

November of 2014. Before this Court are motions for partial summary judgment, one filed by Sheriff Darr on February 3, 2016 and the other by the Defendants on March 7, 2016. In those motions, the issue to be determined is a mandamus claim in which Sheriff Darr contests the manner in which the Executive Defendants utilize his budget request in preparing the Mayor's Recommended Budget pursuant to CCG Charter §8-105.¹

A hearing on the summary judgment motions was held on April 20, 2016. Summary judgment is appropriate to narrow the issues and to limit the allegations of the case, particularly where claims may not succeed as a matter of law. O.C.G.A. §9-11-56(c) requires that the moving party demonstrate that the undisputed facts, viewed in a light most favorable to the non-movant, warrant judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491 (1991).

Mandamus on the Budget Process

In reviewing whether a party is entitled to summary judgment, this Court must first examine the timeliness, as well as the limitations, of the relief requested. A mandamus is an extraordinary legal tool only to be used in limited circumstances when no other legal remedy is available. O.C.G.A. §9-6-20. A mandamus may not issue as a corrective action for the past, as it only provides prospective relief. Hilton Constr. Co. v. Rockdale Cnty Bd. of Ed., 245 Ga. 533, 540 (1980); Ianicelli v. McNelly, 272 Ga. 234 (2000). Sheriff Darr seeks mandamus to require the inclusion of each and every one of his budget requests in the Mayor's Recommended Budget, which is formulated and presented by the Executive Defendants each year to Council. His Petitions seek relief for FY2015 and FY2016, and "continuing" recommended budget processes.

The Court recognizes that the duties of the Executive Defendants, as related to the Sheriff in the recommended budget process, are completed once the final Mayor's Recommended

¹ Sheriff Darr's mandamus claim that Council refused to fund his Office properly is not before the Court, having been expressly withheld by the Sheriff.

Budget is presented to Council and the Sheriff is provided an opportunity to be heard on his budget requests before Council.

As an initial matter, this Court finds that Sheriff Darr is subject to the provisions of the CCG Charter's recommended budget process, as he does not have separate budgetary power by law. The Court finds there is no genuine issue of material fact to suggest that Sheriff Darr has been prevented from participating in the recommended budget process. Instead, Sheriff Darr seeks mandamus relief to require the Executive Defendants to be mere conduits of his budget request, in every particular, in their preparation of the Mayor's Recommended Budget for Council.

Sheriff Darr claims that in preparing the Recommended Budget for Council, the Mayor is required to accept his requests in full into her recommended budget. The Sheriff bases his argument on only one provision of the Charter §8-105, which states:

All elective officers such as the sheriff, tax commissioner, Judge of Probate Court, coroner and other elective officers, and all agencies not under the direct control and jurisdiction of the Council such as the board of health and board of family and children services, which receive appropriations from Council, shall prior to the commencement of each fiscal year prepare and submit to the City Manager annual operating and capital budget requests for the ensuing fiscal year. Such budget requests shall be incorporated into the overall consolidated budget for submission by the Mayor to the Council. The Council shall grant a hearing to any such officer or agency on such proposed budgets.

Charter §8-105.

Sheriff Darr alleges that the word "incorporate" in Charter §8-105 requires full acceptance of each and every budget request made by the Sheriff. The Defendants argue that this provision must be considered in light of the overall budgetary process and they seek a construction which recognizes the right and necessity of the Executive Defendants to use the Sheriff's budget request as a guideline to be utilized in compiling the final and balanced budget which considers

the needs of all CCG funded entities, offices, and agencies. Further analysis suggests that the Sheriff Darr's interpretation of this provision is inconsistent with the CCG's overall codified budgetary scheme, particularly §7-401, and could frustrate the entire recommended budget process.

The practical problems of the Sheriff Darr's requested construction of Charter §8-105 are significant. The budget requests of the §8-105 recipients (which includes all elected offices and agencies) could extinguish all, or a significant portion, of the funds available for the proposed expenditures before any consideration could be given to the remainder of the CCG's other departments and governmental affiliates. In essence, he contends that he and the other §8-105 entities get first monies and that the Recommended Budget must be built around their requests. Under such an interpretation, presenting a balanced proposed budget or viable fiscal policy to Council could become impossible. Sheriff Darr has also failed to recognize the authority of the Executive to issue administrative timelines for the submissions in the Mayor's Recommended Budget. If his contention is true, the Executive Defendants could not begin the preparation of the balanced recommended budget until the Sheriff (and other §8-105 officials and agencies) decided to turn in their requests.

A proposed construction must not result in unreasonable consequences and instead must square with common sense and sound reasoning. Ga. Mental Health Institute v. Brady, 263 Ga. 591 (1993). However, the construction must also not infringe on the authority of the Sheriff as a constitutional officer in the control and operation of his office.

The very nature of the Mayor's Recommended Budget is a proposal, which is placed before Council and subject to revisions, changes, and, if desired, a complete redo. Charter §7-402. It is ultimately the Council which has the responsibility of adopting a budget which makes

reasonable and adequate provisions to enable the Sheriff to perform his duties of enforcing the law and preserving the peace, regardless of what the Mayor's Recommended Budget may provide. Sheriff Darr has a hearing provided to him before Council which allows him to not only contest the proposals of the Mayor's Recommended Budget, but also to present his original budget requests. Charter §8-105. The evidence of record demonstrates that Sheriff Darr has appeared before Council in this manner and has achieved an increase to his proposed budget from that effort, as recently as FY2016. The Court finds that Sheriff Darr has a complete remedy available to him to present his budget request to Council and to dispute the proposed budget for his Office submitted in the Mayor's Recommended Budget in his hearing before Council. The fact that the Sheriff believes it would be easier, or more likely, that he would get the budget he wants from Council if his budget request was presented in the Mayor's Recommended Budget exactly as he requested does not make this remedy inadequate. The extraordinary relief of a mandamus is not available in light of this remedy. O.C.G.A. §9-6-20.

A mandamus may compel the performance of a required duty, but it may not dictate the outcome of a discretionary decision. Bibb Cnty v. Monroe Cnty, 294 Ga. 730 (2014). The Court has reviewed the CCG recommended budget process as outlined in the Charter and finds that the discretion of the Executive Defendants is necessary and required, even as it relates to the formation of the proposals for the Sheriff's Office in the Mayor's Recommended Budget. Several Charter provisions require the Executive Defendants to formulate the Mayor's Recommended Budget in a discretionary manner. Charter §4-201; Charter §4-307; Charter §7-401. Specifically, the Charter requires the Mayor to propose an annual balanced operating budget that encompasses a number of responsibilities, i.e. to provide proposed fiscal policies, to explain proposed major changes in fiscal policies, to propose expenditures of each department, board,

commission, office, or agency, to justify the proposed expenditures with work programs or performance data, to establish an estimate of unencumbered fund balance or deficit, to estimate a reasonable amount of cash revenues to be received during the next fiscal year, and to reserve a reasonable amount for contingencies, all in accordance with an established classification of accounts. Charter §7-401(2), (4) and (5). The Court has not found any Charter provision which states that any elected officer is exempt from the discretion inherent in those executive duties outlined in the Charter.

Finally, this Court can find no basis upon which the Sheriff has any legal right to require the full and complete acceptance of each and every one of his budget requests for the Mayor's Recommended Budget. Georgia law is clear that the Sheriff is not entitled to a specific amount of funding, nor is he entitled to a specific method of determining his budget. *See Chaffin v. Calhoun*, 262 Ga. 202 (1992); *Bd of Comm'rs of Randolph Cnty v. Wilson*, 260 Ga. 482 (1990). A county officer is subject to the authority of the commission to set his budget. Georgia law has delegated Defendant CCG specific authority to adopt the processes and procedures through which a proposed budget is developed, including an executive recommended budget process. O.C.G.A. §36-81-4(c) and O.C.G.A. §36-81-5. The grant of this authority is consistent with the original and exclusive jurisdiction provided to the CCG over its funds and property found in O.C.G.A. §36-5-22.1. Sheriff Darr has failed to demonstrate that the executive recommended budget process interferes with or restricts any powers specifically assigned to Sheriff Darr under Georgia law, or that any Defendant has acted outside his or her delegated powers or authority in the recommended budget process.

This Court has examined the applicable law, the relief requested, the filings made, as well as the evidence of record. Under O.C.G.A. §9-11-56(c), partial summary judgment is hereby

granted in favor of the Defendants on all of Sheriff Darr's mandamus claims on the CCG recommended budget process as requested in their Cross Motion for Partial Summary Judgment, filed on March 7, 2016, and **denied** to Sheriff Darr on his Cross Motion for Partial Summary Judgment, filed on February 3, 2016.

Declaratory Judgment Claims

Sheriff Darr has also requested declaratory relief in asserting that two CCG budget ordinances are unconstitutional. The first CCG ordinance, No.14-25, set the budgetary appropriations for FY2015. Sheriff Darr complained that this ordinance did not provide him a budget for a complete fiscal year, since a mid-year review was contemplated in the language of the ordinance. Defendants have requested judgment on this claim due to the mootness of the relief sought. Having demonstrated that the FY2015 is over and complete, there is no relief that could be granted on this claim. City of Comer v. Seymour, 283 Ga. 536 (2008). In addition, the authority to consider additional budgetary amendments is directly contemplated in O.C.G.A. §36-81-3(d) and Charter §7-404, and, therefore, judgment for the Defendants shall be **granted** on this issue.

The second CCG ordinance at issue, No. 13-39, requires any department head or official to obtain prior approval from Council prior to exceeding the amount of funds appropriated to that department or office. Sheriff Darr has admitted that this provision is duplicative of Georgia law, but he pleads its nature is unconstitutional and interferes with his Office. (Second Amended Petition ¶80). The Defendants argue that Sheriff Darr has no claim to monies not appropriated to his Office, and that budget amendments are required to obtain additional funds from a local governing authority. O.C.G.A. 36-81-3(d)(1). The Court agrees with the Defendants and finds there is no constitutional question presented by this ordinance, which is consistent with Georgia

law. Advanced Disposal Servs. Middle Ga. L.L.C. v. Deep S Sanitation L.L.C. , 296 Ga. 103 (2014).

Having presented no viable constitutional questions, sovereign immunity must apply to any remaining claims for declaratory relief of Sheriff Darr. Olvera v. Univ. of Georgia Bd. of Regents, 298 Ga. 425 (2016). The Defendants' Motion for Partial Summary Judgment as to the declaratory relief sought by Sheriff Darr in his amended Petitions is hereby **granted**.

So ORDERED this 21 day of June, 2016.



The Honorable Philip T. Raymond III
Superior Court of Bibb County, on assignment to
the Superior Court of Muscogee County