

**THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT**

HILLSBOROUGH, SS.
NORTHERN DISTRICT

02-E-0508

J. DANIEL LINEHAN,
HIGH SHERIFF OF ROCKINGHAM COUNTY

v.

ROCKINGHAM COUNTY COMMISSIONERS

ORDER

J. Daniel Linehan, the Sheriff of Rockingham County ("the Sheriff"), brings a petition for declaratory judgment and equitable relief, asserting that the defendants, the Rockingham County Commissioners ("the Commissioners"), have impermissibly interfered with his constitutional, statutory and common law authority to administer the Rockingham County Sheriff's Department ("the Sheriff's Department"). Essentially, the Sheriff asserts that he is a constitutional officer, and, as such, he has exclusive authority to administer the Sheriff's

Department, so long as he complies with the Sheriff's Department budget as adopted by the Rockingham County Convention ("the County Convention").¹

The Commissioners disagree, asserting that the Sheriff's Department is a department within Rockingham County ("the County") and as such must comport with county-wide policies and procedures implemented by the Commissioners pursuant to their statutory authority to oversee and manage the financial affairs of the County, except as these powers may be limited by the powers conferred on the County Convention. The Commissioners acknowledge, however, that they do not have the authority to interfere with the Sheriff's constitutional law enforcement duties. They assert that they do not interfere with those matters.

Both parties acknowledge that the present case constitutes the culmination of long-standing disagreements between the Sheriff and the Commissioners on these issues. The conflict has manifested itself in a variety of issues relating to county governance and the management of County financial affairs. These issues include budgetary control and compliance, compliance with county-wide policies and procedures relating to financial reporting and internal financial controls, the line-item transfer policy, the payment of wage and benefits to Sheriff's Department personnel and the authority to purchase goods and services for the Sheriff's Department.

The Court notes that each of the parties have acknowledged that the other has acted in good faith in these matters and in the performance of their duties.

¹ All of the parties involved in the present matter are parties to this action in their official capacities only.

Neither party asserts that the other has engaged in any improper activities. Rather, the issue is one of institutional and official relationships.

The petitioner Sheriff asserts the Commissioners are a statutorily created body with no express authority granting them general management and administrative powers over the County's constitutional offices. See Petition for Declaratory Judgment and For Other Equitable Relief ("the Petition"), Doc. 1, p. 1. The Sheriff contends that the statutes granting the Commissioners authority to act on behalf of the County should be narrowly construed. See Petitioner's Memorandum of Law Regarding the Commissioners' Power to Control the Operations of the Sheriff's Department, p. 1. The Sheriff, therefore, asserts the Commissioners do not have the authority to require him to comply with certain county-wide policies and procedures, such as: (1) the competitive bidding policy and procedures governing county contracts; (2) county-wide spending freezes; (3) policies and procedures governing the terms and conditions of employment, which apply to county employees; (4) policies governing line item transfers; and (5) other financial internal controls imposed by the Commissioners on all county departments. See The Petition, at 5-6.

The Sheriff is asking the Court to determine that the Sheriff has the exclusive power to manage the Sheriff's Department so long as the Sheriff complies with the overall departmental budget as approved by the County Convention. The Sheriff notes, however, that there are areas of mutual interest he has willingly addressed through comity.

The Commissioners assert that the County is a corporate body and the Commissioners have the authority and duty to oversee and manage county financial affairs, except as these powers may be limited by the statutory powers conferred on the County Convention. See Respondents' Post-Trial Memorandum, p. 6. The Commissioners regard this authority as being derived from a broad statutory framework, which they submit calls for their management and oversight responsibilities. See id.

The Commissioners acknowledge that the Sheriff, as a constitutional officer, is vested with important law enforcement and judicial support duties which are within his exclusive purview, so long as he complies with the budget as it was approved by the County Convention. See id. However, the Commissioners also assert that the Sheriff's Department constitutes a county department, and, no differently than other county departments, may be required to comply with county-wide policies and procedures, so long as they do not interfere with the Sheriff's control over law enforcement duties. See id. at 22. The Commissioners also assert that the County is financially responsible for potential risks and liabilities relating to contractual obligations, personnel obligations and overall compliance with statutorily mandated financial oversight duties. Thus, the Commissioners maintain that to hold the County liable without allowing it the related financial oversight over County departments would be untenable and contrary to the broad policy behind the Commissioners' grant of statutory authority.

GENERAL ISSUES

A determination in the present case depends on the interrelationship that exists between the County, the County Commissioners and the Sheriff, a constitutional officer, and each entity's duties and responsibilities as they relate to county government. In New Hampshire, "[c]ounties are subdivisions of the state, in which some of the powers of state government are exercised by local functionaries for local purposes." O'Brien v. County of Rockingham, 80 N.H. 522, 523 (1923). Such governmental subdivisions have only "powers [that] are *expressly granted* to them by the legislature and such as are *necessarily* implied or incidental thereto." Board of Water Comm. v. Mooney, 139 N.H. 621, 625 (1995) (emphasis added). The Legislature has also expressly provided that "[e]ach county is a corporate body for the purpose of suing and being sued, purchasing, holding and conveying real and personal estate for county purposes, making all necessary contracts and doing other necessary acts *relating to the property and concerns of the county*." RSA 23:1 (2000) (emphasis added).

The County, as a separate entity, is mandated to file a financial report with the Department of Revenue Administration ("the DRA") showing "[t]he summary of receipts and expenditures, according to *uniform classifications*, during the preceding fiscal year, and a balance sheet showing assets and liabilities at the close of the year." RSA 21-J:34, V (Supp. 2002) (emphasis added). Furthermore, the DRA, under authority granted in RSA 21-J, mandates, in relevant part: (1) the method and basis of accounting to be used by counties; (2) uniformity in all financial reports filed by the counties; and (3) requires the county

commissioners to certify the County's financial reports. See generally, N.H. Code Admin. R. REV Secs. 2202.01-.03, 2208.01, .02(c). The legislature, therefore, has recognized the County to be a political subdivision of the State, granting it status as a corporate body for certain enumerated purposes, and designating it to be the proper financial entity to report on county government.

The Rockingham County Sheriff's Departments has close to 100 full time, part-time and contract employees. The Sheriff's Department includes sworn law enforcement officers, that is to say the Sheriff and deputy sheriffs, and various non-sworn civilians. The civilians include support and office personnel as well as technical service staff, such as computer and radio maintenance personnel. The Sheriff's Department has a variety of property and equipment including cruisers, trucks, prisoner transport vans, weapons, radios and law enforcement equipment.

The Sheriff endeavors to be involved matters that are mission-critical to his office, including personnel and equipment acquisition determinations. The Sheriff does so both with the principle that he is a constitutional officer and, also, as a matter of managing the functions relating to that office. Thus, the Sheriff asserts, or seeks to preserve, authority over personnel matters involving his department. He also seeks authority relative to requests for proposals and bids concerning equipment and contracted-for services.

County government has changed significantly since its inception in 1769, largely due to growth within each county and additional responsibilities conferred by the legislature on each county. See O'Brien, 80 N.H. at 523 (discussing the

progression of county government from the court of general sessions of the peace to the present system conferring the powers of the county on two bodies, the county convention and the county commissioners). In 1855, the legislature created the present system in which two separate statutorily created bodies, the county convention and the county commissioners, were charged with different aspects in the management and control of county affairs. Id. at 524. In O'Brien, the New Hampshire Supreme Court described the division of power between the two bodies. Id. The county convention has the "[p]ower to raise county taxes, and to authorize the purchase of real estate, . . . the sale and conveyance of its real estate, the erection, enlargement, or repair of its buildings, . . . and the issuing of bonds for its debts." Id., see generally, RSA Chapter 24 (County Conventions). The county commissioners have "[t]he general management and control of the financial affairs of the county and the management and control of its property except as limited by the powers conferred on the county convention." Id., see generally, RSA Chapter 28 (County Commissioners).

RSA Chapter 28 enumerates the responsibilities, duties and powers the legislature has granted the Commissioners. For instance, some of the Commissioners' financial oversight duties include: (1) compiling county-wide financial information and preparing a certified annual financial report to be forwarded to the DRA; (2) engaging an auditor in the event a county-wide audit is required; and (3) conducting the audit in accordance with generally accepted accounting and auditing procedures as required by the DRA. See RSA 28:3, RSA 28:3-a and RSA 21-J:16 respectively. The Commissioners are also granted

authority to: (1) take "custody and care" of all county property; (2) maintain and repair county buildings if the expense does not exceed \$5,000; and (3) purchase and sell the county's personal property "[f]or the use of the county *and its officers*." RSA 28:4; RSA 28:5; RSA 28:6. Additionally, the Commissioners "shall employ such number of clerks and agents" as they deem necessary, and they are required to establish and adopt policies and procedures regarding the discharge of any county employee. RSA 28:10; see RSA 28:10-a. While this is not a complete list of the statutory authority granted to the Commissioners, the statutory framework of Chapter 28 supports a conclusion that the Commissioners have authority to institute county-wide policies and procedures to facilitate the management and control of county finances and assets.

The county government is comprised of many departments and institutions, which must coordinate their functions and services in order to facilitate the provision of services. Theresa Young, the Rockingham County Finance Director, noted that Rockingham County has a budget of some Sixty Million Dollars (\$60,000,000).² It issues some 700 to 800 paychecks per pay period. It issues a large number of payment checks based on accounts payable warrants. The County requires a rather sophisticated system in order to comply with statutory financial requirements and to safeguard assets, provide the necessary services in an efficient manner, and ensure that the County has the necessary funds to meet its liabilities and provide for appropriate accounting controls. In these functions, the County seeks to adhere to Governmental

² The County actually administers or handles some \$90,000,000 including pass-through items.

Accounting Standards Board ("GASB") standards as well as Generally Accepted Accounting Principles ("GAAP").

In order to meet accounting standards, the Finance Office requires that all County departments have consistency in reporting. Otherwise, fiscal accountability can become degraded. Thus, in county-wide audits, not only are the numbers audited, but the internal controls established by the county are also examined. Having various types of reporting can potentially impact GAAP and GAAP, as incorporated within GASB requirements, and can thereby impact an audit.

While some county institutions may be under the direct purview of the Commissioners, other of the county institutions are constitutional offices, which are separately provided for under the New Hampshire State Constitution. See N.H. Const. Part II, Article 71. The constitutional offices have certain constitutional functions over which the Commissioners and the County Convention may not interfere. However, the constitutional offices are not necessarily free of statutory management and financial oversight responsibilities of the Commissioners, so long as the Commissioners' actions do not interfere with those constitutionally mandated duties and services.

Pursuant to Part II, Article 71, the Sheriff is a constitutional officer, who "[m]aintains his common law powers, duties and responsibilities except insofar as they have been modified by constitutional provisions or legislative enactments." Daniels v. Hanson, 115 N.H. 445, 448 (1975) (internal quotations and citations omitted); N.H. Const. Pt. II, art. 71. Unlike the Commissioners, who possess only

statutory authority to carry out their county duties, the Sheriff, as a constitutional officer, has certain constitutional, statutory and common law authority to administer the Sheriff's Department. Because the Sheriff has authority derived from sources other than express statutory authority, he is asking the Court to determine that the Sheriff has the inherent power to exercise exclusive control over all aspects of the administration and operation of the Sheriff's Department so long as he stays within the budget as approved by the County Convention. The Court, therefore, must first determine what express and implied authority has been granted to the Sheriff as a constitutional officer.

Part II, Article 71 of the New Hampshire Constitution, expressly provides that "[the sheriff] shall be elected . . . by the inhabitants of the several towns, in the several counties of the state, according to the method now practiced, and the laws of the state. . . ." N.H. Const. Pt. II, Art. 71. Except for authority to deliver writs of impeachment, which are enumerated in Part II, Article 38, there are, apparently, no other express powers granted to the Sheriff in the New Hampshire Constitution. N.H. Const. Pt. II, Art. 38. However, though the constitution does not expressly define what powers, right and duties attach to the office of Sheriff, historically "[w]here the sheriff is named in the Constitution his duties are the same as they were at the time the Constitution was adopted." 1 W. ANDERSON, SHERIFFS, CORONERS AND CONSTABLES §43 (1941). The rationale supporting inherent authority derives from the principle that "[t]he framers of the Constitution had reference to the office with those generally recognized legal duties and

functions belonging to it in this country, and in the territory, when the Constitution was adopted." Id.

At common law, the sheriff was the chief law enforcement officer of the county. Id. at §6; Daniels, 115 N.H. at 449. Therefore, the common law authority to carry out all law enforcement duties became constitutional authority by the very nature of being present when the framers drafted the State constitution. The Court concludes, therefore, that the Sheriff has certain inherent constitutional authority to administer and provide law enforcement services to the county. Additionally, it is well settled that sheriff's deputies, who are hired by the Sheriff to carry out law enforcement duties within the County, are invested with similar authority that the Sheriff possesses. See 63c Am. Jur. 2d Public Officers and Employees §233 (1997); see also RSA 104:3 (2001).

Because the Sheriff is a constitutional officer, it is said that "[t]he legislature has no power without a constitutional amendment to diminish his official powers, or to transfer to other officers the duties which properly pertain to his office." 1 W. ANDERSON, SHERIFFS, CORONERS AND CONSTABLES, §50 (1941), see Daniels, 115 N.H. at 448. It has also been noted, however, that "[t]he sheriff maintains his common law powers, duties and responsibilities except insofar as they have been modified by constitutional provisions or legislative enactments." Daniels v. Hanson, 115 N.H. 445, 448 (1975). As noted in Murfree, A TREATISE ON THE LAW OF SHERIFFS AND OTHER MINISTERIAL OFFICES, F. H. Thomas & Co. (1884) at v-vi:

The modern sheriff, therefore, is in all states the common-law sheriff stripped of those incidents of his

offices, which by the lapse of time and changes of manner and circumstances, have fallen into desuetude. To his duties, however, have been added by legislation many minor and local functions which in no degree change the general character of his office.

In New Hampshire, the legislature has expanded the Sheriff's authority and responsibilities in certain areas, certain of which are enumerated in RSA Chapter 104, Sheriffs and Constables. In addition, there are other statutory duties that generally relate to the providing of law enforcement services, but which do not have a direct bearing on the present issue. See Daniels v. Hanson, 115 N.H. 445, 449 (1975) (referencing statutory authority and responsibilities conferred on the Sheriff and the Sheriff's Department).

Though the Sheriff has exclusive control over the administration and delivery of county law enforcement services, various budgetary, financial and ancillary services and oversight are provided by other county officials. The Sheriff's office is, however, different from other county institutions in that it is a constitutional office, whose constitutional law enforcement duties are the exclusive purview of the Sheriff, as an elected constitutional officer. See 1 W. ANDERSON, SHERIFFS, CORONERS AND CONSTABLES §6 (1941) (discussing the Sheriff's exclusive authority to exercise the executive and administrative functions related to his law enforcement duties). Therefore, the Court must determine how much, if any, control and oversight the Commissioners may exercise over the Sheriff's administration of the Sheriff's Department given that the Commissioners have general management and control of the financial affairs and of the County.

The Court concludes that the County, and by extension the Commissioners, do not have the authority to interfere with the Sheriff's mandated duties as a constitutional officer. Therefore, the Commissioners may not interfere with matters that directly impact the Sheriff's ability to accomplish his recognized law enforcement duties. These would include duties of the Sheriff and deputies, which is to say, those directly in law enforcement. It would also include matters such as job descriptions, command structure, discipline, and overtime policies. It would also include setting the standards on items to be purchased for use in those functions.

The Sheriff, however, asserts that the provision of law enforcement duties should be broadly construed to grant him exclusive authority to administer most aspects of the Sheriff's Department without interference from the Commissioners. The Commissioners assert that the provision of law enforcement duties should be more narrowly interpreted, and excludes all non-deputy personnel within the Sheriff's Department as well as administrative and ancillary services within the Sheriff's Department not directly related to the actual provision of law enforcement. Both parties rely on Daniels v. Hanson, 115 N.H. 445 (1975) and Trachy v. LaFramboise, 146 N.H. 178 (2001) in support of their assertions.

Daniels involved a dispute between the Merrimack County Sheriff and the Merrimack County Convention. Daniels, 115 N.H. at 447. The Merrimack County Sheriff sought declaratory judgment relief asking the Court to determine the rights of the parties in relation to the county budget. Id. The Merrimack County Convention had initially approved a county budget that established

annual salaries for the sheriff and his deputies. Id. Subsequently, the Merrimack County Convention voted to substitute a new budget, which ordered the abolishment of two deputy sheriff positions. Id. at 448. The Merrimack County Sheriff submitted that the convention's actions were beyond the powers of the convention and that they illegally impinged upon the office of the sheriff. Id.

The New Hampshire Supreme Court held that while the county convention has authority to approve the overall budget for the sheriff's department, it has no authority over the actual operation of the sheriff's department with respect to deputy sheriffs positions. Id. at 451. The sheriff was determined to possess exclusive authority over who will occupy deputy sheriff positions and what their functions would be. Id. at 452. However, it is important to a consideration of the present case to note that Daniels involved a dispute over *deputy sheriffs'* salaries. Deputy sheriffs are subordinate constitutional officers necessary for the direct provision of law enforcement duties. The Court, therefore, declines to broadly interpret Daniels as granting the Sheriff exclusive control over the Sheriff's Department. Rather, the Court concludes that the holding in Daniels references and applies to the Sheriff's exclusive authority to control deputy sheriffs and the direct provision of law enforcement duties. Therefore, Daniels supports the Court's finding that the County Convention, and by extension the Commissioners, may not interfere with the Sheriff's authority to administer the provision of law enforcement duties in the County.

Trachy also supports this finding. In Trachy, the defendant had been employed as a Merrimack County deputy sheriff and was suspended by the

Merrimack County sheriff for violating departmental policies. Trachy, 146 N.H. at 179. After the sheriff refused to reconsider his decision, the defendant formally requested that the Merrimack County Board of Commissioners review the sheriff's decision. Id. The commissioners refused stating that the sheriff's disciplinary decisions were not subject to their review. Id. The trial court ruled that the defendant was considered a Merrimack County employee and an employee of a county institution, the sheriff's office, and was therefore entitled to review by the commissioners under RSA 28:10-a. Id.

On appeal, the New Hampshire Supreme Court reversed the trial court's determination, holding that the commissioners did not have hiring or appointing authority over the defendant, and therefore, RSA 28:10-a did not apply to the defendant. Id. at 180. The Supreme Court stated that within the context of RSA 28, a statutory scheme referring to the county commissioners, a "county institution" is a county department that is "under the jurisdiction of the county commissioners . . . *such as* the department of corrections, county farm, county nursing home and county welfare office." Id. at 180 (internal quotations and citations omitted) (emphasis added). Furthermore, the Court stated, "*[w]ith respect to deputy sheriff positions in particular, we held [in Daniels] that "the sheriff by virtue of his office has the sole authority to determine who will occupy the deputy sheriff positions . . . and what their functions will be."* Id. at 181 (emphasis added). Like Daniels, Trachy is a decision which appears to be specifically related to deputy sheriff positions in particular.

The Sheriff contends that the holding in Trachy should be broadened to stand for the proposition that the Sheriff's Department, in its entirety, is not under the jurisdiction of the Commissioners. However, the Court is not persuaded in this argument and declines to do so. The express language in Trachy recognizes that the holding in Daniels was narrow and related specifically to deputy sheriffs, who are constitutional officers like the Sheriff. Additionally, in Trachy, the New Hampshire Supreme Court's use of the language "*such as*" does not remove the entire Sheriff's Department from the jurisdiction of the Commissioners, it merely distinguishes the county institutions that are under the Commissioners jurisdiction *in their entirety*, from those county institutions that are not.

The Sheriff's Department, as a constitutional office, is *not* under the Commissioners' specific jurisdiction because the Sheriff's law enforcement duties are constitutionally mandated. However, this does not remove the remaining employees within the Sheriff's Department from ancillary governance of the Commissioners. Nor does this remove the Sheriff from the ambit of the Commissioners regarding county-wide policies and procedures, which do not directly impact the Sheriff's provision of law enforcement duties.

The Court, therefore, makes the following overall finding. The Sheriff has exclusive authority to control the provision of law enforcement services within his department and the terms and conditions of employment of deputy sheriffs, so long as the Sheriff complies with the overall budget as adopted by the County

Convention. The Commissioners may not interfere with the Sheriff's direct provision of law enforcement duties.

The Commissioners have responsibility for overall day-to-day county financial management and control of county assets and liabilities, except as may be limited by the powers granted to the County Convention. The Commissioners, therefore, have authority to implement administrative policies and procedures to safeguard the County's assets and monitor the County's financial liabilities, and the Sheriff must cooperate with these county-wide policies and procedures, so long as they do not directly interfere with the Sheriff's ability to provide law enforcement services within the county.

Non-deputy positions within the Sheriff's Department, such as clerks, dispatchers and other support employees, would come under county-wide administrative personnel policies and procedures governing general terms and conditions of their employment, subject to the further conclusions noted herein. The Commissioners, however, do not have authority to interfere with the terms and conditions of the deputy sheriffs' employment, so long as the Sheriff complies with the overall budget constraints relating to the deputy sheriffs' employment. Further, if the administrative and ancillary policies and procedures implemented by the Commissioners materially conflict with, or interfere with the Sheriff's constitutional authority to provide law enforcement services, the Commissioners' policies must yield to the Sheriff's constitutional mandate. Within this broad framework, the Court will address the specific issues raised by the parties.

ISSUES OF MANAGEMENT OF STAFF

The first specific issue the Court addresses is whether the Sheriff has exclusive power to hire and fire and set the terms and conditions of employment for all personnel working in the Sheriff's Department. Pursuant to RSA 104:3, RSA 104:3-e and RSA 104:4, the Sheriff has express statutory authority to appoint deputies and special deputy sheriffs. RSA 104:3 (2001); RSA 104:3-e (2001); RSA 104:4 (2001). Express statutory authority to discharge deputy sheriffs has also been granted to the Sheriff. RSA 104:27 (2001). The Sheriff, however, does not appear to have express or exclusive statutory authority to hire or fire non-deputy employees within the Sheriff's Department. Alternatively, the legislature has granted the Commissioners authority to employ as many clerks and agents as they "deem necessary." RSA 28:10 (2000). The legislature has also mandated that the Commissioners establish policies and procedures for the "discharge, removal, or suspension" of these employees. RSA 28:19-a (2000).

The Rockingham County Human Resources Director does not become directly involved in hiring and firing deputy sheriffs. Rather, the County human resources officials provide personnel administration support. The Human Resources Director, for example, does entrance interviews relative to benefits and other orientation functions. Additionally, the Human Resources group administers payroll and benefit changes. The Human Resource Director notes that department officials and the Sheriff can request exceptions from standard county personnel policies.

As previously discussed, Trachy grants the Sheriff exclusive authority to hire and fire deputies and to set the terms and conditions of their employment, so long as the Sheriff stays within the overall budgeted amount approved by the County Convention. The Sheriff, therefore, has exclusive authority to establish overtime compensation and other terms and conditions of employment directly affecting the deputy sheriffs. The method of determining overtime compensation for deputy sheriffs may be different from the overtime compensation policies and procedures established by the Commissioners. This difference is necessary to enable the Sheriff to administer the efficient delivery of law enforcement services within the County.

For example, the Sheriff's Department is responsible for transporting prisoners and persons requiring emergency mental health hospitalizations. The deputy sheriffs must be available to complete these duties at various times of the day or night. Consequently, a deputy sheriff may have to work longer than a scheduled eight hour shift, may have to come in to complete these duties on a holiday, or may be requested to come in while the deputy is on vacation leave. The Sheriff requires flexibility to determine compensation for these services, which may not necessarily be the same as county-wide policies and procedures instituted by the Commissioners. The Court concludes that the Sheriff has this authority.

Similarly, the Court concludes that the Commissioners do not have the authority to mandate pre-approval of conference, training and continuing education expenses for the sheriff and his deputies. These items relate rather

directly to the management, control and qualifications of the deputies and are under the supervision of the Sheriff. The Commissioners, however, do not appear precluded, however, from requiring appropriate documentary back-up for payment requests.

The Sheriff, however, is not free of county-wide policies and procedures that do not directly and materially relate to the Sheriff's provision of law enforcement services. For instance, deputy sheriffs are not relieved of county-wide sexual harassment policies and procedures. The Sheriff must also comply with county-wide fiscal policies and procedures that do not directly affect the provision of law enforcement services.

Audit standards apparently require that payroll be determined from source documents, or that the source documents accompany compilations. The Sheriff has declined to submit those original records, or copies, to the County Finance Office. The records, however, are physically available for review at the Sheriff's Department. It is ultimately the County that is responsible for employee salaries and benefits. The Sheriff, as an official, is not an entity that can raise and expend taxes. The Court is not persuaded that the Sheriff is shielded from providing the finance office with original Sheriff Department's payroll records. This information, and the method of reporting and collecting it, is reasonably necessary to the County's financial management, accounting and auditing responsibilities.

The method of reporting deputy sheriffs' salaries and the location of the time card sheets do not appear to directly interfere with the Sheriff's law

enforcement responsibilities. The Commissioners, however, do not have authority to change or interfere with the method the sheriff has used to determine overtime compensation and salaries for deputy sheriffs. This remains within the purview of the Sheriff.

The holding in Trachy does not appear to remove non-deputy personnel within the department from county-wide personnel requirements. See supra at 15. Neither has the legislature expressly done so. The legislature did, however, expressly grant authority to the sheriff of Hillsborough County to "[e]mploy such clerk hire as he deems necessary." RSA 104:30 (2001). The petitioner suggests that it would be "anomalous" for this Court to conclude that the sheriff of Hillsborough County could hire civilian personnel, but not the sheriffs of all other counties. See Petitioner's Supplemental Memorandum of Law Regarding the Power to Hire and Fire Sheriff's Department Personnel at 1. The Court declines to adopt this argument. The language of RSA 104:30, grants that statutory authority to the sheriff of Hillsborough County. The Court therefore, does not extend that statutory grant of authority to sheriffs in other counties.

The legislature has granted the Commissioners express authority to hire and fire administrative clerks and ancillary employees working within the County. See RSA 28:10 (2000); RSA 28:19-a (2000). Therefore, employees within the Sheriff's Department, other than deputy sheriffs, are not immune from county-wide personnel policies and procedures that have been adopted and implemented by the Commissioners. Thus, the Commissioners have the authority to set terms and conditions of their employment via county-wide

personnel policies and procedures covering such items as sexual harassment, workers compensation, calculation of overtime, pay grades and pay rates.

It also bears noting that while the non-deputy staff may be civilians, they function within a command or department structure established for law enforcement purposes. Thus, the Sheriff may establish further standards that meet those requirements.

BUDGETARY PROCESS ISSUES

The next issue to be addressed is the relationship of the Sheriff and the county-wide budget process which is mandated by statute. The legislatively mandated county-wide budget process is as follows. The Commissioners are required to deliver accurate financial statements reflecting the financial status of the County to the County Convention, pursuant to RSA 24:21. RSA 24:21 (2000). RSA 24:21-b, which specifically applies to Rockingham County, also requires the Commissioners to provide to the County Convention, "[t]heir itemized recommendations of the sums necessary to be raised for the county in the following fiscal year." RSA 24:21-b, I(a) (2000). In addition, the Rockingham County Commissioners are required to calculate an "[e]stimate of capital expenditures which they are requesting to be expended in the following fiscal year . . ." and submit this recommendation to the County Convention. RSA 24:21-b, I(b) (2000). Finally, "[I]f the county convention does not adopt its annual budget by the time specified, the budget, as recommended by the commissioners shall take effect." RSA 24:14, II (2000).

In order to accurately assess the County's financial status, budgetary needs and projected capital expenditures, the Commissioners must rely on individual departmental budgets, which have been submitted to them. Furthermore, county officers are required to file annual reports concerning the operations of the department, pursuant to RSA 30:1 (2000). These reports are required to be uniform in nature and must contain specified information the legislature has detailed in RSA 30:3, I. RSA 30:3, I (2000). Furthermore, "[t]he reports of the several officers [including the sheriff] *shall be submitted to the county commissioners in as much detail as the commissioners may require.*" RSA 30:3, II (2000) (emphasis added).

The legislature appears to require that the Sheriff submit the Sheriff Department's financial data to the Commissioners in such detail as the Commissioners may reasonably require. Additionally, the budget process grants the Commissioners authority to compile financial information from all county departments in order to accurately reflect the County's financial position and appropriation requirements. The Court therefore concludes that the Sheriff is required to comply with this process. This is a county-wide process, which has not been established by the petitioner to materially interfere with the Sheriff's law enforcement duties and operations.

The County's ability to accurately account for public funds, estimate appropriations and create accurate financial statements, which enable the County to apply for and obtain loans if it should so require, is crucial. It also

bears noting that under the processes to date, the County has enjoyed a favorable credit rating.

ISSUES OF LINE ITEM TRANSFERS

The Court next addresses the authority to make line item transfers within the Sheriff's Department budget so long as the amount does not exceed the total amount of the budget approved by the County Convention. Counties are mandated by statute to have line item budgets, and the Commissioners are authorized to transfer appropriations between line items, so long as the request does not exceed the total sum of appropriations, "unless otherwise ordered by the county convention." See RSA 24:15 (2000). The Commissioners *may* be required, by the County Convention, to "[o]btain written authority from the executive committee before transferring any appropriation or part thereof under RSA 24:15." RSA 24:14, I (2000) (emphasis added). Additionally, pursuant to RSA 24:14-a, the Commissioners are granted the authority to apply for supplemental appropriations, pursuant to a procedure detailed in the statute. See RSA 24:14-a (2000). However, both the Commissioners and county officials are expressly authorized to apply to the executive committee for emergency appropriations that exceed the adopted budget. See RSA 24:15, I (2000).

The Sheriff asserts that the statutory scheme outlined above does not expressly grant the Commissioners exclusive power to make line item transfers within the budget. He asserts, therefore, that it should be interpreted to grant the Sheriff and other constitutional officers the power to make line item transfers

within their approved department budgets. In the alternative, the petitioner submits that RSA 24:15, I, should be broadly interpreted to grant the Sheriff and other constitutional officers the authority to independently present requests for line item transfers within their own budgets to the County's executive committee.

In matters of statutory interpretation, the Court first turns to "[t]he language in the statute itself." Snow v. American Morgan Horse Assoc., 141 N.H. 467, 471 (1996). "[W]here the statutory language is ambiguous or where more than one reasonable interpretation exists, [the Court] review[s the] legislative history to aid in [the] analysis." Hooksett Conservation Comm'n v. Hooksett Zoning Bd. of Adjustment, 149 N.H. 63, 65 (2003) (internal citations omitted). When considering a statute's legislative intent, the Court considers it in "[l]ight of the policy sought to be advanced by the *entire statutory scheme*." Id.

In the present case, the statutory scheme governing the County's budget process, and line item transfers, does not appear to be ambiguous. The County Convention has exclusive authority to adopt the budget, as presented by the Commissioners. The constitutional officers are required to provide all requested budget and financial information to the Commissioners. Within the budgetary and line item transfer process, the legislature has specifically identified the constitutional officers when granting powers or designating duties to them. For instance, the legislature identifies constitutional officers as being one of the county entities with the power to request emergency appropriations directly from the County Convention. See RSA 24:15 (2000). There does not appear to be an express grant of authority from the legislature to the Sheriff conferring power to

make line item transfers. The Court declines to infer that authority from the Sheriff's constitutional mandate to provide law enforcement services within the County.

Additionally, Daniels also appears to provide guidance on this issue. In Daniels, the New Hampshire Supreme Court noted that the County Convention, through the budgeting process, has the power to "[c]onsider and decide that the county's interest would be better served by decreasing the law enforcement support previously given by the sheriff's department to the towns in the county." Daniels, 115 N.H. at 451. Unless the budget, as adopted by the County Convention, is "[a]rbitrary and capricious or in such an amount as will, for all practical purposes, prevent the sheriff from performing a legally mandated function of his office it cannot be declared illegal or invalid." Id. Furthermore, in Daniels, the Court held that the County Convention, through the budgeting process, has the authority to determine a specific line item in the Sheriff's budget, such as salaries and expenses of deputy sheriffs, which directly affects the sheriff's constitutional duties. Id. at 452. However, *within that line item budget*, the Sheriff has sole authority to determine who will occupy the positions and what their functions will be. Id. (emphasis added).

Accordingly, both a statutory interpretation of the budget process and line item transfers, and the holding in Daniels does not indicate that the Sheriff has unfettered authority to make line item transfers within the Sheriff Department's budget. See 80 CJS Sheriffs and Constables §66 (2000). The County Convention has the authority to adopt the County's budget. The Commissioners

have the authority to make line item transfers between county departments so long as they comply with the legislatively mandated procedures contained in RSA Chapter 24, and so long as the Commissioners do not interfere with any of the Sheriff Department's constitutional officers, or any items that would directly interfere with the Sheriff's ability to provide law enforcement services to the County.³ Within a specific line item that directly relates to the Sheriff, the sheriff's deputies or the direct provision of law enforcement duties, the Sheriff has exclusive authority to manage the funds so long as he does not exceed the overall amount budgeted for that line item.

ISSUES OF SPENDING FREEZE

In October, 2000, the Commissioners instituted a spending freeze applicable to all county offices and agencies. This particular freeze related to the purchase of goods and services, and was initiated because of an unanticipated increase in expenditures for the nursing home.

The Court concludes that consistent with prudent fiscal management matters, the Sheriff is not immune from county-wide fiscal vicissitudes. The Court would note that if county funds were finite, and became more limited, it would be inapposite to say that the Sheriff could not be required to absorb sacrifices similar to those called for in regards to other departments.

The Court would note, however, that if a freeze were requested, the Sheriff, as a constitutional officer dealing with law enforcement, would be the

³ It appears that periodically, the Commissioners performs "sweeps" of the various departments appropriations to determine if funds are available for transfer to areas that are over-budget.

entity to determine where the reduction would take place within the Sheriff's Department. Thus, for example, if the Sheriff were required to seek to save certain dollars, the Sheriff would have the authority to determine where to achieve those savings while continuing to meet the Sheriff's Department's mission critical purposes.

ISSUES OF COMPETITIVE BIDDING

The Court next addresses whether the Sheriff has authority to conduct, manage and award competitive bids for the Sheriff's Department without involvement of the Commissioners. The petitioner submits that RSA 28:8⁴ and RSA 28:8-f⁵ should be narrowly interpreted. The petitioner contends that because there is no express language to the contrary, the Sheriff, as a constitutional officer, is responsible for conducting the competitive bidding process within his functions and is not required to comply with the county-wide policies and procedures governing competitive bidding as adopted by the Commissioners.

In various bid and contract matters, the Sheriff has referred to the Sheriff's Department as the responsible entity. The Sheriff, however, does not object to meeting county-wide bid requirements. Rather, the Sheriff submits that he, as Sheriff, is responsible for awarding the bid.

⁴ RSA 28:8 is contained in the chapter applying to County Commissioners and is entitled Competitive Bidding on Purchases.

⁵ RSA 28:8-f is contained in the same chapter and specifically applies to Competitive Bidding in Rockingham County.

The Commissioners respond that RSA 28:8 and 28:8-f must be interpreted within the larger context of an overall statutory scheme addressing county governance and financial management. Therefore, the respondents assert they have the statutory authority to establish policies and procedures relating to competitive bidding, which would enable them to complete their general financial management and oversight responsibilities.

The legislature has expressly granted the Commissioners authority to "[p]urchase personal property for the use of the county *and its officers*" as well as authority to sell county personal property that is no longer needed. RSA 28:6 (2000). No similar powers have apparently been statutorily granted to the Sheriff. Furthermore, a sheriff has no authority, in the absence of statute, to pledge the credit of the County or create a county debt. 80 C.J.S. Sheriffs and Constables §67 (2000). Generally, the Sheriff cannot pay or agree to pay, or incur any liability for the payment of, any sum of money for which the County Convention has not made express appropriation. RSA 24:15, I (2000). Nor can the Sheriff agree to pay, make payment or incur liability in excess of the amount appropriated by the County Convention. Id.

Certain statutory provisions, also, address competitive bidding processes specifically within Rockingham County. As noted in RSA 28:8-f (2000):

Competitive Bidding in Rockingham County.

I. The provisions of this section shall apply to all county departments in Rockingham county, and to the offices of county sheriff, county attorney, county treasurer, and register of deeds in Rockingham county.

II. Any purchase of equipment, materials, services, or leases made by Rockingham county in an amount exceeding \$5,000 shall be by competitive bidding, provided that the county commissioners by an affirmative vote of all 3 commissioners may waive the provisions for such bidding. In case the commissioners so vote, a copy of such action shall be recorded in their offices with a statement of the reason therefor and such record shall be open to public inspection. Purchases of equipment, material, services, or leases to be provided at different times where the cost of a single order or delivery may be less than \$5,000 but the total purchase exceeds that amount shall be construed as coming within the provisions hereof requiring competitive bidding.

The bidding statute expressly grants the Commissioners authority to waive the competitive bidding process so long as they comply with the procedures enumerated in RSA 28:8-f, II. However, the petitioner is correct in his assertion that RSA 28:8-f does not expressly grant the Commissioners authority to control the competitive bidding process. The Court, therefore, turns to the legislative history of RSA 28:8-f to examine the intent of the legislature.

HB 437 was the Senate bill that became RSA 28:8-f. See Senate Journal, April 25, 1995 at 536-37. The Amended Analysis states, in relevant part:

the Rockingham county commissioners shall have authority over the competitive bidding process for purchases of equipment, materials, services and leases, and that this applies to all county departments and to the offices of county attorney, county sheriff, county treasurer and registry of deeds.

Id. at 537. In addition to the legislature's intent that the Commissioners have authority over the competitive bidding process, the Court concludes that RSA 28:8-f, must be considered in context of the overall statutory scheme relating to

county governance and financial management as it is enumerated in relevant portions of RSA 23, RSA 24 and RSA 28.

The Commissioners are responsible for managing and overseeing county appropriations as those appropriations have been approved by the County Convention in the annual budget. The Commissioners are also mandated to prepare accurate and uniform financial statements detailing the county finances and county assets and liabilities on an annual basis. This information is necessary for efficient administration of the County and its finances. Without accurate information, the County would be unable to determine the amount of taxes needed to be levied in order to meet its financial responsibilities. It would also be unable to obtain outside financing for large capital expenditures the County requires.

The County is the corporate entity ultimately responsible for liabilities created by county institutions and departments. The County, therefore, has a responsibility to monitor financial transactions within its institutions that create potential liabilities for it. The Commissioners through a broad statutory scheme have the authority and responsibility for monitoring county liabilities. County-wide policies are necessary to allow the Commissioners to fulfill this responsibility. An untenable result would be created if constitutional officers had independent authority to enter into competitive bids without the Commissioners' knowledge. The County's Finance Director, however, has indicated in the context of fiscal controls, that so long as uniform procedures are set up and

followed concerning bidding, audit-wise, the constitutional officer would be able to award a bid.

The County must know the full nature and extent of liabilities created on its behalf, and the Commissioners would need to know the exact nature and extent of those liabilities in order to complete its statutorily mandated financial oversight functions.⁶ Standardized county-wide competitive bidding policy and procedures do not materially encroach upon the Sheriff's ability to complete his law enforcement duties. For the foregoing reasons, the Court finds that the Sheriff is not excused from the county-wide competitive bidding policy and procedures so long as they do not interfere with his provision of mandated law enforcement services to the County.

ISSUES OF THIRD PARTY CONTRACTS

For many of the same reasons noted above, the Court concludes that the Sheriff's entry into contracts involving the provision of security services to third parties is a responsibility from which the Commissioner's are not excluded as to those aspects within the Commissioner's purview. The Sheriff's Department provides security services and details to various third parties including the Manchester Airport, the Deerfield Fair, Laconia Motorcycle Week, and the Administrative Office of the Courts. Evidence submitted by both parties support

⁶ The County's auditor has noted that audits that are prepared must meet Generally Accepted Accounting Principles and that such audits are relied upon by lenders, bankers and bonding authorities and the commissioners. In order to effectuate audits, and cost-effective audits, appropriate internal controls are required of the audited entity. To the extent possible, parties seek an "unqualified" opinion. That is to say, an audit opinion without qualifications. Failure to properly maintain back-up to payroll can potentially result in a qualified audit, or an audit reflecting

the fact that these contracts provide a significant source of revenue for the County. Both parties also agree that the County incurs not insignificant obligations and potential liabilities in connection with these contracts.⁷

The County appears to be the only entity among the parties that has been provided express statutory authority to enter into contracts. RSA 23:1 (2000). Furthermore, the Commissioners would need to have knowledge of, and be a party to these contracts, because the Commissioners are responsible for managing and overseeing the County's revenue and appropriations. Additionally, the Commissioners are responsible for meeting the obligations and reporting potential liabilities incurred by the County through these contracts.

In short, the Commissioners must necessarily be involved with financial matters contained in the contracts as well as obligations and liabilities created by the contracts, such as workers compensation, general liability coverage and general accounting functions. However, the Commissioners do not have the authority to control how the deputy sheriffs are deployed, the terms and conditions of their pay during these details, or the logistics of coordinating the security services being contracted for. Petitioner has acknowledged that the Commissioners have not caused interference with his ability to fulfill the contractual obligations once those contracts were entered into.

a disclaimer lack of information. Of particular concern are issues of accrual of sick days, compensatory time and vacation and the accrued liabilities for those expenses.

⁷ For example, in Defendant's Exhibit 27, a document prepared by the Sheriff's Department relating to the Manchester Airport, it had been noted that: "Another concern was, that in spite of the airport fully funding workers' compensation insurance premiums, if an employee were to be injured, the county could incur liability long after the expiration of any contract. This is a valid concern. Because the county is self-insured, disability related costs could be incurred for the life of the injured employee." *Id.* at 11.

The Court concludes that the Commissioners must be involved in the execution of contracts involving the provision of security services to third parties using deputy sheriffs. However, within the overall contract terms the Commissioners may not interfere with the Sheriff's performance of his contracted-for law enforcement duties.

RULINGS ON DEPOSITION OBJECTIONS

P 24, L 10, sustained; P32, L17, overruled; P34, L14, sustained; P38, L22, sustained; P61, L6, sustained; P61, L10, sustained; P65, L 2, overruled; P68, L20, overruled; P69, L14, overruled; P70, L18, overruled; P86, L20, overruled; P87, L2, overruled; P89, L1, overruled; L89, P16, overruled; P93, L12; P95, L15, overruled; P103, L21, overruled; P108, L16, overruled.

CONCLUSION

The Sheriff's Petition for Declaratory Judgment and other Equitable Relief is granted in part and denied in part consistent with the findings contained in this order. No costs are assessed.

RESPONDENT'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

The Court has addressed the respondent's requests for findings of fact and rulings of law. The requests may have been granted or denied, or referred to the decree, or otherwise responded-to, for reasons other than the cited-to portion of the record, or exhibits, or case citations contained in the request.

PROPOSED FINDINGS OF FACT: 1, see decree; 2, granted as a partial description of duties; 3, see decree; 4, see decree; 5, granted; 6, see decree; 7, granted; 8, granted; 9.a. - g., granted; 10, see decree, but Sheriff has a business office; 11, granted; 12, granted; 13, see decree 14, granted; 15, granted as to applying comity as to certain matters; 16, argumentative; 17, granted; 18, granted; 19, granted; 20, granted; 21, granted; 22, granted; 23, granted; 24, granted; 25, granted; 26, granted; 27, granted; 28, granted; 29, granted; 30, granted; 31, granted; 32, granted; 33, granted; 34, granted; 35, granted; 36, granted; 37, argumentative as phrased; 38, granted; 39, granted; 40, granted; 41, granted; 42, granted; 43, granted; 44, granted; 45, see decree; 46, granted; 47, granted; 48, granted; 49, granted; 50, granted; 51, granted; 52, granted; 53, granted; 54, granted as to following bid procedures in the past; 55, granted; 56, see decree; 57, granted; 58, granted; 59, granted; 60, granted; 61, granted; 62, granted; 63, granted; 64, granted; 65, granted; 66, granted; 67, granted; 68, granted; 69, granted; 70, granted, replacing "acceded" with "followed;" 71, granted; 72, granted; 73, granted, but Convention may not delegate or confer authority beyond statutory bases; 74, granted; 75, granted; 76, granted; 77, granted; 78, granted; 79, granted; 80, granted; 81, granted; 82, granted; 83, granted; 84, granted; 85, granted; 86, granted; 87, granted; 88, granted; 89, granted; 90, granted; 91, granted; 92, granted, but see decree; 93, granted; 94, granted; 95, granted; 96, granted; 97, granted; 98, granted; 99, see decree; 100, granted as to adopting Personnel Policies and Procedures, see decree; 101, granted; 102, granted; 103, granted; 104, granted; 105, acquiescence does not

necessarily constitute a waiver; 106, granted; 107, granted; 108, granted; 109, granted; 110, granted; 111, granted; 112, granted; 113, granted as only a summary of the process; 114, granted; 115, granted; 116, granted.

PROPOSED RULINGS OF LAW: 1, granted; 2, granted; 3, granted; 4, granted; 5, granted; 6, neither granted nor denied; 7, see decree; 8, see decree; 9, granted; 10, granted; 11, granted, as to worker's compensation statutes; 12, granted; 13, granted, under worker's compensation statutes; 14, granted, but see decree; 15, granted; 16, granted; 17, granted; 18, granted; 19, see decree; 20, granted; 21, granted; 22, granted; 23, granted; 24, see decree; 25, see decree; 26, granted; 27.a. granted; 27.b. "The salaries of county attorneys, sheriffs and county treasurers shall be paid from the county treasury in equal payments as determined by the county commissioners;" 27.c. through 27.q., granted; 28, "The sheriff is accountable to the county commissioners for money in his hands belonging to or for the use of the county, and for fines, forfeitures and costs, for which warrants or other process are issued to him by the clerk, unless he satisfies the commissioners that the same have not been and cannot be collected." and "The sheriff shall, once in each year, submit to the county commissioners, at a term of the superior court, a statement in detail of all services of himself or of his deputies for which the county is chargeable, and such amount shall be allowed thereon as is just. No such account shall be allowed unless presented within one year after the service was performed;" 29, see decree; 30, granted; 31, granted; 32, granted; 33, granted; 34, granted; 35, granted; 36, see decree; 37, see decree; 38, see decree; 39, neither granted nor

denied; 40, granted; 41, granted; 42, granted; 43, granted; 44, statute speaks for self; 45, statute speaks for self; 46, statute speaks for self; 47, see decree; 48, see decree; 49, see decree; 50, see decree; 51, granted; 52, see decree; 53, see decree; 54, see decree; 55, see decree; 56, see decree; 57, granted; 58, see decree; 59, see decree; 60, see decree; 61, see decree; 62, granted; 63, see decree; 64, see decree; 65, see decree; 66, granted; 67, see decree; 68, granted; 69, granted; 70, granted; 71, granted; 72, granted; 73, granted; 74, granted; 75, granted; 76, granted; 77, granted; 78, granted; 79, granted; 80, granted; 81, granted; 82, granted; 83, granted; 84, granted, but see decree; 85, granted, but see decree, the Sheriff is not bound by handbook provisions that may exceed commissioner authority; 86, granted; 87, granted; 88, granted; 89, see decree; 90, see decree.

SO ORDERED.

[11-25-03]
Date

Philip P. Mangones
Presiding Justice