

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA

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M. LINDA PIERCE  
MUSCOGEE COUNTY  
SUPERIOR COURT

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

Plaintiff,

v.

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

Defendants.

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

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**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS**

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COME NOW, Defendants in the above-styled action, and files this Reply Brief in Support of their Motion to Dismiss Plaintiff's Claims, noting that Plaintiff's claims are barred as

a matter of law, respectfully requesting the Court grant their Motion to Dismiss in its entirety and showing the Court as follows:

### I. INTRODUCTION

Plaintiff Sheriff Darr has now filed his third Petition, claiming he is entitled to a long list of extraordinary measures to be ordered by this Court, most of which are aimed at providing him more funding than the twenty-seven million, six hundred fifty three thousand, nine hundred fifty-six dollars (\$27,653,956) which was appropriated to his Office by Council for FY15 in June of 2014.<sup>1</sup> (Second Amended Petition ¶232, ¶252). Defendants stand by their Motion to Dismiss, regardless of the amendments, because the Sheriff has continued to pursue legally deficient claims in his pleadings and has pled no facts to demonstrate relief is warranted. In response to this Motion, the Sheriff has failed to address the extraordinary nature of the relief requested, which is, under Georgia law, rarely granted and available only in limited circumstances. *See* O.C.G.A. §9-6-20, *et seq.* and O.C.G.A. §9-11-65.

Contrary to the statements in his Response Brief, the relief requested by the Sheriff is not typical, and the ramifications of his requests are enormous. (Darr Response Brief, pg. 1). The Sheriff's Petition asks this Court to "undo the entire FY15 Budget" and direct the Council in a specific manner to ensure he is provided with all of his proposed budgetary requests for both FY15 and FY16. (Second Amended Petition ¶232). Although the Sheriff claims he does not want to start at "square one" in the budget process, there is no other method available which could grant him additional funds without revising all other CCG Department and Office budgets for the remaining months of FY15, a virtual reset for all departments within the Columbus Consolidated Government. (Darr's Response Brief, pgs. 12,14; Second Amended Petition ¶232).

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<sup>1</sup> Although the Sheriff has now filed his third Petition for Mandamus, and the District 8 Council seat vacated after the death of Councilor McDaniel has been filled by Mr. Thomas Buck, the Sheriff has not sought to include the District 8 Councilor in this lawsuit, so that all of Council is not present in this case.

However, the extraordinary measures sought are not warranted and indeed are contravened, under the very facts he alleges - The Sheriff himself has pled facts showing sufficient evidence was presented to and weighed by Council support the amounts appropriated to him in the FY15 budget process. (See Second Amended Petition ¶127, noting his proposals were all submitted to Council; ¶134, noting his appearance before Council to explain his budget requests, as well as the comparison and contrast made with those provided in the Mayor's Recommended Budget; ¶135, noting the discussion which resulted from the review and comparison of both proposals).

The Sheriff has continued to be overreaching in his claims, even in the Second Amended Petition which was filed after the Defendants' Motion to Dismiss. Instead of acknowledging that his remedy lies with the Council, which has the exclusive legislative power to grant him additional funds, he seeks this Court's direction and involvement, presumably to ensure each and every funding request he makes will be granted through either mandamus or other equitable relief (Second Amended Petition ¶65, ¶232 and ¶252). Plain and simple - Sheriff Darr has lodged this action as a budget negotiation tool, using the cost of litigation to extract what legislatively he has not been able to justify and what Council, after due deliberation, has determined is not warranted. Sheriff Darr requests this Court intervene and become involved in a legislative process in a manner which is simply beyond the jurisdiction of this Court. See Lowe v. State, 267 Ga. 754 (1997) and O.C.G.A. §36-5-22.1. All of this, the Sheriff asks of this Court, without any legal authority, or support for his theory, that the amounts appropriated to his Office fail to meet the minimum required for him to perform his constitutional duties.<sup>2</sup>

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<sup>2</sup> There is no law, or even pleading in this case, that suggests the Sheriff is entitled to any specific amount of funding for his constitutional duties. Notably absent in any of the Sheriff's filings is any specific reference to the funding required by specific constitutional duties, nor is there any case law or statute which would demonstrate that \$27+million is below the constitutional minimum to fulfill his duties. His Petition states only that a "majority" of his budget requests were for "duties required by law". See ¶134 of Second Amended Petition. Sheriff Darr has no legal right to a specific amount of funding, only to a budgetary process that requires consideration of his requests.

## II. MOTION TO DISMISS

Defendants' Motion to Dismiss has been filed for two reasons: (1) The facts of Sheriff Darr's filings show that he will not be entitled to move forward or receive relief on his claims; and/or (2) Sheriff Darr is barred as a matter of law the relief sought. *See Thomas v. Lee*, 286 Ga. 860 (2010)(motion to dismiss granted on petition for writ of mandamus to compel county official to act when "there is no manner in which" the alleged wrong states a valid claim). Although the facts and allegations stated in his Petitions may be reviewed in his favor for a motion to dismiss, much of what Sheriff Darr claims in his Second Amended Complaint are legal conclusions, which do not demonstrate a right to either extraordinary measure of mandamus or equitable relief.<sup>3</sup> This Court does not need to accept inferences or legal conclusions drawn by the Plaintiff on the facts in his Petition.<sup>4</sup> *See Chisolm v. Tippens*, 289 Ga.App. 757 (2008). Although this Court has not yet ordered any response to be made to the Plaintiff's Second Amended Petition, or the addition of the Defendants in their individual capacities, causing all of those allegations to be presumed denied by the Defendants -- the Defendants adopt their originally filed Motion to Dismiss and the pleadings made herein to seek dismissal on all of Plaintiffs' claims.<sup>5</sup>

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Chaffin, *infra*. His Second Amended Petition shows that was performed. *See* ¶127¶134 and ¶135 of Second Amended Petition.

<sup>3</sup> Throughout his Second Amended Complaint, Sheriff Darr alleges "it is illegal to not provide and cover all expenditures anticipated as necessary for the Sheriff" and "Ordinance 13-39 is being used to control the Sheriff".. and "Council disregarded the law".. in the manner and process of approving his FY15 budget" . (*Id* at ¶65,¶68,¶152, and¶154). Allegations of this kind should be disregarded. *Id*.

<sup>4</sup> An amendment which does not require an answer is deemed denied, and its allegations will not support judgment on the pleadings. *Building Associates v. Crider*, 141 Ga. 825 (1977). A motion for judgment on the pleadings, without the introduction of affidavits, depositions or interrogatories in support of the motion, is the equivalent of a motion to dismiss a complaint for failure to state a claim.[*Cit. omitted*], *Mabra v. SF, Inc.*, 728 S.E.2d 737, 316 Ga.App. 62, (Ga. App., 2012). Defendants refer to the facts stated in Sheriff's Second Amended Petition in order to ensure all facts which Sheriff could possibly claim are discussed in their Motion to Dismiss, but they object to the Court's consideration of the same, as none should be considered by the Court in their unanswered state and in the parties current capacity before the Court.

<sup>5</sup> Since Defendants are addressing newly asserted claims, this Reply Brief is slightly longer than the typical reply.

### III. MANDAMUS RELIEF

Each of Sheriff Darr's Petitions is subject to dismissal, as his own allegations demonstrate no mandamus is warranted, and they request relief far in excess of that available under Georgia law. The Sheriff has requested this Court intervene in the Council's budgetary process by instructing the Councilors on the determination of the current and future budgetary amounts allotted to his Office, ordering Councilors to reconsider his specific requests for funding which were admittedly already considered, and advising Council against considering certain evidence in those decisions, namely any excessive spending he may incur over and above the funds appropriated to him for FY15. (Second Amended Complaint ¶232). All of this is sought to provide the Sheriff greater control over the budget process and to ensure he receives increases from specific sources for his Office - a level of control and involvement that the law does not contemplate as appropriate for a mandamus action.<sup>6</sup> (Second Amended Petition ¶232(a)-(k), ¶249, ¶252; ¶First Amended Petition ¶232(a)-(k), ¶249, ¶252).

While a writ of mandamus will issue to compel a due performance of specific official duties, it 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." [Cit.] The issuance of the writ of mandamus in this case would mandate a course of conduct by [State and] county officials.... Speedway Grading Corp. v. Barrow County Bd. of Comm'rs, 258 Ga. 693(1), 373 S.E.2d 205(1988).

Because appellants would have the courts compel appellees to perform discretionary acts, which are not within the proper scope of mandamus, that relief is not available. Without the ability to compel those discretionary acts, compelling the simply ministerial acts would be a useless act, which the law does not require. Jackson v. Southern Pan & Shoring Co., 260 Ga. 150(1), 390 S.E.2d 393 (1990). Since appellants cannot, as a matter of law, have the relief they seek ....the trial court was correct in granting the motion to dismiss for failure to state a claim. Sixth St. Corp. v. City Stores Co., supra.

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<sup>6</sup> Similarly, the law does not contemplate allowing the constitutional officer this type of control or input into the distribution of the county funds. Lovett v. Bussell, 242 Ga. 405, 406 (1978), (Court denied request of Sheriff to demand pay raises for his personnel funding from the county authorities, and noted it did not want to "delegate to city officials the authority to set county pay scales, and vice versa, for law enforcement officers...").

Lowe v. State, 267 Ga. 754 (1997)(mandamus relief unavailable to compel officials to enforce Tuition Grant Act and award students grants under it, since this would require the Court to promulgate regulations and become overly involved in this process). Similarly, the Sheriff has requested this Court's involvement to a degree not contemplated within the legal confines of mandamus relief. Id.

In fact, there is no case cited by the Sheriff where a mandamus has been issued to force any public entity to remedy the allegedly insufficient funding of a constitutional officer in the manner in which he seeks in his Petitions.<sup>7</sup> This is because, procedurally, Georgia law does not allow the extraordinary relief of a mandamus to provide continued oversight of minimum amounts of funding or to undo past budgetary decisions already made. Lowe, 267 Ga. 754 (1997); *See also* James v. Montgomery County Bd. of Educ., 283 Ga. 517 (2008)(Setting the school board agenda is a discretionary act which is not subject to mandamus, as mandamus not contemplated to compel a course of conduct or use of specific discretion).

Sheriff Darr's Petition is also flawed in that he asks this Court to use a mandamus action improperly to "undo a past act". Sheriff Darr prays for relief to completely unravel a FY15 budget that was assigned and distributed by each department and office of Defendant CCG, and which has been effective since July 1, 2014. The budget appropriations were decided by Council in June of 2014. (Second Amended Petition ¶232). His request is now moot. When the time has passed for the discharge of the official duty sought to be compelled, mandamus will be denied, as

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<sup>7</sup> Although Sheriff Darr relies heavily upon Bd of Comm'rs of Dougherty County v. Saba, 278 Ga. 176 (2004) for his assertion that mandamus is a proper claim in this case, the holding was confined to a very limited review of a grant of *both* injunctive and mandamus relief by the trial court which was presented with a pending issue - and the trial court's grant of relief was overturned due to the incorrect questions asked by the trial court. The Supreme Court did not discuss the procedural merits of a mandamus action - and certainly did not authorize the extensive manner in which the Sheriff seeks the court involvement in this case. Id.

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).<sup>8</sup>

- (1) **Sheriff Darr's Petitions demonstrate no viable claim to show any gross abuse of discretion occurred in the actions taken by Council in making the appropriations for his FY15 budget, so that a mandamus action would be unnecessary.**

The three Petitions filed by the Sheriff reveal a series of facts and admissions to demonstrate no mandamus is necessary. Although the Sheriff claims that **only he** can determine what is reasonable and adequate for his Office to conduct all of its necessary duties, and therefore Council must have broken the law since it did not provide him with every amount of funding requested, these assertions are incorrect statements of law. A county governing authority is only required to provide funding for the constitutional mission of the constitutional officer, and the constitutional officer is only entitled to discretion in that process. Wolfe, 233 Ga. 162 (1974). The Sheriff's pleadings show no mandamus is warranted, because (1) he has not pled his case sufficiently to outline the alleged needs of his constitutional duties, and (2) the information he has provided, through his own pleadings, demonstrates his FY15 appropriations fulfill (and exceed) the constitutional minimum required for the performance of his duties. Bd. of Comm'rs of Randolph County v. Wilson, 260 Ga. 482, 483 (1990), *see also* Chaffin, 262 Ga. 202 (1992).

Instead of providing this Court with a list of his constitutional duties and the expenses incurred from those duties, which would be a minimum for a pleading requesting the extraordinary relief of this kind, Sheriff Darr has essentially admitted he made budget requests of Council which contemplated spending that was not required by his constitutional mission. In his

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<sup>8</sup> Sheriff Darr has not shown his request is timely when compared to Saba. The sheriff in Saba filed his petition *before* the effective date of the budget, and the trial court heard the issue immediately. He also pled that the budget would "interfere" with how he hires his personnel or spends his funds, issues that are appropriate for a mandamus. The Supreme Court returned it as the court answered the wrong question. Saba, 278 Ga. 176 (2004).