

Classic struggle looms behind courthouse spat

By TIM RICHARD

Television reporters missed the significance of the battle over who gets the fourth floor of the Oakland County Court Tower.

It's not a question of how much circuit judges want the county to spend on courtroom space for three new judges.

Rather, it's a major constitutional battle between the courts and the legislative and executive branches of government.

It's the kind of battle which has occurred many times in many places since the days of the Earl Warren "activist" U.S. Supreme Court. County Prosecutor L. Brooks Patterson labels the new battle "a case to watch." On that he's right.

THE FACTS are plain even if the law is in doubt:

The county must find space for three new judges—Hilda Gage, Gene Schmeiz and Bernard Kaufman, who took office Monday. The board of commissioners and County Executive Dan-

iel T. Murphy came up with a plan to house them in various parts of the courthouse complex.

Chief Judge Steven Andrews and his 10 colleagues were dissatisfied with the arrangements, saying they "will cause and contribute to disorganization, inefficiency and such delay as will amount to a denial of due process . . . and fail to provide for even the minimum safety and security of judges, employees and litigants."

So the judges sat "en banc" (as a group) and issued an administrative order telling Murphy to make the arrangements to give the judges the fourth floor, County Treasurer Hugh Dohaney to pay the costs and the board of commissioners that its plans were overruled.

THE QUESTIONS of law will be a matter of dispute for months or years:

• Can judges perform a legislative function by revising the county board of commissioners' budget and office plans?

• Can judges tell the county executive how to house their colleagues

when the executive and commissioners have decided otherwise?

• Can judges order the treasurer to ignore the board's and executive's budget and spend county funds as they direct?

• Can judges evict the prosecutor's 60-person staff without making provisions for housing them somewhere else?

Patterson's response to the judges' administrative order was to issue his own, facetious order saying: "The foolishness of the (court) order is only exceeded by its inherent arrogance."

Patterson added that the security conditions of which the judges complained were the same as, and no worse than that in many district courtrooms where the same kinds of prisoners face preliminary hearings.

THERE IS AN open meetings kind of question too.

analysis

The judges met in secret session Dec. 21. Patterson, as chief legal officer for the county, said he had no knowledge of the meeting and no chance to present Murphy's, Dohaney's and the county board's point of view.

Without knowing of the judges' action, the county board on Dec. 21 voted them pay raises.

The judges' order wasn't actually delivered until Dec. 22, and Patterson said he never saw it until after the Christmas holiday on Dec. 28.

Moreover, in a cover letter, Circuit Court Administrator Fred Mester said, "Please understand that the court has no intention of going public in this matter," another indication that the court intended to operate in secrecy.

The state Open Meetings Act, which took effect in 1977, specified that it applies to judges "while deliberating or deciding upon" the issuance of

administrative orders," such as the Oakland eviction order.

ON ITS FACE, the circuit judges' action appears to be a clear violation of the Open Meetings Act.

But there's a catch: In July 1977, the State Supreme Court issued—on its own initiative, and without having a case to decide or being asked for an advisory opinion—a ruling saying:

"The courts of this state are not bound by provisions of the (Open Meetings) act because it is an impermissible intrusion into the most basic day-to-day exercise of constitutionally derived powers."

Only twice before in history—1881 and 1964—had a Michigan Supreme Court issued such an advisory opinion without being asked.

"I'm going to fight this," Patterson said of the whole affair. "Either the branches of government are separate and equal, or else we hang it up and give it (all governmental powers) to the judges."

THE FIGHT will be long. It will occur like this:

First, the county officials have until Jan. 12 to ask State Supreme Court Administrator Einar Bohlin for a review of the circuit judges' administrative order. ("He's a non-elected official, by the way," Patterson observed.)

Patterson expects to lose there. His next step will be to take a case to U.S. District Court. He admits that may be difficult because he will have to prove he has "standing" to make this county-state matter a federal case.

One thing makes the feisty Oakland prosecutor uncomfortable: The court order applies to Murphy, Dohaney and the commissioners—not to himself, yet his office is the one that is being evicted. Thus, when he urges other officials to defy the circuit court order, he has no chance to defy it personally.

But it won't be a confrontation. There will be no physical battle to evict Patterson from the fourth floor.

It will be a long, drawn-out, classic legal battle—the courts versus the legislative and executive branches of government.

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