IN THE SUPREME COURT
STATE OF GEORGIA

CASE NO: S15A1553

COLUMBUS, GEORGIA, et al.,

APPELLANTS,

v.

JOHN T. DARR, in his official capacity as Sheriff of Muscogee County,

APPELLEE.

BRIEF OF APPELLANTS COLUMBUS, GEORGIA et al.

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IN THE SUPREME COURT
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	*	
Appellants,	*	
	*	Case No. S15A1553
v.	*	
	*	
JOHN T. DARR, in his official capacity as Sheriff of Muscogee County,	*	
	*	
	*	
Appellee.	*	

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STATEMENT OF THE CASE

COME NOW, Appellants COLUMBUS, GEORGIA CONSOLIDATED GOVERNMENT ("CCG"), TERESA P. TOMLINSON, in her official capacity as Mayor of Columbus, ISAIAH HUGLEY, in his official capacity as City Manager of Columbus, PAMELA HODGE, in her official capacity as Finance Director of Columbus, and the COUNCILORS in their official capacities, hereinafter referred to collectively as "Appellants" or "CCG", and file their Appellants' Brief. [1]

Because the Trial Court erred (1) by not granting Appellants' Motion to Dismiss in its entirety, and (2) by ordering CCG to pay Sheriff Darr's attorneys' fees from county funds its Council had lawfully appropriated to other CCG departments/offices and uses, the Trial Court must be reversed. The Appellee Sheriff's claims are barred by legislative and sovereign immunity, and his mandamus claims fail because he has no (and has failed to plead a) clear legal right to relief. The injunction the Trial Court issued, which is immediately appealable to this Court, is an unwarranted intrusion into the legislative budget process, and it unduly expands and rewrites O.C.G.A. §45-9-21.

[1] The Defendant Councilors are Tom Buck, Jerry "Pops" Barnes, Glenn Davis, Evelyn Turner-Pugh, Berry "Skip" Henderson, Bruce Huff, Gary Allen, Mimi Woodson, Judy Thomas and Mike Baker. Additionally, CCG is a city/county consolidated government and a subdivision of the state government. *See* CCG Charter §§1-100 and 2-100 (establishing for CCG the broadest possible rights, powers, duties, immunities and protections allowed by law).

At its core, this case arises from the Appellee Sheriff's lack of appreciation for the CCG budget process and lack of understanding of the roles constitutionally delegated to the executive and legislative branches. The Appellee's dissatisfaction with his FY2015 budget, which was an increase from the previous year, does not give rise to any cognizable claim, and the Trial Court should have so ruled.

THE JUDGMENTS APPEALED

Under review are two Orders of the Trial Court, which granted injunctive relief, denied the application of legislative and sovereign immunity, interfered with the original and exclusive jurisdiction of the local legislative body, and otherwise allowed non-justiciable claims to proceed. (R-S1-1; R-2-292). The Orders were entered on April 22, 2015 and later filed by the Court on April 29, 2015. (R-1-1).[2] In one Order, the Trial Court granted in part and denied in part the Appellants' Motion to Dismiss. (R-S1-1). The Trial Court denied dismissal of declaratory relief claims, despite the required application of legislative and sovereign immunity, and also denied dismissal of non-cognizable mandamus claims. (R-S1-1). These claims are subject to dismissal.

[2] Because all local judges recused from this action, Judge Hilton Fuller, Senior Judge, of Dekalb County was assigned to the case. (R-1-149; R-1-151). Initially, the Court's filed Order (R-2-923) erroneously contained a page from another similar pending case. The correct page was substituted in a Second Amended Order filed on June 15, 2015. (R-S1-5).

In the second Order, the Trial Court granted the Appellee's appointment of legal counsel at the same rate as Appellants' counsel - statutory relief the Appellants did not contest. (R-2-925). However, upon specific request by the Appellee Sheriff, the Trial Court ordered the Appellants to pay these attorney's fees from funds of the governing authority, which were legislatively appropriated to other departments/offices or uses, rather than from governing authority funds legislatively appropriated to the Appellee Sheriff, and the Trial Court enjoined Appellants from taking any action to attribute said attorneys' fees to Appellee's budget, as would be allowed by O.C.G.A. §36-5-22.1. (R-2-928). The Court also required all parties in the litigation to submit their attorneys' invoices to the Court. (R-2-928). The injunctive and extraordinary relief granted improperly expands the plain language of Georgia statutory law and contravenes the legislative intent behind O.C.G.A. §45-9-21(e), which was enacted to negate the need for a constitutional officer to pay fees from his personal funds.

STATEMENT OF JURISDICTION

Appellee has sought injunctive and extraordinary relief, (R-2-987-988, ¶ 257), and the Trial Court granted it. (R-2-928). The Supreme Court has exclusive jurisdiction over this appeal from the grant of an injunction pursuant to Article VI, Section VI, Paragraph III (2) of the Constitution for the State of Georgia of 1983. Direct appeal to the Supreme Court is proper under O.C.G.A. §5-6-34(a)(4).

Direct appeal is also warranted because the Appellants are entitled to sovereign and legislative immunity. (R-S1-4; R-2-658; R-2-805; R-2-924). In the absence of a final judgment, a conclusive denial of immunity is subject to review under the collateral order doctrine. Liberty County Sch. Dist. v. Halliburton, 328 Ga.App. 422, 425-426 (2014)(denial of immunity warrants direct appeal under collateral order doctrine, and Court may also review the sufficiency of other claims, such as mandamus, upon appeal); *see also* O.C.G.A. §5-6-34(d)(pendent jurisdiction provides basis for the review of other claims in appeal).

STATEMENT OF FACTS

The Appellee Sheriff contends he has executive and legislative budgeting powers and is independent of the local budget process. Appellee seeks to force an increase to his legislatively appropriated $27.65 million FY15 budget on the grounds that it is not enough to operate his office in a manner the citizens have come to expect (R-2-956-957, ¶134(a) (d) and (e)), nor in the manner in which he wishes to operate (R-2-947, ¶¶82 and 83). Alleged expectations and wishes are not the legal standard applicable to a constitutional office budget.[3] In his five Petitions, the Appellee Sheriff has alleged that he is his own "unit of local

[3] CCG has a countywide Police Department with full law enforcement duties. (R-2-950-951, ¶ 104; R-2-995-996; R-2-1011); *see* O.C.G.A §36-8-5 (a county police department is imbued with all powers of sheriffs as peace officers and all powers to arrest and execute criminal warrants and process).

government" (*compare* R-2-941, ¶54, *with* O.C.G.A. § 36-81-2(12) and (16)), that he is his own "budget officer" (*compare* R-2-942, ¶55, *with* O.C.G.A. § 36-81-2(2)), and that he is exempt from the specific statutes and/or CCG Charter provisions which require that he participate in, and be a party to, the executive initial budgetary policy-making process, the local legislative budgeting process, and the local administration of the budget. C*ompare* R-2-946, ¶77, *with* O.C.G.A. §36-81-4(c) and Charter §§7-401, 7-402, and 8-105).

The Appellee Sheriff's office is funded annually by the Appellant CCG, through a long, deliberative process, (R-1-397), and the amounts which fund his office are determined through the broad discretion afforded to the CCG's legislative body, the Columbus Council. (R-1-397). By local Ordinance 14-25, the Appellee was appropriated $27,653,956 in FY15, which is $410,528 *more* than was appropriated for that Office in FY14. (R-2-952, ¶¶112, 113 and R-2-1008-1009).[4] In his initial pleadings, the Sheriff demanded relief for some $800,000 *less*

[4] Appellee's claims for relief with respect to the 2015 fiscal year ("FY15") are moot, as the budget ordinance enacted by Council in June of 2014 and ended on June 30, 2015. (R-2-980-981, ¶232). When the time has passed for the discharge of the official duty sought to be compelled, mandamus will be denied, as it is not a proper remedy to compel the "undoing of acts already done or correction of wrongs". Hilton Constr. Co. v. Rockdale County Bd. of Educ., 245 Ga. 533, 540 (1980). A Fourth Amended Petition was filed adopting these allegations for FY16, so this Court may consider the claims and issues brought to ensure the boundaries of power are maintained in local governments, and the long-standing precedent of this Court is affirmed. (R-2-916). Ga. Dep't of Natural Res. v. Ctr. for a

than he had been appropriated in FY15. *Compare* (R-1-40, ¶59)(Appellee's initial petition requests $26,853,715.00 be appropriated to his Office); *with* (R-1-86)(local Ordinance 14-25 appropriated $27,653,956 to Appellee's Office). The Appellee also sought to have his *lesser* FY14 office budget substituted for his FY15 office budget. (R-1-31; R-1-86). After five sets of pleadings in as many months, the Appellee Sheriff now simply wishes to set his own budget. (R-1-29; R-1-152; R-2-423; R-2-932; R-2-916).

Appellee overspent his legislatively appropriated FY14 office budget by $2.11 million (R-2-984 ¶250 and R-2-1008-1009) and belatedly sought legislative amendment pursuant to Ord. No. 13-39 (R-1-39, ¶55) to cover that sum. Council legislatively approved the requested budget amendment and appropriated CCG funds to pay sheriff office FY14 invoices. (R-2-662-663; R-2-810).[5] Appellee Sheriff now, curiously, seeks declaratory relief to nullify the legislative amendment process, which so generously benefitted his expenditures beyond the

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Sustainable Coast, Inc., 294 Ga. 593(2014). Otherwise, the Appellee could continue to file suit each year during the budget process as an attempt to gain negotiating leverage with the Council.

[5] Statements made in Appellee's Third Amended Petition demonstrate that he was awarded a General Fund FY14 Budget of $24,613,191, as well as a LOST Public Safety Fund Budget of $2,630,237 – for a total of $27, 243, 428. (R-2-1008, 1009, Ex.C). He contends the $29,360,932 he actually spent in FY2014 is the amount of money he is entitled to in FY15 (*id.* at ¶250), an amount, ironically, he only received through the budget amendment process he now claims is not applicable to him. *See* Ordinance 13-39 (R-2-984).

funds originally appropriated for his FY14 office budget. (R-2-984, ¶250). He now insists that as his own unit of local government, and as his own budget officer, he cannot be required by ordinance to seek a legislative amendment to his budget. (R-2-946-947, ¶¶80-86). *But see* O.C.G.A. §36-81-3(d)("local government" may amend its budget "so as to adapt to the changing governmental needs during the budget period."); Charter §7-404 ("Council may make appropriations in addition to those contained in the current operating budget, or capital budget, at any regular or special meeting called for such purpose.") Appellee pleads that despite the guidance of state law (*see* O.C.G.A. §36-81-4(c)) and the dictates of the local Charter (*see* §§7-401, 7-402 and 8-105), he also is not subject to an executive initial budgetary policy-making process, and that the Mayor must propose and the Council must approve what he demands at the outset so that he will be relieved from having to manage his expenditures to fit within a set annual budget. (R-2-932-1026).[6]

[6] Charter §7-401(2) provides that a "proposed annual operating and capital budget for the ensuing fiscal year shall be prepared by the city manager to be submitted to the Council on or before a date fixed by ordinance, but not less than 60 days prior to the beginning of the fiscal year." The Mayor is required to propose detailed expenditures for each "department, board, commission, office, agency, and activity" in a balanced budget for the part-time legislature to review and consider - a task which would be impossible if each constitutional officer was entitled to the full amount of their budget requests. *See* Charter §§7-401(2) and (4)(c) and (5)); *see also* O.C.G.A. § 36-81-4(c)(local governments may use an executive "initial budgetary policy-making" process). Charter §§3-104 and 7-402 provide the

In addition to the Appellee Sheriff's attempts to be declared his own legislative island for budgeting purposes, he seeks to control and obtain the use of monies outside his office budget, which have been lawfully appropriated to other departments and offices and for other uses. Appellee has not stopped at simply requesting funds of the "governing authority" to pay for this lawsuit, *see* O.C.G.A. §45-9-21(e), he insists that he, and the Trial Court, be able to dictate from where those fees are paid. (R-2-987, ¶257(d)). Nothing in O.C.G.A. §45-9-21(e), or any interpretation thereof, suggests or permits the Sheriff to demand, or the Trial Court to order, such a novel and broad intrusion into the legislative and administrative process. The Trial Court lacked jurisdiction to direct the payment of county funds from the governing authority's (CCG's) "general fund" and violated the doctrine of separation of powers in so ordering. (R-2-925).

ENUMERATION OF ERRORS

I. The Trial Court erred in issuing an injunction and extraordinary relief which intrudes into the legislative budget functions of the Council by redistributing monies already appropriated for other uses to Appellee for attorneys' fees under O.C.G.A. §45-9-21(e).

Appellant Councilors with a detailed legislative budget process and full legislative budgeting authority.

II. The Trial Court erred in denying the sovereign and legislative immunity due Appellants on the declaratory relief sought, and in not otherwise dismissing these claims, since Appellee has no legal right to be exempt from the CCG budget process or to operate as his own unit of local government.

III. The Trial Court erred in denying the Motion to Dismiss Appellee's mandamus claims as non-justiciable and not based upon any clear legal right.

STANDARD OF REVIEW

The grant of injunctive relief should be reversed if "the trial court made an error of law that contributed to the decision, there was no evidence on an element essential to relief, or the court manifestly abused its discretion." (citation and punctuation omitted) Holton v. Physician Oncology Servs., LP, 292 Ga. 864, 867(2013), *also citing,* Paramount Tax & Accounting, LLC v. H & R Block Eastern Enterprises, Inc., 299 Ga.App. 596 (2009)(abuse of discretion may be found "where the trial court misinterpreted or misapplied the relevant law").

The denial of immunity is a question of law which is reviewed *de novo* *See* Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 596 (2014), *citing* Luangkhot v. State, 292 Ga. 423, 424 (2013).

Motions to dismiss are also reviewed *de novo*. Southstar Energy Services, LLC v. Ellison, 286 Ga. 709 (2010); Bacon County Hosp. & Health System v. Whitley, 319 Ga. App. 545 (2013)(same); Craigo v. Azizi, 301 Ga. App. 181 (2009)(same); Tate v. Kia Autosport of Stone Mountain. Inc., 273 Ga. App. 627 (2005)(same).

ARGUMENT AND CITATIONS OF AUTHORITY

Broad discretion is vested in CCG's Councilors when it comes to deliberating on and setting the Sheriff's budget, and no constitutional officer can usurp this legislative authority. *See* Lovett v. Bussell, 242 Ga. 405, 406 (1978)(recognizing constitutional officers may not control the budget process); Lawson v. Lincoln Cnty, 292 Ga. App. 527, 532 (2008)(allowing sheriffs to "operate independent from county budget process would, in the extreme, undermine the county's broad discretion to exercise control over public property"); *see also* Charter §3-104 (powers of Council); §7-401 *et seq.*(setting forth governing authority's legislative budgeting process); O.C.G.A. §§36-81-5 and 36-81-6(budgeting duties and powers of local legislatures); and §36-5-22.1(county has original and exclusive jurisdiction over its property, including monies). The Sheriff does not recognize this authority or this discretion. (R-2-953-983, shown in ¶¶120, 232, 247).

Moreover, he completely rejects the executive initial budgetary policy-making process required of the Mayor and executive branch by the Charter. (R-2-932). *But see* §4-100 *et. seq.* through 4-300 *et. seq.* (powers of executive branch); Charter §7-402(setting forth extensive initial budget processes required of the executive branch); and O.C.G.A. §36-81-4(c)("[n]othing in this Code section shall preclude the utilization of an executive budget, under which an elected or appointed official, authorized by charter or local law and acting as the chief executive of the government unit, exercises the initial budgetary policy-making function [of a local government]").

Instead, Appellee Sheriff asks that the judiciary dismantle the roles of CCG's legislative and executive branches and grant him the power of budget proposal, approval and amendment. (R-2-953, R-2-980, R-2-983). Such is inconsistent with long-standing Georgia law and incompatible with the very structure of our government. Lovett, *supra*, 242 Ga. at 405; Lawson, *supra*, 292 Ga.App. at 529-30.

Under the Appellee's own pleadings, dismissal was required. Appellee's pleadings on their face and as a matter of law show: 1) neither the Appellee Sheriff, nor the Trial Court, has authority to appropriate or transfer to Appellee additional governing authority funds to fuel his lawsuit against Appellants; 2) no declaratory relief can lie because immunity applies, and the prerequisites for such

relief are negated by the Appellee's pleadings; and 3) there is no cognizable claim for a sheriff to granted additional power or monies, simply because the Appellee did not get all he wanted. The Trial Court committed reversible error when it failed to so rule.

I. The Trial Court erred in issuing an injunction and extraordinary relief which intrudes into the legislative budget functions of the Council by redistributing monies already appropriated for other uses to Appellee for attorney fees' under O.C.G.A. §45-9-21(e).

After the Sheriff rejected Appellants' offer to pay his attorney's fees for the purposes of discussing the issues and avoiding litigation (R-1-242-303, R-1-122-131), the Appellants agreed to the appointment of counsel, as well as to the payment of the Appellee's reasonable legal fees and costs. (R-1-246; R-2-816). Unsatisfied, the Sheriff filed a petition demanding that CCG pay his fees from county funds other than those county funds legislative appropriated to his office by the budget ordinance, to-wit:

> [T]hat the Court issue a temporary and permanent injunction issue [sic] prohibiting the Mayor, City Manager and Finance Director from charging any attorney's fees and costs paid pursuant to O.C.G.A. §45-9-21(e)(2) against the Sheriff's budget and the Council from reducing any appropriations to the Sheriff's budget to offset any attorneys' fees and costs.

See Appellee Sheriff's Third Amended Petition ¶257(4),(R-2-986). With little analysis, the Trial Court granted his request. (R-2-925). In doing so, the Trial Court deviated from, and prevented recourse to, the normal budget administration

process whereby the Sheriff reviews, approves, and submits to CCG his vendor invoices for payment from his appropriated funds. (R-1-250-255; R-1-286). *See also* O.C.G.A. §36-5-22.1(a)(1) - (7). Such an order goes beyond the plain language of the statute and its intent and is reversible.

Subsection (e)(2) of O.C.G.A. §45-9-21 was enacted to prevent constitutional officers from having to pay litigation expenses from their personal funds.[7] This provision of the statute contemplates the payment of fees from the funds of the "governing authority," but it does not provide any legislative authority for directing how those payments are to be structured, appropriated or accounted for within the accounts of the governing authority. The statute provides as follows:

> The governing authority of the county shall pay the reasonable fees of such individual counsel and all applicable court costs, deposition costs, witness fees and compensation, and all other

[7] Originally, O.C.G.A. §45-9-21 was enacted to allow local governments the opportunity to provide employees, officers, etc. with funds for the separate defense of claims filed against them which arose out of the performance of their duties. *See* Ga.L.1974, pg. 702. In 1995, both a judicial opportunity, as well as a legislative amendment, provided means of ordering reasonable fees incurred by an official. The first, Gwinnett Cnty. v. Yates, 265 Ga. 504, 508 (1995), allows the reimbursement of a local government "official" the fees expended where the official asserts a legal position and is successful in that pleading. On April 20, 1995, the General Assembly added subsection (e)(2) to allow constitutional officers involved in any case in which the city attorney has a conflict, to obtain the authorization necessary to hire counsel, and to obtain attorney fees funded by taxpayers, not the officer personally. *See* Ga.L.1995, pg. 1063 §1, *as cited in* Bd. of Comm'rs of Dougherty Cnty. v. Saba, 278 Ga. 176, 200 (2004).

> like reasonable costs, expenses, and fees; provided, however, that such attorneys' fees shall be no more than the rate paid to the county attorney for similar representation or in accordance with a schedule of rates for outside counsel adopted by the governing authority, if any. Such fees and costs shall be authorized by the chief judge of the superior court of the circuit in which the county is located. This subsection shall not apply unless the governing authority of the county has first denied a written request by a county officer for counsel.

O.C.G.A. §45-9-21(e)(2).[8]

Nowhere does the statute prescribe the manner in which the governing authority shall pay the fees or account for those expenditures. The statute provides merely the "authority" of the constitutional officer to hire outside counsel and have it paid for via funds of the "governing authority". Id. Indeed, there was no need for O.C.G.A. §45-9-21(e) to make provisions for the accounting and distribution of funds for the payment of attorney's fees other than to direct that the fees come from the funds of the "governing authority", because O.C.G.A.§36-5-22.1(a)(7)

[8] The "cardinal rule" of statutory interpretation is to look to the intent of the General Assembly. Johnson v. State, 267 Ga. 77, 78 (1996); Miller v. Georgia Ports Authority, 266 Ga. 586, 587 (1996)(in reviewing intent of the legislature, the words are to be given their plain meaning). In Saba, this Court reviewed the statutory history of O.C.G.A. §45-9-21, and the addition of subsection (e)(2), noting its change provided a constitutional official with broadened authority to employ legal counsel and to have the county fund attorney fees and expenses upon a conflict of interest with the county attorney. Saba, *supra*, 278 Ga. at 178-80. The addition of subsection (e)(2) in 1995 prevented the constitutional officers from having to personally pay for litigation filed by them in the course of their duties, as the authorization for fees was no longer conditioned on the success of the officer's legal position. Id.

clearly provides that monies appropriated to "all officers" remain the monies of the "governing authority" though they be in the care, management, and keeping of said officers.

As a constitutional officer, Appellee can spend the monies appropriated to him, as his discretion dictates. *See* (R-249-253); *see also* Chaffin v. Calhoun, 262 Ga. 202, 203 (1992); Moore v. Baldwin County, 209 Ga. 541, 541 (1953)("the manner of doing the act within the power of the governing officials of a county must be largely left to their discretion"). Suing the CCG, its officials and employees is a choice only the Appellee Sheriff could make. Having made that decision it is the monies of the "governing authority" that reside within his budget – within his care, management and keeping - that should cover those expenses. *See* O.C.G.A. §36-5-22.1(a)(1) and (7)(monies appropriated to the Sheriff are funds of the "governing authority").

Contrary to the plain language of O.C.G.A. §45-9-21(e), and counter-intuitive to better public policy, the Trial Court interfered with the CCG budget, redistributed funds already legislatively appropriated through local Ordinance 14-25 (*see* R-2-1004), and granted the Appellee's request for an injunction. *See also* (R-2-928)(Trial Court ordered CCG to pay fees from its "general funds").[9] The

[9] The Trial Court's Order not only directed a payment method and source in a manner not contemplated in O.C.G.A. §45-9-21(e)(2), it also required that each

Trial Court's injunction must be reversed, as it misapplied the law and overstepped its jurisdictional boundaries. Holton, *supra*, 292 Ga. at 864.[10]

II. Sovereign and Legislative Immunity Bar Appellee's claims for Declaratory Judgment.

A. Sovereign immunity bars Appellee Sheriff's claims that the FY15 Budget is void.

The Sheriff seeks a declaration that the FY15 budget should be declared void. He also claims two budget ordinances should be unconstitutional--Ordinance 14-25 (which provided him with his FY15 funds) and Ordinance 13-39 (which authorized his expenditures which exceeded his budget). (R-2-982-985). As discussed herein, the Trial Court should have dismissed these inadequately pled and legally deficient claims due to sovereign and legislative immunity.

Sovereign immunity is not just a defense; it is an entitlement not to stand trial – a right which is effectively lost if a case is erroneously permitted to continue. Bd. of Regents v. Canas, 295 Ga.App. 505, 507 (2009); Southern LNG, Inc. v. MacGinnitie, 290 Ga. 204 (2011)(purpose of sovereign immunity is to

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party engage in a submission of privileged and protected billing information to the Trail Court, here the trier of fact. (R-2-927-929, ¶11, ¶14-16). This process is not contemplated in O.C.G.A. §45-9-21(e), or in other statutes awarding attorneys' fees *See* O.C.G.A. §51-7-80, *et seq.*, O.C.G.A. §13-6-11 or O.C.G.A. §9-15-14. This process could subject the Trial Court to recusal. O.C.G.A. §9-11-26.

[10] Having granted an injunction without statutory support, the Trial Court issued common law equitable relief which was not only unauthorized and unwarranted, but barred by sovereign immunity. (R-2-925); Sustainable Coast, *supra*, 294 Ga. at 597. *See also*, Section II, herein.

allow immunity from suit, rather than as a mere defense to the suit). To avoid the application of sovereign immunity, a claimant must demonstrate a specific waiver of immunity by the General Assembly. Sustainable Coast, *supra*, 294 Ga. at 597("sovereign immunity of the state and its department and agencies *can only be waived by an Act of the General Assembly* which specifically provides that sovereign immunity is thereby waived and which sets out the extent of such waiver); SJN Props. LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 800 (2015)(absent a statutory provision affording the express right to seek declaratory relief against the State, sovereign immunity will bar the claims). *See also* Dekalb Cnty. Sch. Dist. v. Gold, 318 Ga.App. 633, 637 (2012) (recognizing the statue at issue there, O.C.G.A. §50-13-10, *et seq.*, provides for specific waiver of sovereign immunity for declaratory judgment actions challenging state agency administrative rules). Neither the Sheriff nor the Trial Court cites to, nor could they, a single provision of waiver of immunity for the Sheriff's declaratory judgment claims. The Sheriff's attempts to dress-up his budget level complaints as constitutional challenges do not save those claims from the application of immunity.

The Georgia Declaratory Judgment Act, O.C.G.A. § 9-4-2, provides that the superior court may declare rights and legal relations of the parties, but only when there is an "actual case and controversy" and when there is uncertainty and insecurity with respect to those rights and relations. However, the Appellee Sheriff

has improperly sought to declare: 1) the entire (now complete) FY15 CCG budget ordinance No. 14-25 unconstitutional and void; and 2) Local ordinance No. 13-39, which provides a process through which Council can amend its budget, unconstitutional. The law, however, is to the contrary. In short, these constitutional challenges are a subterfuge for a complaint about the budget amount. Accordingly, the Trial Court erred in not holding that sovereign immunity bars such claims of the Sheriff.

i. Appellee is not entitled to a declaration that the FY15 Budget is void.

In an effort to void the FY15 budget, and presumably subsequent budgets, the Appellee Sheriff seeks a declaration that he is not subject to the budget process of the local governing authority. He is simply precluded from such an assertion as a matter of law, and there can be no claim to the contrary on which a declaratory judgment claim could lie. Bd. of Comm'rs of Randolph Cnty., 260 Ga. 482, 483 (1990) (Court recognizes "sheriff's budget and accounts are subject to the authority of the commission" and affirms 20% reduction in funding for sheriff personnel). *See also, infra.,* Section III. His pleadings on their face misstate his powers under the law and fail to plead an express waiver of sovereign immunity to his applicable claims. Accordingly, his declaratory judgments claims fail.

> Under the rationale of Sustainable Coast, it appears that, absent a statutory provision affording claimants an express right to seek declaratory relief against State, sovereign immunity would bar such

> claims. Gold, 318 Ga. App. At 637 (noting that OCGA §50-13-10 provides for specific waiver of sovereign immunity for declaratory judgment actions challenging state agency administrative rules).

See SJN Props., *supra*, 296 Ga. at 802. The Sheriff basis his flawed declaratory judgment claims on a misstatement of clear legal directives.

To somehow distance himself from the law precluding his declaratory judgment claims, Appellee Sheriff erroneously asserts that he is his own budget officer, his office is a separate unit of local government, and his office is exempt from the authority and discretion afforded to the executive branch officials in preparing the annual Mayor's Recommended Budget to Council. He is wrong on all fronts. *See* Lawson, *supra*, 292 Ga.App. at 532 (sheriffs are not independent of county budget process); *see also supra*, pp. 6-7, 9, n. 6, and 12-13.

The Sheriff recites the budgetary process, but he has not pled any sufficient basis to contest the authority of the Appellant CCG over its property in O.C.G.A. §36-5-22.1 or the budgetary process required and outlined in the Columbus Charter and supported by Georgia law. (R-1-408-412). The Charter demands that the annual operating and capital budget for the CCG begin with the work of the executive branch of the CCG, namely the Finance Director and City Manager, who collect necessary and relevant financial data and conduct fiscal policy assessments over several months to ensure the budget for the next fiscal year is realistic and balanced. *See* Charter §4-307(3)(noting the City Manager must "prepare and

submit" to the Mayor the annual operating and capital budget) and Charter §4-201(10)(noting the Mayor's duty to submit the balanced recommended annual operating and capital budget to Columbus Council). This recommendation process, found in Charter §7-401(2), requires the City Manager and Mayor to use their discretion in the budget process. The Charter then provides that the Mayor is to propose expenditures of each elected office, among other departments and boards, in detail pursuant to the Georgia mandated chart of accounts. *See* Charter §7-401(4)(c)("each of the above-described sections of the annual operating budget shall contain, with respect to each of the operating funds of the consolidated government to which they are applicable…proposed expenditures detailed by each department, board, commission, office, agency, and activity in accordance with an established classification of accounts…"); Charter §7-401(5)(proposed budget expenditures must be limited to expected revenues and reserves). The Charter only provides the elected officials with the opportunity to make "budget requests" (*see* Charter §8-105) not budgets as the Sheriff erroneously insists, for *in toto* adoption within the Mayor's proposed balanced budget. *Compare* Charter §8-105 *with* Charter §4-201(10), §7-401(1)–(6). None of the submissions of this elected official constitutes a "budget", as that term is defined by law, i.e. O.C.G.A. §36-81-2 (1)(noting a "budget" means a plan of financial operation which shows planned expenditures during a budget time period and the proposed means of

financing those expenditures). *See also* Charter §7-401(4)(c) (requiring the proposed expenditures of elected offices be submitted by the Mayor in form consistent with the Georgia Chart of Accounts).

Any argument that the law provides Appellee Sheriff an exemption from the initial executive budget-making process ignores the authority provided to the CCG and the right of the executive branch to patriciate and use its discretion in the carefully outlined budget process.[11] Similarly, Appellee Sheriff is not entitled under any Constitutional provision, statutory provision, or Charter provision to avoid the budget process or to be funded in the exact amount of his budget requests. (R-2-983, ¶¶ 243-245*)*. *See* Chaffin, *supra*, 262 Ga. at 204(noting difficulties present by a 53% reduction to sheriff's budget did not override the authority of the county to set the budget, nor did this present a constitutional claim).

[11] Appellee's attempt to avoid the initial budget process misconstrues Charter §8-105, which requires him to submit budget requests to the City Manager for incorporation into the Mayor's Recommended Budget for Council and allows him to have a hearing before Council to review the budget requests. Nowhere does that provision allow him to demand that his budget requests circumvent the Mayor entirely, so they may be submitted to Council in full. Not only is Appellee's argument inconsistent with the other budget provisions of the Charter, but it would also be a practical impossibility (as all the CCG funds could be depleted by the "alleged priority" he or other elected officials claimed for §8-105 entities).

The Appellee Sheriff has not shown any basis to void the budget process as provided for in Georgia law and in the Charter. Nor has he shown any justification whatsoever for the waiver of sovereign immunity. The trial court should have dismissed those claims.[12]

ii. Ordinances 14-25 and 13-39 are consistent with State law and are constitutional.

Appellee Sheriff has admitted that both Ordinance 14-25 and Ordinance 13-39 are consistent with Georgia law. Thus, his claim that they are unconstitutional is facially insufficient. (R-2-946 ¶80; R-2-948 ¶91). *See* Lill v. Deal, 2014 WL 3697356 (S.D.Ga. July 23, 2014)(dismissal of constitutional claim necessitated, as Georgia law does not contemplate granting a litigant the right to complain of actions consistent with the law); Advanced Disposal Servs Middle Georgia L.L.C. v. Deep S. Sanitation L.L.C., 296 Ga. 103, 105 (2014)(consistency with law does not give rise to claims of an unconstitutional ordinance).

[12] The declaratory relief sought Appellee Sheriff is also insufficiently pled, even if immunity were not a complete bar. He fails to establish relief appropriate for this claim, asserting the budget process must be voided and his requests be given priority. (R-2-932). *See* Henderson v. Alverson, 217 Ga. 541 (1962)(where a party faces no uncertainty as to its own conduct, but merely seeks to adjudicate other party's conduct, declaratory judgment is improper); Ctr. for a Sustainable Coast, Inc. v. Ga. Dept. of Natural Res., 319 Ga.App. 205 (2012)(a plaintiff who contests the outcome of action taken as "ultra vires" and seeks to have action voided presents no justiciable controversy).

Appellee Sheriff alleges as follows: (1) Ordinance 13-39, which requires that Appellee seek approval from Council for any expenditure which exceeds his appropriated budgeted funds, is "unnecessary", because those expenditures would already be prohibited by the Charter and the law; and (2) Ordinance 14-25, which set his budget for FY15, did not provide a budget for an entire year, since its language contemplated a mid-year review, should Council deem necessary. Id. (R-2-866; R-2-889). In both of these claims, the Appellee Sheriff admitted the power of the counties to act under the ordinances which are the focus of his complaint. His pleadings expressly acknowledge how the budgetary amendments, and approval of any excess spending requests, are authorized through Council after the original budget is passed. *See* O.C.G.A. §36-81-3(d), *referenced in Third Amended Petition,* (R-2-949, ¶96); *see also* Charter §7-404(expressly allows budgetary amendments to be considered). As these claims are plead, they show no conflict with any constitutional powers or provisions. The Trial Court should have dismissed the Sheriff's claims that the ordinances were unconstitutional.

B. Legislative immunity should have prevented any of the claims based on the legislative budget process from continuing against Appellants in their official capacities.

In its Orders, the Trial Court ignored completely the arguments as to the application of legislative immunity. (R-S1-1). The United States Supreme Court has concluded that "legislators engaged 'in the sphere of legitimate legislative

activity,' should be protected not only from the consequences of litigation's results but also from the burden of defending themselves." *See* Supreme Court of Virginia v. Consumers Union of U.S., Inc., 446 U.S. 719, 732 (1980), *approved in* Kentucky v. Graham, 473 U.S. 159, 164 (1985); Scott v. Taylor, 405 F.3d. 1251, 1255 (11th Cir. 2005)(legislators are entitled to legislative immunity when named in either official or individual capacity); Saleem v. Snow, 217 Ga. App. 883, 886 (1995) ("Individuals acting in a legislative capacity are absolutely immune from suit."). Each and every one of Appellee's declaratory claims involves actions taken, or not taken, through the budget process. (R-2-932-1026). As such, Appellants are entitled to immunity, and dismissal was proper. Id.

III. The Trial Court erred in denying the Appellants' Motion to Dismiss the Appellee Sheriff's mandamus claims as non-justiciable and not based upon any legal rights.

A writ of mandamus only lies where there is a clear legal right to immediate relief, or to compel due performance of specific official duties. O.C.G.A. § 9-6-20; SJN Props., *supra*, 296 Ga. at 798; Lowe v. State, 267 Ga. 754 (1997). Such writ will not issue "to compel a general course of conduct or the performance of continuous duties nor will it lie where the court issuing the writ would have to undertake to oversee and control the general course of official conduct of the party to whom the writ is directed." Lowe, *supra*, 267 Ga. at 755. Likewise, writs will not issue to compel discretionary acts. *Id.* at 756; *see also* James v. Montgomery

County Bd., 283 Ga. 517 (2008). And, writs shall not issue to compel the unraveling of acts already done. Hilton Constr. Co., *supra*, 245 Ga. at 540; *see also* Saba, *supra*, 278 Ga. at 178 (mandamus petition filed before the effective date of the challenged budget, and trial court's issuance of the writ reversed).

The Trial Court erred by not applying the above cases (and other cases) to the Sheriff's petition for the writ. First, the Sheriff is not entitled to any specific amount of money, and Council is not required to appropriate to his office the entire amount he requests. Lovett, *supra*, 242 Ga. at 406; Randolph Cty., *supra*, 260 Ga. at 483 ('[a]s a county officer, the sheriff's budget and accounts are subject to the authority of the commission"); Chaffin, *supra*, 262 Ga. at 204(commissioners do not have to accept the budget a sheriff proposes). A local governing authority is only required to provide funding for the constitutional mission of the constitutional officer, and the officer is only entitled to the fair exercise of discretion in that process. Wolfe v. Huff, 233 Ga. 162 (1974).[13] Because the Sheriff is not entitled to a specific amount but only to "some" funding, because he admits he was the beneficiary of the deliberative legislative process, where he submitted his budget requests to the Council and was afforded the opportunity to be heard at Council,

[13] In Wolfe, this Court held that a county could not appropriate $0 for the sheriff's office, but it required only that the county provide "some" funding. *Id.* *See also* Wolfe v. Huff, 232 Ga. 44 (1974). This Court affirmed the county's discretion in the use of its financial resources.

and because he alleged in his pleading that he sought funding for services beyond those necessary to the fulfillment of his constitutional mission, no claim for a writ is stated and no writ could issue and the Trial Court should have so held. *See* (R-2-956, ¶134(a),(d), and (e) (pleading that only "… the majority of his budget is allocated to duties required by law")). *See also* (R-2-843; R-2-650). These affirmative allegations by the Sheriff distinguish the holding in Saba, *supra.* While the Sheriff quibbles about the amount of funding, his pleadings bind him to the fact that he is seeking additional monies beyond any constitutionally mandated minimum necessary to execute his mission. The Sheriff simply fails to plead that the FY15 budget falls below a constitutional minimum that inhibits or prevents his office from performing its constitutional mission or that would justify the judiciary's involvement. Rather, he pleads he needs additional funds to meet his impression of the citizens' expectations of him (R-2-447, ¶134(a), (d) and (e)) and his general wants (R-2-437-438, ¶¶82 and 83).

Next, a writ in this instance would unconstitutionally and impermissibly intrude upon the duties imposed upon the Mayor and the executive branch to propose a recommended budget addressing all of the CCG's needs and obligations and upon the discretion afforded the Council to deliberate and enact a budget. If a writ was granted, the court would become entangled in and be required to oversee continuously the day-to-day operation of CCG and the hundreds of local governing

authorities throughout the state. Speedway Grading Corp. v. Barrow County Bd. of Comm'rs., 258 Ga. 693, 695 (1988)(writ "will not lie to compel a general course of conduct or the performance of continuous duties nor will it lie where the court issuing the writ would have to undertake to oversee and control the general course of official conduct of the party to whom the writ is directed.")

Finally, the FY15 budget process which the Sheriff challenged was completed when the budget was enacted in June of 2015 to take effect on July 1, 2015. A writ of mandamus does not lie to unravel a completed act, and that is particularly true here where the entire FY15 year has concluded and the budget has been completed. Hilton Constr. Co., *supra*, 245 Ga. at 533; *see also* n. 4 *infra.*

Each and every year, the constitutional officers are provided the opportunity to present their specific budget requests to Council. (R-2-942, ¶57; Charter §8-105). The Appellee admitted that his FY15 requests were provided, in their entirety, to Council. (R-2-954, ¶127). He admitted that he requested, and received, a budget hearing before Council to discuss all of his budgetary requests. (R-2-956, ¶134 (a)-(g)). In his Third Amended Petition he recites the content of the FY15 hearing, in which Council discussed and compared the Mayor's Recommended Budget, the persistent overages in past years, and the authority of the Appellee to adjust his budgeted funds in other areas as he determined necessary. (R-2-958-960, ¶135(c) and (f)). Having admitted that his requests were heard pursuant to the

budget processes outlined in the Charter, and without a specific spending decision to contest before the Court, the extraordinary remedy of mandamus has been insufficiently pled. Bibb County v. Monroe County, 294 Ga. 730(2014)(mandamus will not lie to compel the manner in which an official exercises discretion, nor can it dictate the results of the discretion).

CONCLUSION

In light of the foregoing argument and authorities, the injunction awarding the Sheriff's attorney's fees from CCG's "general fund" should be reversed, the order denying the application of sovereign and legislative immunity should be reversed and the Appellants' Motion to Dismiss should be granted in its entirety.

Respectfully submitted this 21st day of July, 2015.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Appellee in the foregoing matter a copy **BRIEF OF APPELLANTS** in a copy of same in a properly addressed envelope with adequate postage thereon:

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