

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

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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.

M. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

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

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS FILED IN
SUPPORT OF CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

COME NOW, Defendants in the above-styled action, and, pursuant to the requirements of O.C.G.A. §9-11-56 and Uniform Superior Court Rule 6.5, file this their Statement of Undisputed Material Facts and Theory of Recovery in support of their Cross Motion for Partial Summary Judgment. Defendants show as follows:

SHERIFF DARR'S THEORY OF RECOVERY

Sheriff Darr has misconstrued Charter §8-105 to request that this Court grant him the power to demand a budget of his own choosing in the initial budget-making process for the Mayor's Recommended Budget. This allegation is not based on any legal authority or accurate reading of the plain language of the Charter, and the Sheriff has never received all funds requested in the recommended budget process. In addition, Sheriff Darr has requested declaratory judgment, claiming two budget ordinances are unconstitutional. First, Ordinance 14-25 set the FY2015 budget for Defendant CCG, and has long since been closed. Second, Ordinance 13-39 requires Council's prior approval before any CCG Department or Office exceeds its annually appropriated-budget. Sheriff Darr has never complied with this Ordinance and has pled it is consistent with Georgia law. Summary judgment is requested, because this equitable and extraordinary relief has no basis in law.

**STATEMENT OF MATERIAL FACTS AS TO
WHICH NO GENUINE ISSUE EXISTS TO BE TRIED**

1. The Defendant CCG has original and exclusive jurisdiction over its property and the appropriation of its funds. O.C.G.A. §36-5-22.1.
2. The use of the executive branch to conduct the initial-policy-making budget function for CCG is authorized by Georgia law. O.C.G.A. §36-81-4.
3. On January 1, 1971, the government of the Muscogee County and the City of Columbus was consolidated into the Columbus, Georgia Consolidated Government (CCG). A

governing Charter was drafted, which outlined the powers present in the executive and legislative arms of the governing authority. (Charter §1-100; Affidavit of Charter-Consultant-Drafter J.Burgess ¶3). The Defendant CCG operates under the Mayor-Council-City Manager form of government. (Charter §1-101).

4. The Charter designates the Executive Branch of the CCG as the Mayor, the City Manager and their appointees. The Mayor is a full-time Chief Executive Officer position, the spokesperson of the CCG, and the Director of Public Safety. She proposes policies and oversees the operations of the CCG. (Charter §4-201; Affidavit of Mayor Tomlinson ¶4-6). The City Manager is responsible for developing, implementing and administering policies of the CCG, and he manages all departments and employees of the CCG under the direction of the Mayor. (Affidavit of City Manager Hugley ¶4). The Finance Director works under the direction of the City Manager and assists with all financial controls and the administrative functions necessary to the formulation of the annual Mayor's Recommended Budget. (Affidavit of City Manager Hugley ¶6; Affidavit of Finance Director Hodge ¶4).

5. The Charter designates the Legislative Branch of the CCG as the Council. (Charter §3-104). The Council is a part-time legislative body that passes laws, sets the annual budget, amends the budget as needed, and otherwise performs all legislative duties and responsibilities required by law. Id. (Affidavits of Councilor Allen, Councilor Baker, Councilor Barnes, Councilor Buck, Councilor Davis, Councilor Huff, Councilor Henderson, Councilor Thomas and Councilor Turner-Pugh ¶3).

6. The Charter requires the work on the annual operating and capital budget for the CCG to begin with the Executive Defendants, namely the Mayor and the City Manager, who must prepare and present the Mayor's Recommended Budget to Council for its consideration no

later than May 1st of each fiscal year. (Charter §4-201(10); Charter §4-307(3)). The fiscal year for the Columbus Consolidated Government begins on July 1st of each year and ends on June 30th of the following year. (Charter §7-400).

7. The Muscogee County Sheriff's Office is dependent upon the revenue and appropriations provided to his Office by Defendant Councilors. (Deposition of Sheriff Darr pgs. 51-52).

8. The Charter requires the City Manager, and those operating under his direction, to begin the administrative work of the budget building process. This includes estimating revenue, attending budget meetings, reviewing personnel, state mandates, expenditure needs and requests, as well as other information submitted, from all CCG-funded departments and offices. The Charter also requires the Mayor to issue fiscal policy recommendations and to propose expenditures for each agency, department and office. (Charter §7-401(4)(c); Charter §7-401(2); Affidavit of Mayor Tomlinson ¶10-12). The Mayor must present a balanced recommended budget each year to Council, known as the Mayors Recommended Budget. (Charter §7-401(2); Charter §7-401(5); Affidavit of City Manager Hugley ¶6; Affidavit of Mayor Tomlinson ¶13). The Charter also requires the Mayor set forth a budget message to Council to explain general fiscal policies, provide summaries of the proposed budgets, explain any major changes for the next fiscal year and provide any other information deemed necessary for Council to consider in its deliberations over the annual operating and capital CCG budget. (Charter §7-401).

9. The CCG Council considers and revises the Mayor's Recommended Budget in the months of budget hearings leading up to the final enactment of the CCG budget, which must be completed by the end of June during each fiscal year. (Charter §7-402). Sheriff Darr has been provided a hearing before Council to present his budget requests, or discuss any budgetary

matter, in every fiscal year since his election. (Affidavit of Finance Director Hodge ¶13; Affidavit of Councilor Thomas ¶7).

10. Sheriff Darr's budget requests may be heard in two separate ways. First, Charter §8-105 requires each constitutional officer to submit budget requests to the City Manager. That same provision authorizes each constitutional officer the opportunity to have a hearing in front of Council on those budget requests. (Charter §8-105). The hearing is provided, because those formulating the Mayor's Recommended Budget are not required to completely adopt the "budget requests" of these officials or agencies. (Id.; Affidavit of J.Burgess ¶¶6-8).

11. No Georgia law, Charter provision or section of the Georgia Constitution gives the Muscogee County Sheriff's Office the right to receive all budget requests submitted during the Mayor's Recommended Budget process. The Executive has never been required to accept all budget requests for any entity in the formulation of the Mayor's Recommended Budget. (Affidavit of Mayor Tomlinson ¶15; Affidavit of City Manager Hugley ¶7).

12. The drafter of the Charter's budgetary provisions, Mr. James V. Burgess, Jr. testified that no constitutional officer or elected official, including the Muscogee County Sheriff's Office, should obtain a priority to funds in the recommended budget process. (Affidavit of J.Burgess, ¶¶6-9).

13. The Executive Branch must exercise its discretion over the budget requests submitted by all departments, office and agencies in the Mayor's Recommended Budget. (Affidavit of Mayor Tomlinson ¶12; Affidavit of City Manager Hugley, ¶¶6-7; Affidavit of Finance Director Hodge ¶4; Affidavit of Budget Analyst Haynes ¶8). This use of discretion by the Executive Branch is directly contemplated in the language of the Charter. (Affidavit of J. Burgess ¶7; Charter §7-401-requiring fiscal policy directives and proposals of expenditures for

all of CCG funded departments and offices in the recommended budget; Charter §7-401(5)-requiring a balanced recommended budget).

14. The process for the formulation of the Mayor's Recommended Budget has operated in the same manner since well before Sheriff Darr was elected and took Office in 2009. (Affidavit of City Manager Hugley ¶7). The Mayor's Recommended Budget is only proposed after extensive investigation, fact gathering and analysis is performed. (Affidavit of Mayor Tomlinson ¶9-12 and Affidavit Exhibits F- K; Affidavit of Finance Director Hodge ¶4).

15. The financial operations of the Sheriff's Office are well known to the Finance Director, Pam Hodge and his Office's budget analyst, Lionel Haynes, Jr. (Affidavit of Finance Director Hodge ¶2, ¶5, ¶7; Affidavit of Budget Analyst Haynes ¶3). The Finance Department works closely with each Office, Agency and Department that receives CCG funding throughout the fiscal year. The budget analyst assigned to the Sheriff's Office since Sheriff Darr was elected is Mr. Lionel Haynes, Jr. Mr. Haynes assists the Sheriff's Office is monitoring its financials and CCG-funded budget, implementing any transfer requests between line items, reconciling its expenditures, ensuring all information is adequately reported, and processing any invoices that may be directed to the Finance Department. (Affidavit of Budget Analyst Haynes ¶3).

16. Sheriff Darr filed this lawsuit on November 10, 2014 seeking relief related only to his FY2015 budget. (Petition for Mandamus, ¶12-13). This Petition has been amended four times, and the Fourth Amended Petition seeks mandamus relief for the insufficiency of his FY2016 appropriated budget and on the initial budget recommendation process for FY2016, noting the Mayor and the City Manager "did not incorporate the Sheriff's FY2016 budget requests into the overall consolidated government budget for submission by the Mayor to the

Council”. (Fourth Amended Petition, ¶263; ¶266). Sheriff Darr has not filed any action specifically requesting relief for the FY2017 budget process, which is ongoing. (Affidavit of Finance Director Hodge ¶12).

17. The work on the Mayor’s Recommended Budget for FY2015 began months before it was presented to Council. (Affidavit of Mayor Tomlinson ¶12; Affidavit of Finance Director Hodge ¶¶4-6). The Finance Department informed all CCG departments and offices that a service line analysis, demonstrating the functions of the department/office and the personnel assigned to handle the same, would be requested as part of the budget building process and that the FY14 adopted budgets would be used as a starting point for budget proposals due to the decline in anticipated revenues and available funding. Id. As a result, the Finance Department explained that budget requests were not required for FY2015. (Affidavit of Finance Director Hodge ¶¶6). In the FY2015 process, the Finance Director, the Assistant Finance Director and the assigned budget analyst discussed various budgetary matters with the representatives of the Sheriff’s Office before the budgetary proposals were made for his Office in the Mayor’s Recommended Budget. (Affidavit of Finance Director Hodge ¶6).

18. In FY2015, Sheriff Darr submitted a service line analysis with some capital outlay requests, but he did not submit a full set of budget requests to the Finance Department. (Affidavit of Finance Director Hodge ¶6-7; Affidavit of Budget Analyst Haynes ¶6). The budget analyst for the Sheriff’s Office, Lionel Haynes, the Assistant Finance Director, Renee Sturkie, and the Director of Finance, Pamela Hodge, all had contact with the Sheriff’s Office and its various representatives about various budgetary matters leading up to the finalization of the Mayor’s Recommended Budget for FY2015. All information supplied by the Sheriff’s Office

was considered. (Affidavit of Finance Director Hodge ¶6; Affidavit of Budget Analyst Haynes ¶6).

19. For the FY2015 Mayor's Recommended Budget proposal for the Sheriff's Office, the Finance Director, the Assistant Finance Director and the budget analyst reviewed the financial concerns for that fiscal year, i.e. a decline in the CCG fund balance and revenue streams, the imposition of state mandates, as well as other CCG spending needs. Specific information as to costs for the Sheriff's Office, such as utility, fuel, contractual, informational technology requests, personnel, as well as the historical data on expenditures was also considered. (Affidavit of Finance Director Hodge ¶5-6; Affidavit of Budget Analyst Haynes ¶4, ¶8). Similar information is reviewed and analyzed for any year in which the Sheriff fails to present his budget requests. (Id.).

20. Although Sheriff Darr did not submit a complete set of budget requests to the City Manager or the Mayor for FY2015, he did submit them directly to Council, by serving them at their homes or offices before his budget hearing. (Affidavit of Mayor Tomlinson ¶¶20-24; Affidavit of Finance Director Hodge ¶7; Affidavits of Councilor Thomas, Councilor Davis, Councilor Huff; Councilor Turner-Pugh, and Councilor Henderson, ¶¶5).

21. Sheriff Darr appeared before Council, who discussed his FY2015 requests and specifically examined the differences between his budget requests and the Mayor's Recommended Budget. (Third Amended Complaint ¶134, ¶135). Councilors requested additional information on his requests, and several meetings between the Finance Director, the Sheriff, and various Councilors occurred as a result. (Affidavit of Finance Director Hodge ¶7; Affidavit of Councilor Baker ¶6; Affidavit of Councilor Turner-Pugh ¶6). Councilor Henderson

invited Sheriff Darr to his home and spent four to five hours reviewing the necessity of his FY2015 budget requests. (Affidavit of Councilor Henderson ¶5).

22. After the presentation of all budgetary information, Sheriff Darr's hearing, and subsequent meetings with the Councilors, and others, on his specific budget requests, the Council voted on the amount of annual appropriations to provide the Sheriff's Office for FY2015. (Affidavit of Councilor Henderson ¶5; Third Amended Petition ¶134, ¶135).

23. In FY2015, the Council directly appropriated the Sheriff's Office \$27,653,956 in June of 2014 through Ordinance 14-25. (Third Amended Petition ¶¶112,113,137; Ordinance 14-25).

24. Sheriff Darr has no outstanding financial obligations from FY2015 known to CCG. All of his expenditures have been accounted and paid. The final CCG audit has taken place and been submitted to the State as required to close the CCG accounts for FY2015. (Affidavit of Finance Director Hodge ¶8, ¶13). Sheriff Darr also testified that he was able to perform all the duties of his Office in FY2015. (Deposition of Sheriff Darr, pg. 63; pg.70-73)

25. Sheriff Darr exceeded his budgeted appropriations in FY2015 without seeking prior approval from Council, although approval would be required pursuant to Georgia law and Ordinance 13-39. (O.C.G.A. §36-5-22.1-only the governing authority has control over un-budgeted funds and property; Ordinance 13-39). Sheriff Darr testified that he has never sought prior approval for expenditures that exceeded his budget. However, he has also admitted that Ordinance 13-39 has never been used to deny him additional funding. (Deposition of Sheriff Darr pg. 234).

26. Sheriff Darr does not believe that he is required to seek approval from Council for expenditures that will exceed his budget. (Deposition of Sheriff Darr pg. 60-62).

27. Before the preparation of the Mayor's Recommended Budget for FY2016, Council requested an analysis to review the potentially duplicative nature of the services provided amongst the public safety offices. (Exhibits F-K in Affidavit of Mayor Tomlinson; Affidavit of Finance Director Hodge ¶11). Sheriff Darr was invited to participate in these discussions, but he did not. (Deposition of Sheriff Darr pg. 154-155). The Mayor made a recommendation to decrease the funding for investigative services in the Sheriff's Office and to focus upon the investigative division of the Columbus Police Department after concluding that duplicative services did exist. (Affidavit of Mayor Tomlinson ¶¶29-30 and Exhibits F-K to Affidavit; Affidavit of Councilor Henderson ¶6).

28. The Finance Department held the FY2016 budget process kickoff on January 22, 2015. Lt. Joan Wynn attended on behalf of the Sheriff's Office. (Deposition of Lt. Wynn, pg.40). At this meeting, Pam Hodge, Director of Finance, announced the budget schedule and deadlines within which to submit the budget requests, as well as the target date for the Mayor's presentation of the recommended budget to Council. The budget requests were to be submitted by February 6, 2015. (Affidavit of Finance Director Hodge ¶9).

29. Sheriff Darr has pled that his FY2016 budget requests were turned in on March 31, 2015 to the City Manager on the same day the Mayor presented her recommended budget to Council. (Fourth Amended Complaint ¶¶258-260). The Sheriff's Office did not submit the FY2016 requests to the Executive within the requested timeline. He did not engage in any meeting with the Finance Department of City Manager regarding his budget requests. (Affidavit of Finance Director Hodge ¶9; Affidavit of Budget Analyst Haynes ¶7).

30. Sheriff Darr appeared before Council to present his FY2016 budget requests. He persuaded Council that the investigative services were not duplicative and lobbied for an

increase in the amounts provided to his Office in the Mayor's Recommended Budget. As a result of his hearing before Council, he was able to secure additional funds in the amount of \$667,647 to his appropriated FY2016 budget. (Affidavit of Finance Director Hodge ¶11; Affidavit of Councilor Henderson ¶6; Affidavit of Councilor Buck ¶5; Affidavit of Councilor Baker ¶6-7; Affidavits of Councilor Turner-Pugh, Councilor Huff, Councilor Barnes, Councilor Davis, Councilor Allen and Councilor Thomas ¶7).

31. The total of the Mayor's Recommended Budget for FY2016 for the Sheriff's Office was \$26,952,433. After Council voted on its final CCG FY2016 budget, the Sheriff's Office was directly appropriated an increased total budget of \$27,620,080. (Affidavit of Finance Director Hodge ¶11).

32. Sheriff Darr has never incurred a debt or made an expenditure that has not been paid for or otherwise covered by CCG either through payment from his original appropriated funds or otherwise through a duly enacted ordinance amending the original annual budget ordinance. (Affidavit of Finance Director Hodge ¶8, ¶14).

33. The initial recommended budget process for FY2017 is ongoing. Notice was provided to all CCG funded departments and offices that the budget requests should be submitted by February 19, 2016 in order to be considered and incorporated into the Mayor's Recommended Budget. (Affidavit of Finance Director Hodge ¶12). Lt. Joan Wynn attended the budget kickoff for the Sheriff's Office, and she testified the Sheriff's Office's budget requests had not yet been compiled. (Deposition of Lt. Wynn, pg. 47-49).

34. Sheriff Darr has not submitted any budget request for FY2017, despite the passage of the requested deadline on February 19, 2016. (Deposition of Lt. Wynn, pg. 48-49).

Q: Have you had any discussion with anyone within the Sheriff's Office as to the timing of the presentation of the budget requests that you will make for FY17?

A: I know the Sheriff's -- Sheriff has given some type of indication, but I do not remember the date he was targeting for.

Q: Okay. But it's your belief that the Sheriff has his own date in mind as to when the budget requests will be submitted to the City Manager?

A: Well, I mean, I know it's obvious that it wasn't going to be done by --- what was it? -- February the 19th, 18th or 19th.

Q: Okay. And they -- the Sheriff's Office has not yet turned in a budget request to the financial planning office as of today's date, which is the [sic] February 25th.

A: No, ma'am.

Q: Okay. And you don't know right now on the date on which the Sheriff's Office plans to submit that request.

A: I do not recall, no ma'am.

(Deposition of Lt. Wynn, pg. 48).

The Sheriff's Office has not requested an extension or communicated to the Finance Department as to whether any budget requests for the FY2017 Mayor's Recommended Budget will be submitted. (Affidavit of Finance Director Hodge ¶12).


35. The theory of the Sheriff to suggest that all of his budget requests must be accepted by the Executive Defendants is a new one, and one that is being advanced for the expansion of the Sheriff's power. The litigation has broader political purposes. Sheriff Darr's counsel became involved in this case from the Georgia Sheriff's Association (GSA) network.

Kellye C. Moore and Larry Walker currently serve as general counsel for the Georgia Sheriff's Association (GSA), and are also general counsel to the Constitutional Officer's Association of Georgia (COAG). Ms. Moore has testified that she has informed the GSA Director that they "continue to keep in mind the Office of Sheriff as we make our way through this litigation.... Regardless of how this case comes out, there are some very important strategy decisions that we have learned and that the other attorneys in the network, and Sheriffs, would benefit from knowing for any future budget disputes." She has also testified as to her belief that this litigation holds "statewide implications for the Office of Sheriff and all constitutional officers". (Affidavit of Kellye C. Moore ¶15, ¶16). Duke R. Groover represents not only the Sheriff, but also the GSA in the present case, to prevent the discovery of communications from being produced between GSA and the Sheriff's representatives due to an assertion of privilege. (Response to Defendants' Mtn. Compel Third Party, GSA, served on January 5, 2016).

Respectfully submitted, this 7th day of March, 2016.


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS AND THEORY OF RECOVERY IN SUPPORT OF THEIR CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT** via electronic mail, per agreement of counsel and the Court, addressed as follows:

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This 7th day of March, 2016.



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