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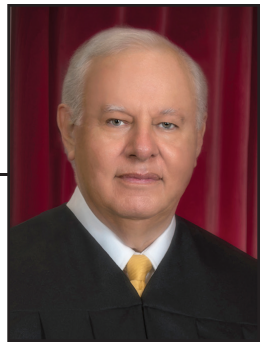

FINANCING THE JUDICIARY: HISTORICAL OBSERVATIONS

On Jan. 1, 2025, five new circuit judges, one new family court judge and 10 new magistrates joined the ranks of the West Virginia judiciary. These additional jurists were the result of legislative changes made in 2023, which became effective Jan. 1, 2025.[1] One of the reasons for the increase in the number of circuit judges was the proposed elimination of all single-judge circuits; that objective was achieved, save for the exception of the Thirtieth Judicial Circuit, comprising Monroe and Summers counties. Every expansion of government — including the expansion of the judicial branch — carries with it some cost. And that brings up the question: What governmental entity — the counties or the State — should bear those costs?

For some time, the trend in West Virginia has been to shift financial obligations from counties to the State. This trend began with our public roads. At "the dawn of the automotive age, and the beginning of the twentieth century . . . 'a policy of permanent roads and intelligent direction in their construction' was established, which began the process of transferring county routes to the State's jurisdiction."[2] In 1909 the Legislature provided a means for the State to aid in road construction in order to implement a modern system of public roads in this State.[3] The trend continued; the electorate approved "The Good Roads Amendment of 1920" that directed the Legislature to adopt a system of State roads and highways, which, for the first time, caused the Legislature to classify the types of public roads then existing in the State as State Roads or County-District Roads.[4] From a financial perspective, perhaps the most significant shift occurred in 1933, when the Legislature transferred jurisdiction of then-existing County-District Roads from various county courts to the jurisdiction of the State Road Commission.[5] This legislation, effectively a takeover of county roads by the State, relieved counties of the responsibility for constructing, repairing and maintaining what heretofore had been county roads.

Another significant shift in financial obligations occurred in the mid-1980s, when the Legislature shifted from counties to the State the cost of providing facilities to house individuals charged with or convicted of crimes. At that time no county jail in this State complied with federal requirements, and few if any counties were financially able to fund the necessary upgrades. Responding to this crisis, in 1985 the Legislature created the West Virginia Regional Jail and Prison Authority, now known as the West Virginia Regional Jail and Correctional

Facility Authority ("Regional Jail Authority"),[6] which assumed from counties the responsibility for the capital cost of constructing and maintaining facilities that met federal requirements. As a result of this legislation West Virginia established a network of 10 regional jails, replacing what had been 55 independently operated county jails. The Regional Jail Authority legislation left with the counties the responsibility for the operating costs of incarcerating individuals. Although spared the overwhelming cost of bringing county jails into compliance with federal standards, the payment by counties of per diem rate costs for incarcerating individuals in regional jails remains a topic of continuing controversy.

The trend of shifting financial obligations from counties to the State has not been limited to the executive branch of government. Prior to 1974 each judicial circuit had one circuit judge, and that judge received a base salary from the State — plus, in a number of instances, a county salary supplement. While not every county provided a salary supplement for circuit judges, all counties were responsible for providing the circuit judge with a courtroom, an office and salaries for the circuit judge's support staff.

In a number of counties one judge was not sufficient to handle the workload. The solution to this problem was through special acts of the Legislature creating statutory courts of record. County officials and the county Bar would work with their legislative delegations to enact a special act creating a statutory court of record. The salary of the judge thereby created was paid by the county, together with the salaries of all support staff. For example, Kanawha County, which for many years has been our State's busiest circuit, had five judges serving as statutory courts of record in 1974, each created by a special act of the Legislature. These statutory courts dealt primarily with criminal cases (the intermediate court), with juvenile matters (the juvenile court), with domestic relations (the domestic relations court) or with lawsuits dealing with business disputes or personal injuries (the court of common pleas). Likewise, in my home county of Raleigh when the workload became too great for the circuit judge the Legislature passed a special act creating the Raleigh County Criminal Court. Later, in order to further apportion the workload, by special act of the Legislature the criminal court became the Intermediate Court of Raleigh County, with jurisdiction over criminal and domestic relations cases.

In 1974 the voters of this State approved the Judicial Reorganization Amendment to the West Virginia Constitution. Among other things, the amendment converted all judges of statutory courts of record to circuit judges and shifted from the counties to the State the obligation to pay the salaries of the judges and all support staff. This was a significant shift of financial responsibility; today, 50 years later, the primary component of the Supreme Court's budget is salaries.

The Judicial Reorganization Amendment also eliminated justices of the peace, replaced them with magistrates and required the State to pay both their salaries and the salaries of their support staff. However, the counties — which previously had no responsibility for providing offices for justices of the peace — were now required to assume the responsibility (and cost) of providing magistrates with office space.

Prior to 1986, in most counties the circuit judge or the judge of the appropriate statutory court of record appointed a practicing attorney as "divorce commissioner"; that individual heard evidence in all divorce cases and presented a recommended order to the judge. Divorce commissioners charged the parties a fee for their services. This all changed in 1986, when the Legislature created the family law master system[7] in response to a federal mandate to provide an expedited method of dealing with delinquent child support obligations of parents receiving governmental assistance. By replacing appointed divorce commissioners with family law masters, this legislation effectively shifted the cost of family law proceedings from litigants to the State, which was now responsible for payment of the family law masters' salaries as well as the salaries of their support staffs. The State also assumed responsibility for providing office space for the family law masters and support staff. This was a notable shift; never before had the State shouldered the financial responsibility to pay "rent" to counties or their designees for office space for judicial officers and support staff — all of whom were now State employees.

In 2000, the voters ratified the Unified Family Court Amendment to our State Constitution, creating family courts. Whereas family law masters made recommended orders that became effective only when signed by a circuit court judge, family court judges are vested with judicial authority, including the power to enter orders.

One area where financial costs have not shifted to the State is court security. County sheriffs have the statutory responsibility to provide courtroom security, but 27 counties employ civilian bailiffs exclusively and

three additional counties use a mix of civilian bailiffs and deputy sheriffs for that purpose. Presumably the civilian bailiffs are utilized as a cost-saving measure. Either way, the cost of civilian bailiffs or deputy sheriffs is entirely a county expense.

Magistrate courts are supported by a magistrate court clerk's office, and the salaries of magistrate clerks, their assistants and the operating expenses of the office are born by the State. The same is not true for the clerk's office supporting circuit courts or family courts. The circuit clerk of each county is an elected official, charged with the statutory responsibility of supporting county circuit courts and family courts. The salaries of circuit clerks, their assistants and the operating expenses of their office are paid entirely by the counties.

What's next? Although courthouses are the primary reason we have counties, and historically the courthouse and courtrooms are county responsibilities, the State pays the counties rent for family court offices.

Likewise, the salaries of support staff within the judicial system were historically a county responsibility. Nonetheless, with the exception of the office of the circuit clerk, responsibility for the salaries of all judicial system support staff within counties has shifted to the State. The function of the circuit clerk's office is to support the circuit and family courts of the county. The circuit clerk and all deputy circuit clerks are county employees, paid by the county. However, consistent with the trend to shift financial responsibility from counties to the State, the magistrate clerk's office exists to support the magistrate court system and is staffed by State employees.

The trend of shifting financial responsibilities for the judicial system from counties to the State began some 50 years ago. It may again be a topic for discussion: financial needs, demands and pressures are some of the few constants in government. What does the future hold? Will the trend of shifting financial obligations from political subdivisions to the State continue? Or might we see a reversal?

Conceivably the Legislature could end the legislatively mandated requirement that the State pay "rent" to county commissions for the office space used by family courts. Such a reversal would bring financial responsibility for family court space into conformity with financial responsibility for space utilized by circuit courts and magistrates — that is, adhering to the historical practice that providing office and courtroom space for judicial offices is a county financial obligation.

While predicting the actions of future Legislatures is an activity fraught with error, I would be enormously surprised if the Legislature would shift from the State to counties the financial obligation to provide space for family courts. If there are changes, the greater likelihood is that the Legislature would shift from counties to the State an additional portion of the cost of maintaining and operating the judicial system. A possibility, consistent with the long-term trend, might be to require the State to pay rent for the office space and courtrooms of magistrates, or even circuit courts. Such a move would be consistent with the practice currently in place with respect to family courts. Shifting from counties to the State the costs associated with the clerk's office that supports circuit and family courts is another possibility. If such a change were considered, it most likely would require changing the circuit clerk from being a county-elected official to being an employee of the Supreme Court. If that were to occur, the salary of the circuit clerk, salaries of any assistants and the operating costs of the office would be State rather than county expenses. In addition to these musings, I'm confident that more fertile imaginations can conceive of other possible modifications of the responsibility for financing the judicial branch.

I'm not suggesting that any of these changes should occur. This article is simply speculation, fueled by contemplating the long-term trend of the State assuming what heretofore had been county financial obligations. Predicting the actions of future Legislatures is a precarious and uncertain undertaking. The most sagacious prediction is that the status quo will remain unchanged until a fiscal crisis becomes the catalyst for a change. Nonetheless, one can safely predict that, in keeping with the history of our State, any change will be driven by the needs of the public. And the relative financial abilities of the State and its political subdivisions will govern the feasibility of any change. WVL

Endnotes

1. *See* West Virginia Code § 51-2-1.
2. *Paletta v. Phillips*, 249 W. Va. 726, 730, 901 S.E.2d 289, 293 (2024) (citing James Morton Callahan, *History of West Virginia Old and New*, Vol. I, 547 (The American Historical Society, Inc., 1923)).
3. *See* id.
4. *See* id.
5. *See* id. at 730-31, 901 S.E.2d at 293-94.
6. *See* W. Va. Code §§ 31-20-1 to -32 (1985) (repealed by Acts 2018, ch. 107, eff. 2018); *see also id*. §§ 15a-3-1 to -18 (2018) (replacing the West Virginia Regional Jail and Correctional Facility Authority with the West Virginia Division of Corrections and Rehabilitation and placing same with the division of Homeland Security).
7. The family law master system is of course the precursor to our current family court system.