

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

FILED IN OFFICE

2016 APR 12 PM 3:28

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

Plaintiff,

V.

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, GLENN 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.

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

M. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

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**DEFENDANTS' REPLY IN SUPPORT OF THEIR
CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT ON
SHERIFF DARR'S BUDGET PROCESS AND DECLARATORY JUDGMENT CLAIMS.**

COME NOW, Defendants in the above-styled action, and, pursuant to O.C.G.A. §9-11-56, submit the following Reply Brief in Support of their Cross Motion for Partial Summary

Judgment to request elimination of legally deficient claims for mandamus and declaratory judgment relief brought by Sheriff Darr in his Third and Fourth Amended Petitions.

INTRODUCTION

Since this action was filed in November of 2014, Sheriff Darr has amended his pleadings repeatedly, changed his theories of relief, altered the capacity in which he has sued the Defendants, begun discovery and then stopped it, and contradicted his own theories in the case – all to convince this Court that he has more budgetary power than the law actually provides. The Defendants' have not filed these Motions for Partial Summary Judgment due to a conflicting interpretation of one provision of the comprehensive CCG budget process. Defendants have filed these Motions, because the Sheriff's bouncing ball of insufficient legal claims and arguments should be stopped. Sheriff Darr, at most, has one legally viable mandamus claim that he has completely ignored, whether the \$27,620,080 assigned to his Office for FY2016 is sufficient to allow him to perform his legally required duties.¹ All other claims for mandamus and declaratory relief, including his newly defined constitutional challenge, cannot give Sheriff Darr what Georgia law has not – power over any stage of the duly-authorized CCG budget process.²

Sheriff Darr is subject to the provisions of the Charter's budget process, as he does not have separate budgetary power by law, his Office is not a separate unit of local government, nor

¹ Even the Sheriff's insufficiency claim over his FY16 budget does not require extraordinary mandamus relief, since he has the opportunity to appear before Council for more funds if his Office requires them due to any claim of an insufficient annual budget. The existence of this legal remedy, a request to Council for more funds, is readily available, appropriate and could satisfy any needs of the Sheriff without interfering with the exclusive jurisdiction of the Council to legislatively determine the appropriation of CCG funds. *See O.C.G.A. §9-6-20* (mandamus is not available where other legal remedies are available); *O.C.G.A. §36-5-22.1*(original and exclusive jurisdictional power of CCG to have Council appropriate its funds). Notably he has not presented this Court with any request for additional funds that has been denied by Council after his FY2016 budget was appropriated. (SOMF ¶¶24, 25, 32).

² The Sheriff's FY2015 mandamus claims for an insufficient budget are moot, as the fiscal year has been audited and closed. No relief could be provided. Defendants have a pending Motion for Partial Summary Judgment on this issue filed on January 27, 2016.

is he a “budget officer”.³ A mandamus may not expand the Sheriff’s authority, void past budget ordinances, or provide him with a budget of his own choosing. After a review of the budget process claims of Sheriff Darr, it is apparent that (1) the mandamus and declaratory judgment claims are legally deficient; (2) his narrow interpretation of the Charter is untenable; and (3) any other equitable relief would be barred by immunity. Therefore, in response, Sheriff Darr has again shifted gears, changing his arguments to assert that the “Defendants’ interpretation” of the executive recommended budget process is unconstitutional. This argument must fail, as the entire premise of Sheriff Darr’s claim of an unconstitutional assertion of budgetary authority over his Office is incorrect.

None of the CCG’s Charter budgetary provisions were enacted pursuant to the authority of the Home Rule provisions of the Georgia Constitution. Defendants have never asserted Home Rule in response to this action: Defendants have relied on statutory law. Therefore, whether or not Sheriff Darr is exempt from the exercise of a Home Rule power is completely irrelevant. In each of his filings, Sheriff Darr has managed to ignore and argue against the clear mandates of the Georgia General Assembly, which has specifically assigned the budgetary powers to the CCG for the development of its budget process, including an executive recommended budget. Having failed to overcome, or even contest, the limitations of his mandamus claims, which seek relief well outside the extraordinary relief contemplated by a mandamus, and having no constitutional basis with which to protest the proper exercise of the CCG’s statutorily-supported

³ Sheriff Darr has not really contested Defendants’ Motion for Summary Judgment on these issues, as he claims those allegations didn’t matter, due to his belief that the Charter provisions actually granted him more power in the budget process. (Sheriff Darr Resp. to Mtn filed by Defendants on January 8, 2016, pg. 4-5). He has now changed this argument to claim the Georgia Constitution denies the CCG its budget powers, which he believes are reserved exclusively to his Office, due to his status as a constitutional officer. No provision of the Georgia Constitution gives Sheriff Darr power over the CCG budget process. Regardless, his allegations are subject to summary judgment, as his Office cannot meet the statutory definition of a separate unit of local government, nor is he a budget officer under O.C.G.A. §36-81-2(2) and (16).

budget authority, none of Sheriff Darr's claims related to the recommended budget process can proceed as a matter of law. Similarly, he cannot demonstrate any budget ordinance challenged in his pleadings is unconstitutional, as none is inconsistent with the powers afforded to CCG in Georgia law or results in an improper exercise of power over his Office.⁴

Even though Sheriff Darr's mandamus claim may not match his requested relief and even though he may find it difficult to persuade this Court that the \$27+ million which is assigned to his Office is insufficient, that is the only potential claim on which he can legally proceed. Sheriff Darr, and his counsel, may be interested in extending the budgetary powers of the Sheriff and other constitutional officers, but it would be error to assume the role of the Georgia General Assembly, which has not chosen to grant constitutional officers those powers. (SOMF ¶35). The Court has not been provided any basis with which to deny the Defendants' requested partial summary judgment motions. Therefore, the Defendants request an Order of this Court to limit and narrow the issues of this case to the one potential mandamus claim related to the sufficiency of the Sheriff's budget. Judgment for the Defendants on all other claims is ripe and required as a matter of law. O.C.G.A. §9-11-56(c).

A. Sheriff Darr Has Failed to Demonstrate any Viable Response to the Defendants' Motions for Partial Summary Judgment on his Budget Process Claims.

Defendants have filed three Motions for Partial Summary Judgment to demonstrate to this Court, as a matter of law, that Sheriff Darr's claims for an extension of power through mandamus and declaratory judgment claims must fail as a matter of law. In response to those Motions, Sheriff Darr has not provided any legal justification for his erroneous claims that his

⁴ Sheriff Darr recently provided notice to the Attorney General of his intention to contest the Defendants' operation of the CCG budget process as unconstitutional, but he has not provided this notice for his claims of unconstitutionality against Ordinances 13-39 and 14-25, as required by O.C.G.A. §9-4-7, which is one more ground for judgment in Defendants' favor for those claims.

Office is a unit of local government, or that he is his own budget officer. He has not contested that a mandamus could not expand the authority of the Sheriff or force the Executive Defendants to use their discretion in the Mayor's Recommended Budget for his Office in a particular way. He has provided no legal basis with which to proceed with any budget insufficiency claims related to FY2015, which are now entirely moot. Similarly, he has not addressed the inability of the Court to provide any remedy for the executive recommended budget processes which have already been completed, i.e. the Mayor's Recommended Budget for FY2015 and FY2016, since mandamus cannot undo a completed act and can only provide prospective relief. Finally, he has omitted any reference to the clear legal remedy available to him to dispute any recommendation made for his Office in the Mayor's Recommended Budget, which is his budget hearing before Council.⁵ The Sheriff does not allege that he has ever been prevented from presenting his budget requests directly to Council, and his appearances have resulted in varying degrees of success. By all accounts, the CCG budget process, including the Mayor's Recommended Budget, has been shown by the Defendants to constitute a thoughtful and comprehensive process that invites the participation of the Sheriff.

Judicial notice should be taken that the Sheriff's Response to the Defendants' Consolidated Filing for Partial Summary Judgment did not contest any of the legal limitations of mandamus set forth by the Defendants. Instead, the Sheriff has changed his approach entirely, and now claims the Charter-required executive recommended budget process, as it has been performed by the Defendants since the inception of the Charter, is unconstitutional. For the reasons set forth herein, this claim should also fail as a matter of law.

⁵ Charter §8-105 directly provides Sheriff with the opportunity to appear before Council on his budget requests, which he has done every year since he was elected. (SOMF ¶9, ¶30).

B. There Can Be No Claim of an Unconstitutional Process When Georgia Law Specifically Authorizes CCG’s Budget Process Outlined in its Charter.

Sheriff Darr has misrepresented the source of authority maintained by Defendant CCG to perform its budgetary process, which derives from specific authority of the Georgia General Assembly.

- 1. Georgia law fully authorizes the Defendants’ power to conduct the local recommended budget process, so that Sheriff Darr’s exemption from the exercise of Home Rule powers is inapplicable and irrelevant to the budget process claims.**

Throughout this litigation, Sheriff Darr has demonstrated a fundamental misunderstanding of the authority which has been delegated to Defendant CCG under Georgia law to formulate and control its annual budget process. This specific grant of authority is different from ordinances or regulations which arise from CCG’s general use of its powers under the Home Rule provisions of the Georgia Constitution. Essentially, Home Rule grants local governing authorities the “legislative power to adopt clearly reasonable ordinances, resolution or regulations relating to its property, affairs and local government for which no provisions has been made by general law...” GA. CONST. of 1983; Art. IX, Sec. II, Para.I. When a local governing authority enacts rules or legislation pursuant to Home Rule, those actions may not “affect any elective county office”, since “the office of sheriff is specifically exempt from Home Rule”. Warren v. Walton, 231 Ga. 495, 499 (1973), as cited in Channell v. Houston, 287 Ga. 682 (2010)(special tax districts established under Home Rule to separately fund the sheriff’s office held as unconstitutional, since the county had no authority under Georgia law existed to create that separate source of funding). In this case, the Sheriff’s ability to be exempt from the exercise of Home Rule powers is completely irrelevant.

The executive budgetary power of the Defendants outlined in the CCG Charter for the recommended budget process did not arise from the assertion of power under the Home Rule

provision of the Georgia Constitution. The entire CCG budget process is specifically authorized by several Georgia statutes. Sheriff Darr's repeated citations to Channell v. Houston is informative on this point, as the Court recognized in relation to a constitutional officer, “[n]either the counties of this state nor their officers can do any act, make any contract, nor incur any liability **not authorized by some legislative act applicable thereto.**” Channell, *supra* at 682. Unlike the county in Channell, which argued its general Home Rule powers supported the establishment of a special tax district to fund its sheriff's operations, the Defendant CCG derives its powers directly from the Georgia General Assembly. The Home Rule powers were not exercised to enact the CCG budget process. Instead, Georgia law provided Defendant CCG with the authority to adopt the process and procedures through which a proposed budget is developed in O.C.G.A. §36-81-5, to wit:

- (a) By the date established by each governing authority, in such manner and form as may be necessary to effect this article, and consistent with the government's accounting system, the budget officer shall prepare a proposed budget for the local government for the ensuing budget period.
- (b) The proposed budget shall, at a minimum, be an estimate for the financial requirements at the legal level of control for each fund requiring a budget for the appropriate budget period and shall be in such form and detail, with such supporting information and justifications as may be prescribed by the budget officer or the governing authority. The budget document, at a minimum, shall provide for the appropriate budget period, a statement of the amount budgeted for anticipated revenues by source and the amount budgeted for expenditures at the legal level of control...
- (c) On the date established by each governing authority, the proposed budget shall be submitted to the governing authority for that body's review prior to enactment of the budget ordinance or resolution...

O.C.G.A. §36-81-5.

The language of the Georgia statute is clear, that Defendants have the authority and discretion to determine the “manner and form” of the CCG budget process. Id.

Sheriff Darr ignores a basic tenant of governmental power: once the authorization to perform a duty has been assigned, the local governing authority has “the duty and discretion to examine the methods available to implement that goal and select the method which it determines most effectively and efficiently” performs that duty. Mesteller v. Gwinnett Cnty, 292 Ga. 674, 676-677 (2013)(garbage and solid waste collection authority allows county to contract with private companies even if not expressly stated in the provision authorizing that duty), and *see also* Lindsey v. Guhl, 237 Ga. 567, 570 (1976)(noting broad discretion afforded to the governing body of a county in the exercise of its powers, a county was permitted to delegate a task force to assist with the landfill selection process, since ultimate authority of the location remained with the commissioners). The Charter for Defendant CCG has a comprehensive budget process to allow the part-time Councilors to consider a proposed annual budget after the Mayor, City Manager and their designees use their discretion to complete an executive recommended budget.

The Executive Defendants also find their authority and discretion in the specific powers afforded by Georgia law in O.C.G.A. §36-81-4(c), which states:

Nothing 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, while another individual, designated as provided in this Code section as budget officer exercises the administrative functions of budgetary preparation and control.

This is the exact manner in which the CCG budget process works. None of the executive budgetary proposal powers have been asserted as arising from the ability of CCG to legislate under Home Rule. There can be no dispute that the CCG’s recommended budget process, as it has been outlined by the Charter and completed by the officials in the capacities of the current Defendants since its inception, originated in, and is authorized by, specific Georgia statutes

granting those powers to Defendants. Clearly the Charter process is authorized, and the Sheriff's powers do not conflict with that exertion of power.

No constitutional provision or statute provides Sheriff Darr with the capability to control the CCG budget process or CCG funds before they are appropriated to his Office.⁶ Not one case cited by Sheriff Darr holds that a constitutional officer is exempt from an executive recommended budget process. Instead, each of the cases in these Motions recognizes the explicit power of the local governing authority to determine and appropriate the funds necessary for the Sheriff's Office. Chaffin v. Calhoun, 262 Ga. 202, 203(1992)(Supreme Court recognized commissioners did not have to approve all of Sheriff's budget requests); 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 does not allow a constitutional officer to have separate budgetary rights from the local governing authority. Lawson v. Lincoln Cnty, 292 Ga.App. 527 (2008). In Lawson, the Court recognized that to allow a sheriff to operate independently from the county's budgeting process would, in the extreme, undermine the county's broad discretion to exercise its control over its property. Id.

Notably, the Sheriff does not challenge the constitutionality of Charter §8-105, as he disputes only the manner and authority by which the individual Executive Defendants have operated the recommended budget process. "An allegation that the State has violated a plaintiff's

⁶ Sheriff Darr's power over CCG funds only begins after the funds are appropriated to his Office. In Georgia, the sheriff's office has been created as a separate entity under the Georgia Constitution, but the legislature has specifically given the county the original and exclusive jurisdiction to first direct and control all property of the county and to formulate a budget process, as the governing authority deems expedient. The sheriff's power is limited to spending the funds that are budgeted to his office. O.C.G.A. §36-5-22.1(a)(original and exclusive jurisdiction granted to counties over their funds); Lawson v. Lincoln Cnty, 292 Ga.App. 527 (2008)(Noting the sheriff had no power to keep revenue generated in his jail from the sale of telephone cards, as those funds were county property and had to be returned to the county. Court also noted that allowing the sheriff to separate his Office from the budgeting process would undermine the jurisdiction of the county over its funds).

constitutional rights is not, in itself, sufficient to avoid the State's sovereign immunity." Dekalb Cnty. Sch. Dist. v. Gold, 318 Ga.App. 633, 639 (2012)(claims that the District operated unconstitutionally in freezing its contributions to a pension plan were barred by sovereign immunity and presented no facial challenge to the legislative action in question). This new allegation is simply a request for declaratory judgment to expand his power under law, which would be barred by sovereign immunity. *Id.* See also Olvera v. Univ. of Georgia Bd. of Regents, S15G1130 (S.Ct. Ga. 2016)(declaratory judgment barred by sovereign immunity unless explicitly authorized by law). Having demonstrated that the Charter-outlined executive recommended budget process is directly authorized by Georgia law, there is no constitutional challenge remaining. O.C.G.A. §36-81-4, §36-81-5. Summary judgment in favor of Defendants is warranted.

2. The language of Charter §8-105 is clear and consistent with the utilization of the Executive Defendants' discretion in the formulation of the entire Mayor's Recommended Budget when read in its entirety and in conjunction with the other Charter provisions.

The language of Charter §8-105 is clear, and directly contemplates that the Sheriff may not receive all of his original requests in the recommended budget. Similarly, it does not give the Sheriff any entitlement to funds or a priority in the Mayor's Recommended Budget. Instead, this provision contemplates two opportunities for the Sheriff to be heard on his budget requests: (1) when his Office's budget requests are submitted to the City Manager for the Mayor's Recommended Budget, and (2) when he has a hearing before Council on his budget requests. The evidence is undisputed that Sheriff Darr has received his hearing before Council each year that he has been in Office. (Def. SOMF ¶9). Sheriff Darr has requested this Court change the long-standing implementation of this clear provision to something that it does not state, based

solely upon his illogical expansion of the word “incorporate” and purposeful avoidance of the word “request”.

If the Sheriff forces this Court to review the construction of Charter §8-105, based on his claim that this provision now means that he should be entitled to receive the full amount of each and every one of his budget requests in the Mayor’s Recommended Budget, then he should at least make that request in light of all the proper rules of statutory construction. Charter §8-105, when noting the sheriff’s budget requests are to be “incorporated” should not be expanded and misconstrued beyond the simple definition of that word, nor may it be defined beyond the context of the Charter’s budgetary provisions, which are required to be read *in para materia*. Richardson v. Phillips, 309 Ga.App. 773 (2011)(statutory construction requires the review of all related statutes, and a narrow interpretation of an act is improper, since intent of the legislature controls over the literal meaning of the terms used.) Charter §8-105 gives Sheriff Darr a direct hearing before Council on his budget requests, which by its very language (“requests”) and process (“allowance of a hearing”) implies that he is not going to receive all of the requests made of the Executive branch in the Mayor’s Recommended Budget. Similarly, there is no language of Charter §8-105 to qualify the Sheriff as a priority in the Charter-outlined recommended budget process, nor does that language specifically exempt him from the administrative guidelines or discretion used in reviewing his budget requests. Instead, the Charter’s budgetary provisions outline a variety of discretionary duties for each Executive Defendant to follow in the recommended budget process.⁷

⁷ As discussed herein, the Charter requires the Executive Defendants, specifically the City Manager and the Mayor, to outline, propose, determine and formulate a recommended fiscal budget for all departments, agencies, and offices funded by the CCG for the legislative Council, whose members are part-time. (SOMF ¶6, ¶8-10). For example, the City Manager must gather information for an annual operating and capital budget; the Mayor must propose expenditures of all offices and provide fiscal policy to the budget for Council. Charter §4-307(e); Charter §7-401.

The Sheriff's request for a new construction of Charter §8-105 does not give any consideration to the other required duties outlined in the Charter for the recommended budget process, and he ignores the fact that his exaggerated interpretation of the word "incorporate" cannot be squared with the duties required of the CCG Executive Defendants. The Charter mandates these Defendants outline, propose, determine and formulate an annual fiscal budget for all departments, office and agencies funded by the CCG in order to assist the part-time Councilors through the presentation of a proposed budget. The Charter directs the Mayor to use her discretion in estimating the financial condition of the CCG, reviewing the fiscal policies of CCG, and specifically proposing expenditures of each office and agency funded in accordance with the established classification of accounts. Charter §7-401(2),(4) and (5). All the budgetary provisions of the Charter must be read together to determine a true understanding of their terms.

Porter v. Food Giant, Inc., 198 Ga.App. 736 (1991)(every part of a statute is relevant to gain understanding of its requirements in questions of construction); *See also Ford Motor Co. v. Abercrombie*, 207 Ga. 464 (1950) (holding it is impermissible to mutilate a statute by lifting a mere segment out of its context, and construe it without consideration of all other parts of the act; further noting that the cardinal rule to guide the construction of law is, first, to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose). Neither the Charter, nor the Sheriff's Response explains how these mandatory duties of the Executive are to be performed if the Sheriff's Office is allowed to dictate both the timing and the parameters of the Mayor's Recommended Budget.

After having submitted his own testimony on the formulation of the Sheriff's Office budget for the Mayor's Recommended Budget, the Sheriff seeks to exclude the testimony presented by the Defendants in response, which directly speaks to the functioning of the CCG recommended budget process. (Sheriff Darr's Motions to Strike Affidavits, filed March 28,

2016). He ignores – and seeks to eliminate - the valuable testimony which demonstrates the impractical nature of his requests, the history of the workings of the comprehensive Charter budget process and the involvement and discretion used by the Executive Defendants – despite having claimed repeatedly that the Sheriff’s portion of the Mayor’s Recommended Budget was calculated with no consideration or deliberation. *Id.*

The testimony presented by the Defendants refutes the Sheriff’s argument and interpretation of Charter §8-105 that suggests he is entitled, as a matter of law, to all the budget requests he submits. (SOMF ¶11-14; Affidavit of Mayor Tomlinson, Affidavit of City Manager Hugley, Affidavit of Charter Drafter Burgess; Affidavit of Pam Hodge); (Abdel-Samed v. Dailey, 294 Ga. 758 (2014)(discussing the term “bona fide” and its varying definitions, noting the court must also consider the context of the phrase and legislative intent of the statute). Instead of allowing the Court to review the evidence in dispute of the Sheriff’s bold assertions, he has sought to eliminate the evidence before the Court, as presumably it is not in his favor and does not follow his narrow interpretation of the Charter. This Court, however, should hear from the Executive Defendants, as well as the budget analyst and the person who drafted the Charter, as they show the clear reading and implementation of Charter §8-105, the efforts required for the CCG budget proposals submitted to Council and the nature of the entire Charter-proscribed budgetary scheme for CCG. (Affidavit Teresa Tomlinson ¶12-14; Affidavit of Isaiah Hugley, ¶5-7; Affidavit of Pam Hodge ¶4-12; Affidavit of L. Haynes ¶4-8; Affidavit of J. Burgess ¶7-8).

Defendants have presented undisputed testimony to show that not only has Sheriff Darr’s interpretation of Charter §8-105 never been followed, it would be impossible to administer and would result in unreasonable consequences. (SOMF ¶14). Although this provision of the Charter is clear and has been followed in a manner according to its terms, the Sheriff’s request for the Court to construe this provision solely in an exaggerated fashion for his benefit would frustrate

the entire recommended budget process. Georgia law does not permit the construction of a provision in a manner that would result in unreasonable consequences or fail to present common sense and good reasoning. Monticello Ltd. v. City of Atlanta, 231 Ga.App. 382, 384 (1998)(a basic rule of statutory construction ensures all parts of a statute are given sensible and intelligent effect, so that no construction results in unreasonable consequences). If the Executive Defendants were required to accept all of the Sheriff's "budget requests" in full, before they could build and present the balanced Mayor's Recommended Budget to Council, there would be no way to present Council with a balanced budget. Similarly, there would be no reason to grant any official under Charter §8-105 with a hearing before Council, since the assumption would be that each agency and official would be entitled to the entirety of each budget request submitted.⁸ The Sheriff has also refused to comply with the timelines issued by the Executive in the formulation of the Mayor's Recommended Budget, suggesting he has powers to set his own deadlines and thereby delay the start of the proposed Recommended Budget until he is ready to present his requests. His interpretation is illogical, contradicts the Charter and its precedent and would frustrate the entire recommended budget process.⁹ As a matter of law, the Sheriff's requested construction of Charter §8-105 to allow that the Sheriff receive each and every one of his budget requests, in a timeline only he dictates, must be refused as unreasonable, and

⁸ The Sheriff's interpretation contradicts another rule of statutory construction, which notes that when a law is capable of more than one meaning, it must be given that construction which is most equitable and just. Lombard v. Trustees of Young Men's Library Fund, 73 Ga. 322, as cited in Ford Motor Co. v. Abercrombie, 207 Ga. 464 (1950).

⁹ Georgia law states that a proposed construction "must not result in unreasonable consequences and must square with common sense and sound reasoning" Ga. Mental Health Institute v. Brady, 263 Ga. 591, 593 (1993), as cited in Monticello v. City of Atlanta, 231 Ga.App. 382, 384 (1998)(a basic rule of construction is that a statute or constitutional provisions should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part).

contradictory to the overall intent of the CCG Charter-mandated budget process which demands the discretion of its Executive. Id.

3. Sheriff Darr cannot complain about the Mayor's Recommended Budget when he refuses to abide by the timelines set and does not participate in good faith.

What has become abundantly clear from all the evidence and pleadings of record is that Sheriff Darr has no intention of complying with any administrative deadline issued in the formulation of the Mayor's Recommended Budget, and he has not participated in that portion of the budget process in good faith. His pleadings request this Court strictly construe each line of the Charter, which specifically states his budget requests must go to the City Manager. Sheriff Darr admits that he did not submit the FY2016 budget requests to the City Manager until March 31, 2015. *See* Cover Letter to Sheriff's FY2016 Budget Requests, March 31, 2015, Exhibit 3 to Sheriff Darr's Affidavit submitted on his MPSJ. However, he now claims, in a tone worthy of a completely misplaced conspiracy, that he did actually submit his requests to the Finance Department earlier, on March 18, 2015. (This assertion is new to the Sheriff, who left this fact out of his Affidavit testifying to the dates on which he submitted his budget requests for purposes of his summary judgment motion). The evidence of this transmission to Finance, attached as an exhibit to his Response to Defendants' Motion, happens to be an email produced by the Defendants, and not by Sheriff Darr. (Ex.B to Darr Response to Def. Cross MSJ).

Sheriff Darr has repeatedly pled that his Office's requests could not have been reviewed by the Executive in time to be incorporated into the Mayor's Recommended Budget in FY2016. Now, he improperly suggests that the Defendants are misrepresenting the facts to the Court, ignoring his own statements made in his Cross Motion for Summary Judgment, facts he outlined in his own pleadings as follows:

There is no genuine issue of material fact that, in both FY15 and FY16, the Mayor's Recommended Budget for the consolidated government could not have incorporated Sheriff Darr's budget for the Office of the Sheriff of Muscogee County; in FY15 Sheriff Darr was instructed not to submit a budget, and **in both years, Sheriff Darr had not submitted his budget at the time the Mayor presented her budget for his office to Council.**

Sheriff Darr's Cross Motion for Partial Summary Judgment, pg. 35. (emphasis supplied).

Sheriff Darr repeated this exact allegation as an undisputed material fact to support his Cross Motion for Summary Judgment. (*See* Pl's SOMF Feb. 3, 2016, ¶¶ 33 and 34); *see also* Cover Letter of Sheriff's Budget Requests, Exhibit 3 to Sheriff Darr's Affidavit.

Regardless, Sheriff Darr's submission of his budget requests to Finance for FY2016, on March 18, 2015, was still six weeks late. Those requests had been due on February 6, 2015. (SOMF ¶28). This pattern has continued into FY2017, as no budget requests have been received from the Sheriff's Office, despite having been notified of the due date of February 19, 2016. (SOMF ¶34). The actions of the Sheriff ignore the legal authority granted to the Executive branch to set administrative deadlines for the Mayor's Recommended Budget - actions which are wholly within the powers afforded by Georgia law. *See* O.C.G.A. §36-81-4(c)(recognizing budgetary power extends to power to create a recommended budget process); Lindsey v. Guhl, 237 Ga. 567 (1976)(noting broad discretion to exercise powers of a county to delegate a task force to assist with its landfill selection process, since ultimate authority remained with the commissioners).

The ultimate authority to determine and set the budget for the Sheriff's Office lies with Council. The choice to participate in the Mayor's Recommended Budget by submitting budget requests to the Executive lies solely with the Sheriff. Despite having failed to take full advantage of this opportunity, Sheriff Darr has still been provided a legal remedy to have Council review any budget proposed for his Office in the Mayor's Recommended Budget

through a hearing. *See Charter §8-105.* As he has done in every fiscal year since he was elected, Sheriff Darr has presented each and every one of his original budget requests to Council. (SOMF ¶9). Neither equity, nor any other power of this Court, can intervene to alter a recommendation process outlined by the CCG Charter and authorized directly by Georgia law, particularly when the process allows and encourages the Sheriff's input and participation.

C. Sheriff Darr Has Failed to Present any other Constitutional Challenge to Defendant CCG's Budget Ordinances in his Motions or Petitions..

- 1. Sheriff Darr cannot avoid judgment against his other constitutional challenges to Ordinances 13-39 and 14-25 based on his desire to preserve those arguments for a later date.**

Sheriff Darr's Response requests a delay in the consideration of Defendants' Motion for Partial Summary Judgment on his declaratory judgment challenges to two budget ordinances, citing a review of these issues would be "premature". These claims have been pending since November 10, 2014, are legally deficient, and should be determined as such to appropriately narrow the issues before this Court. The time to rule on these matters has come. Knowing that declaratory judgment claims against the CCG would be barred absent a specific waiver of sovereign immunity, which has not been pled in this case, Sheriff Darr claims the two budget ordinances are unconstitutional. However, he has failed to demonstrate any viable constitutional issues regarding these two budget ordinances, one of which is moot and the other of which is admittedly consistent with Georgia law.

There is simply no remaining controversy on these ordinances. Ordinance 14-25 set the CCG budget for FY2015 and is now moot. City of Comer v. Seymour, 283 Ga. 536, 537 (2008)(when the act which is the subject of the relief is completed, then the matter is moot). Ordinance 13-39 requires approval from Council before any CCG Department, or elected official, exceeds the budget which was appropriated to them. These requirements are entirely

consistent with Georgia law. O.C.G.A. §36-81-3(d)(1)(noting budget amendments authorized and required to obtain more funding from governing authority). No constitutional challenge may survive. Advanced Disposal Servs. Middle Ga. L.L.C. v. Deep S. Sanitation L.L.C., 296 Ga. 103, 105-106 (2014)(no evidence of undue control present in provisions which are entirely consistent with statutory guidelines).

Sheriff Darr has made no responsive arguments to support his assertions of the unconstitutionality of these provisions. Similarly, he has failed to provide the notice required under O.C.G.A. §9-4-7 to the Attorney General of Georgia as to his claims of unconstitutionality of the ordinances at issue. Williams v. Kaylor, 218 Ga. 576, 129 S.E.2d 791 (1963)(compliance with OCGA § 9-4-7(c) is “mandatory and jurisdictional”). In addition to the authority cited in Section A(1) of this Brief, and Section C(2) of their Cross Motion for Partial Summary Judgment, the Defendants have shown these claims are due to be denied as a matter of law. O.C.G.A. §9-11-56(c).

WHEREFORE, the Defendants submit this Reply in Support of Their Cross Motion for Partial Summary Judgment on Sheriff Darr’s Budget Process and Declaratory Judgment claims, noting those claims must fail as a matter of law. Defendants respectfully request this Court grant a hearing on this matter and enter an Order on their Cross Motion for Partial Summary Judgment, filed on March 7, 2016, as GRANTED.

Respectfully submitted, this 12th day of April, 2016.

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CERTIFICATE OF SERVICE

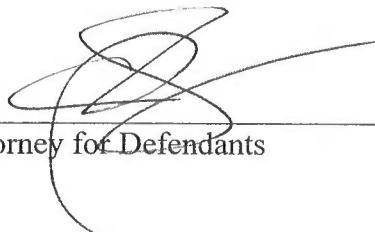
I hereby certify that I have this day served the foregoing **DEFENDANTS' REPLY IN SUPPORT OF CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT ON BUDGET PROCESS** via electronic mail, per agreement of counsel and the Court, addressed as follows:

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This 12th day of April, 2016.



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