attorney General, ex rel. Greenfield v Board of Supervisors of Alcona County*, 167 Mich 666; 133 NW 825 (1911); *Wayne County Jail Inmates v Wayne County Sheriff*, 391 Mich 359; 216 NW2d 901 (1974).

This does not, however, prevent a county from refusing to pay unnecessary and unreasonable expenditures. See, 1 OAG, 1957-1958, No 2029-A, p 28 (January 19, 1957).

It is therefore my opinion that, although a county may deny payment of unnecessary and unreasonable expenditures, it has a duty to reimburse necessary expenses incurred by probation officers attending the annual conference.

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Attorney General.

76/222.1

COUNTIES: Transfer of surplus funds.

COUNTY TREASURER: Transfer of surplus funds.

A county treasurer may not transfer surplus money in a statutorily dedicated fund to a special fund with a deficit in order to relieve the imbalance. If, however, the board of commissioners has established a special fund by resolution, it may also, by resolution, authorize transfers from that fund.

Opinion No. 5110

December 22, 1976.

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You have written to request an opinion concerning the handling of county funds. Your question may be stated as follows:

Where a deficiency exists in one county fund and a surplus in another, may the Treasurer transfer funds from the fund with the surplus to the fund with the deficiency?

Authority of a county treasurer to transfer funds from one account to another must be conferred by law. The accounting system of a county is subject to the provisions of 1919 PA 71; MCLA 21.41 *et seq*; MSA 3.591 *et seq*. Section 3 of 1919 PA 71 provides: