

KRISTA ROGERS, LYCOMING  
COUNTY CONTROLLER  
Plaintiff

:IN THE COURT OF COMMON PLEAS  
:OF LYCOMING COUNTY, PENNSYLVANIA

:

:

Vs.

:No. 1228 of 2021

:

TONY MUSSARE, RICK MIRABITO, :  
SCOTT METZGER, LYCOING COUNTY :CIVIL DIVISION  
BOARD OF COMMISSIONERS  
Defendants

Before the court is an ongoing dispute between the Lycoming County Controller and the Lycoming County Commissioners. By way of history, this matter has some overlap to a prior case captioned Board of Commissioners of Lycoming County v. Krista Rogers, filed at number 21-0365. That matter was disposed of by order and opinion dated July 14, 2021. That case, which sought injunctive relief against the controller resulted in a dismissal of the Commissioner's complaint. No appeal was taken.

The present matter filed by the Controller seeks injunctive relief and a declaratory judgement. Since this case seems to hinge on statutory interpretation, the parties were given an opportunity to narrow the issues which they were unable to do. Thereafter, the court invited them to submit briefs on outstanding issues. The briefs have been received as well as various replies and adjudication of this matter is appropriate.

#### I. FINDINGS OF FACTS

1. Plaintiff Rogers is the duly elected Controller of Lycoming County, while defendants are the elected Commissioners of Lycoming County.
2. Prior to April 2021, the controller had assumed responsibility for the county's general ledger, payroll, and accounts payable functions.

3. Prior to the 2019 amendments of the County Code, these functions were handled by the county's fiscal office.
4. In April 2021, the Commissioners, being unhappy with the Controller's performance, removed these functions from Controller's office and reassigned four of her employees to the County office of budget and finance.
5. The Controller's complaint argues that this transfer of functions and employees, done over the objections of the controller, is improper and contrary to the provisions of the County Code.

## II. DISCUSSION

Initially, the court must determine if this matter is appropriate for adjudication at this time. The Controller argues that the underlying issue is a matter of law which can be decided without hearing or testimony. The Commissioners have taken a confusing position, arguing both that evidentiary hearings are necessary, while at the same time conceding that the ultimate issue is a question of statutory interpretation as noted on page 13 of their brief filed in response to the court order of April 8, 2022. The court agrees that ultimate matter is one of statutory construction and will proceed on that basis to determine whether or not declaratory relief as sought in count two of plaintiff's complaint is appropriate.

As to the Commission's reliance on section 1701 of the County Code, this reliance is misplaced. While the ultimate responsibility for fiscal matters is in their bailiwick, they cannot usurp the statutory authority of other elected officials such as the controller.

Section 1702 of the County Code proscribes the functions of the controller, subject to the provisions of section 1701. Adano v. Cini, 656 A. 2d 576 (Pa. Cmwlth. 1995). That case however has to do only with controller's refusal to perform a mandatory obligation, specifically

the ministerial duty of deducting union dues from payroll. As such, this case offers little guidance.

Section 1705 of Title 16, the County Code, makes it clear that the controller is to maintain the county financial records and "...shall select and administer the form and manner of maintaining the official financial records in connection with the fiscal affairs of the county." The county makes a strained argument on the word "maintain" but fails to give proper meaning to the rest of the statute. In the overall context of the Controller's functions, her responsibility is clear. Otherwise, the above language would be meaningless and contrary to the rules of statutory construction. 1 Pa. C. S. A. 1921 (a).

Clearly the controller has no authority to manage the county's financial affairs. However, the controller is an independent elected County official whose employees are essential to performing the functions of her office. As noted by the controller, the Commissioners broad authority is tempered by the limitation "...in accordance with the provisions of this act and other applicable law." 16 P. S. 1701.

Both parties argue section 1705 County Code reinforces their respective positions. The language of that section is broad and details that the controller shall "...maintain a full and regular set of financial records including the general ledger." Id. While the Commissioners argue that under their proposed scheme the controller has access to these documents, that is not with the County Code provides for this elected official. The case of Ricci v. Matthews, 2 A. 3d 1297 (Pa. Cmwlth. 2010) offers some insight even though it deals with a different class of county. That case, which related to a dispute between judges and commissioners did delineate commissioner responsibility as opposed to those of row officers. The Commonwealth Court pointed out that row officers supervise their employees, including the power to appointed and

remove employees, and that this power is exclusive. Hazel v. D'lorio, 433 A 2d. 162 (1981),  
affd. 466 A 2d. 1346 (1983). The clear import of Ricci is that Commissioners lack authority to  
unilaterally transfer the functions of a row officer and her employees.

The Controller notes that section 1750 of the code, dealing with accounts and payroll  
functions is the responsibility of the controller in counties that have a controller. This language  
strongly reinforces controller's position and is contrary to the commissioners usurpation of her  
duties and staff.

After careful consideration and a review of all the filings in this matter is not  
appear that there are any disputed issues of material fact, present matter is one of law. Judgment  
on the pleadings is an option available to the court based on current status of the record in this  
case and the current version of the declaratory judgment act, 42 B. S. 7531, et seq. Paylor v. The  
Hartford Ins. Co., 640 A 2d. 1234 (1994). A declaratory judgment will be issued against the  
commissioners and in favor of the controller. An appropriate order follows.



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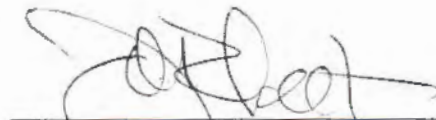
ORDER

AND NOW, July 1, 2022, pursuant to the provisions of the declaratory judgment act, judgment on the pleadings is entered in favor of the controller Krista Rogers and against the commissioners, who will promptly restore to the controller all accounts, ledgers, and other documents as well as the four subject employees, all being essential for the performance of the Controller's statutory duties.

The request for injunctive relief is denied as moot.

As to the issue of attorney's fees, the Court reserves decision pending submissions from the parties within 15 days from this date.

BY THE COURT:



John B. Leete, Senior Judge  
Specially Presiding

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Trevose PA 19053

J. David Smith, Esq.