

COPY

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

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2016 JAN -8 AM 9:57
M. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

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

Plaintiff,

v.

CIVIL ACTION FILE
NO. SU-14-CV-3437-94

COLUMBUS, GEORGIA, a City, a public
corporation and a political subdivision of
the State of Georgia; TERESA P.
TOMLINSON, in her official capacity as
Mayor of Columbus, ISAIAH HUGLEY,
in his official capacity as the City Manager
of Columbus, PAM HODGE, in her
official capacity as Finance Director of
Columbus, JERRY "POPS" BARNES, in
his official capacity as District 1
Councilor, GLEN DAVIS, in his official
capacity as District 2 Councilor, BRUCE
HUFF, in his official capacity as District
3 Councilor, EVELYN TURNER PUGH,
in her official capacity as District 4
Councilor, MIKE BAKER, in his official
capacity as District 5 Councilor, GARY
ALLEN, in his official capacity as District
6 Councilor, EVELYN "MIMI"
WOODSON, in her official capacity as
District 7 Councilor, TOM BUCK, in his
official capacity as District 8 Councilor,
JUDY THOMAS, in her official capacity
as District 9 at Large Councilor, and
BERRY "SKIP" HENDERSON, in his
official capacity as District 10 at Large
Councilor,

Defendants.

**DEFENDANTS' BRIEF IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT**

COME NOW, Defendants in the above-styled action, and, pursuant to O.C.G.A. §9-11-56, request this Court grant partial summary judgment to Defendants in order to narrow the non-fact, legal issues in this case and to prevent the intrinsic legal error attempted to be built into the Plaintiff's case, to-wit: that the Sheriff's Office is its own "unit of local government" as defined by O.C.G.A. §36-81-2(16), and that he is his own "budget officer" as defined by O.C.G.A. §§36-81-2(2). Neither the facts of this case, nor the testimony provided or the black-letter law, support these allegations. Defendants rely upon the Motion and the Statement of Undisputed, Material Facts, filed herewith, and move this Court for an Order granting for partial summary judgment, respectfully showing this Court as follows:

INTRODUCTION

Sheriff Darr's Third Amended Complaint erroneously alleges that his office is its own "unit of local government" and that the Sheriff is his own "budget officer" as defined in O.C.G.A. §36-81-2(2) and (16). (Third Amended Complaint ¶54 and ¶55). In paragraph ¶232(c), Sheriff Darr requests mandamus relief to require Defendants to recognize these legal rights. In doing so, he seeks an extension of power and authority to his Office that the law does not provide. *See* O.C.G.A. §9-11-56 (The purpose of summary judgment is to eliminate the need for trial if there is no genuine issue as to any material fact or if the movant is entitled to judgment as a matter of law). Any erroneous recognition of the Sheriff as his own "unit of local government" or his own "budget officer" would cause this matter to be tried on the basis of legally invalid standards, duties and authorities and would nullify our efforts to reach a conclusion to the mandamus matter before the Court. These are threshold legal issues, which must be determined now. Indeed, given that the status of "unit of local government" and "budget officer" is

statutorily defined and applied strictly by the State of Georgia, no circumstances or facts exist upon which such alleged legal status can be made and the Sheriff has admitted such under oath.

ARGUMENT AND CITATION OF AUTHORITY

Georgia statutory law, official State records, the pleadings and the testimony of Sheriff Darr demonstrate, as a matter of law, that the Sheriff does not have the legal right or status to be a “budget officer”, and his Office does not qualify as its own “unit of local government”. This Motion does not require an entry of judgment to the mandamus claim, it does, however, require a legal determination of issues upon which the mandamus claim will be tried. It is imperative that the Court and the parties resolve these threshold issues as a matter of law before this case goes any further. “Summary judgment may be granted for all or part of a claim, counterclaim, cross-claim or action for declaratory judgment.” Richard C. Ruskell, Davis and Schulman’s: Georgia Practice and Procedure, §23:15 at 1305 (2015-2016 ed.); *see also* Crolley v. Haygood Contractor, 207 Ga. App. 434 (1993) (holding that partial summary judgment is a beneficial tool for the purpose of narrowing the issues for trial); Georgia Farm Bureau Mut. Ins. Co. v. Nolan, 180 Ga.App. 28 (1986)(granting summary judgment to insurer on legal issue of insured’s failure to institute the action within the timing requirements of the policy, noting prior inconsistent statements on the issue by the insured were to be resolved against him). The law, the facts and Sheriff Darr’s own testimony, highlight how any consideration of mandamus relief would be erroneously based on the false legal standards, duties and authorities of an actual “unit of local government” or actual “budget officer”. Summary judgment on those two allegations, and any relief sought thereunder, is warranted. Id.

A. The Sheriff's Office does not qualify as a "unit of local government" as defined under O.C.G.A. §36-81-2.

No sheriff, including Sheriff John Darr, is operating as a separate "unit of local government" in Georgia. Instead, Georgia law explicitly defines what a "unit of local government" is, and that authority is granted to the Columbus, Georgia Consolidated Government, not to Sheriff Darr. O.C.G.A. §36-81-2(16) specifically defines the unit of local government as follows:

"Unit of local government", "unit" or "local government" means a municipality, county, consolidated city-county government, or other political subdivision of the state. Such terms do not include any local school district or board of education. For purposes of this paragraph, "county" includes any county officer who is paid in whole or in part on a salary basis and over whom the county governing authority exercises budgetary authority. (O.C.G.A. §36-81-2(16), emphasis supplied).

Under the express terms of the statute, the Sheriff, as a county officer, is included within the definition of the Columbus, Georgia Consolidated Government ("CCG"). Id.

The Sheriff does not operate as a separate local government, and his Complaint acknowledges his dependence upon the Defendant CCG for his funding. He also recognizes the legislative authority of the Defendant CCG Councilors as the unit of local government that has budgetary authority over his office and that deliberates upon, sets and accounts for the budget of the Sheriff's Office within the framework of the overall budget for the CCG as the local governing authority. (Third Amended Complaint ¶14-16). *See also* O.C.G.A. §36-81-2(16).

Determinative is the State of Georgia's response to written discovery in this case, wherein the Georgia Department of Community Affairs confirms that neither Sheriff Darr, nor any representative of his Office, has registered the Muscogee County Sheriff's Office as a unit of local government. *See Request No. 1 of Exhibit 2, Defendants' Non-Party Requests for Production of Documents to Georgia Department of Community Affairs, and Response No. 1 of*

Exhibit 3, Georgia Department of Community Affairs' Response to Defendants' Non-Party Request for Production of Documents. Plaintiff Darr cannot defy this official declaration as to the Sheriff's lack of status as a "unit of local government".

Likewise, no CCG Charter provision references the Sheriff's Office as a separate unit of local government - nor could it, as that title would be inconsistent with the authority granted to the consolidated government under Georgia law. Georgia law does not grant the Sheriff the power of forming a separate unit of local government, and it is clear from his deposition that the Sheriff did not intend to assert that position in this litigation.

In his own deposition, Sheriff Darr admitted that he does not understand his Office to be its own unit of local government, nor has he filed the paperwork necessary with the State of Georgia to establish or register the Muscogee County Sheriff's Office as a separate local government authority. Sheriff Darr testified as follows:

Q: Do you understand in this lawsuit that you have alleged that the sheriff's office is its own unit of local government?

A: I don't know what you mean by that. I just know that I'm the elected sheriff of Muscogee County.

Q: Okay. Do you consider the elected office of the sheriff of Muscogee County to be its own unit of local government?

A: I'm not sure what you're trying to get to on that.

Q: Let me ask you this: Have you ever filed a request with any governmental entity or state department to have the sheriff's office determined or qualified as its own separate unit of government?

A: No, ma'am, I have not filed anything.

Q: Have you ever seen any documentation which refers to the sheriff's office as its own unit of local government?

A: Not that I - off the top of my head, no ma'am.

Q: Have you filed a registration of authority of the sheriff's office with the Georgia Department of Community Affairs?

A: Not that I know. I just know that I am the elected sheriff of Muscogee County, and one of my responsibilities as the sheriff of the Muscogee County is developing and presenting the budget for the Muscogee County sheriff's office.

Q: You don't present or file any report of the sheriff's office finances with the Georgia Department of Community Affairs on an annual basis, do you?

A: No, ma'am.

(Darr Depo. pg. 46, Line 19 through pg. 48 Line 3).

(Sheriff Darr Deposition Excerpts provided from pgs. 46-54 as *Exhibit 1*). He confirmed that his Office had no authority to tax or to issue bonds, and admitted that he does not control the revenue streams of CCG that fund his Office. (Darr Depo. pgs. 48-49). Under the Local Government Authorities Registration Act, a "local government authority" is defined as an entity that "has authority to issue debt for a public purpose independent of a county or municipality, not to include state authorities". See O.C.G.A. §36-80-16(d)(2)(noting ability of authority to issue debt as a characteristic of a local government authority) and *see also* O.C.G.A. §36-80-16(e)(requires registration of local government authorities with the Georgia Department of Community Affairs); and O.C.G.A. §36-81-8(b)(1)(A)(notes local unit of governments are required to provide an annual report of local government finances).

Sheriff Darr acknowledged no formal recognition of the Sheriff's Office as a unit of local government exists. (Exhibit 1, pgs. 46-48). Further, neither the Department of Community Affairs, nor the Office of Research for the State of Georgia, has listed the Muscogee County Sheriff's Office as an independent local government. See "*Financial Documents Section*" showing those documents uploaded and filed, as required by law, by authorized and registered local governments in <https://ted.cviog.uga.edu/financial-documents/>. Clearly, the Sheriff of a

county, regardless of his status as a constitutional officer, is not a local unit of government and no legitimate claim to be made for that assertion.

B. Sheriff Darr is not a Budget Officer as defined under O.C.G.A. §36-81-2

Similarly, Georgia law strictly provides that only one budget officer is contemplated for the Columbus Consolidated Government under O.C.G.A. §36-81-2(2):

"'Budget officer' means that local government official charged with budget preparation and administration for the local government. The official title of the local government budget officer shall be as provided by local law, charter, ordinance, or appropriate resolution of the governing authority."

Id.¹ No such "local law, charter, ordinance or appropriate resolution" can be identified by Plaintiff Darr, evidencing that he has never been bestowed such an "official title".²

In deposition and under oath, Sheriff Darr was confused at the suggestion that he was a "budget officer", and he was unclear as to any responsibility beyond developing a "budget" for the Sheriff's Office that he might have - "[s]o if you want to say that's a budget officer, I'm not sure".³ (Darr Depo. pg. 53-54). The official title of "budget officer" is not a whimsical title. It is a serious, responsibility-laden position under Georgia law. Frankly, if you were one, you would know it and there would be an official reference to the assumption of that responsibility. *See*

¹ This statutory language is acknowledged in the allegations of the Sheriff, which claim the Defendants failed to provide him with sufficient funds and/or consider his budget requests, and the Sheriff should be estopped from taking opposite sides of the same issue. If he were his own "unit of local government", then his lawsuit would be against himself. These allegations are disingenuous and stretch the meaning of clear, statutory precedent. The Sheriff cannot ask this Court to declare his Office as a separate, independent unit of local government for budgeting purposes, and then ask the Court to require more funding from Defendant CCG, an actual "unit of local government" in its budget process. (Third Amended Complaint ¶232; ¶252).

² Ironically, if Sheriff Darr truly thought he was his own "unit of local government", he would have decreed himself to be his own "budget officer." There is no indication this has taken place, nor has Sheriff Darr even thought to declare himself as his own budget officer, since he acknowledges his Office is fully dependent upon the funding, and thereby the budget process, of Defendant CCG.

O.C.G.A. §36-81-2(2)(definition of “budget officer”); §36-81-3(regarding the budget officer’s approval of certain transfers of appropriated funds); §36-81-4(setting out the process through which a local government appoints a “budget officer”); §36-81-5(particularized list of “budget officer” duties). Sheriff Darr performs none of those duties, which is why it is understandable for him to testify that he has never seen any paperwork referring to him as a budget officer. (Darr Depo pgs. 52-53). Instead, he confirmed that the “Consolidated Government is tasked with providing the sheriff’s office with a reasonable and adequate budget”.... so that the “responsibility of funding the Office” rests solely with Defendant CCG and the CCG Council. (Darr Depo pgs. 51 and 52).

The Sheriff may not obtain equitable relief on legal rights he does not have or in a legal status he does not possess, so that ordering any mandamus relief based on these allegations would be clear legal error. *See* O.C.G.A. §9-6-20(mandamus relief may not be ordered absent a clear legal right to the relief sought). Summary judgment on these two legal assertions is warranted.

CONCLUSION


The law and the facts of this case defy any assertion that the Muscogee County Sheriff’s Office is a separate unit of local government, or that the Sheriff is a budget officer, as defined by O.C.G.A. §§36-81-2(2) or (16). Through these allegations, the Sheriff has asked this Court to dismantle the roles of CCG’s legislative and executive branches and grant him the power of an independent local government through mandamus relief. No authority exists for this Court to so order. Such would be inconsistent with his prayer for relief, not to mention long-standing Georgia law and would be incompatible with the very structure of our government. For all of these reasons, Defendants request summary judgment on those allegations.

WHEREFORE, the Defendants request that the parties be provided a hearing on this Motion, that an Order be entered granting partial judgment for the Defendants in the manner stated herein, and for all such other relief as the Court deems appropriate.

Respectfully submitted, this 7 day of January, 2016.

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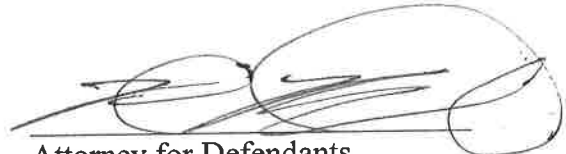
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** via electronic mail, per agreement of counsel and the Court, addressed as follows:

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This 7 day of January, 2016.



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