Not Endowed by Their Creator: State Mandated Expenses of Louisiana Parish Governing Bodies

I. Jackson Burson Jr.

Repository Citation

Available at: https://digitalcommons.law.lsu.edu/lalrev/vol50/iss4/2

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.
Not Endowed by Their Creator: State Mandated Expenses of Louisiana Parish Governing Bodies

I. Jackson Burson, Jr.*

"... a police jury is a creature of the state and possesses only those powers conferred by the state's constitution and statutes."

_Reed v. Washington Parish Police Jury_, 518 So. 2d 1044, 1046 (La. 1988)

I. INTRODUCTION

The economic depression of the late 1980's in Louisiana exacerbated structural weaknesses in Louisiana government and finance at all levels. Burgeoning deficits led the state government to cut drastically its appropriation to the parish road and bridge fund, which was formerly the main source of funding relied upon by most parishes for construction, repair, and maintenance of their roads and bridges.1 As money from Baton Rouge diminished, the parishes saw federal revenue sharing funds cut off simultaneously. Beginning with the Nixon presidency, many parishes unfortunately budgeted these non-recurring federal funds for

---

Copyright 1990, by LOUISIANA LAW REVIEW.

* First Assistant District Attorney, 27th Judicial District Court, Eunice, Louisiana.

1. 1974 La. Acts No. 336 created the Parish Transportation Fund, which is codified at La. R.S. 48:751-755 (1984 and Supp. 1990). La. R.S. 48:753(A)(1) (Supp. 1990) provides that the state appropriations are to be used for work and equipment which "further ... the parish road system." These funds are statutorily dedicated revenue that cannot be used for payment of any mandated expenses discussed in this article. Between 1984 and 1989, funds appropriated to the Parish Transportation Fund dropped precipitously, as the following chart indicates:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984-85</td>
<td>$144,940,145.00</td>
</tr>
<tr>
<td>1985-86</td>
<td>$23,518,748.00</td>
</tr>
<tr>
<td>1986-87</td>
<td>$15,276,943.00</td>
</tr>
<tr>
<td>1987-88</td>
<td>$10,955,120.00</td>
</tr>
<tr>
<td>1988-89</td>
<td>$7,740,484.00</td>
</tr>
</tbody>
</table>

State Treasurer's Office and Police Jury Association of Louisiana. Following social science methodology, many of the budget figures cited in this article were obtained directly from the primary sources either at the parish or state level.
the payment of recurring expenses of vital governmental services including payment of many expenses mandated by state law, which increased dramatically at the same time as federal revenue sharing disappeared.

Concurrent with the cessation of the federal and state largesse, which had become an integral part of their budgets in the 1970's and early 1980's, most of Louisiana's parish governments experienced a decrease in the valuation of real property assessed for *ad valorem* tax purposes. Farm land that sold for $1,500.00 an acre in 1978 sold for $600.00 in 1988. Commercial property lost market value precipitously as businesses went bankrupt. Homes, only eighty-five percent of which were subject to *ad valorem* taxation statewide anyway, lost value with stunning swiftness.

The coalescence of all these negative events left many parish governments on the verge of bankruptcy. Headlines revealed parish police juries from such parishes as St. Landry and Tangipahoa seriously discussing termination of vital services. The entire road and bridge crew of St. Landry Parish was dismissed in 1988 because there was no money to pay them.

As the parish police juries teetered on the brink of insolvency, many of the parish officials entrusted with the performance of vital judicial,
executive, electoral, and administrative functions found their various sources of revenue deleteriously affected by the general reduction of state support services and the decline of local governmental revenues caused by the general decline of commerce across the state. For instance, as fewer state troopers patrolled Louisiana highways, fewer traffic tickets were given and the criminal court cost funds declined markedly in most parishes. This circumstance deprived district attorneys and the district judges of money they relied upon for performing their functions. Once again the parish police juries were adversely affected because they receive fifty percent of the surplus in the criminal court fund at the end of the fiscal year.7

Supplemental pay to parish sheriff’s deputies by the State of Louisiana was cut in the state budget at the same time that the rising tide of narcotics-connected crime left most sheriffs understaffed.8

Federal courts were limiting jail cell occupancy and requiring improvements to parish jails at the very time that the funds available to pay for such improvements were diminishing.

Increases in crime required more expensive services from parish district attorneys, coroners, sheriffs, clerks of court, and courts.

Not surprisingly, many parish officials who determine their budgets independent of police jury control found it necessary to request increases in the funds that state law mandates parish police juries to provide parish officials at the very time that parish police juries sought to cut back, or at least hold the line, on these expenses. A clash was inevitable and it has occurred.

The courts have thus far steadfastly maintained that parish police juries are obligated to provide the funds mandated by state law to parish officials, district attorneys, and judges. However, the Louisiana Supreme Court, in upholding a district attorney’s right to receive mandated costs in the case of Reed v. Washington Parish Police Jury,9 has made it plain that there is a limit. The police jury’s duty to fund statutorily mandated expenses “is limited by the standard of reasonableness.”10 A district attorney’s budget request must meet twin criteria to enjoy the status of legally mandated expenses: (1) his budget request “must be legitimate in that it is related to the function of his office,” and (2) his budget request “must be qualitatively reasonable.”11 Presumably, the same criteria apply to budget requests for mandated expenses made by other parish officials.

9. 518 So. 2d 1044 (La. 1988).
10. Id. at 1049.
11. Id.
At the extreme, there lurks in many parishes the specter of another less ephemeral limit than the well-worn standard of "reasonableness." What will happen when there is no money in the bank to pay all of a parish police jury's mandated expenses? Obviously, they will not be paid if the parish checks will not be honored at the bank. Does the limit of "impossibility of performance" now intrude into the governmental debate as it might steal surreptitiously into a desperate law student's answer in a freshman contracts class? One supposes it must.

Given the irrefutable fact that a police jury cannot pay all its mandated expenses if it does not have enough money to pay them, one must then necessarily confront another dilemma. If the police jury can only pay a portion of its mandated expenses, which expenses have preference? Is there a constitutional or statutory justification for declaring, e.g., that the district judges are primus inter pares among local officials because they can hold police jurors in contempt for refusing to pay their mandated expenses? Are district judges and district attorneys, as functionaries of the state judicial system enshrined as a co-equal branch with the state executive and legislative branches of government, entitled to receipt of their necessary expenses in preference to other local officials, many of whom are also enshrined in the state constitution? Are some recipients of mandated expenses entitled to primacy over others or should all mandated expenses be reduced pro rata to fit the constraints of available funds?

One will search the current Louisiana Constitution, statutes, and jurisprudence in vain for a specific answer to the questions posed above. It is the purpose of this article:

1. To delineate the extent of mandated expenses that the parish police jury is obligated to pay under current Louisiana law;
2. To define the inherent dilemma created by state statutes that mandate police juries on the one hand to pay all expenses requested by another official beyond their control and on the other hand to balance their budgets; and
3. To suggest some possible approaches to resolving the paradox inherent in placing increased expense burdens upon police juries without providing the fiscal means to meet these additional responsibilities.

II. THE LOUISIANA CONSTITUTION OF 1974: THREE BASIC FORMS FOR PARISH GOVERNMENT—NONE OF WHICH PROVIDED FINAL CONTROL OVER THE PARISH BUDGET TO THE PARISH GOVERNING AUTHORITY

A. Forms of Parish Government

Article VI of the Louisiana Constitution of 1974 authorizes three basic types of parish government. First, a home rule charter form of
parish government is based upon a charter that has been approved by a majority of the parish electors voting in an election called for that purpose. The home rule charter “shall provide the structure and organization, powers, and functions of the [parish] government . . ., which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.” The parishes of Orleans, Jefferson, East Baton Rouge, Lafayette, St. Mary, Iberia, Lafourche, Plaquemines, St. Charles, St. James, St. John, Caddo, Tangipahoa, Terrebonne, and St. Bernard all have home rule charters. St. Tammany Parish approved a home rule charter, but then returned to the police jury system.

Second, a parish government that has no home rule charter “may exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers.” Citizens of the forty-nine parishes that now have statutory forms of parish government, police juries, could elect to grant them home rule powers. No parish electorate has yet chosen this form of government.

Third, a parish government that has no home rule charter and in which a majority of the electorate has failed to approve a grant of general governmental powers has only “the powers authorized by this constitution or by law.” The forty-nine parish police juries fit into this third category of statutorily created parish governments.

Section 14 of article VI of the Louisiana Constitution prohibits state legislative increases in expenditures for “wages, hours, working conditions, pension and retirement benefits, vacation or sick leave benefits” for parish employees until such increases “are approved by ordinance enacted by the governing authority” of the parish or “until the legislature appropriates funds for that purpose to ‘the parish’ and only to the extent and amount that such funds are provided.” An exception is made for “laws establishing civil service, minimum wages, working conditions and retirement benefits” for firemen and policemen. Thus, the constitution grants the legislature plenary power over wages and employee benefits of local firemen and policemen.

12. La. Const. art. VI, § 5(E).
13. Id. at § 7(A).
14. Id.
15. Id. at § 14.
Actually the prohibition against legislative increases of parish employee expenses embodied in article VI, section 14 offers the parish government bodies protection that is more apparent than real. Many individuals who receive paychecks from parish funds are not direct employees of the parish governing body *per se*. Instead, they are employees of state or parish officials whose offices are enshrined in the constitution, or they are the constitutional officers themselves. Moreover, section 14 of article VI limits legislative increases of parish expenditures only in the areas of employee emoluments. Neither that section nor any other constitutional provision forbids the legislature to do what it has done time and time again—increase the emoluments due to a host of recipients of funds from the parish treasury ranging from justices of the peace to judges of the district courts.

Unfortunately, the Louisiana Constitution does not vest in any organ of parish government the power to coordinate the requests for expenditures made by the various parish officials so as to insure that the funds requested do not exceed the funds available from the meager revenue sources permitted the parishes by the constitution and state statutes. A perpetual melee among competing parish official fiefdoms for available funds has resulted.

**B. Constitutional Provisions for Parish Government Finance**

1. **Ad Valorem Taxes**

   Section 26 of article VI empowers the governing authority of a parish to "levy annually an ad valorem tax for general purpose not to exceed four mills on the dollar of assessed valuation." In Orleans Parish, the limit is seven mills and in Jackson Parish it is five mills.17 Parish electors can increase this general millage rate by vote.18 *Ad valorem* taxes for specific purposes are also authorized.19

   If all homes in Louisiana were subject to *ad valorem* taxation, the four mill constitutional *ad valorem* tax would supply a large predictable and consistent basis for parish government financing. However, the constitution establishes a $75,000.00 homestead exemption,20 which exempts at least eighty-five percent of Louisiana home owners from paying any parish *ad valorem* taxes.

2. **Sales Taxes**

   Sales and use taxes may be levied by vote of a majority of parish voters up to a maximum of three percent. However, the three percent

---

18. Id. at § 26(A).
19. Id.
limitation includes all sales taxes levied by municipalities. Because munici-

pals may levy a sales tax of up to two and a half percent upon

approval of the voters, the availability of this source of revenue to

the parish is sharply limited.

3. Occupational License Taxes

The Louisiana Constitution authorized parishes to impose an oc-
cupational license tax "not greater than that imposed by the state."22

4. Prohibition Against Parish Levy of Severance Taxes, Income
Taxes, and Motor Fuel Taxes

Article VII, section 4(C) prohibits the enactment of a severance tax,
income tax, or tax on motor fuel by a political subdivision.23

5. Allocation of Severance Taxes and Royalties to Parishes

Article VII, section 4(D) allocates state severance tax to the parishes
as follows:

One third of the sulphur severance tax but not to exceed one
hundred thousand dollars; one-fifth of the severance tax on all
natural resources, other than sulphur or timber, but not to exceed
five hundred thousand dollars; and three-fourths of the timber
severance tax shall be remitted to the parish in which severance
or production occurs.24

6. Allocation of Royalties to Parishes

The Louisiana Constitution provides that:

One tenth of the royalties from mineral leases on state owned
land, lake and river beds and other water bottoms belonging to
the state or the title to which is in the public for mineral

occupational license tax. La. R.S. 47:341 (Supp. 1990) empowers parishes “to impose a
license tax on any person conducting any business herein enumerated” provided two-
thirds of the elected members of the parochial governing authority approve the imposition.
had set the maximum limits on severance taxes paid back to the parishes at $100,000.00
for sulphur and $200,000.00 for other minerals. La. R.S. 47:631 (1970) enacts the state
47:645 (Supp. 1990) mandates distribution to the parish in accordance with Article VII, § 4 of the Constitution.
development shall be remitted to the governing authority of the parish in which severance or production occurs.25

7. Revenue Sharing Income to Parishes

Under the constitution, a minimum sum of $90,000,000.00 is "allocated annually from the state general fund to the revenue sharing fund."26 This fund is distributed annually as provided by law to the tax recipient bodies in each parish on a ratio that compares the population and number of homesteads in each parish to those in the state as a whole.27 The revenue sharing reimbursement is designed to offset current ad valorem tax losses of the local tax recipient bodies that result from the homestead exemption granted by the constitution.28

In 1985 approximately twenty-four percent of Louisiana's state budget was allocated to local governments via state shared revenues and state aid programs. This compared with a 1985 United States average of thirty-five percent.29 The situation has worsened dramatically since 1985.

C. Parish and/or Judicial District Offices Established by the Constitution

The judicial branch of Louisiana government is established in article V of the constitution, which establishes district courts with "original jurisdiction of all civil and criminal matters."30 Judicial districts existing on the effective date of the constitution are specifically retained. Judicial districts may be created, divided, or merged by law with approval "in a referendum in each district and parish affected."31

Each judicial district is constitutionally required to elect a district attorney who "shall have charge of every criminal prosecution by the state in his district" and is "the legal advisor to the grand jury."32 An informed observer may be surprised to learn that justice of the peace courts with powers established by law are also enshrined in the constitution.33

26. La. Const. art. 7, § 26(B).
27. Id. at § 26(C).
28. Id.
31. Id.
33. Id. at § 20.
The informed observer would certainly be surprised to learn that the judiciary article provides that each parish shall elect a sheriff, a clerk of court, and a coroner. He would doubtless be even more surprised to learn that the revenue and finance article provides that each parish except Orleans, which elects seven assessors, shall elect a tax assessor. Finally, he would be astonished to learn that the elections article provides that the "governing authority of each parish shall appoint a registrar of voters, whose compensation . . . shall be provided by law." Thus, the whole panoply of the parish courthouse officialdom enjoys constitutional status.

In no case is the parish governing authority given any voice in determining the salary and emoluments due to the judicial and parish constitutional officials for whom they must provide facilities. The constitution grants no budgetary power to the parish governing authority over the operational expenditures of these constitutional offices.

Finally, the constitution is silent as to how the general fiscal responsibilities of the parish governing authorities are to be reconciled with the constitutional scheme that provides that salaries and emoluments of most parish officers are to be established by state law.

III. Myriad Louisiana Statutes Mandate Payment of Operating Expenses for a Wide Range of State and Parish Officials by the Parish Governing Authority Without Providing Sources of Revenue to Pay the Mandated Expenses

The state legislature has imposed upon the parish governing authorities a plethora of statutory mandates to pay expenses incurred by state and parish officials who are not subject to effective budgetary control by the parish legislative body. Moreover, none of these statutory mandates to pay expenses provide a corresponding source of funds to pay the mandated expenses. Over the years, well organized lobbies of local officials have found it easy to convince the state legislature that their mandated expense allowances should be increased because the legislature did not have to find the revenues to pay the increased expenses it imposed upon parish governments.

To illustrate the magnitude of the problem that has thereby been created for parish governing bodies, it is instructive to consider the mandates in some detail by category.

34. Id. at § 27.
35. Id. at § 28.
36. Id. at § 29.
38. La. Const. art. XI, § 5.
A. Judicial Offices Entitled to Mandated Expenses

Parish payment of judicial officer's salaries raises serious issues of separation of powers meriting separate treatment below. But mere recitation of the judicial expenses imposed upon parish government by state law illustrates that these costs of performing judicial business, items that one would otherwise suppose were part of the state criminal and civil legal system, are an imposing burden on parish government fiscs.

Governing authorities of the parishes within multiparish juvenile detention districts across the state are required by statute to appropriate annually amounts to support juvenile detention homes.39 They must also pay the following court related costs: jurors and witness fees in all criminal cases,40 civil pauper cases,41 and juvenile cases;42 daily attendance fees for the sheriff’s deputies who serve as court bailiffs,43 and appearance fees for all police officers called as witnesses in criminal cases;44 plus court reporter's salaries and transcript fees.

Parish governments must also pay a fee for attending court to the clerk of court's deputies who serve as minute clerks,45 any amount of the clerk of court's minimum salary not covered by the clerk's salary fund,46 and "all necessary office furniture, equipment and record books" requested by the clerk.47 Each parish government must provide "a suitable building and requisite furniture for the . . . district and circuit courts," as well as offices, furniture, and equipment needed by the clerks, recorders, sheriffs, tax collectors, and assessors.48

Expenses of the district attorney's office, as well as mandated portions of the salaries of the district attorney and his assistants, must be paid by the parish governments.49 The parish must also pay for expenses of extraditing criminals from other states50 and for expenses incurred as a result of the arrest, confinement, maintenance, and prosecution of prisoners.51

Salaries of justices of the peace and constables—anachronistic offices that serve little or no function in most cases—are set by state statute,
but must be paid by parish governments, which realize no revenue whatsoever from the justice of the peace courts.

Because parish governments paid a portion of district judges' salaries until 1976, and still pay a portion of city judges' salaries, beleaguered parish governments must deplete their meager general fund budgets by paying a pro rata share of the monthly judicial retirement benefits of all retired judges who served in judicial office before the Louisiana Constitution of 1974 and 1976 Louisiana Acts No. 518 converted the judges' pension plans from unfunded programs to pensions funded by judicial salaries.

Parish governments have also been victimized by the occasional "special retirement bills" that have rendered most Louisiana governmental retirement funds a shambles by qualifying particular individuals, who would not qualify under the general retirement law to receive retirement benefits, by legislative fiat. For example, in 1974 a law was passed that effectively ordered the St. Landry Parish Police Jury to pay a pension of two-thirds of his monthly salary to a defeated city judge who did not qualify for retirement benefits under either the unfunded judicial retirement plan or the funded judicial pension plan payable through the Louisiana State Employees Retirement System.

**B. Coroner's Mandated Expenses**

Coroner's fees for viewing bodies, performing autopsies, issuing papers in an interdiction or commitment, investigating, and examining for mental or physical disabilities as well as the coroner's expert fees must be paid by parish government primarily at rates set by state law. The parish must also pay expert witness fees to the coroner's deputies or assistants when they testify in their official capacity.

The statute imposing the obligation for payment of the coroner's fees upon parishes or municipalities, depending whether the situs of the

---

coroner's service was inside or outside the municipality, seems to provide some latitude for local governing bodies by allowing them to set the rates payable within statutory maximum and minimum limits. However, in the recent case of Reynolds v. City of Pineville, the court held that the limited rate-setting discretion granted by the statute did not allow a local governing body to escape liability for the coroner's expenses by simply refusing to set the rates to be paid.

C. City Court's Mandated Expenses

Salaries of a city court judge must be paid in equal proportion by the parish and city that are the situs of the court if the population of the jurisdiction is less than 100,000, but the city pays all the city judge's salary if the population of the jurisdiction is more than 100,000. The city court statutes are replete with special mandates for judge's salaries.

City court marshal's salaries are set at a minimum of $3,600.00 payable in equal proportion by the parish and the city if the population of the jurisdiction is less than 10,000. In larger jurisdictions, the marshal must be paid by the governing bodies of both city and parish in varying amounts with special statutes making specific salary provisions for particular courts.

Mandatory minimum salaries are also set for the city court clerks and deputy clerks. The statutes have generally saddled the cities rather than the parishes with the burden of paying city court operating expenses.

D. Election Officials' Mandated Expenses

Parish governing authorities must pay a portion of the salary of the registrar of voters according to a schedule established by statute and must furnish him with an office either in or in close proximity to the courthouse, as well as all equipment, supplies, furniture, books, stationery, and other expenses for the operation of his office.

of the salaries of the registrar’s chief deputies and confidential assistants must also be paid,\textsuperscript{71} plus salaries of such additional temporary personnel as the registrar requires.\textsuperscript{72} The statutes even set the number of permanent employees each registrar is entitled to hire (whose salaries must then be paid at least in part by the parish).\textsuperscript{73}

The parish must pay for all costs of the registrar’s annual canvass of one-fourth of the parish voters\textsuperscript{74} and for the registrar’s special counsel.\textsuperscript{75} Finally, the parish must pay a per diem to members of the parish Board of Election Supervisors to prepare for and supervise elections.\textsuperscript{76}

\textbf{E. Assessor’s Mandated Expenses}

The cost of furniture, maps, and supplies needed by the tax assessors are borne proportionately by all taxing bodies in the parish under the traditional \textit{modus operandi} of Louisiana parish government.\textsuperscript{77} These items are purchased by the parish governing body and billed to the other taxing bodies.\textsuperscript{78}

The salaries and expense allowances of parish assessors are enumerated in state statutes.\textsuperscript{79} Each taxing body in a parish contributes a pro-rata share to payment of the assessor’s salary and expenses in proportion to their percentage of the total \textit{ad valorem} tax collection of the parish. The sheriff remits the amounts due directly to the assessor from the first taxes collected each year.\textsuperscript{80}

Some relief from payment of the assessor’s office expenses is afforded to the parish governing body in those parishes where the assessor has availed himself of the prerogative to finance his office by means of a millage levied on the assessed valuation of all property on the tax rolls of a statutorily created “Assessment District.”\textsuperscript{81}

\textbf{F. Obligation to Provide Quarters for Court and Parish Officers, Courthouse, and a Jail}

Parish governing bodies must provide “a suitable building” and requisite furniture and equipment for the district and circuit courts, as

\textsuperscript{71} La. R.S. 18:59(8), (F) (Supp. 1990).
\textsuperscript{72} La. R.S. 18:59(1) (Supp. 1990).
\textsuperscript{73} La. R.S. 18:59.2 (Supp. 1990).
\textsuperscript{74} La. R.S. 18:192 (Supp. 1990).
\textsuperscript{75} La. R.S. 18:64 (1979).
\textsuperscript{76} La. R.S. 18:423(E) (Supp. 1990).
\textsuperscript{78} Id.
well as for the clerk of court, the sheriff, and the assessor, plus "necessary heat and illumination" for such quarters.\textsuperscript{82} This mandate does not specifically extend to provision of air-conditioning, which is now the norm for all parish offices. Each parish government is obligated to provide "a good and sufficient courthouse, with rooms for jurors, and a good and sufficient jail."\textsuperscript{83}

G. Obligation to Provide Care, Feeding, and Transportation of Prisoners

In 1976, Act 689 created law enforcement districts with boundaries coterminous with the boundaries of each parish, except Orleans, for the purpose of providing financing to parish sheriffs.\textsuperscript{84} An \textit{ad valorem} tax sufficient to produce the same revenue in 1977 that the sheriff's commission on \textit{ad valorem} taxes had produced in 1976 through 1977 was statutorily levied on all property appearing on the tax rolls of each parish from 1977 onward.\textsuperscript{85} All this was done without a vote of the people, the normal \textit{sine qua non} of imposition of an \textit{ad valorem} tax on parish residents, which is an explicit tribute to the political power of the Louisiana sheriffs. With voter approval, a sheriff can obtain additional millages or sales taxes for his law enforcement district.\textsuperscript{86}

With an independent financial base, the sheriffs would appear to be in a favorable position to relieve parish governing bodies of some of their mandated obligations. Alas, this has not happened. Instead, in the landmark case of \textit{Amiss v. Dumas},\textsuperscript{87} the first circuit held that while the sheriff, as warden of the parish jail, has the statutory duty of operating the parish jail and seeing to it that the prisoners are properly cared for, fed, and clothed,\textsuperscript{88} it is the financial obligation of the parish governing body to provide the food, clothing, medical treatment, supplies necessary for routine cleaning and daily maintenance, minor appliances, and even utensils necessary to prepare the prisoners' food.\textsuperscript{89}

Parish governments are responsible for the maintenance of all parish jails and must pass regulations for policing and governing those jails.\textsuperscript{90} Minimum state standards of health and decency, as well as prescribed building and maintenance requirements must be met by parish jails.\textsuperscript{91}

\begin{footnotes}
\item[82.] La. R.S. 33:4713 (1988).
\item[83.] La. R.S. 33:4715 (1988).
\item[84.] La. R.S. 33:9001 (Supp. 1990).
\item[85.] La. R.S. 33:9003(A) (1988).
\item[86.] Id.
\item[87.] 411 So. 2d 1137 (La. App. 1st Cir.), writ denied, 415 So. 2d 940 (1982).
\item[89.] \textit{Amiss v. Dumas}, 411 So. 2d at 1141 (citing La. R.S. 15:304 (1981)).
\end{footnotes}
A physician must be appointed to attend sick prisoners and his salary paid by parish governing bodies. The sheriff is allowed twelve and a half cents per day for each sick prisoner.

The third circuit court of appeal has held that the police jury—not the sheriff—is responsible for the hospital bills incurred by a prisoner who was severely beaten in the parish jail, even though the prisoner had been sentenced to the Department of Corrections and was neither awaiting trial nor serving a parish jail sentence.

For keeping and feeding parish prisoners in jail, parish governments must compensate the sheriffs not less than $3.50 per diem for each parish prisoner. The Louisiana Department of Corrections pays the sheriff $18.50 per day for each prisoner who has been convicted of a crime and sentenced to the state penitentiary, but is still held in the parish jail.

Finally, if the sheriff obtains approval of the district judge to keep up to four dogs for chasing fugitives, the sheriff may purchase such dogs at parish expense for up to $500.00 each plus pay up to $20.00 per month for each dog’s maintenance and training.

**H. Mandated Civil Defense Expenses**

Civil defense would appear to be an area of unique state responsibility. However, Louisiana parishes and municipalities are directed to establish a local civil defense organization and to employ a director of civil defense who is appointed by the state civil defense director upon recommendation of the parish or municipal governing authority.

Thus, without hyperbole one may conclude that the Louisiana statutes impose upon parish governing bodies mandated obligations: (a) to pay salaries of a host of employees whom they do not employ at pay rates that the governing bodies do not control; (b) to provide quarters and equipment for state officials, such as voter registrars, district attorneys, and judges who should be maintained at state expense; (c) to provide quarters and equipment for parish officers whose offices are established by the state constitution and whose financial resources exceed those of most parish governing bodies; and (d) to feed, clothe, house, and care for everyone from parish grand jurors, petit jurors, and prisoners to the sheriff’s bloodhounds.

---

IV. MANDATED EXPENSE CONFLICTS IN OTHER STATES

Local governments in other states have experienced mandated expense problems similar to those experienced by Louisiana parish governments. According to Congressional Quarterly's monthly journal of state and local government activity, efforts at coping with the problem "range from simply cataloging mandates to requiring estimates of their costs to mandatory reimbursement of mandates."98

In an effort to discover what mandates are on the books, South Carolina's Advisory Commission on Intergovernmental Relations produced a catalog of mandated expenses that revealed 695 current administrative and legislative mandates imposed on local governments by the state government of South Carolina.99

There are forty-two states that require any proposed legislation mandating action by local government to include a "fiscal note" analyzing the financial impact the proposal will have before the legislature acts on the bill.100 Fourteen states require the state to reimburse local government for the costs of mandates.101 For instance, under the Massachusetts mandate reimbursement program, any city, town, or group of ten taxpayers can challenge any state law or administrative regulation that costs the local government more money. Challenges are reviewed by the Massachusetts Division of Local Mandates who may order the state to reimburse the local government. If the local government is not reimbursed, it may petition the courts for permission not to comply with unfunded mandates.102 California has a similar process available to local governments—appeals for funding to the Commission on State Mandates and ultimate redress in court for claims denied by the Commission.103

During the 1989 Regular Session of the Louisiana legislature, Senator Jon D. Johnson of New Orleans proposed an amendment to article VI, section 14 of the Louisiana Constitution that provided generally that, with a few stated exceptions, "no law requiring increased expenditures for any purpose shall become effective within a political subdivision" until approved by ordinance or resolution adopted "by the governing authority of the affected political subdivision or until a law provides for a local source of revenue within the affected political subdivision for the purpose."104 Under Senator Johnson's proposed constitutional

99. Id. at 28.
100. Id. at 29.
101. Id.
102. Id. at 30.
103. Id.
amendment, any law increasing local expenditures would have been effective “only to the extent and amount” of the revenue that the local political subdivision was allowed to collect.\textsuperscript{105}

Senator Johnson’s bill was referred to the Senate Committee on Local and Municipal Affairs from which it was reported out favorably and passed in the Senate.\textsuperscript{106} When the bill was sent to the House of Representatives, Senator Johnson’s bill was referred to the House Governmental Affairs Committee, which deferred action on the bill, effectively killing it for the 1989 session.\textsuperscript{107} Given the salience of the mandated expense issue, one may confidently predict a similar measure will be proposed again in 1990.

V. General Law Requires Parish Budgets to Be Balanced and to Provide for Payment of Statutory Charges with Priority

A. General Revenue Laws

Louisiana Revised Statutes 33:2921 provides:

\textit{No police jury} nor any municipal corporation shall, in any one year, make any appropriation of, approve \textit{any claim against}, or make any expenditure from annual revenue for that year, if the appropriation, approved claim, or expenditure, separately or together with other appropriations, approved claims, or expenditures, is \textit{in excess of the estimated revenue of that year}.

Louisiana Revised Statutes 33:2922 provides:

A. The annual revenues of any political subdivision (which term shall mean those units of local government listed in Subsection 2 of Section 44 of Article VI of the Louisiana Constitution of 1974) shall be dedicated as follows: \textit{first, all statutory charges shall be paid from the respective funds upon which they are imposed; second, all charges for services rendered annually under time contracts; third, all necessary and usual charges provided for by ordinance or resolution}. Any excess of revenue above such statutory, necessary and usual charges may be applied to the payments of amounts due and unpaid out of the revenues of former years.

\textsuperscript{105} Id.


\textsuperscript{107} In the House, Senate Bill 55 was referred to the Committee on House and Governmental Affairs. Journal, La. H.R., 15th Reg. Sess., May 30, 1989 at 3. Minutes of the Committee on House and Governmental Affairs for June 8, 1989, show action on the bill deferred to be rescheduled, however, the bill was not rescheduled.
Police jurors are subject to fines and imprisonment for authorizing expenditures that exceed revenue. Moreover, police juries cannot incur debt without providing a means of paying principal and interest in the ordinance creating the debt. The police jury may borrow to meet a public emergency, but "repayment of sums borrowed shall be a fixed charge upon the revenues of the year next following the year in which the sums are borrowed." Parishes may anticipate revenues in any given year, borrow money to pay current expenses, and issue certificates of indebtedness to cover the loan. However, the amount borrowed by any parish cannot exceed the estimated income of the parish for that year as reflected by the annual budget previously adopted. Tax income collected after issuance of certificates of indebtedness must be dedicated and set aside for payment of outstanding certificates of indebtedness as they mature. No parish can incur debt, issue bonds or certificates of indebtedness, or do any type of borrowing without prior approval of the State Bond and Tax Board.

B. Local Government Budget Act

In 1980, Act 504 added the Louisiana Local Government Budget Act to the revised statutes. It applies inter alia to "a parish; . . . registrar of voters; independently elected parish offices, including the office of assessor, clerk of district court, coroner, district attorney, sheriff and judges, but only insofar as their judicial expense funds." The Budget Act expressly applies to political subdivisions operating under a home rule charter.

The Local Government Budget Act requires each parish governing body or official to prepare "a comprehensive budget presenting a complete financial plan for the ensuing fiscal year for the general fund and each special revenue fund." In the proposed budget the "total of proposed expenditures shall not exceed the total of estimated funds available for the ensuing fiscal year." In case there is any misunder-

108. La. R.S. 33:2925 (1988) says officers violating La. R.S. 33:2921-2924 are subject to a fine of up to $1,000.00 and/or imprisonment of up to one year.
113. Id.
standing, the Budget Act reiterates that when the proposed budget is presented for adoption "the adopted budget shall be balanced with approved expenditures not exceeding the total of estimated funds available."\textsuperscript{119}

If there is any lingering doubt that the Budget Act prohibits deficit spending it is dispelled by the provision concerned with the process of amending the budget: \textit{"In no event shall a budget amendment be adopted proposing expenditures which exceed the total estimated funds available for the fiscal year."}\textsuperscript{120}

In order to forestall deficit spending, the chief executive of the parish is obliged to notify the parish governing authority in writing when "actual expenditures plus projected expenditures for the remainder of the year, within a fund, are exceeding the estimated budgeted expenditures by five percent or more."\textsuperscript{121}

Finally, the Budget Act provides that "any person may commence a suit in a court of competent jurisdiction for the parish in which [the] . . . governing authority" of the parish "is domiciled for mandamus, injunctive, or declaratory relief to require compliance with the provisions of" the Act.\textsuperscript{122}

Thus, one can readily envision a situation in which the parish governing authority could be impaled on the horns of a statutory dilemma because:

(a) a parish official whose office expenses are statutory charges of the parish governing authority seeks a mandamus to compel payment; but

(b) an outraged taxpayer seeks an injunction pursuant to Louisiana Revised Statutes 39:1314 to prohibit the parish governing authority from paying the parish official's requested office expenses because to do so would result in a deficit.

One may confidently project that this scenario will occur sooner rather than later.

The prohibition against parish budget deficits embodied in Louisiana Revised Statutes 33:2921 has been part of Louisiana law since 1877,\textsuperscript{123} doubtless inspired by the fiscal excesses of the Reconstruction era. The Louisiana Supreme Court early in this century recognized the standing

\textsuperscript{119} La. R.S. 39:1308(B) (1989).
\textsuperscript{123} 1877 La. Acts No. 30, § 1 provided: "No police jury of any parish . . . shall make any appropriation of money for any year which appropriation separately, or together with any other appropriation or appropriations of the same year, shall be in excess of the actual revenue of said parish . . . for that year."
of taxpayers to restrain illegal parish expenditures in violation of the state statute.\textsuperscript{124}

Long before the constitution of 1974 prohibited seizure of public funds to satisfy a judgment,\textsuperscript{125} the Louisiana Supreme Court held that mandamus would not lie to compel Jefferson Parish to appropriate money to pay a judgment it owed to the City of Gretna where the parish budget would otherwise consume all estimated income for the year.\textsuperscript{126}

C. Statutory Charges Must Be Paid With Priority

Three cases have applied the provision of Louisiana Revised Statutes 39:2922 requiring that statutory charges be paid with preference over other "necessary and usual charges" of local government.

1. Penny v. Bowden

In \textit{Penny v. Bowden},\textsuperscript{127} a retired city policeman brought suit to compel the City of Alexandria to pay into the police pension fund amounts due under the state statute establishing the fund. Among other defenses raised by the city was a claim that "since its current operating expenses as budgeted and appropriated by the City Council meet or exceed its yearly revenues from various sources, there are no funds available to satisfy the deficit in the retirement fund."\textsuperscript{128}

The third circuit court of appeal reversed the trial court's decision for the City of Alexandria on the grounds that the current operating expenses budgeted and appropriated by the city council did not stand on an equal footing with the city's paramount statutory obligation to pay any deficit in the municipal policemen's retirement fund on an annual basis. Providing enhanced sanitation service, police protection, fire protection, and utility services by the city council was deemed discretionary by the court; however:

the duty to appropriate and pay any yearly deficit which occurs in the operation of the policemen's retirement fund is a statutory duty imposed by the will of the Legislature on the municipality. Our system of local government contemplates that statutory charges imposed on a municipality by the Legislature take precedence over a more permissive use of municipal funds, and it is settled that the State has the power to require a municipality

\textsuperscript{124} Murphy v. Police Jury, St. Mary Parish, 118 La. 401, 42 So. 979 (1907).
\textsuperscript{125} La. Const. Art. 12, § 10.
\textsuperscript{127} Penny v. Bowden, 199 So. 2d 345 (La. App. 3d Cir. 1967).
\textsuperscript{128} Id. at 351.
to set up and appropriate money to a pension system...  
We are of the opinion, therefore, that though in the City Coun-
cil's view the Council might better serve the inhabitants of the
city by allocating the proceeds from the ad valorem tax to other
functions, the will of the Legislature in this regard is supreme
and must be obeyed. 

As a matter of public policy, it is hard to justify the court of
appeal's thesis that policemen's rights to a particular level of pension
payments should prevail over the rights of the citizenry as a whole to
an adequate number of policemen to provide for public safety. Doubtless
a plebiscite on that ranking of priorities would result in a conclusion
different from the court's opinion in *Penny v. Bowden*, which appears
on its face to be the antithesis of the home rule power envisioned by
the 1974 Louisiana Constitution.

Providing sanitation is a basic raison d'etre for local government.
In the constellation of values espoused by the average citizen of Al-
exandria, one is constrained to believe that the city government's re-
sponsibility to maintain an adequate sewage system would rank
considerably ahead of a deficit in the police pension system as a concern.
Yet, under the *Bowden* rationale, the opposite result is sanctified.

2. *Citizens, Electors, and Taxpayers of Tangipahoa Parish v. Layrisson*

In *Citizens, Electors and Taxpayers v. Layrisson*, the plaintiff filed
suit against the Sheriff and the Police Jury of Tangipahoa Parish
to enjoin them from dedicating a portion of the parish's general fund
revenues for the next twenty years to cover the parish's share of the
cost of constructing a new jail pursuant to a statutory scheme whereby
the state sold the bonds to finance the jail, but the parish had to provide
thirty percent reimbursement of the bond debt. The court of appeal
upheld the dismissal of the sheriff as an improper party to the suit.

Regarding the suit against the police jury, the court of appeal found
that the trial court was correct in enjoining the Tangipahoa Parish Police
Jury from dedicating excess general revenue funds for twenty years
because Louisiana Revised Statutes 39:2922 "prohibits dedication of
excess general fund revenues, when available, for more than ten years." The court then dealt with appellants' contention that building a jail was

129. Citing State ex rel. Sewerage & Water Bd. v. Comm'n Council of New Orleans,
151 La. 938, 92 So. 392 (1922).
130. 199 So. 2d at 351.
132. Id. at 616.
either a "statutory charge" or a "necessary and usual charge" as defined by Louisiana Revised Statutes 33:2922, thus granting the expenditure priority in funding. While admitting that parish governing authorities have a statutorily imposed duty to provide a "good and sufficient" courthouse and jail, the Layrisson court concluded that expenses of providing a jail were not a "statutory charge" under Article 2922, as was the duty to deposit money in the police pension fund in Bowden, because unlike the Bowden obligation it did not involve "a determinable sum to be paid." It appears that the Layrisson court was incorrect in failing to find that the expense of providing a jail was at least a "necessary and usual charge" of the parish budget. At any rate, Layrisson firmly established that the strictures of Article 2922 against pledging parish general fund revenues to pay non-priority items will be judicially enforced.


In 1986, the St. Landry Parish Police Jury filed suit against fifty-four elected or appointed parish officials seeking a judgment: (a) declaring that a balanced budget proposed by the police jury that cut or eliminated allocations for the defendants' operations was in compliance with state law and (b) preventing enforcement of defendants' budgetary requests. The parish court reporters and clerk of court subsequently brought mandamus actions against the police jury seeking funding of salaries and expenditures; the three cases were consolidated. Anticipated expenses for the 1987 fiscal year were $2,011,879.00, while anticipated revenues were $1,602,254.00. Therefore, the St. Landry Parish Police Jury was facing a potential deficit of $409,625.00 in 1987. In order to balance its budget, the police jury reduced all mandated expense items twenty-two percent across the board. Realizing that these

134. 449 So. 2d at 617.
135. St. Landry Parish Police Jury v. Clerk of Court, 536 So. 2d 1283, 1284 (La. App. 3d Cir. 1988), writ denied, 537 So. 2d 1172 (La. 1989). Among the defendants were the St. Landry Parish Clerk of Court, the judges of the twenty-seventh judicial district; the Coroner; the parish justices of the peace; the parish constable; the District Attorney of the twenty-seventh judicial district; city court judges, marshals and clerks, the twenty-seventh judicial district court reporters, the parish registrar of voters, the sheriff, the parish county agent, and a retired pensioner who was former judge of the Ward 1 Court.
items were statutorily mandated, the police jury sought a declaratory
judgment asking the court in essence to rule that its single obligation
to submit a balanced budget under Louisiana Revised Statutes 39:1304
predominated over its multiple statutory obligations to pay expenses.
However, the district court neatly sidestepped the issue by finding:

(1) $697,827.00 of the budgeted expenses of the police jury were
not statutorily mandated;
(2) Therefore, the police jury had no deficit, but a surplus of
anticipated revenues over anticipated mandatory expenses of
$288,202.00;
(3) The defendant parish officials were entitled to judgment
granting their exceptions of prematurity and no cause of action;
and
(4) The St. Landry Parish Clerk of Court and Court Reporters
were entitled to a writ of mandamus ordering the police jury
to pay their expense claims.138

Thus, by failing to find a deficit, the district court completely avoided
grappling with the central issue raised by the police jury's suit: how
does one reconcile the statutory command to avoid a budget deficit with
multiple statutory commands to pay expenses that create a deficit sit-
tuation.

Faced with the same issue, the third circuit court of appeal approved
the circumvention crafted by the district court even unto its verbiage
by adopting that part of the trial court opinion sustaining the St. Landry
Parish officials' exceptions of prematurity and no cause of action. In
its opinion, the trial court adhered to the distinction first enunciated in
Bowden and Layrisson between "statutory charges" and "general stat-
utory duties," saying:

Under these cases, a "statutory charge," within the meaning of
R.S. 33:2922 is one fixed by statute at a specified or determinable
sum to be paid and is distinguished from a general statutory
duty upon a police jury to provide a courthouse and jail and
other services and facilities.139

Employing this narrow definition of "statutory charges," the court
of appeal affirmed the trial court's factual finding that the following
parish government expenses were not mandated statutory charges:

<table>
<thead>
<tr>
<th>GENERAL ADMINISTRATION:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Salaries</td>
<td>$105,424.00</td>
</tr>
<tr>
<td>2. Police Jury Office Expenses</td>
<td>25,000.00</td>
</tr>
</tbody>
</table>

138. 536 So. 2d at 1285.
139. Id. at 1286.
Numerous logical problems arise when one parses the analysis of parish expenses in the *St. Landry Parish* case. First and foremost, how do the court reporters, the clerk of court, and the other recipients of statutory charges function absent a courthouse where the utilities are on and the grass is cut? Yet, the *St. Landry Parish* court precludes payment for these items until "statutory charges," such as the court reporters' transcript fees and salaries, are paid. This is true even if there is no money left to pay the light bill for the courthouse. Paradox is not usually the desired goal of law, but surely it is paradoxical to envision the fully paid court reporters typing transcripts in the dark, or the clerk of court walking through knee high grass to get to his office from the parking lot. Unfortunately, this is the *reductio ad absurdem* of the court's logic.

Second, the logic of the *St. Landry Parish* case is inscrutable when it finds the clerk of court entitled to a writ of mandamus presumably because his claim for expenses of his office were "statutory charges" entitled to payment with preference over, *inter alia*, the fire insurance premiums for the courthouse. How can this be when the clerk's claim for expenses arises from a statute that does not establish a "specified or determinable sum" to be paid to the clerk, but only commands the parish governing body to provide "all necessary office furniture, equipment and record books" required by the clerk.\(^{141}\) That statutory command is

---

140. Id. at 1286-87.
no more "specified or determinable" than the statutory mandate to provide "a good and sufficient" courthouse and jail that the Layrisson court had denied status as a statutory charge because it did not "involve a determinable sum to be paid."\(^\text{142}\)

The third glaring defect in the reasoning of the *St. Landry Parish* case centers around its denial of mandatory status to insurance premiums and other payments for statutory entitlements of parish employees. Motor vehicles owned by the parish governing body must be covered by liability insurance to be driven in this state.\(^\text{143}\) Surely, automobile or truck liability premiums "involve a determinable sum to be paid." Public employees must be provided workmen's compensation either by insurance or a self-insurance fund.\(^\text{144}\) How can the parish governing body meet its statutory obligations to provide a courthouse and quarters for the assessor, the clerk, the district attorney, and the sheriff if the courthouse burns down and there are no funds to rebuild it? Practically speaking, fire insurance on the courthouse and the jail is a *sine qua non* of provision of those facilities. Moreover, payments of unemployment compensation taxes are not optional, but mandatory under general law.\(^\text{145}\)

A fourth defect in the reasoning of the *St. Landry Parish* case is its blithe dismissal of the police jury's contention that maintenance of the parish governing body's offices, as such, are a *sine qua non* of the very existence of the parish as a political body corporate. If nothing else, the police jury must maintain an office at the parish seat for the parish treasurer who must be appointed by the parish governing body.\(^\text{146}\) The parish treasurer must maintain books of account showing all receipts and expenditures of the parish and collect all debts due the parish.\(^\text{147}\) Persons having claims against the parish must present them to the treasurer who shall keep records thereof in "a well bound book."\(^\text{148}\) *A fortiori*, there must be a parish office wherein such claims may be presented. Without parish offices, where would citizens apply for and receive liquor permits, building permits, subdivision licenses, and other licenses that are issued by the parish for fees flowing into the parish treasury? Existence of parish government without parish offices is an oxymoron.

For instance, the police jury is obligated to meet and appoint officers on the second Monday in January after their election.\footnote{149} Surely, this meeting is not to be held in the street. Without belaboring the obvious, the \textit{St. Landry Parish} case is flatly wrong in holding that expenses of maintaining parish offices are not statutory charges.

The fifth major error in the \textit{St. Landry Parish} case lies in the failure of the court to recognize the correctness of the police jury's position that the salaries of its members were expenses priming even statutory charges because they were mandated by the Louisiana Constitution of 1974. Article VI, section 12 of the constitution provides: "Compensation of a local official shall not be reduced during the term for which he is elected." But the third circuit dodged the issue by saying that "even if we consider the salaries of the police jurors as being mandated by the Constitution during their respective terms of office, there is still an excess of revenues over other statutory charges."\footnote{150}

Faced with the dilemma created by a parish government without a courthouse, the third circuit finally took refuge in the faulty logic of its earlier analysis in \textit{Penny v. Bowden} as follows:

As to the other items which the Exceptors contend are not statutory charges, the Police Jury argues that there is general statutory basis for all of these items. For instance, the Police Jury argues that R.S. 33:4713 requires the Police Jury to bear the expenses of suitable buildings, furniture and equipment for the offices of the district courts and the clerks of court, tax collectors, assessors, etc. Thus, the Police Jury argues that all of these expenses shown above under General Administration and General Government Buildings are statutory charges. The answer to this argument is clearly set forth in the quotation from \textit{Penny v. Bowden}, supra. While all of these expenses may be for usual and customary facilities and services, they are not statutory charges and cannot be paid by the Police Jury until all statutory charges have been satisfied.\footnote{151}

Ritualistic incantation of \textit{Penny v. Bowden} does not solve the problem raised when various mandated expense beneficiaries claim "statutory charges" that, if paid, will deprive the parish governing authority of its ability to provide a courthouse, parish offices, and its basic accoutrements—all necessary to a seat of parish government. Proper analysis in the \textit{St. Landry Parish} case would have required the court of appeal to provide rules for dealing with that fundamental dilemma—

\footnote{150} St. Landry Parish Police Jury v. Clerk of Court, 536 So. 2d 1283, 1287, writ denied, 537 So. 2d 1172 (1989). 
\footnote{151} Id.
which has not at this writing been dealt with by a Louisiana appellate court.

Ironically, the *St. Landry Parish* case concluded by affirming the power of the St. Landry Parish Clerk of Court and Court Reporters to bring a petition for a writ of mandamus against the police jury to compel payment of their mandated expense entitlements. In so doing, the court cited Louisiana Revised Statutes 39:1314, the provision of the Local Government Budget Act that permits "any person" to sue a governing authority seeking mandamus, injunctive, or declaratory relief to require compliance with its provisions. Unfortunately, the court failed to suggest how it would reconcile the future conflict that is bound to occur when an official seeks mandamus for payment of his mandated expenses that create a budget deficit, and an interested citizen seeks to enjoin the parish government from paying those expenses and creating a deficit forbidden by the Local Government Budget Act.

Thus, at this juncture, given the denial of writs by the supreme court, the *St. Landry Parish* case answered some questions, but begged the most important questions. The third circuit opinion establishes that a number of expenses that are certainly necessary and proper to the conduct of parish government, such as police juror’s salaries and payment of utilities for the courthouse building, are not statutorily mandated. Neither the trial court nor the court of appeal discussed the obvious *reductio ad absurdem* presented by their analysis, i.e., how does one maintain functional parish offices without a seat of parish government. Put another way: how do a judge and court reporters function without the lights on in the courthouse.

The police jury sought to raise exactly that issue in its declaratory judgment suit and suggested that essential functions of government can only be carried out in a courthouse where the police jury has kept the lights on by dint of paying the parish’s light bill. As courts are accustomed to do with unresolved legal dilemmas, the court in the *St. Landry Parish* case avoided the issue by simply failing to mention it. But just as Banquo’s ghost, it will not go away. When the lights were turned off recently in the Tangipahoa Parish courthouse because the parish council could not pay the bill, it was a harbinger of things to come.

Even the tool of mandamus used by the clerk of court in the *St. Landry Parish* case will not be available to some future clerk who seeks to compel parish government to get the lights turned on if payment of the light bill would infringe upon money budgeted for payment of statutorily mandated expenses; the light bill is not a mandated expense under the *St. Landry Parish* case.

---

152. Id. at 1289.
153. See supra note 3.
Nor, apparently, will mandamus lie to compel performance of a ministerial duty that it is impossible to perform. Thus, one supposes that a parish governing body cannot be ordered to pay even statutorily mandated expenses, for example, court reporter's salaries, if there is no money left in the parish bank account.

Perhaps such lingering realities were uppermost in the minds of the Louisiana Supreme Court justices when they issued their opinion in Reed v. Washington Parish Police Jury.154

VI. THE RULE OF REED V. WASHINGTON PARISH POLICE JURY—A DISTRICT ATTORNEY'S REQUEST FOR PAYMENT OF STATUTORY CHARGES MUST BE REASONABLE

Unlike the court of appeal in the St. Landry Parish case, the Louisiana Supreme Court in Reed v. Washington Parish Police Jury provided a glimmer of hope to embattled parish governing authorities across the state by establishing a rule that the budget requests of officials entitled to appropriations of statutorily mandated expenses must be reasonable in kind and amount. The case arose out of a situation in which the district attorney filed a mandamus action to compel the police jury to reimburse his office for 1986 fiscal year operational expenses out of the parish general fund. Walter Reed's budget request was $145,025.00, but the police jury budgeted only $42,246.12 for his office. Unlike the St. Landry Parish Police Jury, the Washington Parish Police Jury "did not contend it lacked sufficient funds to pay its statutorily mandated expenses."155 The trial court granted the district attorney's request but the court of appeal reversed.156

As the supreme court framed it, the case required the court to reconcile an apparent contradiction of terms within Louisiana Revised Statutes 16:6, which provides:

The district attorneys of this state, the parish of Orleans excepted, shall be entitled to an expense allowance for salaries of stenographers, clerks and secretaries, and salaries or charges for special officers, investigators and other employees and an expense allowance for stationery forms, telephone, transportation, travel, postage, hotel and other expenses incurred in the discharge of their official duties.

The police juries of the various parishes of the state of Louisiana are hereby authorized to pay from their general fund any of the items of expense, as provided for herein, incurred

154. 518 So. 2d 1044 (La. 1988).
155. Id. at 1045.
by the several district attorneys of this state when acting in their official capacities.

Thus, the supreme court had to decide whether the mandatory "shall" or the precatory "are hereby authorized" expressed the true legislative intent. The supreme court held "La. R.S. 16:6 places a mandatory duty on the police jury to fund the . . . expenses of the district attorney's office." In order to reach its conclusion, the supreme court had to dispose of several troublesome issues that cut to the core of the political theory underlying the whole mandated expense problem.

A. Reconciling Mandatory and Permissive Language in a Statutory Mandate

Initially, the Washington Parish Police Jury pointed out that, while the first paragraph of Louisiana Revised Statutes 16:6 provides for a mandatory expense allowance for district attorneys, the second paragraph merely states that the police jury is "authorized" to pay the allowance. Therefore, the police jury argued that payment of the expenses from the parish general fund, rather than from some other source, was permissive not mandatory. It is important to note how the court dealt with the police jury's argument because the myriad of laws creating statutory charges often use mandatory and permissive terms in the same statute.

The supreme court solved this particular semantic puzzle by referring to basic principles of statutory construction. The court said:

It is a fundamental principle of statutory construction that statutes must be interpreted in their entirety. The meaning of a word in a statute must be determined in light of the statute as a whole. There is a presumption that the legislature enacted 16:6 for some definite purpose and we must endeavor to construe it so as to give it effect and accomplish the purpose for which it was enacted. When a statute is susceptible of two interpretations, a court must choose the one which affords a reasonable and practical effect to the entire act over one which renders part of it meaningless or useless.

Reviewing the history of Louisiana Revised Statutes 16:6, the supreme court noted that beginning in 1938 when the legislature first enacted the statute and continuing to the present day, the phrase "shall be entitled to an expense allowance" appeared in every version and always provided the district attorney with a mandatory expense allowance. Because it would be senseless to create a mandatory expense
allowance for the district attorney on one hand and allow the parish
governing authority not to pay it on the other hand, the supreme court
concluded that the legislature had another purpose in mind when it used
the permissive word “authorized” in the second paragraph of Louisiana
Revised Statutes 16:6.

The court defined the choice of the word “authorized” in the second
paragraph of section 6 to be:

[N]othing more than a legislative recognition of the principle
that a police jury is a creature of the state and possesses only
those powers conferred by the state’s constitution and sta-
tutes.

In reference to the delegation doctrine, this court stated in
State v. Jordan: 161

Parishes and municipal corporations of this state are vested
with no powers, and possess no authority, except such as
are conferred upon, or delegated to, them by the Consti-
tution and statutes.

Thus, unless the legislature vested the police jury with
authority to act, it would be powerless to act. 162

In essence, the supreme court concluded that the state created the
police juries and can impose upon them statutory charges even through
the use of careless language.

In a brief concurrence, Justice Dennis found the Reed majority’s
analysis of local governmental power deficient when he suggested:

Although the majority is undoubtedly correct in stating that
at the time of the enactment of La. R.S. 16:6 most local
governments were “creatures of the state” and therefore needed
legislative authority to perform certain functions, it must be kept
in mind that under the 1974 Louisiana Constitution a home rule
charter government possesses, in affairs of local concern, powers
which within its jurisdiction are as broad as that of the state,
except when limited by the constitution, laws permitted by the
constitution or its own home rule charter. 163

At least insofar as the Reed opinion affects the 15 home rule charter
parishes, Justice Dennis’ caveat appears well taken.

160. Id., citing La. Const. Art. VI, § 7(A); Rollins Envtl. Serv. v. Iberville Parish,
371 So. 2d 1127, 1131 (La. 1979).
161. 207 La. 78, 84, 20 So. 2d 543, 545 (1944).
162. 518 So. 2d 1044, 1046 (La. 1988).
163. Id. at 1049 (citing Francis v. Morial, 455 So. 2d 1168, 1171 (La. 1984)); City
B. Legislative Pattern of Shifting the Burden of a District Attorney’s Expenses to the Parish

The legislative history of Louisiana Revised Statutes 16:6 illustrates graphically a progressive shifting of the burden of financing the district attorney's operating expenses from the state legislature to the parish governing authorities. Before 1959, the legislature bore the primary responsibility for funding the district attorney's office and Louisiana Revised Statutes 16:6 provided for a specific mandatory amount to be paid by the state for the district attorney's expenses.\(^{164}\) In 1959, the legislature amended Louisiana Revised Statutes 16:6 to “authorize” the parish police juries “to supplement and pay from their general fund” district attorney’s expenses exceeding the state funded expense allowance, which was then up to $5,000.00.\(^{165}\)

The camel's nose was now in the tent. In 1973 the legislature absolved the state from any responsibility for the district attorney’s expenses while leaving the district attorney's mandatory power to compel payment of his expenses intact.\(^{166}\) Taken together with the 1959 “authorization” of the police jury to pay the district attorney’s office expenses, the legislature's abdication left only parish governing bodies to bear the burden of paying for the district attorney’s operation.

Logically, this historical development supported the supreme court’s holding in Reed that “when the state legislature abandoned its fiscal responsibility, it intended to place the entire burden for funding the 16:6 expense on the police jury.”\(^{167}\)

Having dealt with the semantic problems inherent in the phraseology of Louisiana Revised Statutes 16:6 and with the historical development of the statute, the Reed court next turned its attention to a thornier problem: was the parish general fund supplanted as the primary source of funding for the district attorney’s office expenses by the statutes creating special funds that the district attorney could use for that purpose.

C. Additional Sources of Funding the District Attorney’s Office

The Washington Parish Police Jury raised a troublesome issue in Reed when it claimed that the legislature evidenced a desire to transfer the burden of funding the district attorney’s office to funds other than

\(^{164}\) In 1938 the amount was up to $1,200.00. 1938 La. Acts No. 20, §§ 1, 2. In 1948 the amount was increased to $2,500.00. 1948 La. Acts No. 488, § 2. In 1959, the legislature increased the expense allowance payable by the state to $5,000.00. 1959 La. Acts No. 113, § 17.

\(^{165}\) 1959. La. Acts No. 113, § 17.


\(^{167}\) 518 So. 2d 1044, 1047 (La. 1988).
the parish general fund by statutorily creating numerous special funds that could be used by the district attorney to pay his expenses.

While Reed’s mandamus suit was pending he had paid the Louisiana Revised Statutes 16:6 expenses from three other sources: the criminal court fund, the district attorney’s six percent and special funds, and the district attorney’s fee fund.\footnote{168}

Reed claimed that the police jury was constitutionally compelled to fund the district attorney’s office because the district attorney exercises state police power, which cannot be abridged by local government.\footnote{169} The supreme court deferred a ruling on this claim because it decided that the police jury was statutorily required to fund the district attorney’s office under Louisiana Revised Statutes 16:6, but it could not avoid ruling on the police jury’s contention that the special funds Reed had used should be the primary source rather than a secondary source of the district attorney’s funding.

The supreme court once again harkened back to basic rules of statutory construction by observing that it must construe Louisiana Revised Statutes 16:6 and all other laws providing funding for the district attorney \textit{in pari materia} to seek overall harmony of the funding provisions with each other.\footnote{170}

Provisions that the court had to harmonize were:

1. The “Criminal Court Fund” (CCF) created by Louisiana Revised Statutes 15:571.11 made up of fines and forfeitures collected by the district courts for violations of state law or parish ordinances,\footnote{171} which can be used to pay the district attorney’s office expenses;\footnote{172}

2. The “Twelve Percent Fund” of the district attorney established by Louisiana Revised Statutes 15:571.11 (A) (2) out of fines and forfeitures paid for violations of municipal ordinances;\footnote{173}

3. The fees collected by the district attorney for prosecuting worthless check cases, which were allocated to defray the district

\footnote{169. La. Const. Art. VI, § 9.}
\footnote{170. 518 So. 2d at 1047.}
\footnote{171. Criminal court fund (CCF) monies can be used by district attorneys, district judges, and sheriffs to defray a variety of criminal court expenses. La. R.S. 15:571.11 (A)(1)(a), (b) (1981 and Supp. 1990).}
\footnote{172. With the concurrence of the district judge, the district attorney can use CCF revenues to pay his office expenses including those payable by the parish under La. R.S. 16:6 (1982). 518 So. 2d 1044, 1048 (La. 1988).}
\footnote{173. Originally the district attorney received six percent of this fund, but 1977 La. Acts No. 591, § 2, increased the amount remitted to the district attorney to twelve percent.}
attorney's office expenses by Louisiana Revised Statutes 16:15; and

(4) The special account added by the legislature in 1986 to Louisiana Revised Statutes 16:16 composed of $10.00 court costs imposed against every criminal defendant who is convicted after trial, pleads guilty, or forfeits a bond.\(^{174}\)

The police jury in Reed could logically argue that expense allocations to the district attorney from the criminal court fund should be offset against the police jury's obligation to pay the district attorney's expenses from the parish general fund under Louisiana Revised Statutes 16:6 because one-half of any surplus remaining in the CCF at the end of the year goes automatically into the parish general fund.\(^{175}\) Thus, payment of the district attorney's expenses either pursuant to the Louisiana Revised Statutes 16:6 mandate (where payment was directly from the general fund) or out of the criminal court fund (where payment reduced any surplus going into the general fund) resulted in a diminution of the parish general fund.

However, the supreme court spurned this line of argument. Instead, the Reed court decided that the legislature could not have intended an office with such an important constitutional function as the district attorney to depend on fluctuating and uncertain sources of revenue such as the CCF for funding.\(^{176}\) Consequently, the supreme court deemed the CCF, the twelve percent fund, the worthless check fees fund, and the $10.00 court cost fund "to be nothing more than a recognition by the legislature of the increased costs of operating the district attorney's office.'\(^{177}\) Rather than supplanting Louisiana Revised Statutes 16:6 as the primary source of funding for the district attorney's expenses, the Reed court said these alternative funds were designed to supplement general fund revenues payable under Louisiana Revised Statutes 16:6. Failure of the litigants in Reed to engage in "cooperative intergovernmental relations" to reconcile their differences over the proper role to be played by each statutory source of funding in paying the district attorney's office expenses created a problem, the court noted, that addresses itself to the legislature or to the political arena for resolution.\(^{178}\)

Thus, the supreme court neatly sidestepped the political thicket inherent in resolving the police jury's claim that the availability of alternate funding sources should be a factor in assessing the responsibility


\(^{175}\) 1986 La. Acts No. 293, § 1.


\(^{177}\) 518 So. 2d 1044, 1048 (La. 1988).

\(^{178}\) Id.

\(^{179}\) Id. at 1049.
to fund the expenses of the district attorney. However, the court did not shrink from the task of providing the police juries with some means of imposing a finite limit upon the potentially infinite demands of the state's district attorneys. The court did so by saying:

_We hold ... that the police jury's duty to fund the expenses is limited by the standard of reasonableness._ This limitation comports with traditional interpretations of the doctrine of inherent powers afforded the judicial branch of government and satisfies the system of checks and balances underpinning a republican form of government with its separation of powers. Accordingly, the budget request of the district attorney _must be legitimate in that it is related to the function of his office. Also it must be quantitatively reasonable._  

The court went on to affirm the district court's finding that district attorney Reed's funding request was reasonable.

So, at last the Reed court has given the parish government what they have not heretofore enjoyed—some legal basis for opposing unreasonable budget requests for statutorily mandated expenses. Reduction of unreasonable requests for mandated expenses by parish officials may be opposed either on the grounds that the expenses are: (a) not legitimately related to the function of the requesting official's office, or (b) unreasonable in amount. Either ground presupposes the propriety of an inquiry into the factual basis of the budget request and the exercise of some discretion by the parish governing authority.

Requests for new carpets and office furniture may be unreasonable in a fiscal climate in which parish governments are hard-pressed to feed prisoners in the parish jail. A clerk of court's request for a new computer system may be unreasonable if the present computer system is adequately handling the volume of litigation in the parish. A judge's grant of a twenty percent salary increase to his court reporter may be unreasonable if court reporters in similar judicial districts, or within his own judicial district, are paid far less. Doubtless the determination of what is a reasonable request for statutorily mandated expenses will be made by triers of fact on a case by case basis. It is safe to predict that parish governing authorities will regularly subject budget requests of parish officials to close scrutiny to determine whether or not they pass muster under the dual test of reasonableness enunciated in Reed.

---

180. Id. (emphasis added).
181. Under La. R.S. 13:961(E) (1983), judges can set their court reporters' salaries without approval of or consultation with the parish governing body who must pay the salary set by the judge out of the parish general fund.
In Post v. Madison Parish Police Jury, the second circuit court of appeal, inter alia, sustained the police jury’s exception of prematurity to the clerk of court’s suit for a writ of mandamus seeking to order the police jury to pay for a computer for his office. The court found the clerk had not made a specific budget request for a new computer “with specific prices” to the police jury. Absent a specific proposal the police jury obviously could not determine the reasonableness of the request as it is entitled to do under Reed.

The Post court also held that the trial court had improperly issued a mandamus awarding deputy clerks $20.00 a day for court attendance rather than the statutory minimum of $8.00 a day which the police jury could choose under Louisiana Revised Statutes 13:846A(2). The court of appeal said: “Mandamus awarding a certain amount of money is inappropriate when the governing body by statute has discretion to pay an amount within a specified range.”

Connick v. City of New Orleans held that Reed v. Wasington Parish is inapplicable to the District Attorney of Orleans Parish because Louisiana Revised Statutes 16:6 which Reed interpreted applies to “[t]he District Attorneys of this State, the Parish of Orleans excepted . . . .”

VII. WHOSE MANDATED EXPENSES ARE PAID FIRST?

Suppose that all budget requests by parish officials are reasonable and yet the sum of these requests still exceed the resources of the parish fisc. As our inquiry continues, we encounter that grim prospect and undertake to suggest some possible answers.

A. Concursus as a Means of Coping with the Mandated Expenses Dilemma—The Tangipahoa Parish Experience

On July 19, 1988, the Tangipahoa Parish Council filed a petition for concursus making defendants the parish sheriff, assessor, coroner, constables, justices of the peace, registrar of voters, clerk of court, as well as the judges of the twenty-first judicial district and their court reporters. Pursuant to the concursus, the general fund revenues of the parish, excluding dedicated funds, were deposited into the registry of the court, and all defendants were ordered to assert their claims contradictorily against the fund. The State of Louisiana intervened in

182. 554 So. 2d 198, 200 (La. App. 2d Cir. 1989).
183. Id. at 201.
184. 543 So. 2d 66 (La. App. 4th Cir. 1989).
the concursus proceeding to assert its right to repayment of money the
state loaned to Tangipahoa Parish to build a jail.186

On August 16, 1988, the district attorney of the twenty-first judicial
district filed for reimbursement for employee life and health insurance
premiums, workmen’s compensation insurance premiums, and telephone
expenses previously paid by the district attorney from his statutory special
expense funds on the grounds that Louisiana Revised Statutes 16:6 and
Reed v. Washington Parish Police Jury187 required payment of these
items from the parish general fund.188

On September 9, 1988, the Tangipahoa Parish Council obtained an
order to pay the telephone bills, inter alia, of the clerk of court, the
sheriff's office, and the tax assessor's office.189

Again on September 29, 1988, the Tangipahoa Parish Council, the
parish president, the sheriff, and the coroner petitioned the court for
authority to pay various charges against the general fund that are illus-
trative of the minute expenses that the parish governments finance
for other independent constitutional officers over whom the parish gov-

germent enjoys little or no budgetary control. Included in the expenses
were postage stamps, phone bills, employee salaries, state and federal
employee withholding taxes, a judge's retirement payments, employer's
unemployment contributions, and utilities for the jail.

Some items designated as “flow-through expenses” are funded in
part by revenues deposited into the parish general fund by individuals,
other parish agencies, or state agencies. The expenses are then paid out
of the general fund for such items as contributions to the Louisiana
Parochial Employees retirement system or contributions to local fire
departments from proceeds of the state tax on fire insurance premiums.190

After all Tangipahoa Parish general funds for 1988 were disbursed
pursuant to various orders issued by a judge ad hoc, who heard the
claims of the competing parties in open court, the judge dismissed the
concursus proceeding on January 18, 1989.191

Given the desperate financial circumstances of most Louisiana parish
governments, it may safely be asserted that the Tangipahoa Parish

186. Id.
187. 518 So. 2d 1044 (La. 1988).
188. Tangipahoa Parish Council v. Joseph E. Anzalone, Jr., No. 87-115, La. 21st
J.D.C. (Jan. 18, 1989).
189. Id.
190. Id. See La. R.S. 22:1583 (1978 and Supp. 1990), which levies a 2% tax on fire
insurance premiums, the proceeds of which are then sent to the parish government for
distribution to the various fire departments in each parish pursuant to La. R.S. 22:1585
A concursus proceeding is a harbinger of things to come across the State of Louisiana. More and more parish governments finding themselves impaled on the horns of an unsolvable financial dilemma will eschew refereeing the clash for funds among warring parish fiefdoms and simply deposit the whole mess in the lap of the judiciary to sort out the priority of competing claims to the parish general fund. Because local judges will be urging their own claims to statutorily mandated expenses from the general fund, *ad hoc* judges from outside the involved judicial district will necessarily be called upon to determine whose claims take priority.

Use of the concursus device by beleaguered parish governments will prevent the courts from deftly sidestepping, as they have done so far, the critical issue in the whole mandated expense imbroglio: how will the competing claims of the various mandated expense recipients be reconciled when the total amount of the mandated expense claims exceeds the parish general fund revenues.

B. Ranking of Competing Mandated Expense Claims When Claims Exceed General Fund Revenues

Four possible approaches to reconciling the conflicting mandated expense claims appear to be:

(1) Reduce all claims dollar for dollar on a pro-rata basis. This approach would require an initial finding that each budgetary request is reasonable under the *Reed v. Washington Parish* standard, but it has the considerable virtue of simplicity.

(2) Distinguish among the competing claimants by giving priority to claims of constitutional officers over statutory officers. This approach does not help much because most of the claimants hold constitutionally created positions.

(3) Distinguish claims on the basis of the verbiage used in the particular statute granting each claimant mandated expenses. Some statutes specify a specific dollar amount to be paid, for example, $9,500.00 per annum to the district attorney of the twenty-first judicial district, while other statutes specify only a general category of expenses that “shall be” paid by the parish governments, for example, for “all necessary office furniture, equipment, and record books” requested by the clerk of court.

One could plausibly argue that the specific amounts set by statute should be paid before general categories of mandated expenses, the reasonableness of which is subject to scrutiny under *Reed*.

---

Moreover, salaries of most public officials may not be reduced during their term of office.\footnote{194} (4) Finally, the courts may choose to distinguish expenses that are a \textit{sine qua non} of parish government and cannot be financed other than by general fund revenues or new taxes, for example, providing a courthouse building, from those that can presently be financed by using available alternative means (such as increased “user fees” to be charged by the clerk of court) or alternative statutory funds provided to the officer claiming mandated expenses (such as the statutory judicial expense funds available to the district judges,\footnote{195} or the district attorney’s statutory twelve per cent fund).\footnote{196} The court could then give a preferential claim against the general fund to those expenses that cannot be paid from any other existing alternative revenue source other than additional taxes. It must be noted that the Louisiana Supreme Court has rejected such an approach when Washington Parish proposed that the district attorney’s office expenses be paid first out of the criminal court fund\footnote{197} and the residual twelve percent fund before resorting to the parish general fund. While recognizing the district attorney’s need for the criminal court fund and the twelve percent fund to meet the increased cost of operating the district attorney’s office, the supreme court said: “These additional funds were never intended to wrest the primary responsibility for funding the 16:6 expenses from the shoulders of the legislative branch of government.”\footnote{198}

At this juncture, the most feasible method of reconciling mandated expense claims that exceed the parish general fund would combine approaches one and three. Thus, it is suggested that each mandated expense claim should be reduced proportionately so as to pare enough from each claim to permit all mandated expenses to be paid out of the parish general fund. However, all amounts specified by statute within each category should be paid before any item described generally is paid. For example, the portion of the district attorney’s salary required by statute to be paid by the parish must be paid before the district attorney’s office supplies are provided.

\footnote{194} See, e.g., La. Const. art. V, § 31, which provides: “The salary and retirement benefits of a . . . district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office.”
\footnote{198} 518 So. 2d 1044, 1048-49 (La. 1988).
VIII. DOES THE LOUISIANA CONSTITUTION REQUIRE STATE FUNDING FOR ALL OPERATING COSTS OF THE DISTRICT COURTS?

A. Twenty-First Judicial District Court Claims A Constitutional Right to be Funded by the State

The concursus proceeding filed by the Tangipahoa Parish Council created a situation in which district judges of Louisiana's twenty-first judicial district had to recuse themselves and lodge a claim against the parish general fund which was deposited in the registry of their own court to obtain the funds necessary to operate their courts in 1988. Necessarily this placed the judges in competition for funds against other parish officers and agencies. Seeking to escape this unseemly role in fiscal year 1989, the judges of the twenty-first judicial district filed a lawsuit seeking to establish their constitutional right to have all court expenses paid by direct appropriation from the state treasury. No discussion of mandated expenses would be complete without an examination of the constitutional arguments raised by the judges in support of their position.

B. Failure to Fund District Courts is a Denial of Rightful Status of Judiciary as a Co-Equal Branch of State Government

The judges of the twenty-first judicial district sued the State of Louisiana qua state, Governor "Buddy" Roemer, the Speaker of the House, the President of the Senate, and the Members of the Tangipahoa Parish Council. The gravamen of their suit was that the district court judiciary was being denied its rightful status as a co-equal branch of government under the tripartite system of government established by the Louisiana Constitution. Of course, the Louisiana Constitution adheres to the model of the national government created by the United States Constitution in establishing three separate and distinct branches of government: legislative, executive, and judicial.

1. State Funding Presently Provided for District Court Judges' Salaries

The State of Louisiana pays the salaries of all 156 district judges now serving in Louisiana pursuant to Louisiana Revised Statutes 13:691. Nevertheless, the aggrieved judges of the twenty-first judicial district decry the current practice whereby the state budget provides funds for the entire operations of the legislative and executive branches of state

government by direct appropriation, but provides no funds for the operations of most of the district courts of the state, thereby relegating judges of those courts to seeking operating funds from the parish general fund. Cursory examination of state appropriation acts for 1988 and 1989 bears out the truth of this thesis.

For instance, 1988 Louisiana Acts No. 348 appropriated funds for "the expense of operation and maintenance" of the Louisiana Supreme Court and the five circuit courts of appeal, but not for operation and maintenance of any district courts except for the judges travel expenses and office expenses up to $5,000.00 per annum. In a situation all too typical of the morass of uncoordinated statutes that involve financing government at the parish level in Louisiana, there is no comprehensive statute establishing a uniform coherent system for financing district court operations. Instead, the Judicial Appropriations Act contains the usual anomalous "special" provisions providing ad hoc financing for a few fortunate district court officers while denying state financing to the overwhelming number of district court functionaries similarly situated across the state. Thus, Act 348 made special state appropriations for the following: expenses and a commissioner for the Orleans Parish Civil District Court and for office expenses, thirteen minute clerks, twenty-two court reporters, four commissioners, eight law clerks, a judicial administrator, and six assistants for the Orleans Parish Criminal Court; two court reporters and a law clerk for the twentieth judicial district; office expenses and two commissioners of the nineteenth judicial district; and a commissioner for the fifteenth judicial district.


201. La. R.S. 13:698 (1983) states that "[d]istrict judges . . . shall be reimbursed actual expenses of the salaries of stenographers, clerks, law books, legal periodicals, stationery, telephone, and like expenses incurred in the discharge of their duties. Such expenses shall not exceed the sum of five thousand dollars for any judge in any one year." Such a sum would not appear adequate to do much more than pay for one year's upkeep for a judge's basic library.

202. Parenthetically, singling out a few judicial districts for state financing while excluding all others is a blatant example of a classification with no rational basis; therefore, a violation of the equal protection principle, which generally requires that all persons similarly situated receive equal legal treatment. Such an arbitrary selection of favored judicial districts to receive state largesse appears to violate the spirit, if not the letter of Article III, section 12 of the Louisiana Constitution of 1974, prohibiting local and special laws.


district. Outside of the favored four districts, all other district criminal and civil courts are left to fend for themselves in the local parish war of all against all to obtain funding for court reporters, law clerks, administrators, and the other panoply of functionaries required to run the district courts.

The 1989 Judiciary Appropriation Act contained no improvement for the district courts in the 57 parishes deprived of state financing for their operations. Ironically, the verbiage of the Judiciary Appropriation Act renders ritualistic obeisance to the judiciary's status as a co-equal branch of government by providing that allocations made therein shall be paid by the State treasurer with “preference over all other warrants, except warrants for the salaries of constitutional officers of the state and warrants for expenses of the legislature, which shall be concurrent with the warrant provided by this Act.” This language offers cold comfort to the district court operating in one of the fifty-seven parishes where the district courts receive no state appropriations for operations.

Even those four judicial districts that receive some state funding for operations are receiving a mere pittance compared to their total operating budget. For instance, while the state appropriated $91,798.00 for office expenses for the judicial expense fund of the fifteenth judicial district, the parish governments of the three parishes composing that judicial district—Acadia, Vermilion, and Lafayette—contributed over $1,000,000.00 from their parish general funds for operation of the fifteenth judicial district courts in 1989.

2. Melange of Parish Provisions For Paying Court Reporters

All district courts require minute clerks, bailiffs, and court reporters to conduct business. Minute clerks are paid by the parish clerk of court, who is reimbursed a daily court attendance fee by the parish. Bailiffs are paid by the sheriff, who is paid a fee for daily court attendance by his deputy out of the parish general fund.

208. A letter from Michael Bertrand, Secretary Treasurer of Vermilion Parish Police Jury, on November 8, 1989, provided that $711,157.00 was paid from the general fund for judiciary expenses, including the district attorney’s office and the coroner. Joseph C. Arabie, Secretary-Treasurer of Acadia Parish Police Jury, said $254,129.00 was paid out of the parish general fund towards district court operation for 1989 in a letter dated October 31, 1989. In a letter dated October 31, 1989, Jim Barton, Secretary-Treasurer of the Lafayette Parish Police Jury said the parish general fund contributed $129,894.00 toward court operation.
Court reporters, on the other hand, are directly paid by the parish. A veritable melange of methods are used to pay them. In 1986, the Judicial Council conducted a survey of the forty-two district courts in Louisiana to determine how court reporters were paid and what problems were being encountered. The response was revealing.

There were 247 court reporters whose salaries ranged from $10,800.00 per year to $40,680.00 per year. These figures do not include the money earned by court reporters for providing transcripts to litigants, which is set by statute at $1.50 per page and twenty-five cents per copy reported and transcribed. Unfortunately, the parish general fund must pay the transcript fees in all criminal cases in which the defendant is a pauper and in all civil cases in which the appellant is a pauper.

Of the forty-two Louisiana district courts, the Judicial Council's 1986 survey revealed that court reporters' salaries were paid in twenty districts by the police jury; in nine by a combination of the police jury, the criminal court fund and/or the judicial expense fund; in four by the criminal court fund and/or the judicial expense fund; and in nine courts by some combination of the criminal court fund, the indigent defender fund, the sheriff's department funds, the clerk of court's funds, the State of Louisiana, the police jury, and a number of special funds created by statutes that authorize civil filing fees to be used to pay court reporter's salaries.

Because almost all criminal defendants are indigent, financing preparation of transcripts in indigent criminal cases is a substantial and persistent statewide problem for district courts. In the forty-two district courts in 1986, indigent transcripts were paid for from the criminal court fund in eighteen, by the police jury in eight, by a combination of the police jury and the criminal court fund in five, by the indigent defender fund in one, by the indigent defender board and the district attorney in one, by the police jury and the Louisiana Department of Corrections in one. In six districts, court reporters were not paid for indigent transcripts—an apparent violation of a statutory mandate that they be paid. Another district court provides for payment of indigent criminal transcripts out of the criminal court fund and the indigent

211. Louisiana Judicial Council Survey on Funding of Court Reporters, June 1986, at 1 [hereinafter Judicial Council].
215. Id. at 1-2.
216. Id.
transcript fund, which is supported by a $14.00 cost assessed in each non-indigent criminal case.\textsuperscript{217}

It is a small wonder that the income of court reporters varies so wildly from one judicial district to another in Louisiana. Surely, a process using such a hodgepodge of temporary expedients for financing the vital function of making the only record of judicial proceedings that will be considered on appeal is doomed to difficulty. In the 1986 survey, out of the forty-two district courts, nineteen reported that they were experiencing serious problems in paying court reporters salaries and/or finding funds to pay for indigent criminal transcripts.\textsuperscript{218}

The melange of provisions governing payment for court reporters’ salaries and transcripts is not the result of vacillation by parish government. The state statutes imposing the duty to provide for these items upon parish government simply do not say exactly how they are to do it.

Each district judge appoints his own court reporter\textsuperscript{219} and fixes the salary to be paid,\textsuperscript{220} but the parish government must pay the salary. Thus, the police jury does not enjoy any power to examine the reasonableness of the salary set by the judge. In setting such salaries, the district judge is really performing a legislative function. By contrast, at the appellate level, the total amount of money available for salaries for court personnel is set by the legislature via the approval or modification of the judicial budget request.

However, if the district judges desire to appoint additional court reporters, in excess of one per judge, the appointment of such reporters can only be made “with the approval of each police jury.”\textsuperscript{221} But there are statutes providing directly for appointment of additional reporters in specified judicial districts that appear to annul the parish government’s veto power over such appointments provided by Louisiana Revised Statutes 13:961(A).\textsuperscript{222}

Before a civil transcript is filed by the court reporter in non-pauper cases, the appellant must file a deposit for the costs.\textsuperscript{223} In pauper cases,

\textsuperscript{217} Id. The final district court (Orleans Parish Civil District Court) has no indigent criminal transcripts.
\textsuperscript{218} Id.
\textsuperscript{220} La. R.S. 13:961(E) (1983) says each court reporter “shall receive a monthly salary to be fixed and determined by the judge making the appointment.”
\textsuperscript{222} See, e.g., La. R.S. 13:971(A) (1983) which says: “In addition to the Court Reporters appointed under . . . R.S. 13:961(A) the judges of the Sixteenth Judicial District shall appoint one additional court reporter and each of the judges of the Twenty-Seventh Judicial District may appoint one additional court reporter.”
court reporter's fees are assessed as costs to be paid by the party or parties ultimately cast in judgment.\textsuperscript{224}

Criminal transcripts in pauper cases, however, cost 22 district courts in 1986 a total of $391,000.00 in court reporters fees.\textsuperscript{225} Payment of these fees is addressed elliptically in a number of statutes that do not together establish a coherent methodology of dealing with them.

The court reporter statute says:

In indigent criminal cases, the fees shall be paid primarily from the criminal court fund, the indigent defender fund or as otherwise provided by law upon approval of the judge and shall be assessed as costs.\textsuperscript{226}

The indigent criminal appellant is unquestionably entitled to a "free" transcript of the proceedings against him for appellate review of his conviction.\textsuperscript{227} The criminal procedure statutes provide generally that "all expenses whatever attending criminal proceedings shall be paid by the respective parishes in which the offense charged may have been committed . . . by the parish treasurer."\textsuperscript{228} Unfortunately, the statutes do not tell the parish treasurer from what source the money is to come. The indigent defender fund, formed by a specified portion of court costs for misdemeanor and felony convictions, may be used as a source.\textsuperscript{229} The criminal court fund composed of fines and forfeitures imposed by district courts and district attorney's conviction fees in criminal cases involving violations of state or parish ordinances "may be used" as well.\textsuperscript{230} But inevitably, these funds have proven insufficient to provide for the indigent criminal defendant's transcripts because the funds are used for so many other expenses of criminal prosecutions.

Insight into the view of a working district judge who must deal with issues of payments of the court reporter and providing indigent criminal defendants with a transcript on a daily basis was provided by twenty-seventh judicial district Judge Isom J. Guillory, Jr., when he spoke before the Judicial Council on April 11, 1986, and recommended state funding of these items as the real solution to the problem because:

1. It will standardize salaries (as it did in the case of the judges).
2. It will give us a responsible fund source for payment of reporters.

\textsuperscript{225} Judicial Council, supra note 211, at 2.
3. It will restore the standing and dignity of state officers, and not expose them to public confrontations with elected officials—which demeans the office and creates unnecessary problems for heavily occupied judges.\textsuperscript{231}

Thus, a district judge of long experience concluded in 1986 that the recurrent financial impasses confronting the district court judiciary under the system of parish financing actually impinges upon their effectiveness in coping with heavy case dockets—which is one of the salient points in the Tangipahoa judges' suit in 1989.

3. \textit{Failure to Finance the District Judiciary in the State Budget Impinges on The Judiciary's Role as Check and Balance on Arbitrary Abuse of Governmental Power by the Legislative and Executive Branches}

Obviously, if the judiciary's status as a co-equal branch of government is diminished by failure of the state to fund its operations at the district court level, the independence of the judiciary—so sacrosanct and necessary an ingredient of American constitutional government—is seriously eroded.

The Louisiana Constitution enshrines district courts and grants them original trial jurisdiction over the most important matters considered in both private and public law. Specifically, article V, section 16 says:

A district court shall have original jurisdiction of all civil and criminal matters. It shall have \textit{exclusive} original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

Thus, failure to finance district courts weakens the whole foundation upon which the edifice of the Louisiana judiciary system of trial and appellate courts rests.

Whence goeth the constitutional system of checks and balances in such a situation? Only a vigorous independent judiciary, immune from the political pressures inherent in the present process of judicial funding \textit{via} the battle for sparse parish funds, can be safely relied upon to forestall arbitrary or unconstitutional actions by the legislative and ex-

\textsuperscript{231} Judge Isom J. Guillory, Jr., Transcript of Presentation of Funding of Court Reporters before the Louisiana Judicial Counsel, April 11, 1986, at 8. The writer wishes to thank Judge Guillory for his assistance and his ideas.
executive branches of state government, or by the legislative or executive arms of local governments.

4. Lack of State Funding Could Deny Access to District Courts and Destroy the Judiciary's Role as Guarantor of Individual Rights of the Citizenry

Given the dire state of parish government finance, the specter of district courts unable to operate because of a dearth of operating funds is more than a theoretical fear. No one was in a better position to realize this fact than the district judges in Tangipahoa Parish. Therefore, one of the primary theoretical bases of the suit brought by the twenty-first judicial district judges against the state was the claim that failure of the State to fund operation of the district courts denies the people the access to the courts necessary to preserve "inviolate" the people's rights to due process of law and equal protection of the laws—all as guaranteed by the Louisiana Constitution. Certainly, one may plausibly argue that failure to fund local courts eviscerates all constitutional guarantees because a mere textual recognition of rights without providing a local judicial forum for enforcement is a meaningless play on words.

5. Reliance on Parish Government to Finance the District Courts is an Unconstitutional Delegation of Legislative Power

The Local Government Article of the Louisiana Constitution allows parishes to establish home rule forms of government that may exercise "any power" and perform "any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution." Despite the unprecedented broad sweep of this grant of residual governmental power to local government by our state constitution, the framers of the 1974 constitution took special pains to protect the independent judiciary from any undue influence by local government. Consequently, the Local Government Article says:

232. La. Const. art. I, § 22 guarantees that "All Courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."
234. Id. at § 2.
235. Id. at § 3.
236. This theory is advanced succinctly in paragraphs 6-9 of the twenty-first judicial district judges' complaint.
237. La. Const. art. VI, § 1.
Notwithstanding any provisions of this Article, courts and their officers may be established or affected only as provided in Article V of this Constitution.238

Yet, as the Tangipahoa judges point out under the existing statutes enacted by the legislature and approved by the governor, parish governments have been granted virtually plenary power over the district courts. Parish governments no longer pay any portion of the district judge's salaries, as they did prior to 1975,239 or any portion of the district judge's retirement benefits, as they did prior to 1976.240 However, the Louisiana statutes delegate to parish governments all responsibility for providing funds necessary to house and operate the district courts.

Parish government must provide a suitable building and furniture for the district court and "necessary heat and illumination therefor."241 The ancient case of Watts v. Police Jury of Carrol242 recognized in 1856 the right of a citizen to compel the parish governing body to levy a general alimony tax and to appropriate money to build a courthouse so that he would not have to travel outside of the parish to obtain access to a district court. However, the court in Watts faced the happy prospect of a police jury that possessed unused constitutional authority to levy a millage for general parish operations, a circumstance that does not currently prevail in a single Louisiana parish. What would be the fate of a litigant, whether judge or ordinary citizen, seeking to compel

---

238. Emphasis added.
239. Prior to 1975, most parishes supplemented the state pay of their district judges. 1975 La. Acts No. 743 amended La. R.S. 13:691 to provide in subsection (C) that "No judge . . . directly or indirectly, any additional salary, compensation, emolument, or benefit from the state or any of its political subdivisions except (1) retirement benefits, (2) reimbursement of those expenses provided for . . . by La. R.S. 13:694, 13:698, and 13:1341.2, (3) membership in group insurance programs, and (4) educational grants." (emphasis added).
240. State ex rel. Guste v. City of New Orleans, 363 So. 2d 678 (La. 1978), struck down a New Orleans city ordinance which permitted Orleans Parish judges to receive from the city an annual sum equal to one half of their annual contribution to the State Employee's Retirement System because it violated the prohibition against local government stipends to district judges contained in La. R.S. 13:691(c) (1983). In so doing, the supreme court rendered this historical perspective:

Because the judicial retirement was not an actuarially funded system, and because judges did not make contributions to the system as did other state employees, the constitution of 1974 directed the legislature to provide for a retirement system for judges. It was not until 1976 (R.S. 13:12 et seq.) that the legislature provided that the judges could be members in and contribute to the state employees retirement system.

363 So. 2d at 683-84.
construction of "suitable" courtrooms today? At best, outcome of such a mandamus proceeding appears problematical if we consider that the parish government would doubtless defend against such a claim by initiating a concursus and depositing the parish general fund into the registry of the court. At that point, parish litigants advancing the statutory claim of their right to a suitable district court building would doubtless be joined by sheriff-claimants asserting their statutorily mandated claims for "a good and sufficient jail" and by all the other mandated expense claimants. Suffice it to say that forcing parish governments to build new parish courtrooms, even though actually needed, will be difficult at best.

What of the court personnel whose presence is the sine qua non of an operating district court? Statutes impose upon parish government the obligation to pay the salaries of official court reporters, and the court's "stenographic, secretarial, and other personnel necessary to make the functions of the court effective." Petit jurors, grand jurors, and witnesses in all criminal cases are summoned and, if necessary, fed and housed at the expense of the parish government. Even in civil cases brought in forma pauperis, the parish must pay the cost of summoning jurors and witnesses. Parish government must also pay witnesses and court fees in juvenile cases.

Sheriffs or their deputies are entitled to a fee for daily district court attendance paid by the parish government. The clerk of court or his

---

245. Id.
249. La. R.S. 15:304 (1981) provides that "the pay of witnesses, jurors, and all expenses whatever attending criminal proceedings shall be paid by the respective parishes in which the offense charged may have been committed." But see La. R.S. 15:571.11 (1981), which permits payment from the parish criminal court fund, inter alia of "expenses and fees of the petit jury and grand jury, for witness fees."
251. La. R.S. 13:3671 and 3661 (Supp. 1990) provide for witness fees in civil cases; La. R.S. 13:3662 (Supp. 1990) provides witness fees for off duty law enforcement officers in civil cases. La. Code Civ. P. art. 5185(A)(2) requires the parish to pay for compulsory attendance of six witnesses or more if the trial court approves the litigants application for an increase. In Hartford v. Mobley, 233 La. 956, 98 So. 2d 250 (1957), the Louisiana Supreme Court held that in an in forma pauperis proceeding the police jury of the parish in which the trial was held was required to advance payment of witnesses' fees and jurors' per diem.
253. La. R.S. 33:1430 (1983) provides a fee of not less than $16.00 nor more than $25.00 per day.
deputy must also be paid a daily court attendance fee by the parish.\textsuperscript{254} There can be no district court trials without jurors, witnesses, bailiffs, and minute clerks. Yet, it is not the state but the parish that provides these parties essential to district court proceedings in Louisiana.

Trial courts must provide transcripts for appeals. Court reporter’s transcript fees in all criminal cases\textsuperscript{255} and in all \textit{in forma pauperis} civil cases in which a pauper appeals\textsuperscript{256} must be paid for by the parish in which a trial is held. Moreover, the parish governing body must provide official court reporters with a suitable office, supplies, and equipment for performing their tasks of reporting and transcribing notes of evidence.\textsuperscript{257}

Except for salaries and retirement paid to the district judges out of the state treasury, it is apparent that all other costs necessary to operate the district courts had been delegated to the parish governments prior to enactment of the various judicial expense funds under Part VI of Title 13 of the Revised Statutes.

6. \textit{Various Judicial Expense Funds Created by the Revised Statutes Fail to Meet the Need for State Funding of District Court Operations}

1969 Louisiana Acts No. 135 established a judicial expense fund for the nineteenth judicial district under Part VII of Title 13 as Louisiana Revised Statutes 13:991. 1975 Louisiana Acts No. 603 changed the title of Part VI to “Judicial Expense Funds” heralding the creation of such funds in twenty-nine other district courts.\textsuperscript{258} The pattern for each of these funds is similar. First, they provide for additional filing fees in civil suits (ranging from $5.00 to $10.00) and additional costs in criminal convictions, guilty pleas, or bond forfeitures (ranging from $5.00 to $15.00) to create the judicial expense fund. Then they provide that the judges of that district \textit{en banc} control disbursement. Finally, they specify that the funds may be spent for various operational expenses of the district courts except judicial salaries.

At first blush the judicial expense fund statutes appear to provide the kind of self-generating funding for the district courts that would

\textsuperscript{254} La. R.S. 13:846(A) (Supp. 1990) mandates a fee of at least $8.00 per day with a maximum of $20.00 per day.


\textsuperscript{256} La. Code Civ. P. art. 5185(A)(1), (4) entitles a pauper to preparation of a record and for devolutive appeal, but Article 5185(B) says the appeal cannot be suspensive.


free them from the turmoil of budgetary squabbles currently endemic to Louisiana parish governments. Unfortunately, the judicial expense fund concept is fundamentally defective for five reasons:

(1) The judicial expense funds simply yield inadequate sums of money when compared to the sums necessary for district court operation.

(2) Paying for the judiciary solely through court costs tends to reduce the district courts to collectors of fines, forfeitures, and costs rather than dispensers of justice. The United States Supreme Court has frowned upon those municipal courts in which the Mayor, who was also a judge, received his salary as executive solely or primarily from fines imposed while acting as a traffic judge.\textsuperscript{259} Indeed, such courts have been held to effectively deny due process of law. The same constitutional objection could be raised to the quality of criminal justice dispensed by district courts dependent solely upon fines and costs for their operating funds.

(3) Financing district courts through fines and forfeitures leaves the court's operations subject to the vagaries of criminal law enforcement and traffic enforcement in their respective jurisdictions. Thus, a precipitous drop in the number of state policemen assigned to an area could virtually shut down the district court by decreasing traffic citations. At the least, revenues from fines and forfeitures provide no reliable barometer for an annual judicial budget because the income is variable while the expenses remain constant.

(4) Areas with a large volume of criminal, traffic, and civil proceedings will necessarily enjoy better financed district courts than areas with low volumes of judicial business. Should areas with a more law abiding citizenry suffer inadequate financing of their courts as a reward for their probity?

(5) Financing district court operations solely through court costs and fines results in inequities among the district courts across the state similar to the inequities that existed in the salaries of the district judges when wealthy parish governments paid their district judges a much higher salary supplement than the poorer parishes could afford.

Neither equal protection of the law nor a uniform statewide judicial system are fostered by such a mode of financing the district courts.

\textsuperscript{259} Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437 (1927) held that a mayor who had a direct pecuniary interest in receiving costs for conviction of one violating a liquor law was not a fair and impartial judge guaranteed by the Due Process Clause of the Fourteenth Amendment. See also Ward v. Monroeville, 409 U.S. 57, 93 S. Ct. 80 (1972).
C. The Judges of the Twenty-First Judicial District Lose in the District Court

On September 8, 1989, the district court rendered reasons for judgment denying the petitions for declaratory judgment and for mandamus filed by the judges of the twenty-first judicial district. Because of the pivotal nature of this case, close scrutiny of the court's reasons for judgment is imperative.

The district court held that the twenty-first judicial district judges were not entitled to the relief they sought for two reasons: (1) none of the defendants had a ministerial duty to provide funds for the operation of the district courts, and (2) the relief sought was "not needed at this time and when needed can be obtained by following prescribed procedures."261

I. Can the Legislature be Compelled to Fund the Judicial Offices Created by the State Constitution?

In denying the Tangipahoa judges' claim, the district court said: "the Legislature has supreme sovereignty over the expenditure of State funds [and]... decides how the branches and department for government shall be funded from the public fisc."262

From this truism, the district court reasoned:

The application to the legislature for funds for the operation of any department of government is made by budgetary requests to the legislature. The budgetary requests are considered by the Legislative Budget Committee, passed upon [by] the entire legislature and finally, if approved, signed by the Governor. The approval of any budgetary requests is discretionary and... is not subject to the Mandamus powers of this Court.263

Such a conclusion is a non sequitur because the twenty-first judicial district judges' suit does not challenge the legislature's hegemony over budgetary appropriations per se, but properly challenges the legislature's refusal to include in the budget any appropriations for operations of an integral arm of the co-equal judiciary branch of government. If the

261. Id. (suit roll 387, frame 1452).
legislature decided not to appropriate any money for the governor’s staff or his office expenses although providing handsomely for the remainder of the executive department, where would the governor seek redress if not in the courts? If the governor were to veto all appropriations for the Louisiana courts of appeal, where would these constitutionally enshrined judges seek redress if not in the courts?

Axiomatic in American constitutional theory is the principle that the federal courts have the power to review the constitutional validity of actions taken by coordinate branches of the national government and to nullify actions that violate the Constitution of the United States. Louisiana constitutional law rests on the same premise. The Louisiana district courts are created directly by the state constitution, unlike United States district courts, which are created by congressional act under the federal constitutional scheme. A fortiori, the legislature’s failure to provide funding for district courts in its legislative enactments is a prima facie violation of the Louisiana Constitution. To argue otherwise leads to this reductio ad absurdem: the legislature could refuse to fund the supreme court and the courts of appeal by direct state appropriation and they could not be legally compelled to do so.

The legislature exercises its power both actively by choosing to enact enabling legislation and passively by refusing to enact such legislation. Legislative enactments can unquestionably be abrogated if they violate the state constitution. The legislature can be compelled to act in a cause where the state constitution compels it to act and its failure to act emasculates a coordinate branch of state government created directly by the state constitution.

2. Does Present Law Provide the Means of Coping With the Current Crises in District Court Funding?

In the Tangipahoa Parish case, the district court refused the request for mandamus of the twenty-first judicial district court judges, inter alia, because (a) the twenty-first district could present its needs to the Judicial Budgetary Control Board; (b) the Tangipahoa Parish Council is statutorily obligated to finance the district courts; and (c) the twenty-

265. In Dreyer v. Illinois, 187 U.S. 71, 23 S. Ct. 29 (1902) the Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment does not require a state to maintain a separation of powers, but La. Const. art. II, § 1 explicitly establishes three separate branches of government. Section 2 provides that “no one of these branches... shall exercise power belonging to either of the others.” Louisiana cases holding that the courts have the power and duty to declare unconstitutional laws invalid include State v. Gatlin, 241 La. 321, 129 So. 2d 4 (1961), overruled on other grounds by State v. Liggett, 363 So. 2d 1184 (La. 1978) and State v. Thompson, 366 So. 2d 1291 (La. 1978), and State v. Birdsell, 235 La. 396, 104 So. 2d 148 (1958).
first district had enough money in their judicial expense fund and in the criminal court fund to operate their court in the immediate future.\textsuperscript{266} Examination of each of these purported sources for district court funding reveals that they are patently inadequate.

\textit{a. Judicial Budgetary Control Board}

Section 38 of Title 24 of the Louisiana Revised Statutes establishes the Legislative Budgetary Control Council, which is empowered to "direct any budget unit of the state to submit information relative to the financial requirements and receipts of the budget unit," including the expenditures, services, equipment, personnel, or any other matter relating to the operations of the budget unit to the Joint Legislative Committee on the Budget or to the Legislative Fiscal Office.\textsuperscript{267}

The Louisiana Supreme Court Rules establish a Judicial Budgetary Control Board, which is composed of thirteen members: the chief justice of the supreme court; an associate justice designated by the chief justice who serves as chairman; the chief judge of each of the five courts of appeal or his designee; a district judge selected by the Louisiana District Judge's Association; a judge of the criminal district court, Parish of Orleans; two district judges and a judge of a separate juvenile or family court, each appointed by the chief justice of the supreme court; and the judicial administrator of the supreme court.\textsuperscript{268}

Among the duties assigned the Judicial Budgetary Control Board is presentation to the Louisiana Supreme Court for its approval a unified budget request for the judicial branch prior to each session of the legislature.\textsuperscript{269} The supreme court then presents the judiciary's unified budget request to the legislature for enactment into law.\textsuperscript{270}

Historically, such budget requests have not included allocations for operation and administration of the district court. Nothing less than a revolution in the confection of the state judiciary budget would be required to add such a large sum of money to the supreme court's budget request. Annual cost of operation for all district courts, excluding district judges' salaries, was approximately twenty to thirty million dollars.

\begin{footnotes}
\item[269] Id. at Rule 24:38.1(d).
\item[270] Id. According to the rule the supreme court performs this function "under its inherent and administrative authority, Louisiana Constitution Article V, Sections 1, 5."
\end{footnotes}
in fiscal year 1987. Before approaching the legislature for such a large addition to the judicial budget, it is logical to assume that the Judicial Budgetary Control Board would want a clear and unequivocal statement by the supreme court in a case establishing the legislature's constitutional obligation to supply this additional money to the district court.

At this juncture, the legislature has opted to do otherwise and impose the responsibility for operation of the district courts upon the parishes. Given the many demands upon the state fisc to support colleges, schools, prisons, and the myriad state health and welfare agencies, the legislature is unlikely to voluntarily assume a substantial fiscal burden that it has passed on to the parishes for so long. Thus the Judicial Budgetary Control Board does not presently possess the answer to the financial woes of the district courts absent a clear judicial statement of a constitutional obligation of state government to finance district court operations.

b. Parish Government Financing

As we have seen, present law imposes upon parish governments the obligation to support district court operations without providing the fiscal means to meet that responsibility. Indeed, it is primarily the paucity of financial resources rather than mismanagement that has driven parish governments across the state to suface their statutorily mandated obligations. Yet, the district court in the Tangipahoa judges' case denied the mandamus sought by the district judges in part because the parish government was statutorily obligated to provide facilities to the district court.

Curiously, the district court then observed:

Plaintiffs argue that Tangipahoa Parish does not have the funds to contribute to the support of the 21st Judicial District Court. This was perhaps in a measure correct. The Parish could not afford to pay the electric bills to keep the court house open, however, the Parish did enter into an agreement with the utility.

---

271. The writer's inquiry revealed that no official source in the legislature, the executive branch, or in the judiciary possesses the statistics necessary to delineate the total cost of district court operation in Louisiana. The only extant compilation of that date is Unpublished Data compiled by Marvin Lyons, Legislative Coordinator, Police Jury Association of Louisiana in response to a questionnaire in April of 1987 sent to all 64 parishes. Lyons' data is the source for the composite figure of twenty to thirty million dollars. Only 50 of 64 parishes responded to his survey. The three largest parishes—Orleans, East Baton Rouge, and Jefferson—did not report criminal district court expenditures as a separate item.

company and the Clerk of Court, and electricity was restored to the Courthouse.

The Court is of the opinion, after having heard the evidence, that the Plaintiffs have failed to show a justiciable controversy, one that could not be solved by exploring all the avenues available to them. The problem of financing the operation of the court could be solved by the governing authority of the parish with its proposed tax to be voted on by the people of the parish in October, 1989; it could be solved by properly addressing its budgetary needs to the Judicial Budgetary Control Board, and it could address its needs to the Criminal Court Fund.273

QUERY: Can the fate of the fundamental judicial unit upon which the entire state judicial system depends to conduct trials of serious civil and criminal cases rest upon such a thin reed of happenstance? Is the judiciary a co-equal branch of state government if it must depend for its very survival upon the vagaries of a police jury's negotiation of an overdue light bill? What undue pressures are brought to bear willy-nilly upon the district court when the police jury or the friendly utility company are next before it as litigants? Is it consonant with the status of the judiciary as a co-equal branch of government to allow closure of a state district court upon defeat of a local tax measure?274

The Tangipahoa district judges pointed out to the district courts that they were using the judicial expense fund to pay for enhanced local court facilities, which the parish could not otherwise afford, rather than for the day to day operations of the district courts such as: repairs and renovations to the court rooms, adding jury boxes, and other enhancements decided upon by the judges en banc. In its decision, the district court pointed out that under Louisiana Revised Statutes 13:996 and 996.7, the judges could use the judicial expense fund for capital outlay "only for the necessary expenses for the operation of the court." Of course, then the parish would have to fund the necessary courtroom capital improvements out of the same general fund that is inadequate to pay operational expenses of the courts, thereby completing a vicious circle.

273. Id.
274. Parenthetically, the people of Tangipahoa Parish passed the one percent sales tax proposed by their parish council in October, 1989. Promulgation and Proces Verbal of October 7, 1989, tax election, Tangipahoa Parish Council Minutes, October 23, 1989, 1989 Minute Book, 325-30. Seventy-five percent of the proceeds were dedicated to roads and bridges, while twenty-five percent will go into the general fund to be fought over by the courts, the district attorney, and other general fund claimants. Mandated parish government financing is obviously not the final answer to district court financing problems.
c. Judicial Expense Fund or Criminal Court Fund Financing

Reliance upon the judicial expense fund as the sole source of financing district court facilities and staff is ill-founded for numerous reasons previously noted. At present, both the judicial expense fund and the criminal court fund are fluctuating funds that depend upon such variables as the volume of litigation, the number of crimes committed in the jurisdiction, "the size and location of the parish," and whether the parish is rural or urban.

Faced with the police jury's contention that the district attorney's office should be financed primarily from the criminal court fund and his other special funds, the Louisiana Supreme Court in Reed v. Washington Parish Police Jury said:

These additional sources were never intended to wrest the primary responsibility for funding the 16:6 expenses from the shoulders of the legislative branch of government. Characteristics such as discretionary usage, instability of amounts available, allocations among several officers, the need for court approval, negate the availability of these funds as a primary source to insure the basic function of the district attorney will not be impaired.

Applying the Reed rationale to the situation of the state district court judiciary leads one inexorably to the conclusion that the provisions for district court funding in the judicial expense fund and the criminal court fund should not remove the "primary responsibility for funding... [judiciary] expenses from the shoulders of the legislative branch of government." Only a stable source of funding via annual state budget appropriations avoids the constitutional and ethical pitfalls inherent in patchwork financing of the judiciary though special statutory funds and parish general funds, none of which are truly equal to the task. Enactment of annual state budget allocations for district court operations may well render both the judicial expense fund and criminal court fund provisions for the district courts superfluous. Certainly, a scheme of state financing would be much simpler than the current hodgepodge of district court financing provisions and would allow the district court judiciary to make budget forecasts on a more rational basis.

D. Article V of the Louisiana Constitution Makes All Judges State Officers Beyond the Scope of Parish Government Control

All judgeships created pursuant to Article V of the Louisiana Constitution of 1974 are state officers beyond the plenary control of either

275. See infra, Part VII, B, at pp. 671-72.
277. 518 So. 2d 1044 (La. 1988).
278. Id. at 1048-49.
municipal or parish executive or legislative bodies. In Cosenza v. Aetna Ins. Co., the court of appeal held that a parish had no liability for the tortious conduct of city court employees, even though the parish paid part of the court's operating costs, because the city judge was a state officer and neither the police jury "nor any other executive body at that level" had the power "to interfere with or direct [the] activities of [the] court."

Even justice of the peace courts have been recognized to be "constitutional offices exercising the judicial power of the State of Louisiana" and presiding justices recognized as judges whose salaries cannot be reduced during their terms of office by parish governing bodies. 281

A fortiori, district court judges are state officers whose courts are the matrix from which the judicial power of the State of Louisiana originates. District court transcripts provide the facts that appellate courts review. Unless they are manifestly erroneous, district court decisions are not reversed. Ergo, a district judge's opinion will usually decide the merits of a case.

Mere theoretical standing as a state officer cannot suffice to shield the district court judiciary from practical impingement upon its independence inherent in reliance upon local governmental largess to provide for the courts' functioning.

E. Current Status of the Twenty-First Judicial District Judge's Case

The district judges of the twenty-first judicial district appealed the district court decision rejecting their claim for state financing of their operation. 282 On May 30, 1990, the Louisiana First Circuit Court of Appeal rendered its decision affirming the district court. 283

The court of appeal held, first, that local government funding of the judicial branch of government was not an unconstitutional delegation of legislative authority because the Louisiana Constitution did not specifically deny to the legislature the authority to delegate the duty of funding the district and city courts to local government. The basic rationale of the court of appeal's decision is contained in its citation of the following language from the Louisiana Supreme Court's decision in Board of Directors of Louisiana Recovery District v. All Taxpayers: 284

279. 341 So. 2d 1304 (La. App. 3d Cir. 1977).
280. Id. at 1305.
283. Id.
284. Id. at 5-6, citing Board of Directors of Louisiana Recovery District v. All Taxpayers, 529 So. 2d 384, 387-88 (La. 1988).
Unlike the federal constitution, a state constitution's provisions are not grants of power but instead are limitations on the otherwise plenary power of the people of a state exercised through its Legislature. In its exercise of the entire legislative power of the state, the Legislature may enact any legislation that the state constitution does not prohibit. Thus, to hold legislation invalid under the constitution, it is necessary to rely on some particular constitutional provision that limits the power of the legislature to enact such a statute. . . . 285

The reasoning embodied in the Recovery District rationale is flawed both as a matter of state constitutional interpretation and as a matter of political theory.

1. The Residuum of Sovereignty Is Not in the Legislature but in the People under the Louisiana Constitution

The Tenth Amendment to the United States Constitution says: “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Article I, Section 1 of the Louisiana Constitution of 1974 provides: “All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole.” Exercising their authority as representatives of the sovereign power of the people the delegates to the Louisiana Constitutional Convention of 1973 wrote a basic document which is a higher law not amenable to amendment by ordinary legislative act.

Yet insofar as the legislative acts delegating responsibility to local government impinge upon the ability of the judicial branch to function as a separate co-equal branch of government, these acts abrogate the tri-partite system of government created by Article II of the Louisiana Constitution.

2. American Political Theory Does Not Recognize Any Legislature Vested with Total Sovereignty

The court of appeal, as did the district court, failed to deal with this fundamental argument of the twenty-first judicial district judges. Instead the court of appeal appears to have vested the legislature with the full unbridled power of sovereignty—akin to Jean Jacque Rousseau’s

285. 529 So. 2d 384, 387 (La. 1988).
Indeed, the first circuit's formulation and exposition of legislative power is even more reminiscent of Thomas Hobbes' *Leviathan* which postulated the formation of government via a social contract in which the individual citizen surrendered all sovereignty over himself to the sovereign state created by the social contract.

American constitutional theory is based upon neither Rousseau nor Hobbes but on John Locke's theory of the social contract set out in *Two Treaties of Government*. Under Locke's view of the social contract, in making a constitution the people "transfer the exercise of their supreme authority, legislative, executive, and judicial, to organs of government." However, unlike Hobbes, Locke believed that the grant of governmental power to the legislature was not unconditional. Although Locke "called the power of the legislature fiduciary and a delegation from the majority that acts for the community, he retained the older view that the grant of the community divests the people of power so long as the government is faithful to its duties."

*Ergo*, the twenty-first judicial district judges argued that the people transferred to the judiciary certain governmental powers which are indefeasible by the legislature. If the legislature frustrates that grant of judicial power by asking local government to assume an unbearable burden of financing district court operation, then the judges have not only the power but the obligation to legally enforce the judiciary's right to adequate financing inherent in its establishment as a co-equal branch of government under the Louisiana Constitution.

Suppose the legislature imposed upon the East Baton Rouge Parish government the burden of providing financial support for the governor's office staff? Would anyone hesitate to conclude that this would be an unconstitutional delegation of the legislature's duty to provide adequate financing for the executive branch of state government?

The court of appeal simply did not deal with the essential theoretical issue presented by the *Twenty-First Judicial District Judges* case.

286. See G. Sabine, *A History of Political Theory* 585 (3d ed. 1964), wherein Professor Sabine quotes Rousseau's article on Political Economy in the fifth volume of the Encyclopedia as follows: "The body politic, therefore, is also a moral being possessed of a will; and this general will, which tends always to the preservation and welfare of the whole and of every part, and is the course of the laws, constitutes for all the members of the state, in their relations to one another and to it, the rule of what is just or unjust." But even Rousseau did not believe that the sovereign people could permanently divest themselves of their ultimate right of self-government by vesting sovereignty in a legislative body. W. Ebenstein, *Great Political Thinkers* 415 (2d ed. 1958).

287. Ebenstein, supra note 286, at 415.

288. Sabine, supra note 286, at 534.
3. The Judiciary Has Inherent Power to Prevent the Frustration of Its Constitutional Mission by the Legislature

Article V, Section 1 of the Louisiana Constitution says "the judicial power is vested in a supreme court, courts of appeal, district courts and other courts authorized by this Article." In its Twenty-First Judicial District Court opinion the court of appeal recognizes that the legislature is thereby prevented from divesting the three named courts of the judicial power.\textsuperscript{289} However, the court of appeal fails to come to grips with the practical situation presented by the Tangipahoa Parish fiscal crisis. Thus, if the parishes on whom the legislature has imposed the obligation of financing district court operation cannot pay the bills, then the legislature will have effectively done indirectly what it admittedly could not do directly, i.e. deny the district courts the resources necessary to carry out their constitutional mission.

Recognizing the existence of an inherent judicial power to do all things reasonably necessary for the exercise of their function as courts,\textsuperscript{290} the court of appeal nonetheless refuses to extend the scope of that inherent power to compelling the legislature to provide adequate funding for court operation in the state budget. In taking that restrictive view of inherent powers, the court of appeal relies primarily on a historical argument. Since the delegates to the Louisiana Constitutional Convention rejected a proposal which would have mandated that the total cost of state judicial system be paid from the state general fund, the court of appeal deduces an intent of the framers of the constitution not to change the system of parish funding of district court operation.

Two comments are in order on the point:

(1) At the time of the constitutional convention in 1973 the oil economy in Louisiana was prosperous and the district court financing by local governments had not yet emerged as a problem; and

(2) The delegates in 1973 were never squarely presented with the critical issue made out by the Tangipahoa Parish situation: What is the obligation of the legislature to fund the district courts when local governments are manifestly unable to meet that obligation?

Had the delegates been presented with empirical evidence that the prevailing system of local government court financing was inadequate, as such evidence now plainly exists, it is plausible to propose that they would have enunciated clearly the obligation of the legislature to provide

\textsuperscript{289} Twenty-First Judicial District Court v. State, No. CA 89-1937 (La. App. 1st Cir. May 30, 1990), at 9.

\textsuperscript{290} Id. at 10.
the funds for court operation implicit in the very system of separation and balance of powers. At any rate, the records of the constitutional convention are bereft of any discussion of the constitutional impasse which would be created if local governments did not possess the means to finance district court operation.

At this juncture, counsel for the twenty-first judicial district court judges has advised the writer that the judges will seek writs from the Louisiana Supreme Court to attempt to reverse the decision of the court of appeal.

IX. TRIAL COURTS FINANCED BY THE STATE ARE A SINE QUA NON OF A SEPARATE INDEPENDENT JUDICIAL BRANCH OF GOVERNMENT

The Louisiana Supreme Court provided a compelling theoretical basis for the position that the state government should finance district courts adequately in Konrad v. Jefferson Parish Council when it said:

La. Const. Art. II, §§ 1 and 2 divide governmental power into three separate branches and provide that no one branch shall exercise powers belonging to the others. These sections establish the basis for the recognition of inherent powers in the judicial branch which the legislative and the executive branches cannot abridge.

Under the doctrine of inherent powers, courts have the power (other than those powers expressly enumerated in the constitution and the statutes) to do all things reasonably necessary for the exercise of their functions as courts. The doctrine is a corollary of the concepts of separation of powers and of judicial independence, in that other branches of government cannot, by denying resources or authority to the court, prevent the courts from carrying out their constitutional responsibilities as an independent branch of government.

The doctrine of inherent powers has been utilized . . . to require the appropriation or expenditure of funds reasonably necessary for the court's functioning as a court. The doctrine exists because it is essential to the survival of the judiciary as an independent branch of government.

In the context of the current fiscal crises of Louisiana parish governments and the easily demonstrable inability of those governments to provide adequate financing of district courts, the separation of powers logic expressed in Konrad leads inexorably to the conclusion that the

291. 520 So. 2d 393, 397 (La. 1988).
state is constitutionally required to appropriate funds for statewide operation of district courts.

Pennsylvania recently faced similar problems. In *County of Allegheny v. Pennsylvania*,293 the county brought a declaratory judgment proceeding against the state alleging that a constitutional mandate for a unified judicial system required the state to provide funds necessary for the functioning of all parts of the Commonwealth’s unified judicial system and, specifically, for the Court of Common Pleas of Allegheny County. The county alleged, *inter alia*, that “there are continuing disputes between the county and the Court of Common Pleas concerning the funding of [the Court’s] employees”294 as required by the Pennsylvania statutes.

**QUERY:** in *Reed v. Washington Parish*, the Louisiana Supreme Court posited the right of parish governments to inquire into the reasonableness in kind and amount of budget requests by parish constitutional officers such as the district attorney. Would the power to inquire as to the reasonableness of judicial budget requests for salaries of court personnel not logically follow? Such inquiry into the reasonableness of judicial budget requests by parish governments would without doubt lead to the same sort of internecine disputes decried by the Allegheny County government.

Because it was the Allegheny County government that brought suit, the Pennsylvania Supreme Court could not rely on the doctrine of inherent powers as it would probably have done had the Allegheny trial court judges been the plaintiffs. Nonetheless, the Pennsylvania Supreme Court reached the same result sought by the district judges in the Tangipahoa Parish case by referring to the “legal and constitutional implications” of the “unified judicial system” required by the Pennsylvania Constitution. First, the Pennsylvania court found that:

> When relations between the judicial branch and the county governments deteriorate to the point where litigation is required to settle disagreements as to funding, the relationship is neither harmonious nor unified but rather, fragmented.295

Similar fragmentation is apparent in the litigation that has already occurred between the St. Landry Parish, Grant Parish, and Tangipahoa Parish governments and the district courts residing in those jurisdictions.

Second, the Pennsylvania Supreme Court found that employment of staff was suspect in the county financed court system because

> [t]he purpose of a unified judicial system is to provide even-

---

293. 534 A.2d 760 (Pa. 1987).
294. Id. at 761.
295. Id. at 764.
handed, unbiased and competent administration of justice. The expectation is that cases will be processed as well in one county as another. In order to meet this expectation, however, judicial resources and staffing must be proportionately similar in all judicial districts. There must be uniform hiring practices and standards and judges must be free to hire competent staff, not merely those referred by local political figures.\textsuperscript{296}

In this sense, the "unified court system" guaranteed by the Pennsylvania Constitution is designed to provide a trial court system virtually synonymous with that implicit in the Louisiana Constitution's guarantees to all persons "equal protection of the laws"\textsuperscript{297} and access to the courts.\textsuperscript{298}

Finally, the Pennsylvania Supreme Court believed the public's perception of the judicial system was adversely affected by county financing of trial courts because

[The citizens of this Commonwealth have a right not only to expect neutrality and fairness in the adjudication of legal cases, but also . . . a right to be absolutely certain this neutrality and fairness will actually be applied in every case. But if court funding is permitted to continue in the hands of local political authorities it is likely to produce nothing but suspicion or perception of bias and favoritism. As the framers of our constitution recognized, a unified system of jurisprudence cannot tolerate such uncertainties. All courts must be free and independent from the occasion of political influence and no court should even be perceived to be biased in favor of local political authorities who pay the bills.\textsuperscript{299}

Much the same reasoning persuaded Louisiana to abandon a system in which parish governments paid a substantial increment of district judges' salaries in favor of a system in which all district judges across the state are paid the same salary by the state \textit{qua} state. Moreover, the aspiration of guaranteeing a uniform, neutral, fair, and unbiased judicial system espoused by the Pennsylvania Constitution is precisely the same goal embraced by the Louisiana Constitution in article I, section 22, which guarantees that:

\begin{quote}
All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation or other rights.
\end{quote}

\textsuperscript{296} Id. at 764-65.
\textsuperscript{297} La. Const. art. 1, § 3.
\textsuperscript{298} La. Const. art. 1, § 22.
Procedurally, the Pennsylvania Supreme Court suggested a practical way to move from a system of county funding to state funding of courts by staying its judgment to afford the Pennsylvania Legislature "an opportunity to enact appropriate funding legislation" consistent with its decision.\textsuperscript{300} Pending adoption of the new legislation, the prior system of county funding was maintained in place.

It is submitted that the Louisiana appellate courts in the Tangipahoa Parish case should reach the same result as the Pennsylvania courts. To do so would implement both the letter and the spirit of the Louisiana Constitution, as well as the well-established doctrine of inherent power to require the appropriation and expenditure of funds reasonably necessary for the functioning of the courts \textit{qua} courts. In the meantime, district courts must rely on statutory mandates and the doctrine of inherent judicial power to compel parishes to fund their operations.

X. THE DISTRICT AND CITY COURTS HAVE INHERENT POWER TO COMPEL PARISH GOVERNMENTS TO APPROPRIATE EXPENSES REASONABLY NECESSARY FOR THEIR OPERATION

Two cases decided simultaneously by the Louisiana Third Circuit Court of Appeal have held that district courts and city courts can compel local governing authorities to pay expenses reasonably necessary for their operation.

A. McCain v. Grant Parish Police Jury

In \textit{McCain v. Grant Parish Police Jury,}\textsuperscript{301} the district court judge sought a mandamus to compel the police jury to pay past due district court bills and to reform its budget to provide for expected future bills. On appeal, the third circuit affirmed the trial court’s decision granting the mandamus because denying operating funds to the court would infringe upon the judiciary’s status as a coequal branch of our tripartite system of state government. The court said:

Our government is based on a constitution. One of the most basic and fundamental features of our system is the vesting of power in three “coordinate, independent, coequal and potentially coextensive” branches.

1. Faulty Separation of Powers Analysis

The court then observed that under article VI, section 7 of the Louisiana Constitution of 1974, the Grant Parish police jury is “the

\textsuperscript{300} Id.

\textsuperscript{301} 440 So. 2d 1369 (La. App. 3d Cir. 1983).
local legislative branch of government" to which "the legislature has given . . . broad powers, including the power to levy and collect taxes, pass ordinances, incur debts and spend public monies for public purposes."302 Next the court recognized that the Local Government Article of the constitution denied local governments the power to establish or run the courts.303

Until this point the McCain opinion was theoretically sound in recognizing that: (a) the police jury, as a creature of state government, enjoyed only those powers that the state legislature has given it, and (b) the constitution prohibits the state legislature from giving local governments power to "create" or "affect" the judiciary.304 At this juncture, however, the court faltered in its analysis.

Having correctly characterized the thirty-fifth judicial district court as an organ of the judiciary, which is a coequal branch among the three branches of state government, the court then incorrectly characterized the police jury as standing "on an independent and equal footing" with the district court.305 Of course, the district court did enjoy co-equal status with the state legislature but not with the police jury, which combined the legislative and executive function in parish government.306

Having struck off down the wrong analytical road, the McCain court continued to travel that way in framing the issue presented by the case as:

[w]hether a court, as an equal member of our governmental triumvirate, has the inherent power to compel a legislative body, another of the co-equal branches of government, to budget the reasonably necessary expenses incurred to provide the basic needs of an efficient, effective court. We hold that courts in the state of Louisiana do possess such inherent power.307

The McCain court did, however, correctly state that "the primary responsibility for supplying the funds to pay for the operation" of the court had been placed upon the police jury.308 In a footnote, the court referred to various statutes that oblige the parish to pay for juvenile court expenses,309 the district judge's office expenses,310 and to provide

302. Id. at 1371.
303. La. Const. art. VI, § 25 says "courts and their officers may be established or affected only as provided in Article V of this constitution." Article V is the Judiciary Article.
304. 440 So. 2d at 1371.
305. Id.
307. 440 So. 2d at 1372.
308. Id. at 1371-72.
a suitable building and requisite furniture for the district court. The third circuit's decision in McCain, which indicates that providing the courthouse is a mandatory obligation of the parish governing authority, is at odds with its decision in the St. Landry Parish case, which indicates that providing the courthouse is not a mandated expense.

2. Mainstream Inherent Powers Analysis

Relying on conventional wisdom as expressed in cases arising "in many of our sister states," the McCain court then posited the existence of an "inherent authority of the courts to compel payment of those expenses necessarily incurred by the courts in the discharge of their duties." Acknowledging that the issue was res nova in Louisiana, the court of appeal justified its declaration of the inherent power of the courts on the grounds that:

[s]uch power is essential to preserve the independence of courts which are often called upon to rule on the acts of these same public officials, who control public funds, and the courts must be free to act without fear of retaliation. . . .

The inherent powers analysis in McCain may be applied verbatim to justify the claim of the district judges in the Tangipahoa Parish case against the state legislature, as well as against the Tangipahoa Parish council.

3. Limitations on the Court's Inherent Powers

The McCain decision says that although the power of a court to incur, and compel the payment of, debts for services and supplies "reasonably necessary for its efficient and effective operation is inherent, such power is not unlimited." Just as the Louisiana Supreme Court would later, in Reed v. Washington Parish, circumscribe the district attorney's right to receive statutorily mandated expenses by requiring that the expenses be reasonable in kind and amount, so the third circuit in McCain circumscribed a judge's right to receive expenses mandated by statute and by the court's own inherent power. Thus, a judge's inherent power was said to extend only to expenses that "were both reasonable and necessary to the operation of his court."

312. 440 So. 2d at 1372.
313. Id.
314. Id.
315. Id. at 1373.
4. Mandamus Proper

Anticipating the supreme court's stance in Reed v. Washington Parish, the court of appeal held that mandamus was the proper procedural vehicle for the district judge to employ in compelling the police jury to pay his mandated expenses.

5. Deficit Would Create Constitutional Conflict

Judge Domengeaux, in a terse but perhaps prescient concurrence to the McCain majority opinion, made it clear that the third circuit was not expressing an opinion "as to any exigency which might place a police jury into a deficit situation by paying such district court expenses." No other statement in the jurisprudence to date recognizes the obvious truth stated by Judge Domengeaux when he said "such a contingency would entail possible conflicting constitutional provisions." Because the legislature is constitutionally required to adopt a balanced budget, because the state has statutorily prohibited the parish governments from deficit spending, and because parish governments may not constitutionally exercise their spending powers contrary to general law, it follows that proposed deficit spending for judicial expenses would create a patent conflict between constitutional powers granted the judiciary and constitutional limits imposed on the exercise of parish legislative powers.

6. Burden of Proof

The McCain approach suggests that the burden of proving that judicial expenses are reasonable and necessary rests on the judges proposing them. This conclusion is supported by the supreme court's decision in Reed v. Washington Parish that the district attorney bore the burden of proving that his expenses were reasonable.

7. Critique of Inherent Powers Doctrine

The inherent powers doctrine presents numerous snares for the unwary. The police jury has no expertise in what constitutes "reasonable" judicial expense. Mere filing of a suit by a district judge may effectively

316. Id. at 1369, 1373 (Domengeaux, J., concurring).
317. Id.
318. La. Const. art. VII, § 10(B).
320. La. Const. art. VI, §§ 7(A), 30.
preclude unbiased inquiry into the question. To require one district judge to consider whether another district judge's expenses are unreasonable is a tremendous request because the deciding judge may soon be forced to lodge his own claim for unfunded expenses. The specter of bias looms. Realistically, where will the police jury find a judge to testify on its behalf?

Moreover, an inquiry into reasonableness of judicial spending should not focus only on the nature of the specific items of expense being sought from the general fund, as the McCain court seems to suggest is proper, but should also extend to an examination as to whether the judge in question has spent wisely his available funds from other sources such as the judicial expense fund or the criminal court fund.322

Another problem with the inherent powers vehicle for enforcing payment of judicial operating expenses lies in the real possibility that constitutionally designated executive officers may seek to enforce funding of their offices via the same device. What then would happen to the traditional legislative role in sorting out competing budget claims via the political process? Does this not bring us ever closer to rule by judicial fiat, under the guise of enforcing the constitution, in this area as we have done in so many other problem areas of American government.323

An earlier case involving a request for mandamus based on the inherent powers doctrine was brought by the judge of the city court of Bossier City to compel the Bossier Parish Police Jury to pay its pro rata share of the amount necessary to increase the salaries of the clerks and deputy clerks of the court. In Lyons v. Bossier Parish Police Jury,324 the second circuit court of appeal refused to apply the doctrine of inherent powers. Instead the second circuit held that the police jury's breach of its statutory duty under Louisiana Revised Statutes 13:1888 to pay the clerks a specified minimum salary constituted "a breach of a ministerial duty for which mandamus will lie to compel performance of that duty."325

B. City Court of Breaux Bridge v. Town of Breaux Bridge

Having embarked on the broad trail of inherent powers in McCain, the third circuit continued down that road in City Court of Breaux Bridge v. Town of Breaux Bridge,326 which was decided contrary to the second circuit's restrained statutory approach in Lyons and on the same

323. Such as jail standards, reapportionment, judicial election plans, for example.
324. 262 So. 2d 838 (La. App. 2d Cir. 1972).
325. 262 So. 2d at 840.
day as *McCain* by another panel of the third circuit court. The third circuit employed the inherent powers doctrine and granted a writ of mandamus to the city judge of the Breaux Bridge City Court against the city requiring the city to pay the reasonable and necessary expenses of the court, including postage, printing of forms, telephone expenses, and library upkeep. *Query:* suppose the city judge is an inveterate telephone user and cherishes a library containing the Federal Reporters—does a financially strapped city have to pay?

The trial court had found that the city owed the court only physical facilities, "utilities, cleaning, painting, repairs and upkeep," and that the types of expenses sought by the city judge should have been purchased out of the proceeds of the city court traffic fund created by Louisiana Revised Statutes 13:2488.78. However, the court of appeal disagreed, specifically relying on *McCain* to say:

We do not regard the statutes referred to above as constituting a limitation or negation of the inherent power possessed by the city court of Breaux Bridge. The provisions of those statutes simply lay down certain specific directions to the town and authorize the assessment of court costs and the use of funds derived from such assessment.

In disregarding the city's argument that alternate statutory revenue sources should have paid the Breaux Bridge City Court's expenses rather than the city's general fund, the third circuit foreshadowed the supreme court's dismissal of the parish's argument that the district attorney's alternate statutory revenue sources should pay his expenses rather than the parish's general fund in the *Reed* case.

To reach its decision in the *Breaux Bridge* case, the third circuit had to dispose of an additional defense raised by the city. Breaux Bridge contended that city courts were not expressly established by the constitution, and thus did not share in the inherent powers enjoyed by constitutional courts such as the district courts. In reply, the court of appeal observed first that article V, section 15 of the Louisiana Constitution of 1974 retained all existing city courts. More importantly, the *Breaux Bridge* opinion holds that once city courts or other legislatively created courts are established, they become "a coequal branch of local government within the [state] judicial department" that partakes of inherent judicial powers.

The *Breaux Bridge* decision is of more than passing significance to parish governing bodies because most city courts in Louisiana are also

---

327. Id. at 1375.
328. Id. at 1376.
ward courts with territorial jurisdiction extending across municipal boundaries into rural parish areas. Consequently, most city courts in Louisiana are funded in substantial part by parish governing bodies.

Thus parish governing bodies now face the specter of mandamus suits by city courts as well as district courts relying upon the doctrine of "inherent powers" to compel parish governments to pay their expenses. There is no doubt that the doctrine of inherent judicial power to enforce payment of the reasonable and necessary expenses of the courts is now solidly ensconced in our law.

C. Inherent Judicial Powers Expanded

Expansion of the inherent powers doctrine appears inevitable. Since McCain was decided, the Louisiana Supreme Court has held that the Family Court of East Baton Rouge Parish had the inherent power to appoint counsel to represent an indigent parent in a child abandonment procedure and to "award the attorney a reasonable fee to be paid from a source which the court deems appropriate." In that case, the Department of Health and Human Resources was found to be the "appropriate" party to pay the fee despite the absence of statutory authority. Presumably, in other cases parish government might be held liable for such indigent expenses as well even though the basis for requiring payment is only "inherent judicial authority" and not statute.

The supreme court offered only these guidelines for exercise of its inherent power to require payment of attorneys for indigents:

In deciding whether the state or one of its subdivisions, departments, or agencies should pay the fee, a court must act with comity toward the other branches of government and with sensitive regard for the concepts of functional differentiation and the checks and balances implied by the separation of powers doctrine. Important considerations for a court taking such action include the following: the structure and scheme of existing legislation which may be applied by analogy, the ability of an entity to budget and finance such expenditures, the entity's responsibility for incurring the need for legal services or for administering the program out of which the need arises, and the existence of any custom or informal practice regarding the payment of such fees.

331. Id. at 342. Judge Blanche's dissent in the Johnson holding suggests that the judiciary usurps the legislature's authority to provide a "uniform system for securing and compensating qualified counsel for indigents" under La. Const. art. 1, § 13.
In *State v. Lembcke*, the first circuit court of appeal held that a trial judge's automatic ten day sentences violated the mandate of Louisiana Code of Criminal Procedure article 894.1 to individualize sentences. In a comment pregnant with meaning for parish governing bodies the court said:

In an apparent defense of his actions, the trial judge stated that he did not have the staff to supervise any alternative to a jail sentence. Any shortcomings in the staffing of a court to the extent that a court is not staffed at a reasonable necessary level to perform its constitutional duty can be cured by the court.

Thus, *Lembcke* provides a jurisprudential rationale for the district court's creation of staff positions (to be financed presumably by the parish governing body) through its "inherent powers" absent statutory authorization. One wonders how much farther this inherent judicial power might go.

Indeed, it is hard to envision an effective shield that beleaguered parish governing bodies might raise effectively to defend their general fund treasuries against the sword of inherent judicial powers. When Justice Lemmon concurred in the denial of writs in the *Breaux Bridge City Court* case, he said: "The Town's recourse, if it does not want to fund the reasonable expenses of the City Court's operation, is to request that the legislature abolish the Court." Not likely, is it?

D. Judicial Pensions

Retirement benefits for judges who were in office on or before October 1, 1976, are the joint responsibility of "'[t]he Louisiana State Employees' Retirement System and the State of Louisiana and any political subdivision or agency thereof that pays, contributes to or supplements the salary.'" Many parish governments are presently paying portions of salaries of sitting city judges while paying portions of the retirement benefits of retired city judges and even district judges who were in office before October 1, 1976. This is a mandate to pay substantial costs that will extend until all judges serving before October 1, 1976, have departed the earth.

332. 444 So. 2d 353 (La. App. 1st Cir. 1983).
333. Id. at 354 (citing McCain v. Grant Parish Police Jury, 440 So. 2d 1369 (La. App. 3d Cir. 1983)).
E. Compelling Payment of Judicial Expenses Via Citation for Contempt

If district courts possess inherent power to compel parish governments to pay their reasonable expenses, could a recalcitrant parish governing body that refuses to pay such expenses be cited by the court for contempt? Louisiana Code of Civil Procedure article 225(10) defines constructive contempt to include "any... act or omission... intended to obstruct or interfere with the orderly administration of justice." Failure of the parish governing authority to pay the judicial light bill may well be construed to fit that definition of contempt.

XI. ARE EXPENDITURES BY A PARISH OFFICIAL THAT EXCEED HIS APPROVED BUDGET COLLECTIBLE IN A MANDAMUS ACTION OR ULTRA VIRES

The Local Government Budget Act requires each parish official to submit a balanced budget.336 Logically, an official who exceeds his budget should not be able to avail himself of the mandamus against the parish governing body to recoup his excess expenditures. Spending in violation of budget acts would appear to be an ultra vires act.

It is well established that political bodies are not estopped by the unauthorized or illegal acts of their officers,337 or bound by a contract made in violation of a public bid law.338 Applying a similar rationale to expenditures by a parish official in violation of the budget law would result in a conclusion that he cannot recoup those expenditures via mandamus.

Exactly this argument has been made in a pending district court suit wherein the current St. Landry Parish Clerk of Court seeks a writ of mandamus ordering the police jury to pay $90,000.00 in office expenses already incurred in 1989. The amount sought is the amount by which the Clerk's actual expenditures exceeded the $100,000.00 the police jury had budgeted for her office in 1989. To the clerk's suit the police jury has rejoined: (1) the clerk incurred the expenses before lodging an amended budget request with the police jury as requested by the third circuit in Post v. Madison Parish Police Jury and by the Local Government Budget Act, and (2) therefore, the clerk's expenditures were ultra vires.339

XII. There is no coherent statutory system providing for imposition of mandated costs on parish governments in Louisiana, nor are adequate means provided for payment of such costs.

The melange of statutes that impose mandated expenses on parish governing bodies are difficult to categorize with any rationality. There is no cohesive organization of the mandated expenses within the titles of the statutes dealing with parish government; instead they are scattered willy-nilly throughout the Louisiana Revised Statutes. The various mandatory expense statutes are replete with commands to parish governing authorities to pay expenses over which they enjoy no semblance of normal legislative appropriation control. For example, the parish governing bodies must pay the salaries of court reporters that are set and increased solely by the district judge without approval of the parish governing body. If the same method were employed in the state legislative appropriation process, the court of appeal judges would decide what their salary will be next year and compel the legislature to appropriate enough money to pay them.

The language of the statutory mandates is inconsistent and confusing because the verbiage of the commands does not fit any recognizable semantic formula. Worst of all, in many cases the statutes themselves do not establish the amounts of the mandated expenses, but leave them to the unfettered discretion of the local officials who can demand payment from the parish governing body for expenses on a meager or grandiose scale. Thus, expenses for the same office vary wildly from parish to parish. In the case of judicial expenses, such as the salaries of court reporters, they may vary wildly from judge to judge within the same judicial district.

Some of the statutes are clearly mandatory, saying that the parish "shall" pay a given category of expenditures, while other statutes seem merely directory because they say that the parish governing authority "may" pay given expenses from its general fund. Some mandatory expense statutes employ both the mandatory "shall" and the precatory "may," leading ultimately to confusion over whether the expenses involved are really mandated statutory charges against the parish general fund.

Where disputes between the parish governing body and the official receiving mandated expense allotments have resulted in litigation, the courts have provided some interpretive guidance as to how apparent conflicts in language of a particular statute are to be reconciled. But

340. E.g., in 1988, the 27th judicial district court reporters salaries in four divisions varied from $25,000.00 per annum in one division to $35,000.00 per annum in another division.
nowhere in the jurisprudence has there yet been an overall reconciliation of the ranking of the competing statutory expense claims against parish fiscs.

XIII. CONCLUSION

The third circuit in McCain groped toward a verbalization of the need for essential reform, but did not quite reach it. The separation of powers doctrine requires the judiciary to receive adequate financing if it is to function as a co-equal branch of state government. To be a co-equal branch of state government, the judiciary must be funded entirely by the state government. Both the constitution and common sense require it. Based on 1988 budgets, full funding of the judiciary by the state government would remove more than $20,000,000.00 in expenses from the budgets of the beleaguered parish governments. The Tangipahoa Parish judges case presents an opportunity that should not be missed to remove the district courts from the mandated expenses fray by requiring state funding of their operational costs.

The legislature must undertake a wholesale revision of the revised statutes relating to parish government finance to unify all statutes imposing financial burdens upon parish governing bodies. In conjunction with this plan, a constitutional amendment prohibiting the state legislature from imposing financial obligations on local governments without providing a source of funds to pay the mandated costs should be adopted. Further, a coherent body of statutory charges must be coupled with a cohesive plan for parish taxing and licensing power that will raise revenue sufficient to meet those statutory charges. Salaries of district court personnel must be standardized statewide in the same manner that district judges salaries were standardized in 1976.

Only such forceful and dramatic reforms can rescue parish governing bodies from the plight created by excessive mandated expenses and inadequate revenues. Decay of the parish infrastructure of roads and bridges in Louisiana is apparent to even the casual observer. Farm to market roads are crumbling in a state that still relies on agriculture as the base of its rural economy. As of December 31, 1988, there were more than 58,000 miles of roads in Louisiana, of which seventy-two percent were maintained by local government. Thirty-five percent of those roads, or more than 32,000 miles, must be maintained by parish governments. At its zenith, Rome flourished when its citizenry was provided with a comprehensive network of highways including more than...
fifty-thousand miles of first class roads. Roman hegemony faded as its crumbling roads reflected the disarray of its increasingly chaotic government. Louisiana cannot hope to achieve economic parity with other states—much less preeminence—so long as parish governments are rendered impotent to rebuild a decent system of parish roads and bridges. In the end, revitalization of parish government cannot occur unless and until the problem of mandated costs is solved.343

343. Acknowledgment is made to the special assistance provided in the preparation of this article as researcher, paralegal, and typist by Janice Doucet.