

notified by the Defendants that the supplement and the expense allowance would be terminated beginning with the first pay period in January, 2009. The Defendants formulated a plan to pay a supplement according to population, which change resulted in a net compensation decrease to the Plaintiff in the amount of \$4,312.16 per annum.

On May 17, 2009, the Defendants enacted a resolution creating a "Special Tax District" to fund the operations of the Plaintiff's office. Thereafter, the Plaintiff filed the instant action for Declaratory Judgment, seeking a determination that the action of the Defendants in creating this special tax district was unconstitutional and could not be implemented. He also asked for a grant of a Writ of Mandamus requiring the Defendants to cease and desist from enforcing or implementing this special tax district.

The Plaintiff also asked for a Writ of Mandamus requiring the Defendants to continue to pay the county supplement that was in effect at the time of his primary election. He also asked for an injunction against the Defendants prohibiting them from implementing these objected to determinations.

During the course of the litigation, the depositions of the county manager, Byron Lombard, and the Plaintiff were taken. In his deposition, Mr. Lombard consistently indicated that the special tax district was implemented in part to "control the spending of the Sheriff's office." (Depo. 18, 20, 21, 24, 25). At the time of the hearing in this matter, the Court directed that no action be taken to implement the creation of this district until the Court could rule on this issue.

II. Conclusions of Law

a. Special Tax District

The purpose of the Declaratory Judgment statute is to "settle and afford relief from

uncertainty and insecurity with respect to rights, status, and other legal relations...This chapter is to be liberally construed and administered.” O.C.G.A. 9-4-1. The Court finds that a Declaratory Judgment action is a proper vehicle for the resolution of this matter.

A Sheriff in the state of Georgia is an elected constitutional officer. 1983 Georgia Constitution, Article IX, Sec.1, Par. III(a). The office carries with it all of the common law duties and powers, except as modified by statute. **Elder v. Camp**, 193 Ga. 320 (1942).

The Constitution and statutes of this state grant to the Counties the power of taxation. However, the powers of county commissioners are strictly limited by law, and they can do nothing except under authority of law. **Mobley v. Polk County**, 242 Ga. 798 (1979); **Beazley v. DeKalb County**, 210 Ga. 41 (1953); **Warren v. Walton**, 231 Ga. 495 (1973). If there is a reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative.

The Georgia Constitution prohibits county commissioners from taking any action affecting any elective county office (of which the Sheriff’s office is one), the salaries thereof, or the personnel thereof. Georgia Constitution, Article IX, Section II, Paragraph I (c)(1).

The institution of a Special Tax District for the funding of the Sheriff’s office does “affect” this office, which is prohibited by the Constitution. Furthermore, it is an attempt to control the spending of the Sheriff’s Department, which is also prohibited. **Wolfe v. Huff**, 233 Ga. 162 (1974).

b. Sheriff pay issues

The law provides that the County governing authority may supplement the minimum annual salary of the Sheriff, but “no sheriff’s compensation supplement shall be decreased during any term of office.” O.C.G.A. 15-6-20(a)(3). The compensation provided the Plaintiff was not

decreased during his term of office so as to prevent the Defendants from decreasing his compensation during his term beginning January 1, 2009.

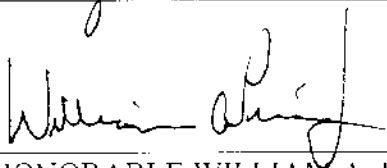
It is therefore, **ORDERED AND ADJUDGED** as follows:

This court declares that the action of the Defendants in creating a special tax district to fund the Plaintiff's office is contrary to law and therefore void. The Defendants are restrained and enjoined from implementing same.

The Defendants have not decreased the Plaintiff's compensation during his term of office. and therefore, his application for writ of mandamus on that count is hereby **DENIED**.

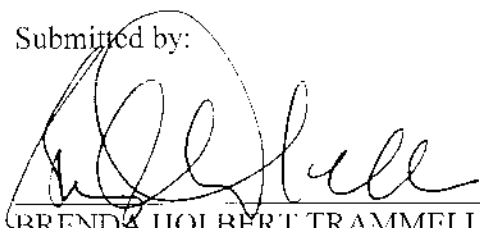
Due to the issuance of a declaratory judgment on the special tax district, the issue of a writ of mandamus on this issues is rendered moot.

SO ORDERED, this 28th day of August, 2009.



HONORABLE WILLIAM A. PRIOR, JR.
JUDGE, Superior Court
Greene County, Georgia

Submitted by:



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