

In the Supreme Court of Ohio

ORIGINAL

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY, ROBERT A.
DOUGLAS, JR., and ROBERT P.
MILICH, Judges, Youngstown
Municipal Court
26 South Phelps Street
Youngstown, Ohio 44503

Case No. 09-0866

Relators

-US-

YOUNGSTOWN CITY COUNCIL, viz.:
ANNIE GILLAM, 1st Ward
DEMAINE KITCHEN, 2nd Ward
JAMAE BROWN, 3rd Ward
CAROL RIMEDIO-RIGHETTI, 4th Ward
PAUL DRENNEN, 5th Ward
JANET TARPLEY, 6th Ward
JOHN R. SWIERZ, 7th
CHARLES SAMMARONE, President
26 South Phelps Street
Youngstown, Ohio 44503

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MAY 13 2009
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SUPREME COURT OF OHIO

and
CITY OF YOUNGSTOWN
c/o Iris T. Gugliucello, Law Director
26 South Phelps Street
Youngstown, Ohio 44503

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and
JAY WILLIAMS, Mayor
26 South Phelps Street
Youngstown, Ohio 44503

Respondents

MEMORANDUM IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS
WITH AFFIDAVITS ATTACHED

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ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL. ELIZABETH
A. KOBYL, ROBERT A. DOUGLAS, JR.
ROBERT P. MILICH, Judges of
Youngstown Municipal Court
26 South Phelps Street
Youngstown, Ohio 44503

Relators

-vs-

YOUNGSTOWN CITY COUNCIL,
and all members thereof, viz.:
ANNIE GILLAM, First Ward
Councilwoman
DEMAINE KITCHEN, Second Ward
Councilwoman
JAMAEL BROWN, Third Ward
Councilman
CAROL RIMEDIO-RIGHETTI, Fourth
Ward Councilwoman
PAUL DRENNEN, Fifth Ward
Councilman
JANET TARPLEY, Sixth Ward
Councilwoman
JOHN R. SWIERZ, Seventh Ward
Councilman
CHARLES SAMMARONE,
President of Council
26 South Phelps Street
Youngstown, Ohio 44503
and

CITY OF YOUNGSTOWN
c/o Iris T. Gugliucello, Law Director
26 South Phelps Street
Youngstown, Ohio 44503
and

JAY WILLIAMS, Mayor
26 South Phelps Street
Youngstown, Ohio 44503

Respondents

Case No. _____

MEMORANDUM IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS

COME NOW THE RELATORS, HON. ELIZABETH A. KOBLY, HON. ROBERT A. DOUGLAS, JR., and HON. ROBERT P. MILICH, Judges of the Youngstown Municipal Court, and submit the following Memorandum in support of their Complaint in Mandamus.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF COMPLAINT FOR MANDAMUS

FACTS

Relators, HON. ELIZABETH A. KOBLY, HON. ROBERT A. DOUGLAS, JR., and HON. ROBERT P. MILICH, are the Judges of the Youngstown Municipal Court, located in Mahoning County, Ohio. They bring this action pursuant to OHIO REV. CODE ANN. §§1901.36 and 2731.01, *et seq.* and OHIO CONST., art. IV, §1, after years of inaction by Respondents. Respondents are the duly elected, qualified, and acting members of the legislative and executive branches of the City of Youngstown. They are constitutionally and statutorily obliged to provide suitable accommodations for the Youngstown Municipal Court. The Court is, and has been for years, housed on the second floor of the Youngstown City Hall. The facilities which house the

Youngstown Municipal Court and the support services for the Court are, and for years have been, entirely inadequate. The Court facility is not clean, is not adequately heated and air-conditioned, and is not adequately maintained. The deficiencies of the Court facilities are listed in the Complaint and the affidavits of the Relators, and need not be restated here.

On July 17, 1996, the then-sitting judges of the Youngstown Municipal Court entered an order indicating that the Court was "in dire need of additional space to reasonably, efficiently and effectively administer justice." The issue of adequate space and facilities for the Court's operations has been repeatedly raised with the City government for many years. As the Complaint details, the Respondents and their predecessors in office take steps which are illusory only, and Respondents have failed and refused to provide the Youngstown Municipal Court with suitable accommodations. Despite the July 17, 1996 order referenced above, and despite the fact that a portion of the City's income tax is to be segregated for capital improvements, Respondents and their predecessors in office have, for over 12 years, failed and refused to set aside any money whatsoever for the construction or renovation of a suitable court facility, or for debt service to defray the cost of construction or renovation. In 2002, Youngstown City Ordinance 02-65 expressed the intent of City Council to allocate future city capital improvement funds generated by the City's

income tax to construct a City Justice Center and to amortize the debt thereon, thereby ostensibly committing a portion of the City's income tax receipts which were dedicated to capital improvements for the construction of a justice facility. However, the Respondents and their predecessors in office have failed and refused to dedicate any income tax proceeds to defray the cost of a Municipal Court facility.

The City of Youngstown did engage a project architect. However, when his project cost exceeded what the City wanted to pay, the City, rather than asking the project architect if something could not be done, simply engaged a *second* architect. That second architect drafted an alternative renovation plan which is unsuitable to meet the needs of the Court, and the City has been notified why.¹ Still, even with proposals and counter-proposals, the City has yet to commit one cent to construction, renovation, or debt service. After more than a decade of attempting to work cooperatively and negotiate, Relators must obtain judicial enforcement of that which the City obstinately and continuously refuses to furnish.

¹ In any event, the alternative plan lists only *construction* costs, not total *project* costs. It does not account for permits and fees, nor for the cost of furnishing the facility or establishing the necessary technology. When those factors are accounted for, the cost differences between the two project proposals are minimal.

LAW AND ARGUMENT

Relators Have a Clear Right to the Relief Requested, and Respondents Have A Clear Legal Duty to Provide the Requested Relief.

The first two requirements for the issuance of a writ of mandamus are interrelated in this case. Pursuant to OHIO REV. CODE ANN. §1901.36(A), the legislative authority of a municipal court is required to “provide suitable accommodations for the municipal court and its officers.” Without question, the present facilities are not “suitable accommodations.” Of course, the operative question of whether the present facilities are “suitable accommodations” turns upon the meaning of that phrase. In determining what the legislature meant by the phrase, courts first review the statutory language, reading words and phrases in context and construing them according to the rules of grammar and common usage. See, e.g., *State, ex rel. Rose, v. Lorain Cty. Bd. of Elections*, 90 Ohio St.3d 229, 231, 2000 Ohio 65, 736 N.E.2d 886; *State, ex rel. United States Steel Corp., v. Zaleski*, 98 Ohio St.3d 395, 2003 Ohio 1630, 786 N.E.2d 39, ¶12; and OHIO REV. CODE ANN. §1.42. Where the language of a statute is unambiguous and conveys a clear and definite meaning, then there is no need to apply rules of statutory construction. See, e.g., *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, 96, 573 N.E.2d 77. In ordinary parlance, the word “suitable” might be the subject of good faith debate, and neither OHIO REV. CODE ANN. §1901.36 nor any other statute in that

Chapter defines the phrase "suitable accommodations." While the legislature did not define the phrase and the precise meaning of the phrase might be subject to some debate, the courts of this State *have* supplied meaning to the phrase.

For example, in *State, ex rel. Taylor, v. City of Delaware* (1982), 2 Ohio St.3d 17, 18, 2 O.B.R. 504, 442 N.E.2d 452, this Court held that former OHIO M.C. SUP.R. 17 was "intended to provide basic guidelines for facilities of municipal and county courts." That rule is now incorporated into Appendix D to the Ohio Rules of Superintendence. This Court in *Taylor* concluded that "[a]lthough not all of the provisions of the rule are mandatory in character, the standards set forth in the rule should be taken into consideration in measuring the adequacy of existing court facilities" Later, this Court in *State, ex rel. Hillyer, v. Tuscarawas Cty. Bd. of Commrs.*, 70 Ohio St.3d 94, 95-96, 1994 Ohio 13, 637 N.E.2d 311, 313, reached essentially the same conclusion. In *Hillyer*, a county court judge filed a complaint in mandamus alleging that the court facilities were inadequate. Many of the same reasons that Relators cite here were cited by the judge in *Hillyer*. In interpreting an analogous statute requiring that the board of county commissioners provide suitable county court facilities, this Court affirmed its holding in *Taylor* that the Rules of Superintendence should be used as a measuring stick in determining whether court facilities are suitable. *Id.*, 70 Ohio St.3d, at 99. One of the most recent

cases involving inadequate court facilities relied upon the holdings in *Taylor* and *Hillyer* to conclude that the Rules of Superintendence and Appendices C and D thereto are indeed the polestar for determining whether a legislative authority has met its duty of providing “suitable accommodations” for a municipal court as required by OHIO REV. CODE ANN. §1901.36. See, *State, ex rel. Badgett, v. Mullens*, 177 Ohio App.3d 27, 2008 Ohio 2373, 893 N.E.2d 870. Relying on this Court’s decision in *Taylor* and *Hillyer*, the court in *Mullens* said that “we look to the Rules of Superintendence for guidance in determining whether the legislative authority of Marietta has met its duty of providing ‘suitable accommodations’ for the municipal court as required by R.C. 1901.36.” *Id.*, at ¶24. The court also observed in footnote 2 that at the time that *Taylor* and *Hillyer* were decided, Appendix C to the Superintendence Rules, governing court security standards, did not exist. However, held the court in *Mullens*, “Appendix C is now part of the Rules of Superintendence; therefore, we consider it in determining whether the municipal court facilities are ‘suitable’ in the same way we consider Appendix D.” *Id.*, ¶24, n. 2.

**Respondents Have Not Provided “Suitable Accommodations”
for the Youngstown Municipal Court.**

The Complaint and the affidavits of the Judges set forth the particulars in which the Respondents have failed to furnish suitable facilities for the Youngstown Municipal Court. To list the deficiencies

again here would be pointless and needlessly repetitive, except to say that in numerous respects, the present Court facility fails to meet the requirements of Appendices C and D of the Ohio Rules of Superintendence. Moreover, this is not a close question, not one that is subject to debate or doubt, such as whether the lighting is adequate or whether there is public parking sufficiently near the violations bureau. The deficiencies in the Youngstown facility are both legion and serious, and the Respondents continue to stonewall any efforts to furnish suitable accommodations for the Youngstown Municipal Court.

Although a member of the public also may file an action to compel the furnishing of a proper court facility, see, e.g., *State, ex rel. Badgett, v. Mullens, supra*, at ¶14, without question, Relators, as the sitting Judges of the Youngstown Municipal Court have the right to bring this action and also have a clear right to the relief requested. See, e.g., *State, ex rel. Taylor, v. City of Delaware, supra*; *State, ex rel. Musser, v. City of Massillon* (1984), 12 Ohio St.3d 42, 12 O.B.R. 36, 465 N.E.2d 400; *State, ex rel. Hillyer, v. Tuscarawas Cty. Bd. of Commrs.*, 70 Ohio St.3d 94, 1994 Ohio 13, 637 N.E.2d 311; *State, ex rel. O'Farrell, v. New Philadelphia City Council* (1991), 57 Ohio St.3d 73, 565 N.E.2d 829; *State, ex rel. Cramer, v. Crawford Cty. Bd. of Commissioners* (Jun. 19, 1984), Crawford App. No 3-84-17, 1984 Ohio App. LEXIS 10115, 1984 WL 7964. Relators are, therefore, proper parties to bring the action. They have a clear legal right

to the requested relief, and the Respondents have a corresponding and equally clear legal duty to fulfill the legal obligation.

Relators Have No Plain and Adequate Remedy in the Ordinary Course of Law.

The final element of mandamus is whether there is the lack of an adequate remedy in the ordinary course of the law. See, e.g., *State, ex rel. Skaggs, v. Brunner*, 2008 Ohio 6333, 900 N.E.2d 982, ¶29; citing and quoting *State, ex rel. Heffelfinger, v. Brunner*, 116 Ohio St.3d 172, 2007 Ohio 5838, 876 N.E.2d 1231, ¶13; *State, ex rel. Colvin, v. Brunner*, 120 Ohio St.3d 110, 2008 Ohio 5041, 896 N.E.2d 979, ¶20, and *State, ex rel. Melvin, v. Sweeney* (1950), 154 Ohio St. 223, 226, 43 Ohio Op. 36, 94 N.E.2d 785. For the requested relief in the Complaint, Relators lack a plain and adequate remedy in the ordinary course of law. Contempt is not an adequate remedy because the actions of Respondents indicate that they will continue to ignore or to defy the orders of Relator as they have done in the past. Fining them or even jailing them, assuming the latter could be done, would not adequately enforce the legal rights of the Relators to administer justice in facilities that are suitable for that purpose.

In *State, ex rel. Foster, v. Wittenberg* (1968), 16 Ohio St.2d 89, 242 N.E.2d 884, 45 Ohio Op.2d 442, this Court held as syllabus law that the administration of justice by the judicial branch of the government cannot

be impeded by the other branches of the government in the exercise of their respective powers. The Court also held that courts of general jurisdiction, “whether *named in the Constitution or established pursuant to the provisions thereof*, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.” (Emphasis added.) *Id.*, syl. 1-2, following and approving *Zangerle v. Court of Common Pleas* (1943), 141 Ohio St. 70, 46 N.E.2d 865, 25 Ohio Op. 199, syl. 2. These are, to use the Court’s phrase “our rudimentary democratic principles.” The people of Ohio, “possessing all governmental power,² adopted the Ohio Constitution, thereby distributing power to appropriate departments. The people created courts, and, in some instances, authorized the legislatures to create others.³ The courts so created and authorized have all the powers which are necessary to their efficient action, or embraced within their commonly received definition.” See, *State, ex rel. Johnston, v. Taulbee* (1981), 66 Ohio St.2d

² See, OHIO CONST., art. I, §2: “*All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.*” (Emphasis added.)

³ See, OHIO CONST., art. IV, §1: “*The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.*” (Emphasis added.)

417, 422-423, 423 N.E.2d 80, 20 Ohio Op.3d 361, citing and quoting *Hale v. State* (1896), 55 Ohio St. 210, 45 N.E. 199.

The City Cannot Dispute the Pertinent Facts, and the Relators Are Undoubtedly Entitled to Relief; Thus a Peremptory Writ Should Issue.

In a mandamus action, if “the *pertinent* facts are uncontroverted and it appears beyond doubt that [the relators are] entitled to the requested writ” (emphasis added), the Court is to issue a peremptory writ of mandamus. See, e.g., *State, ex rel. Highlander, v. Rudduck*, 103 Ohio St.3d 370, 2004 Ohio 4952, 816 N.E.2d 213, ¶8; *State, ex rel. Union County Veterans Service Commission, v. Parrott*, 108 Ohio St.3d 302, 2006 Ohio 92, 843 N.E.2d 750 ¶7. When an original action in mandamus is filed, the Court, pursuant to OHIO S.CT.PRAC.R. X(5), must determine whether dismissal, an alternative writ, or a peremptory writ is appropriate. See, e.g., *State, ex rel. Rodak v. Betleski*, 104 Ohio St.3d 345, 2004 Ohio 6567, 819 N.E.2d 703, ¶10.

The pertinent facts here are uncontroverted. The Respondents cannot contend that the present facilities are “suitable accommodations” for the Court as required by Ohio law, and Respondents have a clear legal duty to provide suitable accommodations for the Youngstown Municipal Court. They have not done so, and they continue to refuse to do so. The Respondents may argue that presently they lack the funds to build or renovate a suitable facility. That fact is not true, as the Court increased

court costs years ago after a delegation from this Court visited the Youngstown facility, and the City is required to dedicate a portion of its income tax proceeds to capital improvements and to debt service thereon. The claimed present inability to pay is not a “pertinent fact” to deciding the mandamus question. When the Respondents have a clear legal duty, they must perform it without fail and without delay, both of which have been in abundance here. That Respondents have spent the money elsewhere is not an excuse. Were it an excuse, every court facility in the State would look like the Youngstown facility, for elected public officials almost without exception would prefer to channel tax dollars into safety forces and discretionary spending that pays political dividends rather than in furnishing suitable accommodations for the courts. The number of cases in this State which have been litigated over court facilities and court budgets are testament enough to that. Accordingly, the only “pertinent facts” here are that Relators have a clear right to legal relief, as the present facilities are not “suitable accommodations;” that Respondents have a clear legal duty to provide the requested relief, *i.e.*, suitable accommodations for the Youngstown Municipal Court; and, that Relators have no adequate remedy at law. If all of the foregoing appear beyond doubt, the Relators are entitled to a peremptory writ of mandamus. See, *e.g.*, *State, ex rel. Dispatch Printing Co., v. Morrow Cty. Prosecutor’s Office*,

105 Ohio St.3d 172, 2005 Ohio 685, 824 N.E.2d 64, ¶4, quoting *State, ex rel. Highlander, v. Rudduck, supra*, at ¶8.

Based upon the foregoing time-tested principles and the inexplicable and unforgivable delay occasioned by the Respondents' inaction, only a writ from the State's highest court, directing the Respondents to provide Relators with "suitable accommodations" *now*. Any meager efforts the City has made may be viewed as laudable, but the statute is mandatory in its terms and the duty to comply unavoidable. This Court has held that in enacting OHIO REV. CODE ANN. §1901.36, "which is mandatory in its terms, the General Assembly recognized that municipal courts, as an essential part of the justice system in this state, must be given means to carry out their duties under the law. Thus, there is a clear legal duty on the part of respondents to 'provide suitable accommodations' for the [Youngstown] Municipal Court." See, *State, ex rel. Taylor, v. Delaware, supra*, 2 Ohio St.3d, at 18. In that case, the Respondents admitted that the existing facilities of the court were "inadequate in many respects." The Respondents in that case stated that they were willing to comply with the statute and that a contract had been entered into between the city and an architectural firm for a space study report of the municipal court. This Court issued the writ. The actions of the City of Delaware in that case were taken years ago by the City of Youngstown, and the Court remains in its inadequate facilities, with no construction or renovation underway,

and indeed no present plans to do so. The only action the City has taken in recent years is the to hire a second architect to try to find ways to cut corners on the plans developed by the City. There is no more time. The Relators have waited patiently for the City to act for over a decade. A delegation from this Court toured the facility years ago and its findings catalogue the inadequacies. There is no question that the present facilities are not "suitable accommodations," and no question about the Respondents' clear legal duty or the Relators' clear legal right to relief. This Court should issue a peremptory writ of mandamus, compelling the Respondents to forthwith provide the Youngstown Municipal Court with "suitable accommodations." No other legal remedy will suffice.

Respectfully submitted,



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COUNSEL FOR RELATORS

In the Supreme Court of Ohio

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY, ROBERT A.
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MILICH, Judges, Youngstown
Municipal Court
26 South Phelps Street
Youngstown, Ohio 44503

Relators

-vs-

YOUNGSTOWN CITY COUNCIL, *viz.*:
ANNIE GILLAM, 1st Ward
DEMAINE KITCHEN, 2nd Ward
JAMAE BROWN, 3rd Ward
CAROL RIMEDIO-RIGHETTI, 4th Ward
PAUL DRENNEN, 5th Ward
JANET TARPLEY, 6th Ward
JOHN R. SWIERZ, 7th
CHARLES SAMMARONE, President
26 South Phelps Street
Youngstown, Ohio 44503

and
CITY OF YOUNGSTOWN
c/o Iris T. Guglucello, Law Director
26 South Phelps Street
Youngstown, Ohio 44503

and
JAY WILLIAMS, Mayor
26 South Phelps Street
Youngstown, Ohio 44503

Respondents

Case No. _____

AFFIDAVIT OF ELIZABETH A. KOBLY

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EXHIBIT A

In the Supreme Court of Ohio

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY, ROBERT A.
DOUGLAS, JR., and ROBERT P.
MILICH, Judges, Youngstown
Municipal Court

Relators

-vs-

YOUNGSTOWN CITY COUNCIL, *et al.*

Respondents

STATE OF OHIO

COUNTY OF MAHONING

Case No. _____

ss.

AFFIDAVIT OF ELIZABETH A. KOBLY

ELIZABETH A. KOBLY, being first duly sworn and cautioned according to law, deposes and says:

1. Affiant is one of three duly elected, qualified, and acting Judges of, Mahoning County, Ohio, and offers this affidavit in support of a complaint for mandamus filed before the Supreme Court of Ohio. Affiant is competent to testify and has direct personal knowledge of the matters asserted herein or has reviewed public documents which establish the matters asserted if not based upon personal knowledge.

2. The Youngstown Municipal Court is a court which exists pursuant to OHIO CONST., art. IV, §1 and OHIO REV. CODE ANN. §1901.01(A).

3. Affiant and her colleagues are, by virtue of their aforesaid positions as Municipal Judges, charged with the constitutional and statutory duties of maintaining and operating the Youngstown Municipal Court, including the Court itself and the probation department.

4. The Respondents in the within action in mandamus, as the duly elected, qualified, and acting members of the executive and legislative branches of Youngstown municipal government, are constitutionally and statutorily obliged to provide suitable accommodations for the judicial branch of government, *viz.*, the Youngstown Municipal Court.

5. The Youngstown Municipal Court and the support services for the Court are presently housed on the second floor of the Youngstown City Hall, and have been for quite some time.

6. The facilities which house the Youngstown Municipal Court and the support services for the Court are, and have been, entirely inadequate. The facilities do not constitute suitable accommodations as required by OHIO REV. CODE ANN. §1901.36. The facilities do not comport with Appendices C and D of the Ohio Superintendence Rules, and the Court facility is not clean, adequately heated and air-conditioned, or adequately maintained.

7. Among the deficiencies of the Court facilities are that the courtrooms do not have adequate seating capacity so that litigants and others are not required to stand or wait in hallways and areas adjacent to the courtroom; that desks, tables, and chairs are insufficient for all court personnel regularly present in the courtroom; that tables and chairs cannot be situated in the courtrooms to allow private interchanges between litigants and counsel away from jurors and other courtroom participants; that blackboards and other necessary demonstrative aids are not available

in all courtrooms; that the Court's Magistrate does not have courtroom and office facilities similar to those of a judge; that the courtrooms do not each have a soundproof jury deliberation room located in a quiet area as near the courtroom as possible; that there are no private personal convenience facilities available for the jurors for the rooms that are used as jury assembly and deliberation rooms; that there is no adequate waiting room for jurors, nor reading material of general interest, television, or telephones; that there is no waiting room for witnesses, and witnesses are often relegated to standing in the hallway when a separation of witnesses is ordered; that there are no consultation rooms for use by attorneys; that the violations bureaus and pay-in windows are not located near public parking areas; that there is insufficient space and equipment for court personnel to prepare, maintain, and store necessary court records; that there are no adequate restroom facilities separate from public restroom facilities for the use by court personnel; that in fact there are no clean, modern restroom facilities in the vicinity of the public areas of the court, and indeed, the only public restroom facilities are a one commode unisex restroom two floors below the floor on which the court, violations bureau, and pay-in windows are located, and that restroom is not handicap accessible; that there are no public telephones available; that prisoners are not transported into and within the court facility through areas that are not accessible to the public, and because there is no separate entrance, public hallways must be utilized; that during the transport of prisoners, law enforcement officers in direct

contact with the prisoners carry firearms; that there is no secure prisoner holding area equipped with video monitoring; that there is no effective secondary security perimeter at the entrance to the office space housing judges and court personnel; that there is no ability to stop anyone from accessing the court area at any time of the day or night; and, that the floor on which the Court is located is the only means by which persons access all of Youngstown City Hall during non-business hours.

8. On July 17, 1996, the judges of the Youngstown Municipal Court entered an order indicating that the Court was “in dire need of additional space to reasonably, efficiently and effectively administer justice.”

9. The issue of adequate space and facilities for the Court’s operations has been repeatedly raised with the Respondents and their predecessors in office for many years, and the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

10. In 1996, the Mayor of the City of Youngstown wrote to the City Council, indicating that a consultant had been secured “to meet with the Judges to identify their needs, survey available space and make recommendations on accommodating the Municipal Court,” however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

11. On August 28, 1998, after a visit to the Court by a delegation from the Ohio Supreme Court, the Youngstown Municipal Court issued an amended judgment entry that increased Court costs and established a special projects fund; however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

12. Youngstown City Ordinance 98-369 authorized the finance director to establish a special projects fund in the Youngstown Municipal treasury, *viz.*, fund 214.

13. Youngstown City Ordinance 00-97 authorized the Youngstown City Board of Control to solicit proposals and to enter into a professional services agreement to conduct a study of the facility needs for the Court. However, no useful study has ever been completed and implemented, save and except as the Court itself has determined its own needs.

14. In 2002, Youngstown City Ordinance 02-65 expressed the intent of City Council to allocate future city capital improvement funds to construct a City Justice Center and to amortize the debt thereon, thereby committing a portion of the City's income tax receipts which were dedicated to capital improvements for the construction of a justice facility; however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations, and they have failed to dedicate any income tax proceeds to defray the cost thereof.

15. In the twelve years since the Youngstown Municipal Court declared the need for more suitable facilities, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

16. Letters have been sent by the Judges to the City, and meetings have been held. Up to this point, the City has committed no funding to either renovation or construction, and the Mayor at the last meeting announced that the City has no present ability to provide suitable accommodations for the Court, as capital improvements proceeds from income tax have been diverted to current operations of the City.

And further Affiant Sayeth Naught.



ELIZABETH A. KOBLY

Sworn to Before Me and Subscribed in My Presence this 12th day of May, 2009.



NOTARY PUBLIC

C:\at06\BJB\Civil\YMC Judges 2326\Pleadings\Affidavit Both Kobly dr2.wpd

JOHN B. JUHASZ, Attorney at Law
Notary Public --- State of Ohio
My Commission Has No Expiration Date
Sec. 147.03 R.C.

branch of government, *viz.*, the Youngstown Municipal Court.

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6. The facilities which house the Youngstown Municipal Court and the support services for the Court are, and have been, entirely inadequate. The facilities do not constitute suitable accommodations as required by OHIO REV. CODE ANN. §1901.36. The facilities do not comport with Appendices C and D of the Ohio Superintendence Rules, and the Court facility is not clean, adequately heated and air-conditioned, or adequately maintained.

7. Among the deficiencies of the Court facilities are that the courtrooms do not have adequate seating capacity so that litigants and others are not required to stand or wait in hallways and areas adjacent to the courtroom; that desks, tables, and chairs are insufficient for all court personnel regularly present in the courtroom; that tables and chairs cannot be situated in the courtrooms to allow private interchanges between litigants and counsel away from jurors and other courtroom participants; that blackboards and other necessary demonstrative aids are not available in all courtrooms; that the Court's Magistrate does not have courtroom and office facilities similar to those of a judge; that the courtrooms do not each have a soundproof jury deliberation room located in a quiet area as near the courtroom as possible; that there are no

private personal convenience facilities available for the jurors for the rooms that are used as jury assembly and deliberation rooms; that there is no adequate waiting room for jurors, nor reading material of general interest, television, or telephones; that there is no waiting room for witnesses, and witnesses are often relegated to standing in the hallway when a separation of witnesses is ordered; that there are no consultation rooms for use by attorneys; that the he violations bureaus and pay-in windows are not located near public parking areas; that there is insufficient space and equipment for court personnel to prepare, maintain, and store necessary court records; that there are no adequate restroom facilities separate from public restroom facilities for the use by court personnel; that in fact there are no clean, modern restroom facilities in the vicinity of the public areas of the court, and indeed, the only public restroom facilities are a one commode unisex restroom two floors below the floor on which the court, violations bureau, and pay-in windows are located, and that restroom is not handicap accessible; that there are no public telephones available; that prisoners are not transported into and within the court facility through areas that are not accessible to the public, and because there is no separate entrance, public hallways must be utilized; that during the transport of prisoners, law enforcement officers in direct contact with the prisoners carry firearms; that there is no secure prisoner holding area equipped with video monitoring; that there is no effective secondary security perimeter at the entrance to the

office space housing judges and court personnel; that there is no ability to stop anyone from accessing the court area at any time of the day or night; and, that the floor on which the Court is located is the only means by which persons access all of Youngstown City Hall during non-business hours.

8. On July 17, 1996, the judges of the Youngstown Municipal Court entered an order indicating that the Court was “in dire need of additional space to reasonably, efficiently and effectively administer justice.”

9. The issue of adequate space and facilities for the Court’s operations has been repeatedly raised with the Respondents and their predecessors in office for many years, and the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

10. In 1996, the Mayor of the City of Youngstown wrote to the City Council, indicating that a consultant had been secured “to meet with the Judges to identify their needs, survey available space and make recommendations on accommodating the Municipal Court,” however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

11. On August 28, 1998, after a visit to the Court by a delegation from the Ohio Supreme Court, the Youngstown Municipal Court issued

an amended judgment entry that increased Court costs and established a special projects fund; however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

12. Youngstown City Ordinance 98-369 authorized the finance director to establish a special projects fund in the Youngstown Municipal treasury, *viz.*, fund 214.

13. Youngstown City Ordinance 00-97 authorized the Youngstown City Board of Control to solicit proposals and to enter into a professional services agreement to conduct a study of the facility needs for the Court. However, no useful study has ever been completed and implemented, save and except as the Court itself has determined its own needs.

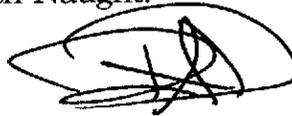
14. In 2002, Youngstown City Ordinance 02-65 expressed the intent of City Council to allocate future city capital improvement funds to construct a City Justice Center and to amortize the debt thereon, thereby committing a portion of the City's income tax receipts which were dedicated to capital improvements for the construction of a justice facility; however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations, and they have failed to dedicate any income tax proceeds to defray the cost thereof.

15. In the twelve years since the Youngstown Municipal Court declared the need for more suitable facilities, the Respondents and their

predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

16. Letters have been sent by the Judges to the City, and meetings have been held. Up to this point, the City has committed no funding to either renovation or construction.

And further Affiant Sayeth Naught.



ROBERT A. DOUGLAS, JR.

Sworn to Before Me and Subscribed in My Presence this 12th day MAY,
of May, 2009.

Emma L. Woodberry
NOTARY PUBLIC



EMMA L. WOODBERRY
Notary Public, State of Ohio
Recorded in Mahoning County
My Commission Expires
August 6, 2012

In the Supreme Court of Ohio

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY, ROBERT A.
DOUGLAS, JR., and ROBERT P.
MILICH, Judges, Youngstown
Municipal Court

Relators

-vs-

YOUNGSTOWN CITY COUNCIL, *et al.*

Respondents

Case No. _____

AFFIDAVIT OF ROBERT P. MILICH

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COUNSEL FOR RESPONDENTS

EXHIBIT C

statutory duties of maintaining and operating the Youngstown Municipal Court, including the Court itself and the probation department.

4. The Respondents in the within action in mandamus, as the duly elected, qualified, and acting members of the executive and legislative branches of Youngstown municipal government, are constitutionally and statutorily obliged to provide suitable accommodations for the judicial branch of government, *viz.*, the Youngstown Municipal Court.

5. The Youngstown Municipal Court and the support services for the Court are presently housed on the second floor of the Youngstown City Hall, and have been for quite some time.

6. The facilities which house the Youngstown Municipal Court and the support services for the Court are, and have been, entirely inadequate. The facilities do not constitute suitable accommodations as required by OHIO REV. CODE ANN. §1901.36. The facilities do not comport with Appendices C and D of the Ohio Superintendence Rules, and the Court facility is not clean, adequately heated and air-conditioned, or adequately maintained.

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that there is no secure prisoner holding area equipped with video monitoring; that there is no effective secondary security perimeter at the entrance to the office space housing judges and court personnel; that there is no ability to stop anyone from accessing the court area at any time of the day or night; and, that the floor on which the Court is located is the only means by which persons access all of Youngstown City Hall during non-business hours.

8. On July 17, 1996, the judges of the Youngstown Municipal Court entered an order indicating that the Court was “in dire need of additional space to reasonably, efficiently and effectively administer justice.”

9. The issue of adequate space and facilities for the Court’s operations has been repeatedly raised with the Respondents and their predecessors in office for many years, and the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

10. In 1996, the Mayor of the City of Youngstown wrote to the City Council, indicating that a consultant had been secured “to meet with the Judges to identify their needs, survey available space and make recommendations on accommodating the Municipal Court,” however, as of the filing hereof, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

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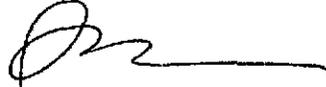
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15. In the twelve years since the Youngstown Municipal Court declared the need for more suitable facilities, the Respondents and their predecessors in office have failed and refused to provide the Youngstown Municipal Court with suitable accommodations.

16. Letters have been sent by the Judges to the City, and meetings have been held. Up to this point, the City has committed no funding to either renovation or construction, and the Mayor at the last meeting announced that the City has no present ability to provide suitable accommodations for the Court.

And further Affiant Sayeth Naught.



ROBERT P. MILICH

Sworn to Before Me and Subscribed in My Presence this 12 day of May, 2009.



NOTARY PUBLIC

JOHN B. JUHASZ, Attorney at Law
Notary Public -- State of Ohio
My Commission Has No Expiration Date
Sec. 347.03 R.C.

C:\AIO\BJ\Civil\YMC Judges 2326\Pleadings\Affid Bob Milich dr2.wpd# Tue 12 May 2009 0057p 1257hrs