Pennsylvania State Association of County Commissioners

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TESTIMONY ON JUDICIAL FINANCES
PRESENTED TO THE
HOUSE JUDICIARY COMMITTEE
BY ANDREW L. WARREN, BUCKS COUNTY COMMISSIONER AND PRESIDENT, PSACC

August 24, 1992

Harrisburg, PA

Good afternoon. I am Andrew L. Warren, Bucks County Commissioner and President of the Pennsylvania State Association of County Commissioners. The PSACC is a nonprofit, nonpartisan association providing legislative, regulatory, educational, and other services to all of the Commonwealth's 67 counties.

With me today are Washington County Commissioner and PSACC Past President Frank Mascara, Dauphin County Commissioner and PSACC Executive Committee Member Sally Klein, Union County Commissioner Ruth Zimmerman, and Bedford County Commissioner and PSACC Legislative Committee Member Gary Ebersole. Also accompanying us today is PSACC Executive Director Douglas Hill.

We appreciate the opportunity to appear before you today to discuss the issue of court and district justice funding, an issue which is critical to county government.

Let me begin with a very simple analogy. If I received an order from the Supreme Court that called for a specific action on my part, I suspect I would be facing penalties if I delayed compliance by as much as five weeks. Yet this December will mark five years since the Supreme Court's **Allegheny v Commonwealth** court funding decision, with no appreciable action on the part of the Commonwealth to comply with the decision.

In fact, for the 1992-93 budget the Commonwealth has not only failed to comply, it has actually taken steps away from assuming the funding and control of the lower courts called for in the **Allegheny** decision.

I refer, of course, to the complete lack of funding for the court cost and district justice line items as a result of their gubernatorial veto. However, the Legislature is no less to blame; the original appropriation the Governor vetoed was $2,500 less per judicial position than historic funding levels, and less than half of the normal funding level for district justices.

We are here today to ask you, and the legislative leadership, to return this fall and restore the full $70,000 per position for the courts, and $33,000 per district justice position. We are further requesting that the funding mechanism be amended so that additions to the judicial complement are recognized immediately. And most important, we are asking that the Legislature begin the task called for by the state Supreme Court in 1987: development of the mechanism for state assumption of funding and administration of the court system.

Let me give you some background to this position. In 1986, our Association adopted a *Report of the Committee on the Future of Counties*, which reviewed the incremental growth in county responsibility in a number of areas for the purpose of recommending the proper role of counties in the future. The Committee deliberations were approached from a perspective which ignored tradition and current statute, and instead looked at each function solely on its own merits. After reviewing the full range of county services, the only one which the Committee deemed no longer appropriate for counties, and recommended for assumption by the state, was operation of the lower courts.

At the heart of this determination was a realization that counties face two distinct problems with the courts: **cost** and **control**.

The **cost** of the court system is borne partly by the Commonwealth and partly by the counties. As mandated by the Constitution, the state pays the salaries of judges and district magistrates, but most of the remaining costs have traditionally been borne by counties. It was not until the advent of federal general revenue sharing in 1972 that the Commonwealth began to reimburse counties for a part of their administrative expenses. This funding has increased nominally, although it was placed in serious jeopardy when the state portion of the federal general revenue sharing program was

not renewed in 1981. Since that time the Commonwealth's share has come from the general fund budget, and has remained constant, calculated at $70,000 per authorized judicial position.

While the counties appreciate this state funding, it nonetheless accounts for only a small portion of the overall cost of operating the courts. The reimbursement to counties for fiscal year 1991-92 was just under $28 million, compared to a total estimated county expenditure that is approaching $300 million.

Moreover, the funding mechanism is painfully slow and, in many cases, inequitable. The current system, reestablished annually as a part of the general fund appropriation act, pays each county its actual cost of court operation (exclusive of capital projects) **up to** $70,000 per common pleas judicial position. This ceiling has not increased since 1981 and, as a result, every county now spends in excess of that amount, often significantly. Nonetheless, the distribution is not made until audited financial statistics are received by the Supreme Court Administrator's Office; the net result is that, assuming restoration of the reimbursement in this year's general fund, we will get a payment in May 1993 for calendar year 1991. The problem is heightened in counties which receive new judicial positions; they are not compensated for those positions until two years later.

I would now like to comment on the district justice payment. This fund, which originated in the 1985-86 budget, was intended as a "revenue sharing" payment to counties. It came about largely as a result of two factors: First, counties were facing significant shortfalls in state reimbursement for children and youth and other human services programs and second, the legislature could find no other ready distribution formula which did not send a disproportionate share of available funding to Philadelphia. To the leadership at that time, the relative number of district justices seemed to be an appropriate distribution mechanism. It was not intended as new money for the

judicial system, but rather to supplant money counties were already spending so that those funds could be used elsewhere.

This fund has varied from a low of $15,000 per authorized position to a high of $33,000 per position. The payment is normally made about the middle of December, and for many counties the DJ payment constitutes the cash flow needed to meet the county's final payroll of the year. The Governor's veto of this traditional funding source in the middle of an already difficult county fiscal year will be disastrous if the funds are not restored by the Legislature.

Counties' second problem with the judicial system is one of **control**. This conflict erupts most frequently over the number and salaries of court-related employees. The County Code sets up salary boards which have jurisdiction over the number and compensation of all county employees, which include in this case court officers, clerks, stenographers, and other support personnel. The president judge of the court sits as a member of the salary board in making these determinations for court-related employees. Questions recur concerning the discretion which can be exercised by the president judge for appointment, promotion, and dismissal of employees, the degree to which court-related employees fall under county personnel policies, and the degree to which the judge controls the court budget for overhead expenses. Based on a series of court decisions, the authority of county commissioners in the administration of the court system has eroded to such an extent that most commissioners feel that they have little if any participation in court administration, other than to appropriate the funding requested by the president judge.

In part because of this lack of fiscal and administrative control, but more particularly in view of the intent of the 1968 Constitution to create a unified judicial system, our *Report of the Committee on the Future of Counties* recommended that the administrative and funding responsibility for the courts rest solely with the state. Court-related

functions, such as the sheriff's office and probation officers, should be transferred as well.

Just over a year after the Association adopted this position, the state Supreme Court ruled in **Allegheny County v Commonwealth of Pennsylvania** that the current system of court funding, being dependent on the varying fiscal capacities of the individual counties, resulted in a system of unequal application of justice. The ruling directed the legislature to develop a plan for state assumption of funding and control of the lower court system, but indicated that until the legislature acted, the current funding system was to remain in effect.

The **Allegheny** decision was handed down on December 7, 1987. What has happened since then? In the 1988-89 budget, the legislature appropriated $1 million for a study of the transfer of the system. This study never got past the publication in the *Pennsylvania Bulletin* of a request for proposals from consultants to conduct the study. The appropriation has since lapsed. Additionally, the House Appropriations Committee has, on two occasions, directed the AOPC to survey county court costs. Finally, on one occasion, the Senate issued a statement predicting dire consequences of the transfer, implying that it would be a windfall to Philadelphia at the expense of the smaller counties.

This has been the extent of the legislature's response to an order of the Pennsylvania Supreme Court.

Today, we are making two specific requests of the legislature: First, come back to session in September and, as a part of dealing with a number of deficiencies in the 1992-93 budget, reappropriate $70,000 per position for court costs (including funds for new positions) and $33,000 per position for district justices. Second, begin work in earnest to come into compliance with the **Allegheny** decision.

Prompt action on both requests is imperative. In the short term, counties need to be able to finish this fiscal year and properly plan for the next. Early action will help us meet this year's payroll with the December district justice payment, and will make it unnecessary for contingency planning on court costs as we develop our 1993 budgets this fall. We believe the legislature has an obligation to act. The **Allegheny** decision called for the current system to remain in effect until the legislature dealt with the transfer of the system to the state; the then-current system included state funding for courts and DJs in addition to county general fund appropriations.

In the long term, the legislature must act to comply with the transfer of the courts contemplated in **Allegheny**. Aside from the moral implications, the legislature's failure to act results in a continuing upward spiral of local taxpayer dollars going to a court system over which no accountable elected official has any meaningful control.

The voices in opposition claim **Allegheny** would be a Philadelphia bailout at the expense of small counties. They claim that the state lacks the tools to administer a statewide court system. They claim that it is impossible to devise a personnel system providing for an orderly transfer of county personnel to the state payroll, recognizing the labor markets in various corners of the state. And they claim that counties would miss the revenues generated locally by the courts.

We believe these arguments are misleading at best, and are nothing more than attempts to shirk responsibility to implement the **Allegheny** decision. In response, we note that the state has assumed control of parts of the court system before without dire consequence; in 1985, the legislature transferred full responsibility for the funding and administration of the appellate courts from the counties to the state, precisely because the state was at that time reimbursing counties for the full cost of that system and recognized that the counties could not control the costs.

The argument that the state could not devise a personnel system recognizing local markets makes little sense. The state responds well to having county assistance offices, county employment offices, regional offices of PennDOT, DER and other state agencies, and others scattered across the state.

The argument of a Philadelphia bailout arises from the fact that the city spends more than $1 million per judicial position, compared to about $100,000 per position in the smallest counties. Differences in court structure, case load, overhead and support levels account for part of the cost differential, but those differences aside, the whole point of **Allegheny** is to give the state a means to control and equalize these costs, a control which is impossible at the county level. Counties are constitutionally inferior to the courts, and thus are not able to enforce budget and administrative processes and controls. Placing full responsibility for the courts at the state level would restore checks and balances to the system.

Allegheny does not say that the state has to fund every whim of the courts. **Allegheny** simply calls for uniform funding and administration, an objective which cannot be accomplished at the county level, an objective which can be accomplished only at the state level.

Thank you for your consideration of these comments. With your permission, I would like to ask the other members of our panel to comment briefly from the perspectives of their individual counties, and then we will entertain your questions.