

STATE OF INDIANA
COUNTY OF LAKE

ss:

IN THE LAKE SUPERIOR COURT
ROOM 5
SITTING IN HAMMOND, INDIANA

LAKE COUNTY SHERIFF OSCAR MARTINEZ,
JR., in his official capacity,

Plaintiff,

-v-

LAKE COUNTY BOARD OF
COMMISSIONERS, COMMISSIONER
MICHAEL C. REPAY, in his official capacity,
COMMISSIONER KYLE W. ALLEN, SR., in his
official capacity, COMMISSIONER JERRY
TIPPY, in his official capacity, and LAKE
COUNTY AUDITOR JOHN PETALAS, in his
official capacity,

Defendants.

LAKE COUNTY BOARD OF
COMMISSIONERS, on its own behalf and in the
name of the STATE OF INDIANA,

Counterclaimant,

-v-

LAKE COUNTY SHERIFF OSCAR MARTINEZ,
JR., in both his official and individual capacities,
Counterclaim-Defendant.

Case No. 45D05-2201-PL-000072

(Transferred from: 45C01-2201-PL-000072)

Filed in Open Court

June 30, 2022


Judge, Lake Superior Court
Civil Division, Court Room 5
SO

DECLARATORY JUDGMENT AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter came before the Court for hearing on June 1, 2022 on all pending dispositive motions, *to wit*:

- 1) The *Lake County Sheriff's Motion for Summary Judgment* as filed on 04/22/2022;
- 2) The *Defendants' Cross-Motion for Summary Judgment Against Count I of Sheriff's Complaint* as filed on 05/06/2022; and
- 3) The *Board of Commissioners' Motion for Summary Judgment in Favor of Count I of its Counterclaim* as filed on 05/06/2022.

The parties appeared; a hearing was held and concluded; the Court took all matters under advisement, pending issuance of this order.

The Court has considered the record of this case, the evidence and arguments respectively presented by the parties and applicable law. The Court now, after due consideration and being duly advised in the premises, FINDS and CONCLUDES and DECLARES and ORDERS as follows:

1. This Court has jurisdiction over these parties and the subject matter of this action.
2. Lake County Sheriff Oscar Martinez, Jr. (the “Sheriff”) initiated this litigation on January 21, 2022 upon the filing of his *Verified Complaint for Declaratory and Injunctive Relief* (“Complaint”) against the Lake County Board of Commissioners (“Board of Commissioners” or “Commissioners”), its members in their official capacities, and the Lake County Auditor (“Auditor”) in his official capacity. Count I of the Complaint¹ seeks the following relief:
 - (1) an order “declaring that the Sheriff, and not the Board of Commissioners, has the authority to enter into contracts that relate to the operation of the Jail and/or the care of inmates within the Jail;”
 - (2) an order “directing the Board of Commissioners and Auditor to approve [...] purchase orders and/or invoices submitted by the Sheriff in connection with the Second 2022 CHI Contract;”
 - (3) an order “declaring that the Sheriff, and not the Board of Commissioners, has the authority to determine how to spend funds in his annual budget, once the budget has been determined by the Lake County Council;” and
 - (4) an order “declaring that the Sheriff need not submit future contracts to the Board of Commissioners for approval that relate to operation of the Jail and/or the care of the inmates within the Jail[.]”
3. The Defendants filed their *Answer by all Defendants* on 03/14/2022, with accompanying *Counterclaim by Lake County Board of Commissioners* (“Counterclaim”) against the Sheriff in both his official and individual capacities.
4. Count I of the Counterclaim² seeks the following relief:

¹ Count II of the Complaint asserts a tortious interference claim. That claim has been ordered held in abeyance pending further order.

² Count II of the Counterclaim asserts a claim for recovery of funds. That claim has been ordered held in abeyance pending further order.

(1) an order declaring and adjudging “that only the Board, and not the Sheriff, has the authority to approve the entry of any contract, including any contract with CHI, for the provision of medical services at the Lake County Jail.”

5. The Sheriff filed his *Answer and Affirmative and Other Defenses to Lake County Board of Commissioners' Counterclaim* on 04/22/2022.³

6. Dovetailing with the foregoing, the parties filed and fully briefed the instant cross-motions for summary judgment, which are ripe for resolution with respect to Count I of both the Complaint and Counterclaim, *i.e.* the parties’ competing declaratory judgment counts. These are the only motions and issues now before the Court.

7. “Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *City of Beech Grove v. Beloat*, 50 N.E.3d 135, 137 (Ind. 2016). “A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties’ differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences.” *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). “The initial burden is on the summary judgment movant to demonstrate the absence of any genuine issue of material fact as to a determinative issue, at which point the burden shifts to the non-movant to come forward with contrary evidence showing an issue for the trier of fact.” *Id.* “The court may only rely upon the evidence designated by the parties,” and “[t]he facts and reasonable inferences are construed in favor of the non-movant party.” *City of Beech Grove*, 50 N.E.3d at 137. Evidence considered for summary judgment purposes must be admissible. *Akin v. Simons*, 180 N.E.3d 366, 377 (Ind. Ct. App. 2021)(“in ruling on a motion for summary judgment, our courts will only consider evidence which would be admissible at trial”).

8. The issues now before the Court present purely legal questions regarding statutory interpretation, such that “summary judgment is particularly appropriate.” *Sullivan v. Nat'l Election Def. Coal.*, 182 N.E.3d 859, 868 (Ind. Ct. App. 2022).

9. There are no genuine issues of material fact to now preclude entry of summary judgment; the parties acknowledged and even asserted as much at the June 1 hearing.

10. The Court’s findings of fact herein shall be considered its conclusions of law, and *vice versa*.

³ The Sheriff and Board of Commissioners each also filed motions for preliminary injunction, and all Defendants filed a motion for judgment on the pleadings against the Complaint. The Sheriff has withdrawn his preliminary injunction motion, and litigation concerning the Board of Commissioners’ preliminary injunction motion and the Defendants’ motions has been ordered held in abeyance.

11. Oscar Martinez, Jr. is the duly-elected and qualified Sheriff of Lake County, Indiana.
12. The Lake County Board of Commissioners is the executive of the Lake County, Indiana government.
13. Michael C. Repay is the duly-elected and qualified Commissioner for Lake County's 3rd District and serves as the President of the Board of Commissioners.
14. Kyle W. Allen, Sr. is the duly-elected and qualified Commissioner for Lake County's 1st District and serves as the Vice President of the Board of Commissioners.
15. Jerry Tippy is the duly-elected and qualified Commissioner for Lake County's 2nd District.
16. John Petalas is the duly-elected and qualified Auditor of Lake County, Indiana.
17. The Lake County Jail (the "Jail") is located in Crown Point, Lake County, Indiana.
18. When this lawsuit was filed, the Jail housed about 656 prisoners. That number fluctuates with inmate arrivals and departures.
19. The Sheriff is responsible for taking care of the Jail and its prisoners. Ind. Code § 36-2-13-5(a)(7).
20. Since at least 2012, the Lake County Sheriff has contracted the services of Correctional Health Indiana, Inc. ("CHI") to provide comprehensive medical and healthcare services to the Jail's prisoners.⁴
21. CHI is a qualified healthcare provider.
22. The Sheriff's 2021 contract with CHI provided for comprehensive medical and healthcare services to Jail prisoners throughout calendar year 2021, with an expiration date of December 31, 2021 (the "CHI 2021 Contract").
23. Upon such expiration, no qualified healthcare provider would stand engaged to provide comprehensive medical and healthcare services to the Jail's prisoners.
24. Attendant to the duties of his office and consistent with past practice, in the summer of 2021, the Sheriff and CHI began contract-renewal discussions for calendar year 2022.

⁴ Each of the 2012, 2013, 2014, and 2015-2016 contracts with CHI was entered "by the Lake County Commissioners on behalf of the Lake County, Indiana Sheriff." From 2017 onward, the contracts with CHI were entered by the Lake County Sheriff and—until the 2022 contract—supplementally approved by the Board of Commissioners. The Sheriff of Lake County (whether Oscar Martinez or his predecessor(s)) has always been the party contracting with CHI.

25. The Sheriff and CHI discussed extending CHI's medical services contract from January 1, 2022 through December 31, 2022.
26. The Sheriff and CHI agreed that CHI would provide healthcare services to the Jail's prisoners throughout calendar year 2022 for a total cost of \$6,094,854, payable in 24 semi-monthly payments of \$253,952.
27. This agreement was reduced to writing (the "First CHI 2022 Contract").
28. Attendant to the duties of his office and consistent with past practice, in the fall of 2021, the Sheriff submitted a proposed 2022 departmental budget (the "2022 Sheriff's Budget") to the Lake County Council for consideration and approval.
29. The proposed 2022 Sheriff's Budget included \$6,094,854 to fully account and provide and budget for the costs contemplated within the First CHI 2022 Contract.
30. On October 12, 2021, the Lake County Council approved the 2022 Sheriff's Budget, including CHI's contemplated \$6,094,854 cost.
31. On October 28, 2021, the Sheriff and CHI executed the First CHI 2022 Contract. The First CHI 2022 Contract contained a signature block by which the Commissioners could signify their supplemental approval.
32. Historically, the Sheriff has provided the CHI and other jail-related contracts to the Commissioners for their review and supplemental approval.
33. The Commissioners conducted a meeting on November 17, 2021. The First CHI 2022 Contract, additional jail-related contracts and other items were placed on the agenda for that meeting.
34. At their November 17 meeting, the Commissioners approved the 2022 budget for all of Lake County government, which included the 2022 Sheriff's Budget (which likewise included the \$6,094,854 contemplated within the First CHI 2022 Contract).
35. Also at their November 17 meeting, the Commissioners supplementally approved numerous jail-related contracts already executed by the Sheriff.⁵
36. Also at their November 17 meeting, the Commissioners deferred consideration of the First CHI 2022 Contract until their December 15, 2021 meeting.
37. The Commissioners conducted a meeting on December 15, 2021.

⁵ These contracts related to the care of Jail prisoners in providing services for inmate counseling, dentistry, psychiatry, nursing, pharmaceuticals and more.

38. At their December 15 meeting, the Commissioners again deferred consideration of the First CHI 2022 Contract. This deferral was in spite of the imminent December 31, 2021 expiration date of the CHI 2021 Contract, whereupon no qualified healthcare provider would stand engaged to provide comprehensive medical and healthcare services to the Jail's prisoners.
39. The Sheriff asked the Commissioners to schedule a special meeting before January 1, 2022 to review and/or approve the First CHI 2022 Contract.
40. The Commissioners declined the Sheriff's request for a special meeting.
41. On December 20, 2021, the Sheriff and CHI executed a second contract for CHI to provide healthcare services to the Jail's prisoners throughout calendar year 2022 (the "Second CHI 2022 Contract").
42. The Second CHI 2022 Contract is identical to the First CHI 2022 Contract, but contains no signature block for the Commissioners to signify their supplemental approval.
43. On or about December 22, 2021, the Sheriff delivered a copy of the executed Second CHI 2022 Contract to the Auditor.
44. The Auditor serves as, *inter alia*, the clerk of the Board of Commissioners and the Lake County Council.
45. The Auditor's duties include, *inter alia*, keeping ledgers and records affecting Lake County funds and seeing that such funds are received and disbursed in the manner provided by law.
46. As of January 1, 2022, CHI began performing services at the Jail pursuant to the Second CHI 2022 Contract.
47. On January 18, 2022, the Sheriff's Department submitted a purchase order to the Defendants for the full \$6,094,854 amount contemplated within the Second CHI 2022 Contract; included with that purchase order was CHI's first semi-monthly invoice for 2022, dated January 16, in the amount of \$253,952 (collectively, the "Purchase Order").
48. The amounts reflected within the Purchase Order were already provided and accounted for and approved and available within the 2022 Sheriff's Budget.
49. The Commissioners conducted a meeting on January 19, 2022.
50. At their January 19 meeting, the Commissioners reviewed the First CHI 2022 Contract.
51. At their January 19 meeting, the Commissioners declined to supplementally approve either the First or Second CHI 2022 Contract or CHI's 2022 rates as contemplated

therein. The Commissioners did, however, agree to pay for CHI's on-going services at the rate of the expired CHI 2021 Contract.

52. After the Commissioners' January 19 meeting, the Auditor informed the Sheriff that the Purchase Order (requesting disbursement of funds to pay CHI at the Second CHI 2022 Contract rate) would not be processed "because today at the Commissioners meeting the Commissioners approved this but at the 2021 rate for the year 2022. We need to change the grand total dollar amount to match the 2021 rate."
53. The Auditor declined to disburse funds to pay for CHI's 2022 services at the rate contemplated within the Second CHI 2022 Contract. This declination was in spite of the availability of funds approved within the 2022 Sheriff's Budget to do so.
54. On January 24, 2022, the Sheriff submitted an amended purchase order in the amount of \$5,804,616 (the amount of CHI's 2021 contract rate) and invoices from CHI for semi-monthly payments at its 2021 rate of \$241,859 (collectively, the "Amended Purchase Order").
55. The Amended Purchase Order included the statement, "This request is submitted per [the Auditor's] email of Jan. 19, 2022, requesting an amended purchase order amount of \$5,804,616, and is not intended as any compromise or waiver of the Sheriff's claims asserted in cause no. 45C01-2201-PL-72."
56. The Commissioners' and/or Auditor's decision to only pay at the expired CHI 2021 Contract rate results in a payment shortfall of \$12,093 per semi-monthly payment, or \$24,186 per month.
57. The Auditor has since undertaken to pay for CHI's 2022 services at the expired CHI 2021 Contract rate and not at the rate contemplated within the Second CHI 2022 Contract, causing the Sheriff to incur an on-going financial delinquency to CHI that grows with each passing day.
58. Approved funds to fully satisfy this financial delinquency remain readily available within the 2022 Sheriff's Budget.
59. The Second CHI 2022 Contract is the only known time the Sheriff has sought to enforce a written jail-services contract that did not receive the Commissioners' formal and/or written supplemental approval (the Commissioners' approval of the Sheriff's 2022 Budget notwithstanding).
60. The Commissioners dispute the validity and/or enforceability of the Second CHI 2022 Contract *sans* the Commissioners' formal and/or written supplemental approval.
61. The Commissioners dispute the Sheriff's authority to unilaterally enter contracts to take care of the Jail and its prisoners.

- 62. Under Indiana law, the General Assembly assigns specific duties to elected county officers. *See* Ind. Const. Art. 6, § 2(a); *id.*, Art 6, § 3; *Dortch v. Lugar*, 255 Ind. 545 (1971), *abrogated on other grounds by* *Collins v. Day*, 644 N.E.2d 72 (Ind. 1994).
- 63. Under Indiana law, “All powers and duties of the county that are executive or administrative in nature”—including the power to “negotiate contracts for the county”—“shall be exercised or performed by its executives, except to the extent that these powers and duties are expressly assigned to other elected officers.” Ind. Code § 36-2-3.5-4, -4(b)(9).
- 64. Under Indiana law, the General Assembly assigns county sheriffs with the duty to “take care of the county jail and the prisoners there[.]” Ind. Code § 36-2-13-5(a)(7). This statutory assignment could not be more expressed.
- 65. Under Indiana law, the Sheriff’s duty to take care of the jail and its prisoners (the “take-care duty”) requires the Sheriff to exercise reasonable care for prisoner health and provision of medical services. *Northeast Ind. Colon & Rectal Surgeons v. Allen Cty. Comm’rs*, 674 N.E.2d 590, 591 (Ind. Ct. App. 1996)(“Prisoners are entitled to medical care, and a sheriff has a duty to exercise reasonable care to preserve a prisoner’s health.”); *Health & Hosp. Corp. of Marion Cty. v. Marion Cty.*, 470 N.E.2d 1348, 1358-1360 (Ind. Ct. App. 1984)(“The Sheriff is required to provide necessary medical services to inmates of his jail.”)(It “is firmly grounded upon a constitutional foundation” that jail prisoners are entitled to medical care.) (“[T]he Sheriff’s duty to care for his prisoners includes the duty to pay for medical treatment.”).
- 66. Under Indiana law, the Sheriff’s take-care duty includes the capacity and authority to enter contracts necessary to carry out this expressed duty. *See Alexander v. Marion Cty. Sheriff*, 891 N.E.2d 87, 93 (Ind. Ct. App. 2008); *Health & Hosp. Corp. of Marion Cty.*, 470 N.E.2d at 1360.
- 67. Under Indiana law, county sheriffs occupy a constitutionally-created office that is separate from the county executive. Ind. Const. Art. 6 § 2; *Waldrip v. Wadrip*, 976 N.E.2d 102, 118-119 (Ind. Ct. App. 2012).
- 68. “The law is well-settled that county commissioners do not have control over the acts of a sheriff.” *Waldrip*, 976 at 119. “Actual administration of the jail and treatment of prisoners falls to the county sheriff.” *Id.*
- 69. Ideally, government officials can and will and do work together—even if at times contentiously or with discord—to agreeably effectuate the needs of their constituents, *i.e.*, here, taking care of the county jail and the prisoners there.
- 70. From at least January, 2012 through the end of 2021, Lake County’s officials succeeded in agreeably taking care of the Lake County Jail and its prisoners.

71. When it is not possible for government officials to agreeably take care of things together, a county jail and its prisoners must nonetheless be taken care of.
72. Indiana law expressly and statutorily requires that a sheriff “take care of the county jail and the prisoners there”. Ind. Code § 36-2-13-5(A)(7).
73. The Sheriff, and not the Board of Commissioners, has the authority to enter into contracts to take care of the county jail and the prisoners there.
74. The Sheriff had authority to unilaterally enter into the Second CHI 2022 Contract.
75. The Second CHI 2022 Contract is a valid and enforceable contract.
76. The Sheriff, and not the Board of Commissioners, has the authority to determine how to spend funds within the 2022 Sheriff’s Budget that have been allocated to take care of the Lake County Jail and the prisoners there.
77. The Board of Commissioners and Auditor are directed to process and approve and pay or satisfy purchase orders and/or invoices submitted by the Sheriff attendant to the Second CHI 2022 Contract.
78. The Sheriff’s request for a declaration that the Sheriff need not submit future contracts “that relate to operation of the Jail and/or the care of the inmates within the Jail” to the Board of Commissioners for approval should be and hereby is DENIED. These submissions behoove better government operation, communication, transparency and comity. This denial notwithstanding, the Sheriff has and retains the authority to enter into contracts to take care of the Lake County Jail and its prisoners, even *sans* formal or supplemental approval by the Board of Commissioners.
79. The parties’ mutual requests for a declaratory judgment declaring the parties’ respective rights and statuses under the law *vis-a-vis* contracts to take care of the Lake County Jail and its prisoners should be GRANTED and such a declaratory judgment should be ENTERED as set forth above and below.
80. The *Lake County Sheriff’s Motion for Summary Judgment* as filed on 04/22/2022 should be GRANTED in part and DENIED in part as set forth above and below.
81. The *Defendants’ Cross-Motion for Summary Judgment Against Count I of Sheriff’s Complaint* as filed on 05/06/2022 should be DENIED as set forth above and below.
82. The *Board of Commissioners’ Motion for Summary Judgment in Favor of Count I of its Counterclaim* as filed on 05/06/2022 should be DENIED as set forth above and below.

WHEREFORE, IT IS HEREBY DECLARED, ORDERED, ADJUDGED AND
DECREEED as follows:

- (A) The Lake County Sheriff, and not the Lake County Board of Commissioners, has the authority to enter into contracts to take care of the Lake County Jail and the prisoners there.
- (B) The Lake County Sheriff, and not the Lake County Board of Commissioners, has the authority to determine how to spend funds within the 2022 Sheriff's Budget that have been allocated to take care of the Lake County Jail and the prisoners there.
- (C) The Board of Commissioners and Auditor are directed to process and approve and pay or satisfy purchase orders and/or invoices submitted by the Sheriff attendant to the Second CHI 2022 Contract.
- (D) The parties' mutual requests for a declaratory judgment declaring the parties' respective rights and statuses under the law *vis-a-vis* contracts to take care of the Lake County Jail and its prisoners are GRANTED and a Declaratory Judgment is hereby ENTERED as set forth above.
- (E) The *Lake County Sheriff's Motion for Summary Judgment* as filed on 04/22/2022 is GRANTED in part and DENIED in part as set forth above.
- (F) The *Defendants' Cross-Motion for Summary Judgment Against Count I of Sheriff's Complaint* as filed on 05/06/2022 is DENIED as set forth above.
- (G) The *Board of Commissioners' Motion for Summary Judgment in Favor of Count I of its Counterclaim* as filed on 05/06/2022 is DENIED as set forth above.
- (H) JUDGMENT is hereby ENTERED as a matter of law in favor of Plaintiff/Counterclaim Defendant Lake County Sheriff and against all Defendants and the Counterclaimant as to Count I of the Complaint and Count I of the Counterclaim.
- (I) With respect to the foregoing judgment entries as to Count I of the Complaint and Count I of the Counterclaim, there is no just reason for delay and this is a final judgment pursuant to Trial Rule 54(B) and other applicable law. Any party is free to immediately appeal this order.

(J) The Court now SETS this matter for a Telephonic Status Hearing, only, on the parties' respective Counts II and any other outstanding matters, to occur on **August 16, 2022, at 11:30 a.m. CT.** Unless the parties agree or arrange otherwise, the Sheriff's counsel is tasked with initiating that Telephonic Status Hearing by accessing all known and available telephonic participants onto a single/teleconferenced line and calling the Court at 219/933-2880 at the designated time. The parties, attorneys and any/all interested persons are also welcome to appear in the Lake Superior Court/Room 5 for that hearing, at which all prevailing Covid-19 protocols will be observed.

ALL OF WHICH IS SO ORDERED this 30th day of June, 2022.



STEPHEN E. SCHEELE, Judge
Lake Superior Court/Room 5

Distribution: T.R. 72 Notice