

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
CIVIL DIVISION

MIKE HALE, as the duly elected Sheriff
Of Jefferson County, Alabama;
ALLEN FARLEY, Assistant Sheriff
Of Jefferson County,
Plaintiffs,

FILED IN OPEN COURT

This 16th day of July 2009
Joseph Boohaker, Judge

v.

CIVIL ACTION NUMBER:
CV 09-2041

JEFFERSON COUNTY, a political
Subdivision of the State of Alabama;
BETTYE FINE COLLINS, as a duly
Elected Commissioner of Jefferson County
Alabama; WILLIAM A. BELL, as a duly
Elected Commissioner of Jefferson County
Alabama; JIM CARNES, as a duly
Elected Commissioner of Jefferson County
Alabama; BOBBY HUMPHRIES, as a duly
Elected Commissioner of Jefferson County
Alabama; SHELIA SMOOT, as a duly
Elected Commissioner of Jefferson County
Alabama,

RECEIVED IN OFFICE

JUL 16 2009

ANNE-MARIE ADAMS
Clerk

Defendants.

ORDER ON PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs' petition for preliminary injunction. The Court, having conducted an ore tenus hearing, commencing on July 10, 2009, having received sworn testimony and other evidence with regard to Plaintiffs' petition hereby enters the following:

This matter was commenced in the Circuit Court for the Bessemer Division of Jefferson County by petition filed on June 30, 2009. Respondents replied with a motion to dismiss for lack of jurisdiction and improper venue, or in the alternative to transfer venue of this matter to the Birmingham Division of Circuit Court of Jefferson County.

On July 1, 2009, the Circuit Court entered a temporary restraining order and set this matter for hearing on preliminary injunction for July 13, 2009.

On July 2, 2009, Respondents Jefferson County, et al, filed an emergency petition for mandamus relief to the Alabama Supreme Court setting forth the following arguments:

1. The Circuit Court of the Bessemer Division of Jefferson County lacked jurisdiction over the matter due to the pendency of litigation between the parties in previously filed case, *Mike Hale v. Jefferson County, et al, Civil Action Number CV 07-1040*.
2. That the Circuit Court was not authorized to enter a temporary restraining order on grounds that the Balanced Budget Act was unconstitutional without providing proper notice and opportunity to participate to the Alabama Attorney General.
3. That the Circuit Court of the Bessemer Division of Jefferson County was not authorized to enter a temporary restraining order in light of the timely challenge to venue interposed by Respondents.
4. That Petitioner had not met its burden of proof of likelihood of success on the merits.

On July 6, 2009, Circuit Judge Dan King of the Bessemer Division entered an order recusing himself from the case, returning the matter to the presiding judge of the Bessemer Division of the Jefferson County Circuit Court, Judge Teresa B. Petelos.

On July 7, 2009, Judge Petelos ruled on Respondents' outstanding motion to dismiss or to transfer venue to the Birmingham Division of the Circuit Court of Jefferson County, ordering the transfer of this case to the Birmingham Division.

On July 9, 2009, the Alabama Supreme Court ruled on Respondents Emergency Petition for Writ of Mandamus, granting said petition. In so granting, the Court wrote the following:

"Because the Bessemer Division of the Jefferson County Circuit Court was without authority to enter the Temporary Restraining Order, the Temporary Restraining Order is vacated without prejudice to the right of Plaintiffs, Mike Hale, et al., to renew their request for injunctive relief in the Birmingham Division of the Jefferson Circuit Court, the appropriate forum for seeking such relief."

It thus appearing to the Court that the Supreme Court entered its order based on the venue argument posed by Respondents herein, and its order having been entered

Page 3 of 41

without prejudice, the order of the Supreme Court does not decide nor determine the merits of Plaintiffs' claims.

Standard of Review and Requisites of Proof

The Court in *Blount Recycling, LLC v. City of Cullman*, 884 So.2d 850 (Ala. 2003) stated the standard by which this matter is to be reviewed by the Court as follows:

"We review a preliminary injunction to determine whether the trial court exceeded its discretion in granting the injunction. "[T]he grant of, or refusal to grant, a preliminary injunction rests largely in the discretion of the trial court." *Teleprompter of Mobile, Inc. v. Bayou Cable TV*, 428 So.2d 17, 19 (Ala.1983). Moreover, if it cannot be shown that the trial court exceeded its discretion, the court's "action will not be disturbed on appeal." *Id.* A trial court exceeds its discretion when it "exceed[s] the bounds of reason, all the circumstances before the lower court being considered." *Valley Heating, Cooling & Electric Co. v. Alabama Gas Corp.*, 286 Ala. 79, 82, 237 So.2d 470, 472 (1970)."

Before entering a preliminary injunction, the trial court must be satisfied: (1) that without the injunction the plaintiff will suffer immediate and irreparable injury; (2) that the plaintiff has no adequate remedy at law; (3) that the plaintiff is likely to succeed on the merits of the case; and (4) that the hardship imposed upon the defendant by the injunction would not unreasonably outweigh the benefit to the plaintiff. *Perley v. Tapscan, Inc.*, 646 So.2d 585, 587 (Ala.1994)(citing *Martin v. First Fed. Sav. & Loan Ass'n*, 559 So.2d 1075 (Ala.1990))." *Blaylock v. Cary*, 709 So.2d 1128, 1130 (Ala.1997).

If the party seeking the injunction fails to establish each of these prerequisites, then a preliminary injunction should not be entered. If the trial court enters a preliminary injunction when these prerequisites have not been met, the trial court's order must be dissolved and the case remanded. *Teleprompter of Mobile, Inc. v. Bayou Cable TV, supra.*" 884 So.2d at 853.

Proceedings

This action was precipitated by the consequences of *Jessica Edwards, et al v. Jefferson County, et al*, Civil Action No. 2007-900873. The Edwards case was commenced on May 11, 2007. After failed attempts at mediation, the case was submitted to the Court under Rule 56 for ruling on motion for summary judgment.

On January 12, 2009, the Court granted Plaintiffs' motion for summary judgment and declared that the Jefferson County Occupation Tax, Act 1967-406, had been repealed by a subsequent enactment of the Alabama Legislature, Act 1999-669.

On January 21, 2009, Jefferson County filed an appeal of this ruling with the Alabama Supreme Court.

Page 4 of 41

On March 13, 2009, Jefferson County filed a motion for an emergency stay; on March 20, 2009, the Circuit Court granted Jefferson County's motion and ordered a stay until midnight, May 18, 2009.

On May 28, 2009, Jefferson County sought a second emergency stay from the Circuit Court. On June 4, 2009, the Circuit Court denied Jefferson County's Motion for a second emergency stay and stated in its order:

"Unfortunately, this Court has no confidence that this matter can reach a political or legislative solution so long as the Court provides shelter from the crisis. If this Court or the Supreme Court grants further stay there will be no incentive for the Court and its legislative delegation to resolve this matter."

The Respondent Jefferson County Commission then undertook efforts to bring its Fiscal 2008-09 operating budget for the 4th Quarter of the said fiscal year (July 1 – September 30, 2009) into compliance with the Balanced Budget Act by amending the previously approved budget through enactment of an "across the board" one-third reduction in appropriated expenditures for all county departments and agencies, including the Jefferson County Sheriff's Department.

Plaintiff filed for injunctive relief from the then proposed amendments to the Fiscal 2008-09 budget with its action taken on June 30, 2009, the eve of the commencement of the 4th Quarter of the current fiscal year.

Summary of the Testimony Before the Court

Cleveland Moore

The Court received the testimony of Captain Cleveland Moore of the Jefferson County Sheriff's Department. Captain Moore testified that he has been employed by the Sheriff's Department for 29 years and that he has served 14 months in the rank of Captain serving as the Division Commander of the Bessemer Division of the said Department. Captain Moore testified as to the various duties he performs and the number of men and women who serve in the Bessemer Division of the said Department. Captain Moore testified that the proposed reductions in funds from the County Commission, resulting from a one-third, across the board reduction as applied to the Bessemer Division of the Sheriff's Office, would result in the layoff of Deputy Sheriffs with those of lowest seniority being laid off first under current existing rules and regulations of the personnel board.

Page 5 of 41

Byron Jackson

The Court next received the testimony of Captain Byron Jackson. Captain Jackson is a 30-year employee with the said Department and is currently serving as Captain of the Patrol Division in the Birmingham Division of Jefferson County Alabama. Captain Jackson testified that the Department currently operates with less than the optimum number of uniformed deputies performing all of the statutory duties assigned to the said Department. Shifting resources to meet Departmental needs in times of manpower shortages, such as are currently being experienced, was described by Captain Jackson as "robbing Peter to pay Paul".

In a layoff scenario wherein budgetary cutbacks would result in cutting back the force, Captain Jackson testified that the latest hires would be the first to be dismissed under current rules and regulations of the Personnel Board under which the Deputies serve in the Department. Captain Jackson testified that the principle resources of the Patrol Division are human resources, without much administrative support staff, so that layoffs in his Division would directly impact the number of Deputies serving on Patrol.

Commissioner Bobby Humphries

The Court next received the testimony of County Commissioner Bobby Humphries. Commissioner Humphries testified that he was not aware of the statute identified in the testimony as the "preferred claims statute", *Ala. Code §11-12-15(1975)*, and had only learned about it after the commencement of the current action.

The Commissioner described the budgetary process as one wherein department heads submit their budget requests to the County Commission, pursuant to the Budget Control Act, and that depending on the estimates of revenue available as well as in consideration of the needs of the other departments, the County Commission approves a budget so as to fund the various Departments of County government in a manner that is geared toward a balanced operating budget, as required by law.

The budget approved by the County Commission for the said Sheriff's Department for fiscal year 2008-09, Commissioner Humphreys testified, was reasonable in that it took into account the request made by the Sheriff and reflected a sum of money that the Commissioner testified the County could afford to appropriate, in the amount of approximately \$61 million dollars. Commissioner Humphreys testified that the total

Page 6 of 41

budget approved for FY 2008-09 was approximately \$700 million dollars, of which the Sheriff's Office was appropriated \$61 million dollars. Later testimony clarified the exact amount of the expenditures approved for the current fiscal year.

In June of 2009, Commissioner Humphreys testified that the Defendant County Commission was faced with the loss of approximately \$75 million dollars in revenue comprising an estimated 35% of County revenues assigned to the County's General Fund, due to the loss of a business license tax and the denial to the County of occupational tax collections pursuant to an order of the Circuit Court rendered in the case of *Jessica Edwards, et al v. Jefferson County, et al, Civil Action No. 2007-900873*.¹

Because of the requirements of *Ala. Code §11-8-3(b) (1975)*, and its mandate that appropriations made in the budget shall not exceed the estimated total revenues of the county available to fund said appropriations, the budget for FY 2008-09 became seriously out of balance with the loss of the two referenced sources of revenue to the General Fund, necessitating the County Commission to enact amendments to the said budget in order to restore the statutorily mandated balance.

The Commissioner testified that there were a number of proposed resolutions that came before the County Commission to eliminate certain aspects and services previously funded by County appropriations.² There were measures listed in the Proposed Budgetary Reduction Resolutions, designated as "Eliminate Discretionary Government Functions and Eliminate Jobs", which totaled \$13,790,000 million dollars, but none of these proposals were voted upon or approved. Also listed were various discretionary contractual obligations undertaken by the County Commission totaling \$24,879,500, which likewise were not voted upon or approved for elimination or reduction.

On June 16, 2009, of the various proposed resolutions eliminating spending, Commissioner Humphreys testified that only 4 items of prospective appropriations in the 2009-2010 fiscal year were voted upon. They were, namely:

- Postponement of the Opening of the New Bessemer Courthouse;

¹ This case was commenced on May 11, 2007. After failed attempts at mediation, the case was submitted to the Court under Rule 56.

On January 12, 2009, the Court granted Plaintiffs' motion for summary judgment and declared that the Jefferson County Occupation Tax, Act 1967-406 had been repealed by a subsequent enactment of the Alabama Legislature, Act 1999-669.

² Plaintiff Exhibits #3, #4

- Abolish Tuition Reimbursement;
- Terminate Road Maintenance in all Cities; and
- Close all Satellite Courthouses.

These votes resulted in a prospective savings of \$11,642,063. These measures were adopted prior to the action taken by the County Commission to adopt and amendment to the FY 2008-09 Budget in which a one-third, across the board reduction in appropriations to all departments of county government, including the Sheriff's Department, was enacted. The amendment to the fiscal 2008-09 budget reduced the appropriation to the Sheriff's Office by an approximate amount of \$5.0 million dollars for the 4th Quarter of the said fiscal year. The Commissioner testified that the across the board one-third cut was approved by the County Commission on June 30, 2009 applied to all Departments of county government, including the Sheriff's Office, however, due to the Temporary Restraining Order (TRO) issued in this action on July 1, 2009, the amended budget was not immediately implemented with regard to the Sheriff's Office.

With the voiding of the said TRO order by the Alabama Supreme Court on Thursday, July 9, 2009, the Commissioner testified that the amended budget was then implemented with regard to the Sheriff's Department and his unencumbered available appropriated funds for the balance of FY2008-09 were reduced by one-third. The Commission acted on the evening of July 9, 2009 to effectuate the reduction.

When questioned about whether he believed the Sheriff's Office ought to be treated differently from other Departments of county government, the Commissioner testified that given the severe nature of the loss of revenue and the cutbacks necessary to restore balance to the budget, that the County Commission could not adopt a "hands off" position with regard to any department of county government, including the Sheriff's Office. The Commissioner testified that the County is currently taking in approximately \$8.0 million in revenues and expending approximately \$18.0 million in expenditures per month with only a \$14.0 million dollar cash reserve fund as of several weeks ago.

The Commissioner testified that the County Commission's authority over the Sheriff's Office is to fund its budget. In exercising that authority to fund the operations of the Sheriff's Office, the Commissioner testified that the Commission takes into account the representations of the Sheriff with regard to his estimate of the requirements

Page 8 of 41

of his Department, a view of the estimated revenues of the County, and the needs of the other departments of county government.

The Commissioner testified that he is not familiar with the day-to-day operation of the Sheriff's Department. Though the Commissioner testified that he was personally invited by Assistant Sheriff Farley to tour the Bessemer Division in order to observe the debilitating effect that a steep reduction in expenditures would cause, the Commissioner testified that he was not able to take the tour. Prior to implementing the said one-third reduction in the funds available to the Sheriff's Office, the Commissioner testified that the County Commission had not received any recommendations from the Plaintiff, Sheriff Hale, with regard to the amount of reduction his Office could sustain, and further, the Commission did not take into account Ala. Code §11-12-15 (1975) and the priority of preferred claims stated therein.

Paul Logan

The Court then received the testimony of Paul Logan. Mr. Logan is a Captain with the Jefferson County Sheriff's Office in charge of the Vice and Narcotics Division in the Birmingham Division of Jefferson County. Captain Logan presented a demonstration of the various functions of his Division. Captain Logan testified that the Sheriff's Office also receives funding from the proceeds of the sale of contraband seized by the Vice & Narcotics Division. Captain Logan testified that this fund, known as the Ex Officio Fund, is placed at the disposal of Plaintiff to spend on equipment only. Captain Logan testified that to his knowledge, the proceeds from forfeiture sales may not, by law, be used to fund salaries for personnel³.

Mark Farley

The Court then received the testimony of Mr. Mark Farley. Mr. Farley is a Captain with the Jefferson County Sheriff's Department, Bessemer Division working primarily in School Resources and Vice & Narcotics. Captain Farley testified with regard to the method and means of carrying out the various functions of his division and the number of uniformed deputies needed to conduct a raid, or serve a warrant or make an arrest where armed resistance is foreseeable. He also testified that there are uniformed deputies that work 9 schools and 1 alternative school in the Bessemer Division.

³ Sergeant Steve Morrow later testified with regard to the Ex Officio Fund of the Sheriff's Office

Page 9 of 41

Dennis Berry

The Court then received the testimony of Mr. Dennis Berry. Mr. Berry is a Captain with the Jefferson County Sheriff's Office working in the Supply and Service Department with budget and financial responsibility. In short, Captain Berry is in charge of the budget for the Jefferson County Sheriff's Office.

Captain Berry testified that on Thursday, June 9, 2009, that he had \$13 million dollars available in the Sheriff's Office budget. On Friday, June 10, 2009, he testified that his system showed that the original appropriation made to the Sheriff's Office in the FY 2008-09 year of \$61,450,732 had been reduced to \$54,950,556.35. Captain Berry testified that this change meant that rather than having \$13 million dollars remaining in the budget to finish the 4th Quarter of FY 2008-09, he had only \$5,983,791.04 remaining.

Captain Berry testified that he had budgeted \$10,340,206 for the said remaining Quarter of the fiscal year, comprised of \$9,464,151 for personnel and \$876,055 for utilities. Captain Berry testified that his budget for the 4th Quarter of the current fiscal year, after the implementation of the June 30, 2009 amendments, currently has a \$4,356,206 shortfall. Captain Berry further testified that of the \$9,464,151 in personnel cost, \$1,912,050 was budgeted to pay the salaries of the civilian staff, that is, the non-sworn employees.

Should the Sheriff order the entire civilian staff be laid off, and that all utilities in the amount of \$876,055 not be paid, then remaining funds in the Sheriff's budget would still leave the Department short by \$1,568,310 in meeting personnel costs of the sworn or uniformed deputies. Captain Berry testified that the cost of sworn personnel averages \$4,200/month. The cost of each Deputy's salary for the 2.5 months remaining in FY 2008-09 is \$10,500. Therefore the amendment to the Plaintiff's budget, assuming that Plaintiff eliminated all civilian personnel, and ceased payment of all operating expenses would reduce the Sheriff's Deputy Force by 155 deputies.

Captain Berry then testified regarding his analysis that a force reduction of 155 Deputies from the current force of 721 Deputies would leave the Sheriff's Office with no Deputies available to patrol the County after positions formerly held by the civilian staff in the Bessemer and Birmingham County Jails have been filled with replaced patrol

Deputies, and all other services performed by the sworn officers of the force have been filled.⁴

Captain Berry testified that the Sheriff's Office attempted to comply with the March 2009 request to reduce expenditures by approximately \$3.0 million dollars and instead implemented reductions of \$2.75 million dollars with \$1.75 million being implemented in the current fiscal year, and due to other circumstances, the other \$1.0 million dollars was scheduled to be reduced from the FY 2009-10 budget. Captain Berry also testified that certain cost savings measures were adopted by the Sheriff's Office that would produce a savings of \$700,000 by end of the fiscal year had the said June 30, 2009 amendment to the FY 2008-09 budget not been implemented against the Sheriff's Office Budget. Thus, after the March 2009 reductions, had there been no other reductions implemented, Captain Berry testified that the Sheriff's Office would have ended the fiscal year with a \$700,000 surplus.

The reductions implemented on the evening of July 9, 2009 were accomplished without any communication to Captain Berry. Berry testified that while the Sheriff has discretion to spend his Office's appropriation, any change in the various accounts or reallocation of funds from one account to another within the Sheriff's Office budget, must, under the county-wide SAP⁵ accounting software system, pass through the County Commission and be approved by Commissioner Collins.

Captain Berry testified that he has worked as the budget officer with the Sheriff's Office for 16 months and that before this current assignment, he was the commander of the Birmingham and Bessemer Division County Jails.

Captain Berry testified that he had never before seen or known of the "preferred claim statute", Ala. Code §11-12-15 (1975). In submitting claims to the County Commission for payment, Berry testified that he had never referred to any claim as "preferred" or as "priority" nor had he ever cited to the said statute.

He testified that overtime and deputy time spent responding to calls that originate outside of the unincorporated territory of Jefferson County are part of the payroll claims

⁴ Plaintiff exhibit #12

⁵ "Systems Applications and Products"

Page 11 of 41

submitted, but are not separately accounted for under the SAP accounting software used by the County Finance Department.

Berry testified that there are currently 22 vacant deputy positions but that in his calculation of the Sheriff Office budgetary shortfall caused by the Defendant's adoption of the amended budget, he did not include funding for vacant positions. Rather, he used the average compensation actually paid to all active personnel, sworn and unsworn.

Berry testified that during the current fiscal year, there have been new deputies hired, and some lost through retirement. Since March 11, 2009, there have been new deputies hired and there have been merit pay increases in salaries awarded as well.

In executing a force reduction, Berry testified that the newest deputies are released first and the newest deputies are first assigned to the county jail, so that the jail would be the first to experience understaffing as a result of the implementation of the Amended Budget as applied to the Sheriff's Office. This situation would be remedied by taking more veteran deputies off patrol and putting them on duty in the county jail.

Berry testified that prior to Defendants' implementation of the budget amendment reducing the Sheriff Office's appropriation on July 10, 2009, the Sheriff had not identified cost centers to be cut. Rather, the Defendant implemented the reductions, according to the SAP accounting hardware, to the various accounts within the Sheriff Office's budget. Under the said accounting system, the Sheriff has the power to exercise his discretion to reallocate the funds remaining between and among the accounts within his over all appropriation, with the necessary approval of the changes by the President of the County Commission, Commissioner Collins.

Commissioner James Carnes

The Court then received the testimony of Commissioner James Carnes. Commissioner Carnes has responsibility over Environmental Services and has served since November 2006 on the Commission. Commissioner Carnes testified that his primary responsibility over the Sheriff is to approve the budget for the Sheriff's Office.

Commissioner Carnes testified that in the usual budgetary process the Commission staff receives requests for appropriations from the staff members of the various departments of county government funded by appropriations approved by the

County Commission wherein the Commission funds the critical needs of the various departments.

Regarding the process that was followed in adopting the amended budget that featured an across the board one-third reduction in the departments which receive appropriations from the General Fund, Commissioner Carnes testified that there was no such consulting process. The requirements of the Balanced Budget Act required the Commission to take immediate action to reduce expenditures and so the Commission acted more to reduce expenditures than to consider the needs of the various departments that were to have their budgets reduced. The Commissioner testified that he never asked about the needs of the Sheriff's Office, never undertook an investigation of his own and never obtained information from anyone else as to the impact on the one-third reduction on the Sheriff's Office before voting to approve it.

But, Commissioner Carnes testified that he was not "picking on" anyone, certainly not on Plaintiff, when he voted for the Amended Budget featuring the across the board reduction. He testified that every department, including his own, has suffered equally from the budget reduction and that he personally has lost employees from his departments as well as staff from his office.

The Commissioner testified that he has never discussed the minimum required funding for the Sheriff's Office necessary for Plaintiff to meet his statutory obligations.

In bringing the County budget into balance under the requirements of the Balanced Budget Act, Commissioner Carnes testified that the Commission exercises its budgetary discretion to pick and choose and then they vote on the amendment necessary to bring the budget to balance. There is no law that requires the Commission to implement a flat percentage reduction to all departments. The across the board approach, Commissioner Carnes testified was one of several approaches the Commission could have adopted, another would have been to prioritize, but it was important not to show favoritism in this extreme budgetary situation. So the across the board approach was taken and it received a unanimous vote among the five commissioners.

Commissioner Carnes testified that the Commission had sent out three separate notices to the department heads, including to the Sheriff asking for their recommendations for reductions in their departments that the Commission would

Page 13 of 41

consider in exercising their budgetary powers. The Commissioner testified that the circumstances were such that "we were the Titanic heading toward the iceberg."

There was no response to the request for cuts and therefore the Commission simply acted by amending the FY 2008-09 budget by reducing appropriations by one-third across the board, implementing the reductions to the Sheriff's Office on July 10, 2009 after the TRO was lifted by action of the Alabama Supreme Court.

Though the Sheriff's budget is funded from the General Fund, Commissioner Carnes testified that it is possible to transfer resources from one of the other funds maintained by the County to the General Fund.

During the current fiscal year, Commissioner Carnes testified that county sales taxes are less than anticipated due to the economic downturn; ad valorem taxes are down and two entire categories of revenue, the Occupational Tax and Business License tax, have been eliminated from the budgets of those departments funded from the General Fund. Yet, to date, Commissioner Carnes testified that there has been no request from the Sheriff's Office that has been refused for payment. Though public safety will be adversely affected by a reduction of resources appropriated to the Sheriff's Office, Commissioner Carnes testified that the other departments of county government have likewise been adversely affected by the reduction and elimination of revenues and that therefore there has been an adverse affect on the health and welfare of Jefferson County.

The Commissioner testified that the other departments were not asked how much of a reduction in appropriations they could tolerate and still perform their missions. The County is running out of money and there was simply no time to interview everyone. A decision had to be made which was being forced by the circumstances of rapidly reducing funds with which to meet payrolls. The budget could have been balanced by some other means. The Commissioner testified that it was possible to have implemented reductions by some formula other than the across the board method, but the other alternatives were not chosen. No priorities were given among the departments and so the Commission acted and its all on public record.

Travis Hulsey

The Court next received the testimony of Travis Hulsey, the Director of Revenue and acting Finance Director for Jefferson County. Ms. Tracy Hodge, the Manager of

Page 14 of 41

Budget Information, assists Hulsey in his Department. Mr. Hulsey testified that budgets are made from estimates of revenue and of expenditures, not the actual amounts.

Mr. Hulsey was asked about the setting aside of sufficient funds to pay priority claims submitted to the Commission for payment and testified that there are sufficient funds to pay all claims with the County Treasurer. He testified that all claims presented for payment have been paid. When asked the amount of the set aside, Mr. Hulsey testified that he did not know because that is the duty of the County Treasurer⁶. Mr. Hulsey testified that all claims are made on a weekly basis and paid timely.

Regarding the liquidity in Jefferson County's General Fund, Mr. Hulsey testified that as of June 1, 2009, the General Fund had approximately \$20 million dollars on account. Revenues in the approximate amount of \$8.0 million dollars are deposited to the said fund monthly and expenditures of approximately \$18 million are drawn from the said fund monthly.

As of July 10, 2009, the General Fund had \$4.9 million dollars on deposit and there has been a recent transfer of an additional \$5.0 million dollars from the Department of Revenue, so that currently there is approximately \$10.0 million dollars on deposit in the General Fund.

On July 24, 2009 there will be a payroll draw of approximately \$6.5 million dollars and there are weekly expenditures of \$1.0 million to vendors. Currently it is expected that the General Fund will reach a zero balance on August 7, 2009.

The County Commission has adopted a 32 hour workweek; implemented a hiring freeze; and on June 30, approved an across the board one-third cut in appropriations to all Departments. Mr. Hulsey testified that the \$5,069,685 reduction in the budget of the Sheriff's Office amounted to only an 8.25% reduction in the over all budget.

Mr. Hulsey testified that the budget approved for the Sheriff's Office in October 2008 in the amount of \$61,450,723 was more than a reasonable amount on which to fund the operations of the Sheriff's Office. Hulsey testified that the said Office could be operated at minimum levels on a budget of \$40 million dollars and that he based this opinion on 17 years of dealing with Sheriffs and their budgets.

⁶ Ala. Code §11-4-23(1)(a) (1975)

Page 15 of 41

Mr. Hulsey testified that the budget reduction has been difficult on all concerned and that the across the board reductions was the most fair and consistent means to bring the budget into balance.

When it was brought to his attention that, as applied to the Sheriff's Office, Plaintiff will be forced to dismiss all non-sworn personnel and not feed the prisoners in the jail and eliminate deputies from patrol, Mr. Hulsey testified that all departments are suffering from the restrictions imposed by the lost revenue and that the other departments are making due with the resources they have remaining.

Mr. Hulsey testified that it was his recommendation that the best method to address the revenue shortfall was the across the board one-third cut to all departments, including the Sheriff's Office. This was the most expedient method available.

Hulsey testified that this was not the only method and that a committee comprised of himself, Tracy Hodge, Demetrius Taylor (HR), Jeff Smith (GSA), the County Attorney and the Personnel Board of Jefferson County, investigated other methods. This committee considered several scenarios. They looked at eliminating non-legally mandated services; they looked outside of the constraints of the General Fund; and at the across the board reduction in expenditures. They took input from the departments with regard to layoffs.

Hulsey testified that the committee did not consider the constitutional or statutory duties of the several departments, including the Sheriff's Department.

Hulsey testified that though the budget as approved provided for a transfer into the General Fund of \$17,421,500 from the Bridge and Public Building Fund, this transfer was never made. The transfer would have been possible had this sum not been encumbered with the payment of debt obligations paid from the Bridge and public Building Fund. However, the expected claims on the said fund were more than originally anticipated which meant that the said 17,421,500 transfer could not be made. In addition to the General Fund there are 16 other identifiable funds maintained by the County Commission, most of which are for earmarked revenues and earmarked expenditures that are not available to the General Fund.

In the budgetary process, Mr. Hulsey testified that it is standard operating procedure for all department heads to ask for more than they know will be appropriated.

In approving the requests for FY 2008-09, Hulsey testified that the Commission did not anticipate the declining ad valorem and county sales taxes, nor the complete loss of the occupational tax and county business license tax.

The approximate \$100 million dollar increase in anticipated revenues to the county for FY 2009 as compared to previous years from 2006-08, was attributed to the 1% tax that was levied and earmarked to the School Warrant Operating Fund for the first time since its adoption.

Mr. Hulsey testified that he first learned of the possible loss of the Occupational Tax Revenues on January 12, 2009 when Judge Rains made his ruling in *Jessica Edwards, et al v. Jefferson County, et al, Civil Action No. 2007-900873* declaring the authorizing act to have been repealed in 1999. The reduction in the ad valorem and sales taxes came to his attention, Mr. Hulsey testified, through a process of monthly monitoring of actual tax receipts against budget projections. In the 1st Quarter of FY 2008-09 there was some reduction, but the trend did not become defined until June 2009 when the actual receipts fell below 16% of revenue projections.

Mr. Hulsey then went department by department and explained what the elimination of the "non-statutory" departments would have on the ability of county government to serve the people.

Mr. Hulsey testified that he prepared the June 24, 2009 memo to Commission President Collins in which he asked that the Resolution and Budget Amendment, which reduced appropriations to all departments by one third, be placed on the pre-Commission agenda for Thursday, June 25, 2009.⁷ The proposed resolution was voted on and approved on June 30, 2009. Prior to the issuance of the memo, in mid-June 2009, Mr. Hulsey testified that he met with representatives of the Sheriff's Office in the conference room of the Finance Department. The meeting was at the request of the Sheriff's representatives. Mr. Hulsey testified that the said representatives wished to inform him of the requirements of the Sheriff's Office for funding and that the Exhibits⁸ prepared by Captain Berry and introduced in this case indicating that the proposed reduction would eliminate the patrol division of the Sheriff's Office were not then presented. In fact, Mr.

⁷ Defendant Exhibit #7

⁸ Plaintiff Exhibit ## 11, 12

Page 17 of 41

Hulsey testified that the Sheriff's representatives did not propose any reductions for the Sheriff's Office. Hulsey testified that the said representatives did not tell him that the Sheriff's Office could not perform its mission if its budget were reduced as proposed. Mr. Hulsey testified that he told the Sheriff's representative of the dire situation that the County's General Fund faced and that the County would not be able to make payroll unless all departments participated in the force reduction.

Ron Eddings

The Court next received the testimony of Mr. Ron Eddings. Mr. Eddings is a Captain with the Sheriff's Department currently serving as the Captain of the county jail, Birmingham Division. Captain Eddings testified that if the force reduction is implemented, 60% of the deputies assigned to the county jail will be laid off first, under current Personnel Board Rules. Of the 153 sworn deputies assigned to the County Jail in Birmingham, Captain Eddings testified that he has 9 positions vacant; 7 in the Armed Forces deployed to Iraq; 5 in the law enforcement academy; and 3 more scheduled to be deployed to Afghanistan within 3 months.

Not counting the 3 who will go to Afghanistan, of the 132 deputies available to him for the county jail, each have 2 off days per week. Captain Eddings testified that the County Jail requires 100 men per day working three shifts: 46 men for day shift; 31, for evening; and 23 for night shift. With the current force level, and allowing for some men to be in the Armed Forces, others to be away at the law enforcement academy and those left being allowed to take their days off or else charge the county overtime for working their off days, he currently has a manpower shortage of 6 sworn deputies per shift day.

Captain Eddings testified that the annual cost to operate the Jefferson County Jail at Birmingham is \$20.0 million dollars. Captain Eddings testified that the cost to heat the county jail, supply it with drinking water, to keep it clean, provide janitorial services; and provide electricity⁹ is borne by Jefferson County, but does not come from the Sheriff's budget. Provision for bedding and clothing does come from his budget however and Captain Eddings testified that he had recently expended \$37,000 for new sheets.

Regarding the staffing of the county jail, by both sworn and unsworn employees, Captain Eddings testified that the Sheriff's Office employs sworn Deputies rather than

⁹ Ala. Code §11-12-15(a)(1) (1975)

Civil Action Number CV 09-2041

Page 18 of 41

"watchmen" or "attendants"¹⁰. Though Captain Eddings was presented with classifications within the Jefferson County Personnel Board for a position known as a "Correctional Officer"¹¹, Captain Eddings was shown other classifications within the Personnel Board for Corrections Supervisor¹² and Senior Corrections Supervisor¹³, however all of these classifications pertained to "large municipal jails" not to a county jail.

Regarding the setting of salaries for the sworn employees of the Sheriff's Office, though Ala. Code §14-6-105(1975) provides that the County Commission shall set the salaries, Captain Eddings testified that under the "Turquitt Defense"¹⁴, the County has left to the Sheriff the setting of Deputy salaries.

Captain Eddings testified that the Sheriff's Office is allowed \$1.20/day to feed prisoners and that the cost per month is approximately \$55,000.

Regarding health care for inmates, Captain Eddings testified that a private firm known as Health Assurance, LLC provides this service under contract with the Sheriff's Office at an annual fixed cost of \$4,140,000. Prior to this arrangement, Captain Eddings testified that health care was provided by staff from Cooper Green Mercy Hospital and that the annual cost of the service to the Sheriff's Office was approximately \$4.0 million dollars. Thus, with the cost of operating the Bessemer and Birmingham Division County Jails being approximately \$20 million dollars¹⁵, the cost for operating the county jails for the final three months, which are the 4th Quarter of FY 2008-09, was testified to be approximately \$5.0 million dollars¹⁶.

Captain Eddings also testified as to staffing requirements and the various functions that the sworn deputies assigned to the county jail perform.

With regard to payment for the health care costs of state inmates temporarily housed in the Jefferson County Jail, Captain Eddings testified that the Sheriff's Office

¹⁰ Counsel cited to Ala. Code §14-6-105 (1975)

¹¹ Defendant Exh. #8

¹² Plaintiff Exh. #19

¹³ Plaintiff Exh. #20

¹⁴ Turquitt v. Jefferson County, Ala., 137 F.3d 1285 (11th Cir.(Ala.)1998)

¹⁵ \$20,520,177.00, as per Plaintiff Exhibit #21

¹⁶ \$5,130,044.25, as per Plaintiff Exhibit #21

Page 19 of 41

usually pays for minor ailments, but that if a hospital stay is required, then the State Department of Corrections is made responsible.¹⁷

Captain Eddings also testified that there are 16 vehicles assigned to jail personnel, 11 sergeants, 4 lieutenants and one for the Captain of the County Jail.

Captain Eddings testified that prior to this trial, no one from the Defendant Jefferson County Commission had ever asked him the amount of financial resources needed to operate the County Jail. With 78 days remaining in FY 2008-09, Captain Eddings was asked how much it would cost to operate the County Jail, Birmingham Division and he responded, that with a per day cost of \$14,764.78¹⁸, the cost would be \$3,294,385.38. With the effects of the budgetary amendment as adopted by the Defendant County Commission on June 30, 2009, implemented July 1, 2009 reducing the remaining appropriation to the Sheriff's Office to \$5,946,363.00 approximately 55% of the remaining funds would be needed to keep the County Jail, Birmingham Division operational. Captain Eddings testified that the cost would be higher due to an imminent deployment of some of his sworn personnel to Iraq which would require him to work the remaining force overtime and pay overtime which is not included in the calculations made by Captain Berry in Plaintiff Exhibit #21.

When asked by how much more he could reduce his operations, Captain Eddings testified that he is already below what he absolutely needs to operate the county jail and cannot reduce the budget any more than it has already been reduced.

Jennifer Parsons Champion

The Court then received the testimony of Ms. Champion who is the County Treasurer, an elected position. Ms. Champion testified that the funds, which come into her custody are transferred from the Revenue Department. Ms. Champion testified that she has read and understands the requirements of Ala. Code §11-12-15(1975), the preferred claims statute, and that she pays out all claims that have been properly presented to her office for payment. Ms. Champion testified that to date she does not

¹⁷ Ala. Code § 14-3-30(b). Temporary confinement of convict pending removal; inmate developing medical condition which requires treatment.

"When an inmate sentenced to the custody of the department and the department is in receipt of a transcript of such sentence, is being housed in a county jail, and the inmate develops a medical condition which requires immediate treatment at a medical-care facility outside the county jail, the department [of corrections] shall be financially responsible for the cost of the treatment of the inmate."

¹⁸ Plaintiff Exhibit #21

Page 20 of 41

segregate funds so as to meet the requirements of the preferred claims statute since Jefferson County operates from a budget with approved appropriations.

Dennis Berry

The Court then again received testimony from Captain Dennis Berry who verified that he prepared Plaintiff's Exhibit #21 based on an average amount paid out by the Sheriff's Office over the period of the preceding 9 months of the current fiscal year. Captain Berry testified that at the current rate of spending, the Sheriff's Office will be out of funds by mid-August 2009.

Captain Berry also testified about "comp time" built by Sheriff Department employees. He described the claim as arising when an employee works over time or on an off day and rather than be paid over time, the employee takes comp time, that is, time for which the employee may take off and be paid for the day off. He testified that no employee may "book" more than 500 hours of comp time. Currently, there are 8,218.25 hours of comp time booked for Sheriff Department employees.¹⁹

Captain Berry also testified with regard to the amount and category of encumbered funds in the Sheriff's Department's budget. "Encumbered" means obligated or promised to pay a certain obligation. Claims proceed through the Department first as pre-encumbered, then encumbered and upon payment, the amount so expended is removed from the encumbered category. As of July 10, 2009, Captain Berry testified that \$1,564,300.84 of the amount appropriated to the Sheriff's Office is encumbered.²⁰

Sheriff Mike Hale

The Court then received the testimony of Plaintiff Mike Hale, Sheriff of Jefferson County. Sheriff Hale, after describing the duties of his office testified that he cannot perform all of his statutory obligations with a one-third cut in his 4th Quarter budget. The Sheriff testified that he and his staff have made reductions earlier in the year as they could. He did not comply with the request to reduce his work week from 40 to 32 hours because for much of his staff, the work is 24 hours per day and 7 days per week.

The Sheriff explained the overtime pay situation with his budget and the history of budgeting for over time. He testified that by increasing the force, he was able to cut

¹⁹ Plaintiff Exhibit #23

²⁰ Plaintiff Exhibit #24

Page 21 of 41

down on overtime expenses and finally get a budget that was more reflective of the actual cost of the Department. The Sheriff testified that he was the first sheriff of the county to actually have a budget for over time.

Regarding the coverage area of the Sheriff's Department, Sheriff Hale testified that for patrol purposes, his deputies patrol only the unincorporated portions of Jefferson County, in those municipalities that do not have a police force or an adequate force to patrol their municipality, and in "contract municipalities" wherein the municipal government enters into a contract with the Sheriff's Office for "enhanced law enforcement services, that is, for the Sheriff to dedicate a certain number of Officers and patrol cars to the municipality²¹.

The Civil Division, however, covers the entire County, not just the unincorporated areas. The Civil Division includes the warrant division, service of summons and complaints, subpoenas and execution of writs from the civil courts.

The Sheriff testified that his office has an ex officio fund and that Sergeant Steve Morrow accounts for those funds. The funds are under the Sheriff's control by virtue of several local acts of the State Legislature. The Sheriff testified that none of the funds may be used to supplant budgeted funds and that should he so use such funds, that he may lose the right to collect them.

Regarding the helicopters that are in service, the Sheriff testified that he bought four and from them built two operable ships. The helicopters were purchased, and are maintained strictly from ex officio funds and the pilots are reserve deputies who work for free as volunteers, so that none of the cost for the use and maintenance of the said helicopters is drawn from budgeted funds.

The Sheriff testified that the loss of 155 deputies, which is the projection made by Captain Dennis Berry²², would cause him to dismiss the civilian employees. The Sheriff testified that he would dismiss the civilians and fill their positions in the county jails with sworn deputies so that he could retain a force of trained deputies in the Department should he need to assemble a such a force. By moving the deputies into the jail to keep it operational, the Sheriff testified that his patrol force would thus be eliminated.

²¹ Plaintiff Exhibit #1 (Center Point, Clay, Pinson and Graysville); Plaintiff Exhibit #12

²² Plaintiff Exhibit #12

Page 22 of 41

Regarding the contract with Health Assurance, LLC, the Sheriff testified that there had been 8 prisoners deaths under the previous regime with Cooper Green Hospital and that the families had filed civil actions. Though he is a state constitutional officer clothed with sovereign immunity, the Sheriff testified that he could become exposed to civil liability if he did not address the issue. Therefore he sought from Cooper Green a commitment to indemnify the Sheriff and the Sheriff's Office in the event that a prisoner was injured or died while in the care of Cooper Green and could not get the commitment. Therefore he sought out a private company and entered into a contract with Health Assurance, LLC because they provided the service at the same cost as Cooper Green and provided the Sheriff with indemnity.

The Sheriff testified that prior to the County Commission implementing a one-third cut in his budget, no one from the County made inquiry as to whether the Sheriff's Office could sustain that size of a reduction and the Sheriff testified that the reduction is too much so that he cannot sustain the County Jail operations as well as perform the other missions of his office such as patrol and civil service to the Courts.

Steve Morrow

The Court then received the testimony of Sergeant Steve Morrow. Sgt. Morrow over sees the Ex Officio Fund of the Sheriff's Office.²³ Of these funds, Sgt. Morrow testified that the Sheriff Service Funds, the Sheriff Checking Fund and Sheriff Invested Funds are in the custody of the County Treasurer. All other funds are maintained in the Sheriff's Office. Sgt. Morrow testified that the funds may be expended at the sole discretion of the Sheriff for any purpose which furthers law enforcement in the County. When asked if there is any restriction on any of the funds, other than that they be spent to further law enforcement, Sgt. Morrow testified that the Federal Condemnation Fund, Federal Condemnation Fund – Savings, and the Federal Treasury Fund have significant restrictions which specifically do not allow the funds to be used to pay deputy salaries. He also testified that the Sheriff's Academy fund is used to defray the Sheriff's Academy expenses. The total amount of the Ex Officio Funds as of June 30, 2009 were \$2,752,120.55.

²³ Plaintiff Exhibit #25

Sheriff Mike Hale

Sheriff Hale was again called to testify. The Sheriff was asked if he would give up use of his helicopters in order to fund deputy salaries. The Sheriff testified that the helicopter's operating costs for fuel is approximately \$1200/month because he can access fuel at a cost of \$1.57/gallon under a Homeland Security Program. This cost is so low, the Sheriff testified, that he could not hire more than one or two deputies from the savings and that this would not justify the loss of the helicopters and the impact they have on crime prevention. The Sheriff was asked whether he would commit some of his ex officio funds to the purchase of equipment and thus free up some funds in the General Fund to alleviate some of the pressure on the budget and the Sheriff testified that he would be willing to do so in discussions with the County Commission.

The Sheriff agreed that his budget in 1998-99 was only approximately \$38 million dollars and that in approximately 10 years time, it had grown to \$60 million though in that decade the population and territory of unincorporated Jefferson County had witnessed a reduction.

Findings of Fact

Based on the foregoing testimony and evidence, the Court makes the following findings of fact:

1. The Defendant County Commissioners adopted a Budget Resolution for FY 2008-09 in September 2008 that provided for expenditures to all County agencies and Departments, including the Sheriff's Department from the General Fund as well as expenditures for 17 other special funds.
2. The said budget provided for expenditures of \$320,128,498.00 from the General Fund of which \$61,450,723.00 was appropriated for the Sheriff's Department.
3. The Sheriff's Department Budget was allocated into three accounts, with the respective appropriations as follows:
 - a. Personnel - \$49,806,391.00;
 - b. Operating Expenses - \$10,963,332.00; and,
 - c. Capital Outlay - \$ 681,000.00.
4. In addition the said Budget Resolution estimated that the Sheriff's Department would have available to it \$2,888,779.00 in ex officio funds.

5. There are several sources for revenue assigned to the General Fund, included therein for FY 2008-09 were expected revenues from the County Occupational Tax in the amount of \$72,480,944 and the County Business License fees of \$5,962,679. None of the other 17 special funds maintained by the Defendant County Commission receive revenue from these two said sources.
6. On January 12, 2009, at the start of the 2nd Quarter of FY 2008-09 the Court in *Jessica Edwards, et al v. Jefferson County, et al*, Civil Action No. 2007-900873 ruled that the said Occupation Tax and related Business license taxes were repealed by Act of the Alabama Legislature, Act 1999-669.
7. On March 11, 2009, Defendant County Commission issued a memorandum advising all county departments and agencies of the consequences of the Court's ruling in the *Edwards* case, and advised that a one-third reduction in departmental budgets would be necessary.
8. On June 4, 2009, the Circuit Court in the *Edwards* case denied Defendant's final request for a lift of the stay on use of the Occupation Taxes currently being collected by Defendant County Commission. The said case remains on appeal before the Alabama Supreme Court as of the date of this order.
9. In mid-June, 2009 there was some consultation between representatives of the County Revenue Department and representatives of the Sheriff's Department with regard to the looming one-third across the board budget reduction. Plaintiff's representatives argued against such a reduction while Defendant's representatives from the Revenue Department attempted to explain that all departments must participate in budget reductions, given the drastic nature of the action necessary.
10. On June 24, 2009, Defendant Commission received the memorandum from the Director of Revenue recommending the uniform one-third reduction in all county departmental budgets.
11. On June 30, 2009 Defendant County Commission, acting on the recommendation of the Director of Revenue, Travis Hulsey, voted unanimously for a resolution amending the FY 2008-09 Budget so as to bring it into compliance with the "Balance Budget Act", *Ala. Code §11-8-3(b) (1975)* by adopting a uniform one-

- third, across the board cut in appropriations to all county departments, including the Sheriff's Office.
12. On July 1, 2009, Plaintiff sought and obtained a Temporary Restraining Order against Defendants from implementing its amendatory budget resolution with regard to the reductions designated for Plaintiff's Department. The order was immediately appealed to the Alabama Supreme Court.
 13. On the evening of July 9, 2009, following the grant of writ of mandamus by the Alabama Supreme Court, the temporary restraining order issued by the Circuit Court of Jefferson County, Bessemer Division on July 1, 2009 was vacated, and the June 20, 2009 resolution referenced hereinabove was implemented with regard to Plaintiff's budget.
 14. To the point of implementation of the June 30, 2009 amendatory resolution, Plaintiff had expended \$47,402,464.47 from his budgeted appropriation for FY 2008-09 and had \$1,564,300.84 in either pre-encumbered or encumbered funds, leaving an unencumbered balance of \$14,048,258.53.
 15. Following the implementation of the said resolution, Plaintiff's unencumbered budgeted appropriations were reduced to \$5,983,791.04.
 16. Plaintiff's testimony is that he required \$10,340,206 to complete the balance of FY 2008-09 and that the implementation of the budget amendment to the Plaintiff's appropriation created a budgetary shortfall of \$4,356,415.
 17. Plaintiff's testimony is also that in order to close this budgetary shortfall created by Defendants' action, he would be required to implement a force reduction within the Sheriff's Office. Of a force comprised of 557 sworn employees and 164 civilians, Plaintiff testified that he would be required to lay off the entire civilian staff as well as 155 sworn deputies, leaving Plaintiff's Office without sufficient manpower to staff the County Jails and maintain patrols of the County on a 24 hour, 7 day per week basis.
 18. In addition to appropriated funds, Plaintiff has available to him ex officio funds, which may be expended by Plaintiff in his discretion for the advancement of law enforcement in Jefferson County. Five of the said ex officio funds are restricted

and may not be used to fund the salaries of employees of the Sheriff's Office, those funds and the amounts therein as of June 30, 2009, are:

- a. The Federal Condemnation Fund - \$134,744.22
- b. The Federal Treasury Fund - \$ 10,262.85
- c. Sheriff's Academy Fund - \$ 67,570.75
- d. State Pending Fund - \$209,268.43
- e. Federal Condemnation - Savings - \$300,000.00
- f. Federal Condemnation - Checking \$200,000.00

Thus, of the \$2,752,120.55 reported in the said funds, \$1,611,667.02 may be expended in Plaintiff's discretion restricted only by the qualification that such discretionary expenditure should be for the betterment of law enforcement in Jefferson County. Plaintiff has indicated a willingness to exercise his discretion with regard to these funds as a source and means to assist alleviate the financial crisis which precipitated this action.

19. Defendant's adoption of the amended budget for FY 2008-09 on June, 30, 2009 was not preceded by consultation with Plaintiff in an attempt to ascertain the reasonable needs of Plaintiff's Department.

20. Defendants acted in adopting the amended budget for FY 2008-09 without independent knowledge or information from Plaintiff, his agents or representatives, of the reasonable needs of Plaintiff and his Office, and without such knowledge of whether the reduction in budgeted funds of \$5,069,685 for the final quarter of FY 2008-09 would render Plaintiff able to carry out the duties of his office, Defendants took action to adopt and implement its said amendatory budget resolution.

Findings of Law

Separation of Powers Doctrine

The Office of the Sheriff

This is a dispute arising between two co-equal branches of local government. Plaintiff, as Sheriff of Jefferson County, as are all Sheriffs in the State of Alabama, is a member of the Executive Branch of State Government. *Art. V §112, Constitution of 1901* states:

"The executive department shall consist of a governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer,

superintendent of education, commissioner of agriculture and industries, *and a sheriff for each county*. (emphasis added)"

In interpreting this and other provisions of the Alabama Constitution, the United States Supreme Court has recognized that an Alabama Sheriff is an executive officer of the State for the county in which he or she is elected and serves. In *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 117 S.Ct. 1734 (U.S.Ala.,1997), the Court wrote:

"... [T]he Alabama Supreme Court has interpreted these provisions [of the Alabama Constitution of 1901] as evidence of 'the framers' intent to ensure that sheriffs be considered executive officers of the state." *Parker v. Amerson*, 519 So.2d [442, 446 (Ala.1987)]. Based primarily on this understanding of the State Constitution, the court has held unequivocally that sheriffs are state officers, and that tort claims brought against sheriffs based on their official acts therefore constitute suits against the State, not suits against the sheriff's county. *Id.*, at 443-445. (note 5 omitted) Thus, Alabama counties are not liable under a theory of respondeat superior for a sheriff's official acts that are tortious. *Id.*, at 442.

Turning from the Alabama Constitution to the Alabama Code, the relevant provisions are less compelling, but still support the conclusion of the Court of Appeals to some extent. Section 36-22-3 of the code sets out a sheriff's duties. . . .

... [M]ost importantly, '[i]t shall be the duty of sheriffs in their respective counties, by themselves or deputies, to ferret out crime, to apprehend and arrest criminals and, insofar as within their power, to secure evidence of crimes in their counties and to present a report of the evidence so secured to the district attorney or assistant district attorney for the county.' § 36-22-3(4). By this mandate, sheriffs are given complete authority to enforce the state criminal law in their counties. In contrast, the "powers and duties" of the counties themselves--creatures of the State who have only the powers granted to them by the State, *Alexander*, 150 So.2d, at 206--do not include any provision in the area of law enforcement. *Ala.Code* § 11-3-11 (1989). Thus, the "governing body" of the counties--which in every Alabama county is the county commission, see *Calvert v. Cullman County Comm'n*, 669 So.2d 119 (Ala.1995) (citing § 11-1-5)--cannot instruct the sheriff how to ferret out crime, how to arrest a criminal, or how to secure evidence of a crime. And when the sheriff does secure such evidence, he has an obligation to share this information not with the county commission, but with the district attorney (a state official, see *Hooks v. Hitt*, 539 So.2d 157, 159 (Ala.1988))." 117 S.Ct at 1738, 1739.

The Jefferson County Commission

The County Commission, on the other hand is the legislative body, which presides over county government with its powers and duties assigned to it, by statute at Ala. Code §11-3-11 (1975). Its powers primarily are centered on the right to appropriate funds for the various departments of county government, including that of the Sheriff's Office. Those powers are listed as follows:

“(a) The county commission shall have authority:

(1) To direct, control, and maintain the property of the county as it may deem expedient according to law, . . .

(2) To levy a general tax, for general county purposes and a special tax, for special purposes, according to this Code.

(3) To examine, settle, and allow all accounts and claims chargeable against the county.

(4) To examine and audit the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county or appropriated for its use and benefit.

(5) To make such rules and regulations for the support of the poor in the county as are not inconsistent with any law of the state.

(15) To expend money for the purpose of improving the sanitary conditions of the county

(16) To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants when requested so to do by the State Board of Health.

(17) To pay out of any funds in the county treasury all the expenses, including a reasonable attorney's fee, incurred by the county treasurer in resisting the payment of any warrant where said resistance on the part of the county treasurer is successful.

(18) To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness and to invest such sinking fund in such interest-bearing securities or deposit the same on interest-bearing account within the state as it may deem wise.

(19) To set aside, appropriate, and use county funds or revenues for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of the county and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories, and other industries in the county. The county commission is authorized to enter into contracts with any person, firm, corporation, or association to carry out the purposes set forth in this subdivision.

(20) To insure in solvent companies the courthouse, jail, machine shops, and other buildings of the county against loss by fire and storm and the trucks, tractors, machines, shovels, graders, equipment, vehicles, and other personal

property of the county against loss by fire and theft and against liability for damages to persons and property. . . .

(22) To exercise such other powers as are or may be given by law.

(b) It shall be the duty of the county commission to provide a janitor for the courthouse and to see that the janitor keeps clean and in a sanitary condition all courtrooms, corridors, halls, and offices in the courthouse of the county."

It is also the duty of the Defendant County Commission to adopt budgets for the various departments of county government and to appropriate funds to the various executive departments of county government pursuant to the adopted budget. Pursuant to Budget Control Act, *Act 2007-488, p. 1037, § 1*, which became effective September 1, 2007, Ala. Code § 11-8-3 (1975) was amended so as to state the following, in pertinent part:

(a) It shall be the duty of the county commission, at some meeting in September of each calendar year, but not later than October 1, to prepare and adopt a budget for the fiscal year beginning on October 1 of the current calendar year which shall include all of the following: (1) An estimate of the anticipated revenue of the county for all public funds under its supervision and control including all unexpended balances as provided in Section 11-8-6. (2) An estimate of expenditures for county operations. (3) Appropriations for the respective amounts that are to be used for each of such purposes.

(b) *The appropriations made in the budget shall not exceed the estimated total revenue of the county available for appropriations.*

(c) *The budget adopted, at a minimum, shall include any revenue required to be included in the budget under the provisions of Alabama law and reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law.*

(d) In order that the budget adopted is based upon an estimate of revenue and operating expenditures as nearly correct as possible, at least 60 days before the meeting of the county commission at which the county budget is adopted:

(1) *Any public official who receives public funds, including any official entitled to ex officio fees, or who issues any kind of order payable out of the county treasury without approval of such county commission shall furnish to the county commission in writing an estimate of the revenue and of the anticipated expenditures the official will be called upon to make during the next fiscal year.*

(2) The judge of probate, tax officials, sheriff, county treasurer, and any other county official or employee named by the county commission shall prepare and submit to the county commission an itemized

estimate of the amount the official or employee believes to be necessary for personnel, office supplies, and other expenditures during the following fiscal year. Any official entitled to ex officio fees shall include in his or her estimate the estimated amount of any ex officio fees the official will receive during the following fiscal year.

(e) Based upon the estimated revenue and expenditures set out in subsection (d), together with any other financial information available to the county commission regarding the anticipated revenue and expenditures for the next fiscal year, the county commission shall approve a budget which includes the expenditures it deems proper for the next fiscal year.

(f) Following the adoption of the budget, no obligation incurred by any county official or office over and above the amount or amounts approved and appropriated by the county commission shall be an obligation of the county unless the obligation is approved by an affirmative vote of a majority of the members of the county commission.

(g) The budget may be amended during the fiscal year as determined necessary by affirmative vote of a majority of the members of the county commission. No amendment may authorize an expenditure which exceeds anticipated revenue of the county except as otherwise specifically authorized by general law."

Also adopted as part of the Budget Control Act of 2007 is the provision contained in Ala. Code § 11-8-9 (1975), which provides the following:

"No warrant shall be issued or check drawn on the county treasury or county depository by any person except as authorized by the chair of the county commission or such other officer as may be designated by such county commission, unless otherwise provided by law, and officers who are authorized to pay claims which have not been first approved by the county commission shall issue orders for warrants or checks pursuant to procedures established by the county commission."

Finally, Ala. Code § 11-8-10(1975) was included in the said Act and it provides as follows:

"No warrant or order for the payment of money shall be issued under authority of the county commission until funds are available for its payment upon presentation to the treasurer or depository pursuant to procedures established by the county commission."

Taken together these measures provide that the County Commission has the sole authority to exercise its discretion in budgeting and appropriating funds to departments of county government. For purposes of the Budget Control Act, the Sheriff, though not a

Civil Action Number CV 09-2041

Page 31 of 41

County employee, but a State Constitutional Officer, has equal standing before the County Commission, as do other Department heads, in the budgetary process. The County is required by these statutes to adopt and maintain a balanced budget through its fiscal year, which commences on October 1 and ends on September 30 of each calendar year.

In adopting its budget for the various departments, Defendant Commission is to provide reasonable expenditures for the operation of the various offices, including that of the Sheriff. Subpart (d) requires Department heads, including the Plaintiff Sheriff to submit to the Defendant County Commission an itemized estimate of the amount necessary to operate his or her office. Then, pursuant to Subpart (e), the Defendant County Commission, based on the estimates, that is, based on the input it received from those Departments who receive an appropriation, approves a budget which includes the expenditures the Commission deems proper for the next fiscal year.

In *Chambers County Com'n v. Chambers County Bd. of Education*, 852 So.2d 102 (Ala. 2002) the Court clearly stated the authority of the Defendant County Commission in matters of appropriations of funds to county departments. The Court wrote, citing to the ruling in *Geneva County Comm'n v. Tice*, 578 So.2d 1070 (Ala. 1991), in which this Court stated:

"We reiterate the holding in *Morgan County Comm'n v. Powell*[, 292 Ala. 300, 293 So.2d 830 (1974),] that 'the true intent of the legislature was to place in the county governing body, which body appropriates the public monies, the *final say-so* in the disposition of such funds, and thus centralize in the legislative body a function lawfully and traditionally delegated to that body by the legislature.' 292 Ala. at 310, 293 So.2d at 839, 578 So.2d at 1075.(emphasis added)" 852 So.2d at 110

The Scope of Judicial Review under the Separation of Powers Doctrine

In an action wherein an officer of the executive branch of government seeks aid of the Court to enjoin the legislative branch of the government, a separation of powers issue arises which limits the field of operation for the Court in the exercise of its otherwise broad and plenary powers to issue writs of injunction in all cases where such a writ should lie.

The Court in *Geneva County Com'n v. Tice*, 578 So.2d 1070 (Ala. 1991) defined the parameters in which the Court has a field of operation when the dispute is between two co-equal branches of the Government. Citing to the ruling in *Etowah County Comm'n v. Hayes*, 569 So.2d 397 (Ala. 1990), the Court wrote:

"In testing the absolutism of the authority of the legislative branch to appropriate operational funds for the executive branch, the judicial branch of government is constrained not to substitute its judgment for that of the legislature and thus usurp the plenary power of that branch. *Finch v. State*, 271 Ala. 499, 124 So.2d 825 (1960). Any encroachment in such matters by the judiciary is limited to *adjudication of constitutional challenges, allegations of statutory violations, and charges of conduct so arbitrary and capricious as to contravene lawfully constituted authority. Id.*' 569 So.2d at 398.(emphasis added)" 578 So.2d at 1072

Tice thus defines the field of operation for the Court in a dispute between the Executive and Legislative Branches of the county government. The Court shall review the evidence with regard to each.

A. Constitutional Challenge to the Budget Control Act

First, there was no constitutional challenge posed by Plaintiff to the cited statutes under which Defendant acted in adopting and implementing its amendatory budget resolution on June 30, 2009.

B. Statutory Violations

Plaintiff claims that Defendants breached the said cited statutes in adopting the amendatory budget resolution in that Defendants failed to comply with Subparts (d) and (e) of *Ala. Code §11-8-3 (1975)*. Plaintiffs introduced evidence that though Defendants sought input from all agencies for their recommendations for one-third reductions in their budgeted appropriations, Defendants, nevertheless, failed to take into account any recommendations so made. Though the evidence is that, rather than propose ways and means to reduce his budget, Plaintiff instead wished to "make his case" for exempting his Department from the effects of a sweeping one-third reduction, the evidence is also before the Court that Defendants decided not to take these matters into consideration. To have adopted the "prioritization" option, as described by Mr. Hulsey, would have required the Defendant Commission to take into account the needs of the Department heads. However, this option was not taken. Instead, the Defendant Commission adopted

Civil Action Number CV 09-2041

Page 33 of 41

unanimously the across the board reduction which treated all Departments, regardless of any intrinsic differences in the ways and means and method of executing their missions, the same.

The consultive provisions of Ala. Code §11-8-3 (1975), however, apply during the 60-day period preceding the adoption of a budget for a full fiscal year. In the case before the Court, Defendant Commission was engaged in adopting an amendment to the budget, as authorized by Ala. Code § 11-8-3(g)(1975). A strict reading of the said statute does not require such consultive procedure prior to the adoption of an amendatory resolution.

Plaintiff also claims that Defendant's adoption and implementation of its amendatory resolution on June 30, 2009 was violative of the Preferred Claims statute, Ala. Code §11-12-15 (1975), in that the said resolution failed to prioritize the budgetary expenditures of Plaintiff and his Office.

In *Geneva County Commission v. Tice, supra*, the Deputy Sheriffs raised the same statute with regard to their claim for overtime pay from the County Commission. The Court wrote the following:

"[The deputies] rely heavily upon the provisions of law that impose on the sheriff certain duties, such as those set out in *Ala. Code 1975, § 36-22-3*, and, citing *§ 11-12-15*, they argue that the compensation for deputy sheriffs and jailers is a "preferred claim". . . (note 4 omitted)

We are not unmindful of the duties and obligations placed upon the sheriff's departments throughout the state, and the provisions of law that make certain claims "preferred claims." *However, we are also not unmindful that county commissions have the duty and responsibility for budgeting and appropriating operational funds for several executive departments of county government.* When this Court has been faced with similar arguments involving a similar confrontation between a sheriff's department and a county commission, it has specifically held that the judiciary "is limited to adjudication of constitutional challenges, allegations of statutory violations, and charges of conduct so arbitrary as to contravene lawfully constituted authority. *Etowah County Comm'n, 569 So.2d at 398.* (emphasis added)" 578 So.2d at 1072

The Court thus established the three-pronged basis - a) constitutional challenge to the statute upon which the Commission acted; b) failure of the Commission to comply with the statute; and, c) review of the discretionary action under the arbitrary and capricious standard - upon which this Court may enjoin a County Commission in the

CIVIL ACTION NUMBER CV 09-2041

Page 34 of 41

execution of its budgetary duties in response to an argument that the Preferred Claims statute should be applied by the Court in deciding whether there has been a statutory violation.

The Court finds that the Preferred Claims statute a part of the statutory formula to which Defendant Commission must conform when performing its budgetary function. The budgetary function is essentially the planning and pre approving of future expenditures over the period of the prospective fiscal year. The Preferred Claims statute must be complied with after the claim is actually incurred and is presented for payment. That is, *Ala. Code §11-12-15 (1975)* applies not at the beginning, but at the end of the spending continuum. The testimony before the Court was that to date, despite the decreasing liquidity of the General Fund, the Defendant County Commission has approved all claims presented by Plaintiff and the County Treasurer has paid all claims presented which have been so approved. The Court does not find that Defendant Commission has failed to comply with the relevant statutes.

C. The Arbitrary and Capricious Standard of Review.

By law, discretion is vested in the Defendant County Commission in exercising its budget and spending powers. In *ECO Preservation Services, LLC v. Jefferson County Com'n*, 933 So.2d 1067 (Ala. 2006) the Court restated the long standing rule that any state action which is discretionary, is subject to judicial review under the "arbitrary and capricious standard" in order to determine whether the governmental body abused its discretionary powers by acting in an arbitrary and capricious manner toward the aggrieved party. The Court wrote:

"Our cases have consistently held that local governments may not arbitrarily exercise their discretionary powers . . . In *Mobile County v. City of Saraland*, 501 So.2d 438 (Ala.1987), we issued a writ of mandamus to compel a city council to grant . . . a [right-of-way] permit to Mobile County. We based that decision on our conclusion that the city's denial of the permit was arbitrary and capricious. 501 So.2d at 440. A county commission is subject to the same standard. See *Etowah County Comm'n v. Hayes*, 569 So.2d 397, 398 (Ala.1990)(judicial review of county commission's decisions extends to "conduct so arbitrary or capricious as to contravene lawfully constituted authority"); *Black v. Pike County Comm'n*, 375 So.2d 255 (Ala.1979)(analyzing denial of liquor license under arbitrary-or-capricious standard).(Note 8 omitted) Although our cases have not always used the words 'arbitrary or capricious,' we have consistently applied that standard in

Civil Action Number CV 09-2041
Page 35 of 41

practice when reviewing a county's decision to grant or deny a license or permit." 933 So.2d at 1071

The Court in *State v. Board of Revenue & Road Com'rs of Mobile County*, 180 Ala. 489, 61 So. 368 (Ala. 1913) described "arbitrary and capricious" as follows:

"It is well-settled law also that, where the duty to be performed . . . involves the exercise of discretion on the part of a tribunal or officer, mandamus will lie to set judgment or discretion in motion, *but will not direct the manner of its exercise*. The writ cannot be used for the correction of errors. 'If, however, judgment or discretion is abused, and exercised in an arbitrary or capricious manner, mandamus will lie to compel a proper exercise thereof.' 19 Am. & Eng. Encyc. pp. 737-739, where numerous cases are cited, including our case of *White v. Decatur*, 119 Ala. 476, 23 South. 999. And, 'if by reason of a mistaken view of the law or otherwise *there has been in fact no actual and bona fide exercise of judgment and discretion*,' mandamus will lie. *Ib.*, citing *Mobile Mut. Ins. Co. v. Cleveland*, 76 Ala. 321, among other cases." 61 So. at 370

In other words, if the statute vests the Defendant Commission with discretion in making budgetary decisions, then its actions must reflect that there was a bona fide exercise of judgment and discretion rather than a discretionary decision taken without deliberation or forethought given.

In the context of disputes between Sheriffs and County Commissions, the Court in *Etowah County Com'n v. Hayes*, 569 So.2d 397 (Ala. 1990) provided an example of an arbitrary and capricious exercise of the budgetary authority by a county commission and discussed the "reasonable test" to be applied in such analyses. The Court wrote:

"This expedited appeal from a partial summary judgment, made final pursuant to Rule 54(b), A.R.Civ.P., presents the issue whether the trial court erred in granting injunctive relief to the sheriff of Etowah County, requiring the Etowah County Commission to reinstate the funding withheld from the Etowah County Sheriff's Department for the remainder of the 1989-90 fiscal year. Because we agree with the trial court that the Commission's withholding of *all* funds, which effectively closed the operation of the Sheriff's Department, was an arbitrary and capricious act, we affirm the judgment granting injunctive relief. . . (emphasis original)" 569 So.2d at 398

Withholding *all* funds and the resultant effective closing of the Sheriff's Department was found to be an arbitrary and capricious exercise of the County Commission's discretionary powers, that is, the decision makers vested with discretionary powers did not weigh the consequences of the implementation of its

Civil Action Number CV 09-2041

Page 36 of 41

decision. One could not infer that due deliberation would have produced a decision that would knowingly terminate the operation of the Sheriff's Department.

Regarding the "reasonable test" analysis used by the Court under the "arbitrary and capricious" standard of review, the Court in *Hayes*, wrote the following:

"While we do not reject out of hand the "reasonableness" test, as urged by the sheriff, the application of that test, contrary to the sheriff's contention, does not focus solely on what is reasonable from the viewpoint of the sheriff in the operation of his department. The application of the "reasonableness" test takes into account not only the reasonableness of the sheriff's request for funding of his department, but how that request impacts upon, and relates to, the totality of the County's budget.

Conceivably, the County Commission may receive budget requests from each of the County's executive departments and may agree that none of the requests is "unreasonable" from the standpoint of each department in the performance of its perceived goals; and, yet, the total of such requests may exceed by millions of dollars the total revenues available to fund the County's budget. Thus, while the Commission is legally mandated to follow statutory guidelines and to establish funding priorities accordingly (see, *Shelby County Commission v. Smith*, 372 So.2d 1092 (Ala.1979); and *Hale v. Randolph County Commission*, 423 So.2d 893 (Ala.Civ.App.1982)), it does not have the burden of proving that any reduction in requested funding is justified because the requests are unreasonable when viewed from the narrow perspective of the operation of that particular department. See *Ball v. Escambia County Commission*, 439 So.2d 148 (Ala.1983). See, also, Comment, "State Court Assertion of Power to Determine and Demand Its Own Budget," 120 U.Penn.L.Rev. 1187 (1972).

This is not to say, of course, that the Commission is permitted to exercise unfettered discretion to reject "reasonable" budget requests for adequate performance of essential functions of government. *Morgan County Commission v. Powell*, 292 Ala. 300, 293 So.2d 830 (1974)." 569 So.2d at 399.

The above cited authority authorizes the Court to make a finding that Defendant acted arbitrarily and capriciously if it simply refuses to appropriate funds sufficient to operate Plaintiff's Office and may enjoin the act and its consequences. However, under the reasonableness test, the Court in *Geneva County Com'n v. Tice*, 578 So.2d 1070 (Ala. 1991) wrote the following:

"We reiterate the holding in *Morgan County Comm'n v. Powell* that "the true intent of the legislature was to place in the county governing body, which body appropriates the public monies, the final say-so in the disposition of such funds, and thus centralize in the legislative body a function lawfully

Civil Action Number CV 09-2041
Page 37 of 41

and traditionally delegated to that body by the legislature.” 292 Ala. at 310, 293 So.2d at 839.

This is not to say, of course, that the Commission is permitted to exercise unfettered discretion to reject ‘reasonable’ budget requests for adequate performance of essential functions of government.” *Etowah County Comm’n v. Hayes*, at 399. See also, *Morgan County Comm’n v. Powell*. The Commission is legally mandated to follow statutory guidelines and to establish funding priorities accordingly, *but the judiciary is not given the power to substitute its determinations for those of the commission*. See *Shelby County Comm’n v. Smith*, 372 So.2d 1092 (Ala.1979); and *Hale*, 423 So.2d 893.” 578 So.2d at 1075

Under the “arbitrary and capricious” standard of review the Court finds from the evidence that the reason given by those who testified and who participated in the decision to propose, adopt, and implement the across the board one-third amendatory budget on June 30, 2009 did so for the principal reason that it was “expedient”. That is, the time was short, a decision had to be made and rather than taking into consideration the requirements of each of the executive departments affected, Defendant Commission took one action that applied to all Departments.

Expediency became a value due to the extremity that the budgetary situation had reached by June 30, 2009. Had action been taken earlier in the crisis, possibly time would have been available for more deliberation and more options could have been explored to meet the fact that the Defendant Commission was spending at a rate of \$18.0 million dollars per month, but only had access to \$8.0 million dollars per month, thus drawing down its cash reserves by a factor of \$10.0 million dollars per month to the point that reserves had dipped below one month’s expenditures. By early to mid-June 2009, indeed, time did become of the essence to amend the FY 2008-09 so that the said budget would not come out of compliance with the requirement that it remain in balance.

However, as Mr. Hulsey testified, even with the reductions implemented in March 2009 and the implementation of the across the board one-third reduction on June 30, 2009, still, the General Fund will be dissipated on August 7, 2009, a mere 21 days from the date of this order. The expedited manner in which the June 30, 2009 decision was taken, thus did not produce the desired result, that is, to bring expenditures into line with available revenues so that the budget could be balanced and all agencies could be funded through the end of the 4th Quarter of the current fiscal year. According to Mr. Hulsey

neither objective will be met as expenditures will over take revenues by August 7, 2009 and many agencies and departments will thus have to close their doors.

Looking to the missions of the various executive departments of county government funded by the Defendant County Commission, the evidence before the Court indicates that there are intrinsic differences in the outlays for personal, operations and capital. Some departments are personnel intensive in providing services while others are less reliant on personnel and more on equipment and machinery. Of those departments that are service oriented, some operate on a normal 9-5 five day per week normal basis. Implementation of the 32-hour workweek in such departments can produce savings.

The Sheriff's Department, however, is one in which personnel are of necessity on duty 24 hours per day, 7 days per week on a three shift per day basis. Reduction of the sworn employee force from 40 hours to 32 hours could conceivably increase the need for manpower rather than reduce it.

When a uniform policy is applied across the board to departments that are intrinsically the same, such a policy is the paradigm of a reasonable exercise of discretionary power. However, when applied uniformly across departments that are not intrinsically the same, then unintended results can accrue, such as, the prospective loss of the entire unsworn staff currently employed by the Sheriff's Office. With a \$10.0 million dollar need to complete the fiscal year, the one-third reduction, or \$5.9 million dollars has worked, in effect, more than a 50% reduction in available funds to the Plaintiff in the remaining months of the 4th Quarter of FY 2008-09, causing Plaintiff to chose between patrolling the territory under his jurisdiction or not staffing the county jail. That is, Plaintiff is left unable to perform the core missions of his Office. Though this was certainly not the intent of Defendant Commissioners in adopting and implementing the Defendants' amendatory budget resolution, the evidence before this Court is that such is indeed the effect on Plaintiff.

The Court finds the Action of the Defendant Commission to Have been Arbitrary and Capricious as to Plaintiff Hale in his Official Capacity.

As to Plaintiff therefore, in his official capacity, the Court finds that the June 30, 2009 amendatory resolution to the FY 2008-09 budget was an arbitrary and capricious

Page 39 of 41

exercise of Defendant Commission's discretionary powers with regard to budget and appropriation of funds to Plaintiff's Office.

In so finding, the Court is ever mindful of the budgetary crisis facing Jefferson County. There are many architects whose actions or whose failure to act created the budgetary crisis in which the Defendant Commissioners are as much a victim as is the Plaintiff Sheriff as well as all of the people who work for county government and are served by it.

The Court is also mindful of its own limitations under the law, in fashioning a remedy. The Court cannot order the Defendant Commissioners to adopt a budget that is not balanced, as such an act would run afoul of the Budget Control Act and its requirement that the county budget be balanced. The Court likewise, cannot instruct the Defendant Commissioners on how best to budget for the Plaintiff's Office, since to do so would be a usurpation of the discretionary powers vested solely in the Offices of the Defendant Commissioners and a violation of the doctrine of separation of powers.

The Court is also mindful of the limitations imposed by practicalities of the current budgetary crisis in the General Fund of Jefferson County. There are only 21 days before August 7, 2009, the date upon which Mr. Hulsey has testified that the Defendant County Commission no longer has any funds remaining in its General Fund with which to fund, not just Plaintiff's Office, but all executive departments of County Government which receive appropriations from the General Fund. As an analogy was drawn to the *Titanic* during the course of the trial, the Court also draws an analogy to that event in that the parties may be scrambling for better seats on the deck of that ship, even as it sinks under the sea.

However, the Court is also mindful that we are a nation of laws and that the rule of law shall always prevail under any and all circumstances, especially in times of crisis, whether budgetary or otherwise. As the Court stated during the course of oral arguments, the first duty of all government is to maintain order. Each branch of government, whether legislative, executive or judicial, always acts with this duty in mind. Whether Plaintiff Sheriff is patrolling the unincorporated territory of Jefferson County, or Defendant Commission is performing its many duties with regard to all of the executive

Page 40 of 41

departments of county government, both are in the same harness performing the same duty toward the citizens of Jefferson County.

This Court therefore chooses to perform its duty as well by enforcing the rule of law, even in a time of budgetary crisis. The Court is authorized to enter a preliminary injunction upon its being reasonably satisfied by the evidence of the following four elements:

- (1) That without the injunction the Plaintiff Sheriff will suffer immediate and irreparable injury;
- (2) That the plaintiff has no adequate remedy at law;
- (3) That the plaintiff is likely to succeed on the merits of the case; and
- (4) That the hardship imposed upon the defendant by the injunction would not unreasonably outweigh the benefit to the plaintiff.

The Court is so satisfied.

WHEREFORE, the foregoing matters and authority having been duly considered by this Court the following is hereby ORDERED:

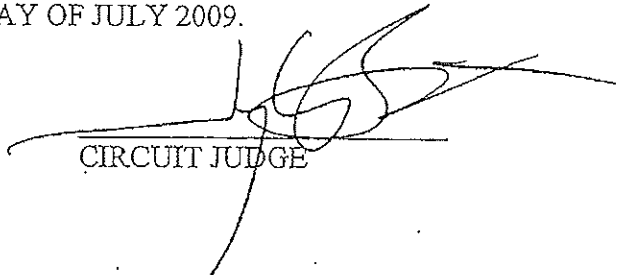
1. Defendant County Commission is hereby preliminarily enjoined from implementing its June 30, 2009 amendatory budgetary resolution with regard to the budgeted appropriations to the Jefferson County Sheriff's Office.
2. Defendant County Commission, its staff or representatives are hereby ordered to enter immediately into consultations with Plaintiff Hale, his agents or representatives to reconsider the amendatory appropriation for Plaintiff's Sheriff Office.
3. Both parties shall consult in good faith with each other in order to work toward a resolution which renders Defendants' budget balanced; provides Plaintiff with sufficient funds to operate the Sheriff's Office, at some reasonable minimum level, until the end of FY 2008-09; and wherein the discretion of the Defendant to set its budget and the discretion of the Plaintiff to run his Office are exercised in a manner that is informed by the limitations imposed on respective parties by the budgetary crisis which affects them both.
4. The Court shall consider that good faith has been exercised by the parties if, among other things, all available financial resources of Defendant

Page 41 of 41

Commission and Plaintiff Sheriff are taken into consideration. By this it is meant:

- a. The ex officio funds of the Plaintiff which are not either restricted as to payment for personnel salaries, pre-encumbered or encumbered are made available to the Defendant County Commission's General Fund through a system of fund transfers;
 - b. The funds of Defendant County Commission which are neither pre-encumbered nor encumbered, nor restricted either by contract, federal or state law, nor any regulation of any governmental agency or board, and thus which the Defendant County Commission currently has discretion to transfer to the General Fund are made available to the General Fund through a system of fund transfers for the resolution of funding of Plaintiff's Office for the balance of the current fiscal year.
5. This Court explicitly states that by its order of today, it is not directing the Defendant toward any Court defined resolution with regard to its funding decision for Plaintiff's Office for the balance of the current fiscal year. Discretion to appropriate county funds for Plaintiff's Office remains with the Defendant County Commission. Today's Order addresses process only, and directs Defendant to engage in a good faith deliberative process with Plaintiff, so as to restore, if possible, sufficient funding to Plaintiff so that his Office may remain operable for the balance of the current fiscal year.
6. The parties are hereby directed to appear before this Court on **Thursday, July 23, 2009 @ 1:30 p.m.** to report of their compliance with the Court's Order of this day.

DONE AND ORDERED THIS THE 16TH DAY OF JULY 2009.


CIRCUIT JUDGE