

November 9, 2018

The Honorable Richard W. Moyer  
Clinton County Prosecuting Attorney  
103 East Main Street  
Wilmington, Ohio 45177

SYLLABUS:

2018-027

1. The duty of a county sheriff to secure a courthouse pursuant to R.C. 311.07(A) necessarily implies the authority to make decisions about the provision of security in the courthouse. However, the county sheriff's exercise of that authority is subject to the direction and control of the board of county commissioners and the inherent authority of a court to secure and safeguard its free and untrammelled exercise of judicial functions.
2. The inherent authority of a court to secure and safeguard its free and untrammelled exercise of judicial functions may extend to portions of a courthouse that are not exclusively occupied or used by the court, if the court shows that those areas are reasonably necessary to the court's efficient operation.
3. A board of county commissioners shall fund security measures in a courthouse that a court concludes are reasonably necessary to the court's proper and efficient operation, unless the board of county commissioners can show that the request is unreasonable or unnecessary. Funding for security measures that supplement the services provided by the county sheriff may be provided to the court as part of the court's appropriation request, if the court has requested it.
4. As part of a county sheriff's duty to secure a courthouse, a county sheriff may enforce rules regarding who may possess a firearm in the courthouse. A county sheriff may not permit or prohibit the possession of a firearm in a courthouse except in accordance with R.C. 2923.123, Standard 7 of the Rules of Superintendence for the Courts of Ohio, and an applicable local rule of court.



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OPINION NO. 2018-027

The Honorable Richard W. Moyer  
Clinton County Prosecuting Attorney  
103 East Main Street  
Wilmington, Ohio 45177

Dear Prosecutor Moyer:

You have requested an opinion about a county sheriff's authority to control the provision of security in a courthouse that is used to house the court of common pleas as well as other county offices. Specifically, you ask whether the county sheriff, acting at the direction of the board of county commissioners, is in charge of security in the courthouse. We understand that question to ask whether a county sheriff, under the direction of the board of county commissioners, has the authority to decide what security measures are required in the county courthouse. You also ask whether a county sheriff has authority to decide whether a person may possess a firearm in the courthouse.<sup>1</sup>

#### **Duty of County Sheriff and Board of County Commissioners to Secure a Courthouse**

R.C. 311.07(A) states, in pertinent part, “[u]nder the direction and control of the board of county commissioners, [a county] sheriff shall have *charge* of the court house.” (Emphasis added.) When used in a context like R.C. 311.07(A), “charge” means having “responsibility or duty ... care, custody, or supervision[.]” *Webster’s New World College Dictionary* 251 (5th ed. 2014). This means that a courthouse is under the care or supervision of a county sheriff. R.C. 311.07(A), therefore, confers a duty upon a county sheriff to provide security to a courthouse. See 1984 Op. Att’y Gen. No. 84-008, at 2-22 (“[t]he duty ... to maintain order within [a courthouse] lies in the first instance with the county commissioners and the county sheriff”).

To fulfill the duty to secure a courthouse, a county sheriff must be able to make decisions about how best to carry out that responsibility. He must also possess authority to control the provision of services required to fulfill his duty of securing a courthouse. See *State ex rel. Hunt v. Hildebrand*,

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<sup>1</sup> Although your letter explained that you are inquiring about a county sheriff's authority in the portions of a courthouse that are not occupied or used by a court of common pleas, we have addressed your questions with respect to the entire courthouse so that a complete explanation of the sheriff's authority is provided.

93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph 4) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”). Therefore, the duty of a county sheriff to provide security in a courthouse pursuant to R.C. 311.07(A) necessarily implies the authority to make decisions about what security measures are required.

The authority to decide what security measures are required in a county courthouse is not exclusively held by the county sheriff, nor is the sheriff’s authority in this regard unlimited. R.C. 311.07(A) expressly states that the sheriff’s charge of the courthouse is subject to the “direction and control of the board of county commissioners[.]” In other words, a county sheriff’s discretion with regard to security shall be exercised in accordance with the directives of the board of county commissioners. That limitation on a county sheriff’s authority in a courthouse is reasonable given a board of county commissioners’ duties with respect to a courthouse.

A board of county commissioners provides, equips, and furnishes a courthouse. R.C. 307.01(A), R.C. 307.02. As county property, a courthouse is under the management and control of a board of county commissioners. *See* R.C. 307.01(A); *Dall v. Cuyahoga Cnty. Bldg. Comm’n*, 24 Ohio Dec. 9, 11-12 (C.P. Cuyahoga County 1913) (“[t]he board [of county commissioners] is the representative and guardian of the county, having the management and control of its property and financial interests, and has exclusive and original jurisdiction over all matters pertaining to county affairs, except in respect to matters the cognizance of which is exclusively vested in some other officer or person”). In addition, a board of county commissioners may employ watchmen and other employees as are necessary for the care and custody of a courthouse. R.C. 305.16.

The above-mentioned provisions and principles have been read to confer a duty upon a board of county commissioners to keep a courthouse safe. 2015 Op. Att’y Gen. No. 2015-027, at 2-272; 1984 Op. Att’y Gen. No. 84-008, at 2-22 (R.C. 307.01 and R.C. 311.07 “place the obligation on the county ... to provide for a courthouse and for the personnel to maintain order”); *see also Britt v. Franklin Cnty. Comm’rs*, 148 Ohio App. 3d 395, 2002-Ohio-3679, 773 N.E.2d 612, at ¶19 (Franklin County) (R.C. 305.16 and R.C. 307.01(A) authorize the board of county commissioners to establish a security screening program at the entrance to a county courthouse); 2001 Op. Att’y Gen. No. 2001-006, at 2-40 (“[b]ecause a board of county commissioners is required by R.C. 307.01(A) to manage and control the courthouse, the board is required to keep the courthouse safe and in good repair” (explained by 2015 Op. Att’y Gen. No. 2015-015)); 1989 Op. Att’y Gen. No. 89-029, at 2-122 (“[c]ustody and control of county property carries the duty of care and maintenance”); 1987 Op. Att’y Gen. No. 87-039, at 2-262 (“[i]mplicit in the power to preserve and protect county buildings is the power to institute policies and procedures that reduce fire risks and insure the safe operation of facilities within the buildings”). Under R.C. 307.01(A), a board of county commissioners is required to provide a county sheriff with equipment that the board determines is necessary for the county

sheriff to secure a courthouse.<sup>2</sup> 2001 Op. Att’y Gen. No. 2001-006, at 2-40 n.1. Therefore, the county sheriff’s exercise of his authority to make decisions about the provision of security in a courthouse is subject to the direction and control of a board of county commissioners.

### **Security for a Court of Common Pleas**

In addition to having a duty to secure a courthouse, a county sheriff and a board of county commissioners have a duty to provide security to a court of common pleas. R.C. 311.07(A) requires a county sheriff to “attend upon the court of common pleas[.]” That statute imposes a duty upon a county sheriff to provide security to a court of common pleas. 2001 Op. Att’y Gen. No. 2001-006, at 2-40. A board of county commissioners’ responsibilities with respect to the provision of security to a court of common pleas are rooted in R.C. 307.01 and R.C. 305.16. 2015 Op. Att’y Gen. No. 2015-015, at 2-163. R.C. 307.01 sets forth, *inter alia*, the board’s duty to provide a courthouse and to appropriate moneys to a court of common pleas.<sup>3</sup> R.C. 305.16 authorizes the board to hire “watchmen ... and other employees as are necessary for the care and custody of the court house[.]” Those statutes have been read to confer a duty to secure a court of common pleas. 2015 Op. Att’y Gen. No. 2015-

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<sup>2</sup> R.C. 307.01(A) states in pertinent part “[t]he board [of county commissioners] shall also provide equipment ... as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices[.]”

<sup>3</sup> R.C. 307.01(B) requires a board of county commissioners to “appropriate the amount of money each year that [the board] determines ...is reasonably necessary to meet all administrative expenses of the court.” Under R.C. 307.01(B), the court bears the burden of showing that the appropriation approved by a board of county commissioners is insufficient to meet the administrative expenses of the court. R.C. 307.01(B) has been found to be unconstitutional to the extent that it authorizes a board of county commissioners to exercise authority over a court of common pleas in violation of the separation of powers. *In re Furnishings & Equip. for Judge, Courtroom & Personnel for Courtroom Two*, 66 Ohio St. 2d 427, 430, 423 N.E.2d 86 (1981) (relying upon reasons expressed in *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) to find R.C. 307.01(B) unconstitutional). A statute that “grant[s] to a legislative body ... ‘the power of the purse’ over judicial administration, unconstitutionally restricts and impedes the judiciary[.]” *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d at 421. To maintain a proper separation of powers, a court of common pleas may be required to present a request for appropriation to the board of county commissioners; however, the board bears the burden of proving that the court’s request for funding is unnecessary or unreasonable. *See State ex rel. Wilke v. Hamilton Cnty. Bd. of Comm’rs*, 90 Ohio St. 3d 55, 60, 734 N.E.2d 811 (2000) (“the board of county commissioners is obligated to appropriate the requested funds [to a court of common pleas or its divisions], unless the board can establish that the court abused its discretion by requesting unreasonable and unnecessary funding”). In other words, there is a presumption that a court’s request for funding is reasonable and necessary. *Id.*

015, at 2-163. Therefore, a board of county commissioners and a county sheriff have a duty to secure a court of common pleas.

### **Court of Common Pleas' Inherent Authority over Facilities**

The responsibilities of a board of county commissioners and a county sheriff with respect to a courthouse and a court of common pleas must be examined in light of the inherent powers of a court. *See* 2015 Op. Att'y Gen. No. 2015-027, at 2-273; 1987 Op. Att'y Gen. No. 87-039, at 2-262 (“[t]he powers of the county commissioners to protect and preserve county buildings must, however, be evaluated in relation to the interests of the judiciary in having facilities that permit the proper and efficient operation of the courts”). As explained in 2015 Op. Att'y Gen. No. 2015-027, at 2-273 to 2-274:

Recognition of a court's authority in a courthouse is based upon the judiciary's status as a separate branch of government. *See State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph 1) (“[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers”); *State ex rel. Foster v. Wittenberg*, 16 Ohio St. 2d 89, 92, 242 N.E.2d 884 (1968) (“[t]he proper administration of justice requires that the judiciary be free from interference in its operations by such other branches”); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. at 66 (“[t]he judicial power is a separate and independent department of government”). The separation of powers doctrine is implicit in the Ohio Constitution's creation of three distinct branches of government: the legislative, Ohio Const. art. II, § 1; the executive, Ohio Const. art. III, § 1; and the judicial, Ohio Const. art. IV, § 1. *State ex rel. Montgomery v. Rogers*, 71 Ohio St. 203, 216-17, 73 N.E. 461 (1905); *City of Columbus v. Anderson*, 27 Ohio App. 3d 307, 308, 500 N.E.2d 1384 (Franklin County 1985); 2004 Op. Att'y Gen. No. 2004-003, at 2-18. Under the separation of powers doctrine, the powers of one branch of government may not be conferred upon another branch of government. *State ex rel. Montgomery v. Rogers*, 71 Ohio St. at 217 (“the distribution so made to the several departments, by clear implication operates as a limitation upon and a prohibition of the right to confer or impose upon either powers that belong distinctively to one of the other co-ordinate branches”). Furthermore, one branch of government may not exercise its powers over another branch so as to interfere with that branch's independence. *See State ex rel. Dann v. Taft*, 109 Ohio St. 3d 364, 2006-Ohio-1825, 848 N.E.2d 472, at ¶56 (“[t]he separation-of-powers doctrine requires that each branch of government be permitted to exercise its constitutional duties without interference from the other two branches of government” (footnote omitted)); *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955) (syllabus, paragraph 1) (“[t]he legislative, executive and judicial branches of government are separate and distinct and neither may impinge upon the authority or rights of the others; such branches are of equal importance”); *State ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cnty.*, 120 Ohio St. 464, 473, 166 N.E. 407 (1929) (“[t]he essential principle underlying the policy of the division of powers of

government ... is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others”).

Consequently, “[c]ourts of general jurisdiction ... possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.” *Zangerle v. Court of Common Pleas of Cuyahoga Cnty.*, 141 Ohio St. 70, 40 N.E.2d 865 (1943) (syllabus, paragraph 2); *accord State ex rel. Johnston v. Taulbee* (syllabus, paragraph 2); *State ex rel. Foster v. Wittenberg* (syllabus, paragraph 2); 1987 Op. Att’y Gen. No. 87-039, at 2-262 (“a court is entitled to the provision of such facilities, and *the control* over such facilities, as may be necessary for the proper and efficient operation of the court” (emphasis added)). *But see Comm. for Marion Cnty. Bar Ass’n v. Cnty. of Marion*, 162 Ohio St. 345, 123 N.E.2d 521 (1954) (syllabus) (“the Common Pleas Court has no power to order the county commissioners to provide an elevator and a shaft therefor in its courthouse even where it has determined that such elevator is essential to the efficient performance of the functions of that court”).

“When appropriate, a court’s exercise of this inherent power extends to areas of a court house that are not exclusively used or occupied by the court.” 2015 Op. Att’y Gen. 2015-015, at 2-166; 1976 Op. Att’y Gen. No. 76-064, at 2-217 (“this power does, in certain circumstances, extend beyond the actual physical enclosure of ... the court to the common hallways[,] the exterior, grounds, etc..... Where necessity exists, the power of the court may extend beyond the actual physical enclosure of the court’s chambers”); *see also State ex rel. Hottle v. Bd. of Cnty. Comm’rs of Highland Cnty.*, 52 Ohio St. 2d 117, 120, 370 N.E.2d 462 (1977) (“a court of general jurisdiction located in a courthouse has a paramount right to the space therein which is essential to the proper and efficient operation of such court”); *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 154-55, 126 N.E.2d 57 (1955) (“[a]ssuredly, a court of general jurisdiction has great inherent power to acquire and control the ordinary facilities which are essential to secure and safeguard the free and untrammelled exercise of its functions. However, that inherent power can not be exercised except for the acquisition of necessary as distinguished from desirable quarters and space”).

The principles set forth above apply to the provision of security in a courthouse by a board of county commissioners and a county sheriff. Although the primary responsibility for securing a courthouse and a court of common pleas rests with a board of county commissioners and a county sheriff, authority to provide for the security of a court of common pleas is not limited to those officials. 2015 Op. Att’y Gen. No. 2015-015, at 2-163. A court of common pleas is authorized in several sections of the Revised Code to employ personnel that may assist in securing a court. *See, e.g.*, R.C. 2301.12(B) (authority to appoint a criminal bailiff, who is a deputy sheriff); R.C. 2301.12(C) (appointment of a chief court constable); R.C. 2701.07 (appointment of court constables to “preserve order, attend the assignment of cases in counties where more than two judges of the court of common pleas regularly hold court at the same time, and discharge such other duties as the court

requires”); *see* 1984 Op. Att’y Gen. No. 84-008, at 2-22 to 2-23 (discussing a court of common pleas’ authority to appoint deputy sheriffs and additional court personnel).<sup>4</sup>

In addition, Ohio Sup. R. 9(A) requires each court to develop and implement a court security plan to “ensur[e] security in court facilities[.]”<sup>5</sup> “[T]he plan shall address the provisions of the Ohio court security standards adopted by the Supreme Court as set forth in Appendix C to [Ohio Sup. R. 9].” Ohio Sup. R. 9(A). Each court is required to appoint a committee to implement the standards set forth in Appendix C. Ohio Sup. R. Appendix C, Standard 1. Those standards include: “a written security policy and procedures manual governing security of the court and the court facility[.]” Ohio Sup. R. Appendix C, Standard 2(A); a requirement that all persons entering a court facility be subject to a security search, Ohio Sup. R. Appendix C, Standard 5; the assignment of uniformed court security officers “in sufficient numbers to ensure the security of each courtroom and the court facility[.]” Ohio Sup. R. Appendix C, Standard 6(A); the equipment of “[a]ll courtrooms, hearing rooms, judges’ chambers, clerks of courts’ offices, and reception areas” with a duress alarm system, Ohio Sup. R. Appendix C, Standard 9; the inclusion of “the court facility parking area, entrance to the court facility, court lobby, courtroom, and all other public areas of the court facility” in a closed-circuit video surveillance system, if one is used by the court, Ohio Sup. R. Appendix C, Standard 10; the use of a “secondary security perimeter ... at the entrance to the office space housing judges and court personnel[.]” Ohio Sup. R. Appendix C, Standard 11; in conjunction with law enforcement officers, the adoption of “procedures for the personal security of judges and court personnel at locations outside

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<sup>4</sup> It is possible to assert that a court’s authority to appoint personnel to provide security is not limited to those positions expressly set forth in a statute. 2015 Op. Att’y Gen. No. 2015-015, at 2-164 to 2-165 n.2; *see State ex rel. The Repository, Div. of Thompson Newspapers, Inc. v. Unger*, 28 Ohio St. 3d 418, 425, 504 N.E.2d 37 (1986) (Celebrezze, C.J., concurring) (“providing additional security personnel to protect judges, attorneys, litigants, and witnesses participating in cases in a court of common pleas may come within the court’s inherent authority “to preserve order and decorum in the courtroom, and to protect the rights of the parties and witnesses”); *State ex rel. Kuhlman v. Finkbeiner*, 179 Ohio App. 3d 270, 2008-Ohio-5914, 901 N.E.2d 321, at ¶36 (Lucas County) (“decisions regarding specific security requirements are within the municipal court’s purview and control. The court’s judges are in the best position to know how many officers are needed to effectively secure courtrooms and the courthouse, whether such officers should be full-time or part-time employees, and which agency would best be able to provide qualified officers”); *State ex rel. Bd. of Cnty. Comm’rs of Cuyahoga Cnty., Ohio v. Common Pleas Court of Cuyahoga Cnty., Ohio*, No. 36307, 1976 Ohio App. LEXIS 7453, at \*6 (Cuyahoga County August 26, 1976) (trial court’s order requiring the board of county commissioners to pay the cost of hiring private security guards to protect a material witness in a criminal case could “arguably be said to be founded upon R.C. 2701.07 [authority to appoint court constables],” however, the order was ultimately upheld “on the principle that the trial court possessed inherent authority to enter the order”).

<sup>5</sup> Ohio Sup. R. 9(A) also states that “[i]f more than one court occupies a court facility, the courts shall collectively develop and implement a single court security plan.”

the court facility[,]” Ohio Sup. R. Appendix C, Standard 12; and when constructing or remodeling a court facility, a consideration of the circulation patterns in and around a courtroom to ensure that judges, juries, court personnel, and prisoners have access to the courtroom that is separate from the public, and that waiting areas “allow separation of parties, victims, and witnesses[,]” Ohio Sup. R. Appendix C, Standard 13. The Preamble to Appendix C directs elected officials to be “proactive and sensitive to court security and emergency preparedness concerns” and states that “it is imperative that the topics discussed in [Appendix C] be addressed.” Ohio Sup. R. Appendix C, Preamble. The standards set forth therein are relevant to a determination of whether the facilities provided to a court are adequate and suitable. *State ex rel. Kuhlman v. Finkbeiner* at ¶18; *State ex rel. Badgett v. Mullens*, 177 Ohio App. 3d 27, 2008-Ohio-2373, 893 N.E.2d 870, at ¶26 (Washington County).

The Rules of Superintendence for the Courts of Ohio do not define the term “court facilities.”<sup>6</sup> It is apparent from the context in which the term is used in Ohio Sup. R. 9 and Appendix C that “court facilities” encompass more than the courtrooms and chambers of the judges of a court. Appendix D of the Rules of Superintendence for the Courts of Ohio sheds additional light on the meaning of the term. Division (B) of Appendix D requires court facilities to “be located in a courthouse or county or municipal building.” Insofar as it is common for courthouses to house county offices as well as various courts, “court facility” does not, necessarily, mean an entire courthouse, especially when the courthouse is not devoted exclusively to housing the courts. However, it is reasonable to conclude that “court facilities” includes those areas of a courthouse that are occupied or used by a court for court purposes, as well as, those common areas of the building that are traversed or occupied by people who are in the courthouse for a court proceeding or a purpose related to the court. For example, the space in a courthouse that is assigned exclusively to a county recorder’s office would not constitute a court facility. In contrast, the entrances to the courthouse, restrooms, stairwells, elevators, hallways, or the common waiting areas in a courthouse may constitute “court facilities” if they are accessible to people who are in the courthouse for a purpose related to a court. Those common areas may constitute court facilities even though they are also used by people who are visiting the courthouse for a purpose unrelated to a court.

Ensuring the safety of judges, court personnel, litigants and witnesses while in a court’s facilities is integral to a court’s judicial functions. As expressed in the Preamble to Appendix C of the Rules of Superintendence for the Courts of Ohio, “Ohio citizens should expect all court facilities to be safe and secure for all who enter so that justice for all may be sought and not unjustly interrupted. Court facilities and each courtroom therein should have appropriate levels of security to address any foreseeable concern or emergency that may arise during the course of business.” A court’s ability to resolve legal disputes is hampered when witnesses or parties do not participate because of fear or intimidation. Likewise, a judge cannot effectively resolve a dispute if his or her safety is in jeopardy. A court’s ability to mitigate dangers or threats to the security of court personnel, judges, witnesses, attorneys, and litigants cannot be limited to the four corners of a courtroom or solely to those areas of a courthouse that are exclusively occupied by a court. Rather, it may be reasonable for a court to

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<sup>6</sup> The Rules of Superintendence for the Courts of Ohio also do not define the term “courthouse.”

require certain security measures in common areas of a courthouse, such as the entrance. As explained in 2015 Op. Att’y Gen. No. 2015-015, at 2-166:

A court’s ability to ensure its security necessarily involves positioning security measures at the entrance to the court house. If a threat reaches rooms or areas within a court house that are adjacent to, but not within the rooms or areas occupied by the court, that threat may pose a danger to the court. It is, thus, reasonable for a court of common pleas to implement security measures at the entrance to the court house.

Accordingly, a court’s inherent authority to secure and safeguard the free and untrammelled exercise of its judicial functions includes the authority to make decisions about the provision of security in the court’s facilities. See *State ex rel. Kuhlman v. Finkbeiner* at ¶35-36; 2015 Op. Att’y Gen. No. 2015-015, at 2-168 (“[a] court of common pleas’ inherent authority ‘to secure and safeguard the free and untrammelled exercise of [its] judicial functions[,]’ ... includes the authority to employ personnel to provide security in an area of the court house that is not otherwise secured by the county sheriff” (internal citations omitted)).

Insofar as the provision of security in court facilities is part of a court’s inherent authority to secure and safeguard the free and untrammelled exercise of its judicial functions, a court’s exercise of that authority cannot be infringed upon by a board of county commissioners or a county sheriff. Therefore, the county sheriff’s exercise of authority under R.C. 311.07(A) is subject to the inherent authority of a court to secure and safeguard its free and untrammelled exercise of judicial functions. The inherent authority of a court to secure and safeguard its free and untrammelled exercise of judicial functions may extend to portions of a courthouse that are not exclusively occupied or used by the court, if the court shows that those areas are reasonably necessary to the court’s efficient operation.

### **Funding for Security Measures Deemed Necessary by a Court of Common Pleas**

As explained above, “[c]ourts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.” *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph 2). It is well established that:

It is the legal duty of the county commissioners to furnish all things coupled with the administration of justice within the limits of their own county. It is their duty to furnish suitable and convenient buildings for holding court, at the expense of the county; .... In fitting up their court rooms and offices, it is the duty of the commissioners to fit them up as court rooms and clerks’ offices, and this requires that they should be supplied with, and contain those things which are necessary to enable the officers for whose public use they are fitted up, to perform their official duties.

*Comm’rs of Trumbull Cnty. v. Hutchins*, 11 Ohio 368, 371 (1842). Moreover, with respect to a board of county commissioners’ duty to fund court operations, the Ohio Supreme Court has explained:

A court of common pleas in this state has the inherent authority to require funding which is reasonable and necessary to the administration of the court's business. This court has held ... that it is incumbent upon the legislative authority to provide funds which are reasonable and necessary to operate a court which requests such funding. Therefore, a board of county commissioners must provide the funds requested by a court of common pleas unless the board can show that the requested funding is unreasonable and unnecessary. The burden of proof is clearly upon the party who opposes the requested funding. In effect, it is presumed that a court's request for funding is reasonable and necessary for the proper administration of the court. The purpose of this "presumption" is to maintain and preserve a judicial system and judiciary that is independent and autonomous.

*State ex rel. Lake Cnty. Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 221-22, 569 N.E.2d 1046 (1991) (internal citations omitted).<sup>7</sup>

A request for funding for security measures is subject to the same standard. *See* 1996 Op. Att'y Gen. No. 96-015, at 2-61 to 2-62 (a court's request for funding to purchase metal detector, ballistic materials for judges' benches, and surveillance cameras appears to constitute a reasonable and necessary expense for which the county would be required to appropriate funds); 1993 Op. Att'y Gen. No. 93-043 (syllabus) ("[a] board of county commissioners is obligated to comply with an appropriation request from the court of common pleas for the payment of the cost of private parking for the judges of that court, unless the board can show that the request is either unreasonable or not necessary for the proper administration of the court's business"). If a court of common pleas makes a request for funds to implement security measures that the court concludes are reasonable and necessary to the court's functions, a board of county commissioners has a duty to provide the funding, unless the board can show that the request is unreasonable and unnecessary.

If a court believes that certain security measures are reasonable and necessary to the court's functions, but does not request funding for those measures as part of an appropriation by the board of county commissioners, the board of county commissioners is, nevertheless, under a duty to provide the measures, unless they are unreasonable and unnecessary. *See* 1989 Op. Att'y Gen. No. 89-029, at 2-123 ("[t]he common pleas court ... has the right to control its facilities, to the extent that proper and efficient administration of justice requires. If the court determines that maintenance, cleaning and janitorial services for the court's facilities should be under the control of the court in order to facilitate the efficient administration of the court, such personnel may be hired by the court. Otherwise, the

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<sup>7</sup> A board of county commissioners may defend a mandamus action by a court by asserting that it is impossible for the board to provide the requested funding. 1996 Op. Att'y Gen. No. 96-015, at 2-61. "In order to demonstrate impossibility, however, the county would have to show, at a minimum, that the court's 'reasonable and necessary expenses could not be funded without taking money from other county offices and rendering them unable to perform their statutory duties.'" *Id.* (quoting *State ex rel. Weaver v. Lake Cnty. Bd. of Comm'rs*, 62 Ohio St. 3d 204, 207, 580 N.E.2d 1090 (1991)).

board of county commissioners is required to supply maintenance, cleaning and janitorial services”); *see also* 2001 Op. Att’y Gen. No. 2001-006, at 2-40 n.1 (“R.C. 307.01(A) requires the board of county commissioners to provide the county sheriff with any equipment the board considers reasonably necessary for the sheriff to keep the courthouse safe”). *But see Comm. for Marion Cnty. Bar Ass’n v. Cnty. of Marion*, 162 Ohio St. 345, 123 N.E.2d 521 (1954) (syllabus) (“the Common Pleas Court has no power to order the county commissioners to provide an elevator and a shaft therefor in its courthouse even where it has determined that such elevator is essential to the efficient performance of the functions of that court”).

Therefore, a board of county commissioners shall fund security measures in a courthouse that a court concludes are reasonably necessary to the court’s proper and efficient operation, unless the board of county commissioners can show that the request is unreasonable or unnecessary. Funding for security measures that supplement the services provided by the county sheriff may be provided to the court as part of the court’s appropriation request, if the court has requested it.

#### **Authority to Regulate the Possession of a Firearm in a Courthouse**

Your second question asks whether a county sheriff has authority to decide whether a person may possess a firearm in the courthouse. R.C. 2923.123(B) prohibits any person from “knowingly possess[ing] or hav[ing] under the person’s control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.” Insofar as R.C. 2923.123 addresses the possession of a deadly weapon or dangerous ordnance, the statute’s provisions apply to the open and concealed carrying of a handgun.<sup>8</sup> *See* R.C. 2923.126(B)(3) (“[a] valid license [to carry a concealed handgun] does not authorize the licensee to carry a concealed handgun into ... [a] courthouse or another building or structure in which a courtroom is located, in violation of [R.C. 2923.123]”).

Division (C) of R.C. 2923.123 provides several exemptions to the prohibition in R.C. 2923.123(B). The prohibition of R.C. 2923.123(B) does not apply to any of the following:

- (1) Except as provided in division (E) of this section, a judge of a court of record of this state or a magistrate;
- (2) A peace officer, officer of a law enforcement agency, or person who is in either of the following categories:
  - (a) Except as provided in division (E) of this section, a peace officer, or an officer of a law enforcement agency of another state, a political subdivision of another state, or the United States, who is authorized to carry a deadly weapon or dangerous

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<sup>8</sup> A firearm constitutes a “deadly weapon” for the purpose of R.C. 2923.11-.24. R.C. 2923.11(B)(1); *see also* R.C. 2923.11(A) (defining “deadly weapon”); R.C. 2923.11(K) (defining “dangerous ordnance”); R.C. 2923.11(L) (exemptions from the definition of dangerous ordnance”). A handgun is a type of firearm. R.C. 2923.11(C).

ordnance, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(b) Except as provided in division (E) of this section, a person who is employed in this state, who is authorized to carry a deadly weapon or dangerous ordnance, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that person's duties, and who is subject to and in compliance with the requirements of section 109.801 of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (C)(2)(b) of this section does not apply to the person.

(3) A person who conveys, attempts to convey, possesses, or has under the person's control a deadly weapon or dangerous ordnance that is to be used as evidence in a pending criminal or civil action or proceeding;

(4) Except as provided in division (E) of this section, a bailiff or deputy bailiff of a court of record of this state who is authorized to carry a firearm pursuant to section 109.77 of the Revised Code, who possesses or has under that individual's control a firearm as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(5) Except as provided in division (E) of this section, a prosecutor, or a secret service officer appointed by a county prosecuting attorney, who is authorized to carry a deadly weapon or dangerous ordnance in the performance of the individual's duties, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(6) Except as provided in division (E) of this section, a person who conveys or attempts to convey a handgun into a courthouse or into another building or structure in which a courtroom is located, who, at the time of the conveyance or attempt, either is carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of section 2923.125 of the Revised Code, and who transfers possession of the handgun to the officer or officer's designee who has charge of the courthouse or building. The officer shall secure the handgun until the licensee is prepared to leave the premises. The exemption described in this division applies only if the officer who has charge of the courthouse or building provides services of the nature described in this division. An officer who has charge of the courthouse or building is not required to offer services of the nature described in this division.

R.C. 2923.123(C). Division (E) of R.C. 2923.123 provides:

The exemptions described in divisions (C)(1), (2)(a), (2)(b), (4), (5), and (6) of this section do not apply to any judge, magistrate, peace officer, officer of a law enforcement agency, bailiff, deputy bailiff, prosecutor, secret service officer, or other

person described in any of those divisions if a rule of superintendence or another type of rule adopted by the supreme court pursuant to Article IV, Ohio Constitution, or an applicable local rule of court prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.

Accordingly, if a Rule of Superintendence or an applicable local rule of court prohibits all persons from possessing a deadly weapon or dangerous ordnance in a courthouse or another building in which a courtroom is located, the exemptions set forth in R.C. 2923.123(C)(1), (2)(a), (2)(b), (4), (5), and (6) do not apply, and the people identified in those divisions are not permitted to possess a deadly weapon or dangerous ordnance in a courthouse or another building in which a courtroom is located.

As addressed above, Ohio Sup. R. 9(A) requires courts to develop and implement a court security plan. Each court security plan shall address the standards set forth in Appendix C. *Id.* Standard 7 in Appendix C to the Rules of Superintendence for the Courts of Ohio provides:

(A) Prohibition. No weapons should be permitted in a court facility except those carried by court security officers or as permitted under division (B)(1) of this standard. The court should establish and install adequate security measures to ensure no one will be armed with any weapon in the court facility.

(B) Law enforcement.

(1) Each court should promulgate a local court rule governing the carrying of weapons into the court facility by law enforcement officers who are not a component of court security and are acting within the scope of their employment. If more than one court occupies a court facility, the courts shall collectively promulgate a single rule.

(2) In all cases, law enforcement officers who are parties to a judicial proceeding as a plaintiff, defendant, witness, or interested party outside of the scope of their employment should not be permitted to bring weapons into the court facility.

Therefore, whether a person may possess a firearm in a courthouse is dependent upon application of R.C. 2923.123, the Rules of Superintendence for the Courts of Ohio, and any applicable local rule of court. As part of a county sheriff's duty to secure a courthouse, a county sheriff may enforce rules regarding the possession of a firearm in the courthouse.<sup>9</sup> A county sheriff may not permit or prohibit

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<sup>9</sup> R.C. 2923.1212(A)(6) requires a county sheriff who has charge of a courthouse or a building or structure in which a courtroom is located to post a sign containing the following statement: “[u]nless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises.”

the possession of a firearm in a courthouse except in accordance with R.C. 2923.123, Standard 7 of the Rules of Superintendence for the Courts of Ohio, and an applicable local rule of court.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. The duty of a county sheriff to secure a courthouse pursuant to R.C. 311.07(A) necessarily implies the authority to make decisions about the provision of security in the courthouse. However, the county sheriff's exercise of that authority is subject to the direction and control of the board of county commissioners and the inherent authority of a court to secure and safeguard its free and untrammelled exercise of judicial functions.
2. The inherent authority of a court to secure and safeguard its free and untrammelled exercise of judicial functions may extend to portions of a courthouse that are not exclusively occupied or used by the court, if the court shows that those areas are reasonably necessary to the court's efficient operation.
3. A board of county commissioners shall fund security measures in a courthouse that a court concludes are reasonably necessary to the court's proper and efficient operation, unless the board of county commissioners can show that the request is unreasonable or unnecessary. Funding for security measures that supplement the services provided by the county sheriff may be provided to the court as part of the court's appropriation request, if the court has requested it.
4. As part of a county sheriff's duty to secure a courthouse, a county sheriff may enforce rules regarding who may possess a firearm in the courthouse. A county sheriff may not permit or prohibit the possession of a firearm in a courthouse except in accordance with R.C. 2923.123, Standard 7 of the Rules of Superintendence for the Courts of Ohio, and an applicable local rule of court.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General