

IN THE IOWA DISTRICT COURT IN AND FOR MAHASKA COUNTY

<p>MAHASKA COUNTY BOARD OF SUPERVISORS,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MAHASKA COUNTY EMERGENCY MANAGEMENT COMMISSION,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">CASE NO. EQEQ089318</p>
<p>MAHASKA COUNTY EMERGENCY MANAGEMENT COMMISSION,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>MARK GROENENDYK, STEVE WANDERS, and CHUCK WEBB, acting in their capacity as MEMBERS OF THE BOARD OF SUPERVISORS OF MAHASKA COUNTY,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">CASE NO. CVEQ089380</p> <p style="text-align: center;">COMBINED RULING ON MOTIONS FOR SUMMARY JUDGMENT FILED BY THE MAHASKA COUNTY BOARD OF SUPERVISORS</p>

These cases came before the court for hearing on October 14, 2022, concerning the Motions for Summary Judgment filed in both cases by the Mahaska County Board of Supervisors. The motion in case number EQEQ089318 was filed July 19, 2022; and the motion in case number CVEQ089380 was filed July 18, 2022. The Mahaska County Board of Supervisors appeared by attorneys Michael R. Reck and Christopher J. Jessen. The Mahaska County Emergency Management Commission appeared by attorneys Michael W. Mahaffey and Gayla R. Harrison. The court heard the arguments of the parties, reviewed the filings, considered the applicable law, and now makes the following:

FINDINGS OF FACT

The relevant facts of these cases span multiple years and necessarily require a discussion of previous litigation matters between the parties.

The Mahaska County Board of Supervisors (Supervisors) executed a 28E agreement pursuant to Iowa Code chapter 447B (now chapter 34A) with other political subdivisions located in Mahaska County to create the Mahaska County E911 Service Board (Service Board). The Service Board operated for many years under the 28E agreement. In 1991, a second 28E agreement was executed that was substantially similar to the earlier 1988 agreement and functioned as the Service Board's operating agreement. The stated purpose of the agreement was the "operating and managing an E-9-1-1 service within Mahaska County, Iowa, and provide a unified, centralized, highly professional approach to the provision of Public Safety Communications." MAHASKA COUNTY E-9-1-1 SERVICES BOARD JOINT AGREEMENT, ARTICLE V § 1. Part of operating and managing an E911 service was the establishment of a public safety answer point (PSAP), commonly referred to as the Mahaska County 911 Call Center. In 2014, it was recognized that there were political subdivisions that were voting on the Service Board improperly. As a result, a new 28E operating agreement was executed in 2015.

On September 17, 2018, the Supervisors brought suit in case number EQEQ088637 against the Service Board and the Mahaska County Emergency Management Commission (Commission) seeking declaratory judgment that the 2015 Agreement was void and/or terminable based upon a variety of legal grounds, including arguments that the Agreement impermissibly delegated authority to the courts and that the Agreement was *ultra vires*. Upon

summary judgment, this court ruled that 14 members of the Service Board, which constituted a majority, lacked the statutory right to vote under Iowa Code section 34A.3 and, therefore, the Service Board's vote approving the 2015 Agreement was illegal. Consequently, the court ruled the 2015 Agreement was void and unenforceable, and further analysis was unnecessary.

A third 28E agreement was executed in 2020 between the Service Board and the Commission. The Supervisors again filed suit in case number EQEQ088960 alleging the 2020 Agreement was *ultra vires* by attempting to force the Supervisors to impose a levy, by allowing improper members to vote, and for unlawfully re-delegating authority. The Supervisors also argued that the Service Board lacked the authority to enter into a 28E agreement, and that the Agreement exceeded Iowa Code section 28E limits on delegation. Again, on summary judgment, this court determined the agreement was void and agreed with the Supervisors that an entity created by a 28E agreement could not itself be a party to a subsequent 28E agreement. As a result of the litigation, both the 2015 and 2020 28E agreements were struck down leaving the 1991 Agreement in effect presently.

On September 9, 2021, the Commission filed a petition for a writ of mandamus seeking an order from this court compelling the Mahaska County Auditor to certify the Commission's budget and prevent the Supervisors from interfering with that process in case number EQEQ089251. The Supervisors and Auditor filed a motion for summary judgment. The court granted the motion finding that there was no clear duty that Mark Groenendyk, as the Vice Chair of the Commission, must sign the Commission's bylaws; that the court could not compel the Auditor to perform a duty of which she was not statutorily empowered to perform; and that while a county lacked the discretion to choose whether to accept a particular funding method chosen by an emergency management commission under Iowa Code section 29C.17,

the Commission's failure to comply with the statutory deadline at section 29C.17(6) precluded it from seeking mandamus.

The first of the present cases, number EQEQ089318, was filed by the Supervisors on December 27, 2021. The Supervisors seek a declaratory judgment of the following:

1. That the Commission may only use its financing authority under Iowa Code section 29C to fund disaster services;
2. That it is illegal for the Commission to use its financing authority to fund any 911 services;
3. That it is illegal for Commission members to vote on 911 matters under Iowa Code section 34A;
4. That it is illegal for the Commission to deny voting rights to public safety contractors under Iowa Code section 34A;
5. That any Commission's budget that includes funding for services or costs that the Commission is not expressly authorized to perform is illegal.

The Supervisors also seeks an injunction to prevent the Commission from attempting to require the Supervisors from imposing a countywide special levy to fund 911 services.

The second case, number CVEQ089380, was filed by the Commission on May 10, 2022. The Commission again sought a writ of mandamus alleging the Board of Supervisors had failed to fulfill its duty to certify the Commission's budget in accordance with Iowa Code section 29C. This court ruled that the Commission was not entitled to a peremptory writ of mandamus as there was no judgment already recovered. The court also noted that the issue of whether the Supervisors had a duty to fund the approved budget through a countywide special levy was contested by the parties and mandamus is only proper when there is a clear legal duty, and that the action was untimely as the Supervisors had already certified its budget

for the financial year. Finally, the court stated the determination of whether a writ should be issued depended on the outcome of EQEQ089318.

CONCLUSIONS OF LAW

Declaratory judgment permits the court to “declare rights, status, and other legal relations whether or not relief is or could be claimed.” Iowa Court Rule 1.1101. The purpose of declaratory judgment is “to resolve uncertainties and controversies before obligations are repudiated, rights are invaded, or wrongs are committed.” *Dubuque Policemen’s Protective Ass’n v. City of Dubuque*, 553 N.W.2d 603, 606 (Iowa 1996) (quoting 22A Am.Jur.2d *Declaratory Judgments* § 1, at 670 (1988)). The “declaration stands by itself” and “does not involve executory or coercive relief.” *Id.* Declaratory judgment is available only when there is justiciable controversy, that is, a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the judgment. *Green v. Shama*, 217 N.W.2d 547 (Iowa 1974).

Summary judgment is proper only when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996)); Iowa R. Civ. P. 1.981(3). An issue of fact is material when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citing *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988)). The requirement that the issue be genuine “means the evidence is such that a reasonable jury could return a verdict” for the party resisting the motion. *Id.* (citing *Hike*, 427 N.W.2d at 159). In determining whether a motion for summary judgment should be granted, the court ““must determine whether any facts have been

presented over which a reasonable difference of opinion could exist that would affect the outcome of the case.” *Id.* (quoting *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987)).

The party requesting summary judgment bears the burden of proof. *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 841 (Iowa 2005) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). “A court entertaining a motion for summary judgment must view the evidence in the light most favorable to the nonmoving party.” *Id.* (citing *Harris*, 679 N.W.2d at 677). “Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions.” *Id.* (citing *Walker Shoe Store, Inc. v. Howard's Hobby Shop*, 327 N.W.2d 725, 728 (Iowa 1982)). The nonmoving party should be afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* (citing *Cent. Nat'l. Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994)). However, “[t]he resistance must set forth specific facts constituting competent evidence to support a prima facie claim.” *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989); *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972)). The adverse party “may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.” Iowa R. Civ. P. 1.981(5).

Speculation is not sufficient to generate a genuine issue of fact. *Walls v. Jacob North Printing Co.*, 618 N.W.2d 282, 284 (Iowa 2000). “A fact issue is generated if reasonable minds can differ on how the issues should be resolved, but if the conflict in the record consists only

of legal consequences flowing from undisputed facts, entry of summary judgment is proper.”
Uhl v. City of Sioux City, 490 N.W.2d 69, 74 (Iowa App. 1992).

ANALYSIS

The two main statutes at the center of this case are Iowa Code chapters 29C and 34A. Chapter 29C is titled “Emergency Management and Security” and provides both statewide and local emergency management provisions. Among other goals, the chapter’s statement of policy at section 29C.1 identifies that:

because of existing and increasing possibility of the occurrence of disasters, and in order to insure that preparations of this state will be adequate to deal with such disasters, and to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of this state, it is the policy of this state

1. To establish a department of homeland security and emergency management and to authorize the establishment of local organizations for emergency management in the political subdivisions of the state.

The chapter defines a disaster as a “man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threatens the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes attack, sabotage, or other hostile action from within or without the state.” IOWA CODE § 29C.2(4). A local emergency management agency is “a countywide joint county-municipal public safety agency organized to administer this chapter under the authority of a commission.” IOWA CODE § 29C.2(6).

Local emergency management commissions are governed by Iowa Code sections 29C.9 and 29C.17. Under section 29C.9, a commission is deemed a municipality and is composed of a member of the county board of supervisors, the sheriff, and the mayor of each city within the county. A representative may be chosen by a commission member to serve on the commission. However, only commission members or representatives that are elected officials may participate in budgetary matters. Under subsection 6, a commission is tasked with providing “for the delivery of the emergency management services of planning, administration, coordination, training, and support for local governments and their departments,” and the commission “may also provide joint emergency response communications services through an agreement entered into under chapter 28E.” In the past year, section 29C.9 was amended with a new provision effective July 1, 2022, providing that “the commission shall, if agreed to by a two-thirds majority of the commission and a two-thirds majority of the joint 911 services board, be responsible for the activities of a joint 911 service board if substituted for a joint 911 service board pursuant to section 34A.3, subsection 3A.” IOWA CODE SECTION 29C.9(9A).

Under section 29C.17, the funding for a local emergency management agency is determined by the commission from one or any combination of the follow sources:

1. A countywide special levy pursuant to section 331.424, subsection 1.
2. Per capita allocation funded from city and county general funds or by a combination of city and county special levies which may be apportioned among the member jurisdictions.
3. An allocation computed as each jurisdiction’s relative share of the total assessed valuation within the county.
4. A voluntary share allocation.
5. Other funding sources allowed by law.

Joint emergency response communications services are to be funded in accordance with the 28E agreement that transfers that responsibility to the commission. Finally, the commission is tasked with adopting, certifying, and providing a budget, on or before February 28 of each year, to the entities determined as funding sources.

Chapter 34A concerns 911 emergency telephone systems. The legislature stated “that 911 emergency telephone communication systems and other emergency 911 notification devices further the public interest and protect the health, safety, and welfare of the people of Iowa” and that the purpose of the chapter is “to enable the orderly development, installation, and operation of 911 emergency telephone communication systems and other emergency 911 notification devices statewide. These systems are to be operated under governmental management and control for the public benefit.” IOWA CODE § 34A.1.

The duty to maintain a joint 911 service board falls upon a county board of supervisors. IOWA CODE § 34A.3(1). The voting members of a service board are the political subdivisions in a county that have a public safety agency, the local emergency management agency, the sheriff, and the chief of police of each city operating a public safety answering point. If a township contracts with a private party to operate a public safety agency for that township, the contractor is entitled to voting membership on the service board. *Id.* A public or private safety agency is “a unit of state or local government, a local emergency management agency as defined in section 29C.2, a special purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, or emergency medical services, or hazardous materials response.” IOWA CODE § 34A.2(22). Under subsection 3, an alternative legal entity can be created through a 28E agreement to fulfill the role of a joint 911 service board by either the agreement of the parties entitled to voting membership on the joint 911

service board or by agreement of the members of a joint 911 service board. Section 34A.3 was amended this year, effective July 1, 2022, providing that a local emergency management commission may be substituted for a joint 911 service board by the county supervisors, and that the commission, acting as a service board, shall have all the powers of a service board. IOWA CODE § 34A.3(3A).

The funding of a service plan enacted by a joint 911 service board is provided by the service board and the member political subdivisions. IOWA CODE § 34A.7. If the cost of the service plan exceeds the revenue collected from the 911 service surcharge, then the service board shall pay the difference “from revenue sources allocated among the member political subdivisions as determined by the joint 911 service board.” *Id.* However, a service board “shall not commit a political subdivision to appropriate property tax revenues to fund a 911 service plan without the consent of the political subdivision,” and a service board’s service plan that includes funding formulae is “subject to the approval of the funding formula by each political subdivision.” *Id.* Section 34A.7 does allow a political subdivision to agree in advance to appropriate property tax revenues or other money pursuant to a formula or plan developed by an alternative 28E entity. *Id.*

I. *EQE089318 Petition for Declaratory Judgment and Request for Injunctive Relief*

The court begins with the Supervisors’ motion for summary judgment on its petition for declaratory judgment. The Supervisors first argue that if the Commission has the authority to levy for whatever it wants, including 911 services, section 29C.9 would be unconstitutional as an illegal delegation of taxing authority to the Commission by the legislature. The issue of

whether there has been an improper delegation is a legal determination for this Court based upon the statute.

The Supervisors are correct that delegations of powers to an agency must be “adequately guided” or “accompanied by adequate standards to guide” the agency’s actions. *Goreham v. Des Moines Metro. Area Solid Waste Agency*, 179 N.W.2d 449, 454 (Iowa 1970); *Chicago, R.I. & P.R. Co. v. Liddle*, 112 N.W.2d 852, 854 (Iowa 1962). Yet, the court also acknowledges that section 29C.9(6) explicitly states that “the commission shall determine the mission of its agency and program.” However, the court does not read this delegation to determine mission and program as an unfettered right for the Commission to do whatever it wants. This section must be read in the broader context of Chapter 29C as a whole.

The statutory definition of a local emergency management agency states the purpose of such an agency is “to administer this chapter under the authority of a commission.” IOWA CODE § 29C.2(6). This limits the commission’s discretion to administration of emergency management provisions as allowed under Chapter 29C. Another limitation of discretion is found in section 29C.9 as it provides that a local emergency management commission shall be established “to carry out the provisions of this chapter.” IOWA CODE § 29C.9(1). The court finds these two provisions impose adequate guidelines and limitations for a commission’s actions. They make clear a commission’s power is limited to administering or carrying out the provisions of Chapter 29C, while providing local commissions the flexibility needed to craft an agency plan that fits their county’s unique characteristics. It is also clear this does not include unfettered discretion to do whatever it wants, including levying for 911 services. Thus, the court concludes section 29C.9 withstands constitutional scrutiny concerning illegal delegation of taxing powers.

The statute being constitutional, the Supervisors' second argument is that the Commission is without authority to require the Supervisors to issue a countywide special levy for 911 services. The Supervisors do not dispute that section 29C.17 grants the Commission authority to require the County to issue a special levy generally, but assert that this authority is limited to disaster-related costs which does not include 911 services. Before substantively addressing this issue, however, the court must first consider what effects, if any, the 2022 amendments to sections 29C.9 and 34A.3 may have upon the dispute.

“When statutes relate to the same subject matter or to closely allied subjects they are said to be in *pari materia* and must be construed, considered and examined in the light of their common purpose and intent so as to produce a harmonious system of body of legislation.” *Schuler v. Rodberg*, 516 N.W.2d 902, 903-04 (Iowa 1994). “This rule applies with peculiar force to statutes passed at the same session of the legislature.” *Niles v. Iowa Dist. Court for Polk County*, 683 N.W.2d 539, 541 (Iowa 2004).

Based upon the mutual references to sections 29C.9 and 34A.3 in new sections 29C.9(9A) and 34A.3(3A), it is logical to conclude the legislature intended these two provisions to be read in a reciprocal manner. Section 29C.9(9A) provides that a commission may assume the duties of a service board “if agreed to by a two-third majority of the commission and a two-thirds majority of the joint 911 service board,” while section 34A.3(3A) allows for the commission to serve as a substitute for the service board when the board of county supervisors choose that substitution. The court interprets these sections to require the board of supervisors to decide that a commission shall be a service board substitute, and then the commission and service board must approve that substitution by a two-third's majority vote. It is undisputed that the Supervisors have not chosen the

Commission be an alternative to the Service Board, so the necessary requirements have not been met and the 2022 amendments have no effect on the instant case.

In returning to the Supervisors' argument that the Commission is without authority to require the Supervisors to issue a countywide special levy for 911 services, the real heart of the Supervisors' argument is whether 911-related costs, including costs related to dispatch services and/or any county 911 call center or PSAP, are solely the obligation of the Service Board. The Supervisors take the position that 911 services are solely for the Service Board, whereas the Commission's role is more general, i.e., the training and preparation for disasters affecting the public as a whole and warning of public-wide emergencies. The Commission resists this view, arguing that what constitutes a "disaster" or part of "emergency management" can and often does involve day-to-day, smaller-scale matters, including the receipt and disposition of emergency calls, and these constitute only a small portion of the Call Center's work.

In considering this dispute, code section 34A.7 states, "when a 911 service plan is implemented, the costs of providing 911 service within a 911 service area are the responsibility of the joint 911 service board and the member political subdivisions." That is, a cost that is a part of "providing 911 service" is the obligation of a service board. A PSAP, such as the Call Center, is a "twenty-four-hour public safety communications facility that receives 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency." IOWA CODE SECTION 34A.2(23). By this definition, it appears the costs of a call center would be a cost of providing 911 service and the obligation of a service board.

In contrast, chapter 29C only contains a single reference to 911 services, which is the newly added section 29C.9(9A), and that only states a commission may be responsible for the duties of a 911 service board. There is no mention of a call center in Chapter 29C. It makes numerous references, however, to emergency communication services such as the state's interoperable communication systems or the authorization that a commission may provide joint emergency response communications under a 28E agreement. The lack of statutory language about emergency management playing a role in 911 services, except in situations where a 28E agreement is executed and county supervisor approval has been given, is a strong indication the legislature did not envision a commission playing a role in 911 services for day-to-day calls unless the requirements of the newly-added section 29C.9(9A) have been met. Therefore, the court concludes the Commission is not responsible for costs associated with providing 911 services and cannot levy for those services.

The court understands the matter is complicated because handling 911 calls is only part of the work of the Call Center. Further, the duties of the Commission and the Service Board are similar in nature and overlap somewhat. But, the decision to allocate certain authority and costs to different entities is a matter of policy reserved for the legislature's consideration. "It is the duty of the court to give that mandate of the Legislature, speaking for the people of Iowa, a reasonable interpretation, so that its true purpose and intent may be realized." *Brutsche v. Incorporated Town of Coon Rapids*, 223 Iowa 487 272 N.W. 624, 631-32 (Iowa 1937). The legislature made the decision that 911 services are to be controlled by a county board of supervisors rather than a local emergency management commission. That decision also makes the funding of 911 service costs the responsibility of the Service Board, and not the Commission.

The court therefore concludes the Commission may not use its sources of funding, including requiring the Supervisors to issue a countywide levy, for “costs of providing 911 services.” The Commission may only use its authority under section 29C.17 for costs related to its function of carrying out the provisions of chapter 29C in accordance with its statement of policy, which does not include 911 services. The court’s determination that the Commission may not use its financing authority under section 29C.17 to fund 911 services—as that would violate section 34A.7—is dispositive of the issue and consideration of further arguments by the Supervisors is unnecessary.

In summary, the court concludes there are no genuine issues of material fact related to this dispute between the parties. Considering the facts in a light most favorable to the Commission, and for the reasons stated herein and as argued in the Supervisors’ brief filed July 19, 2022, the Supervisors are entitled to judgment as a matter of law on the issue of the Commission’s authority to levy for 911 services, specifically, that the Commission has no legal authority to levy for 911 services including costs related to dispatch services and/or any county 911 call center or PSAP.

The court now turns to the Supervisors’ request for injunctive relief. A permanent injunction is an “extraordinary remedy that is granted only when there is no other way to avoid irreparable harm.” *Carroll Airport Comm’n v. Danner*, 927 N.W.2d 635, 654 (Iowa 2019) (quoting *Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 185 (Iowa 2005)). To be successful, the Supervisors must show “(1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available.” *Id.* Various factors must be considered including:

1. The character of the interest to be protected.
2. The relative adequacy to the plaintiff of injunction and other remedies.
3. Plaintiff's delay in bringing suit.
4. Plaintiff's misconduct.
5. The relative hardship likely to result to the defendant if injunction is granted and to plaintiff if it is denied.
6. The interests of third persons and of the public.
7. The practicability of framing and enforcing the order or judgment.

Id. The decision to grant injunctive relief is “a discretionary function of the court based on the traditional principles of equity and the specific circumstances of the case” unless required by statute. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 572 (Iowa 2004) (quoting *Worthington v. Kenkel*, 684 N.W.2d 228, 232 (Iowa 2004)).

The Supervisors assert that a permanent injunction is necessary to prevent the Commission from requiring the Supervisors to issue a countywide levy to fund non-chapter 29C costs. In this analysis, the court is mindful that the Commission's position—that its budget could cover the costs of the Call Center—was based solely on its interpretation of chapter 29C and the related regulations without controlling, or even persuasive, case law directly addressing that issue. This ruling now clearly informs the Commission its interpretation is wrong and its attempt to levy for 911 services is illegal. The court will not simply assume the Commission will ignore this ruling and continue its attempts to wrongfully and illegally levy for 911 services. There is simply no evidence the Commission will continue to seek to use its budget to cover 911 costs following the filing of this ruling, in violation hereof. Thus, the Court finds the Supervisors have failed to establish that substantial injury or damage will result without injunctive relief. This element failing, the court finds the

Supervisors have failed to carry their burden and no permanent injunction should be ordered.

II. *CVEQ089380 Petition for Writ of Mandamus*

In this case, the Commission seeks to compel the Supervisors to certify the Commission's budget, including the EMA-Emergency Communications portion, and to levy the necessary county-wide tax. The Supervisors seek summary judgment on multiple grounds beginning with the argument that the Commission is not entitled to a peremptory writ. As the Honorable Judge Lucy Gamon has previously decided this issue, no further consideration is necessary.

The second ground asserted by the Supervisors in support of their motion for summary judgment is that the court may not compel an illegal act and the Commission's budget violates Iowa Code chapter 34A. As previously discussed, the Supervisors allege that the Commission's budget, particularly the EMA-Emergency Communications portion, includes 911 costs and should be funded through the Service Board. The court agrees and has concluded, as previously discussed, that the Commission has no legal authority or right to levy for such 911 services and that funding of such costs flows from the Service Board.

"Mandamus is not available to establish legal rights, but only to enforce legal rights that are clear and certain." *Stafford v. Valley Cmnty. Sch. Dist.*, 298 N.W.2d 307, 309 (Iowa 1980). Mandamus will not issue in doubtful cases, but only where the right involved and the duty sought to be enforced are clear and certain and where no other specific and adequate mode of relief is available to the complaining party." *Headid v. Rodman*, 179 N.W.2d 767, 770 (Iowa 1970) ("Plaintiff's right to the performance of the act he seeks to

compel must be clear, certain and free from the possibility of any reasonable controversy.”); *Reed v. Gaylord*, 216 N.W.2d 327, 332 (Iowa 1976).

The Commission has no right to budget for or compel a levy to fund 911 services. There is no genuine issue of material fact concerning this matter. Considering the facts in a light most favorable to the Commission, there is no basis on which mandamus lies for the Commission to enforce a budget which includes 911 services and a levy to fund it. Therefore, the Supervisors are entitled to judgment as a matter of law, specifically, that mandamus does not lie in favor of the Commission and CVEQ089380 must be dismissed.¹

RULING

IT IS THEREFORE ORDERED:

1. The Motion for Summary Judgment filed by Mahaska County Board of Supervisors in case number EQEQ089318 is granted and the court declares and orders as follows:
 - a. The Mahaska County Emergency Management Commission, pursuant to Iowa Code sections 29C.17 and 34A.7, may only use its funding authority for matters connected to its statutory imperative of carrying out the provisions of Chapter 29C, which does not include 911 services (including costs related to dispatch services and/or any county 911 call center or PSAP).
 - b. Pursuant to Iowa Code section 34A.7, costs for providing 911 services (including costs related to dispatch services and/or any county 911 call center

¹ The court acknowledges as a result of its ruling in EQEQ089318 issues may arise between the parties concerning what constitutes 911 services. The court does not believe that issue is before it and therefore does not attempt to address it.

or PSAP) are solely the responsibility of the Mahaska County Joint E911 Service Board.

- c. Any Mahaska County Emergency Management Commission Budget that contains funding for 911 services (including costs related to dispatch services and/or any county 911 call center or PSAP) is illegal.
 - d. All costs are assessed against Mahaska County Emergency Management Commission.
2. The Motion for Summary Judgment filed by Mahaska County Board of Supervisors in case number EQEQ089318 is denied as to the request for injunctive relief for the reasons stated herein.
 3. The Motion for Summary Judgment filed by Mahaska County Board of Supervisors in case number CVEQ089380 is granted for the reasons stated herein and said action is hereby dismissed with all costs assessed to Mahaska County Emergency Management Commission.

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State of Iowa Courts

Case Number
CVEQ089380

Case Title
MAH CO EMC V GROENENDYK/WANDERS/WEBB/MAH
CO BOARD SUP ET AL
DISMISSED PER COURT

Type:

So Ordered

Myron Gookin, Chief District Judge,
Eighth Judicial District of Iowa

Electronically signed on 2023-01-05 14:36:16