IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTA, ROGERS CONTROLLER :
LYCOMING COUNTY CONTROLLER :
Plaintiff : CV 21-01228
v. :
:
TONY MUSSARE, RICK MIRABITO, :
SCOTT METZGER, LYCOMING :
COUNTY BOARD OF COMMISSIONERS:
Defendant :

OPINION AND ORDER

I. Findings of Fact:

1. Krista Rogers is the duly elected Controller of Lycoming County.
2. Scott Metzger, Tony Mussare, and Rick Mirabito are the duly elected Commissioners of Lycoming County.
3. For many years, payroll, accounts payable, general ledger functions were performed by the county's fiscal services office. This system was in place from 2004 until 2019.
4. Following a statutory change, the Controller approached the Commissioners and asked that the responsibility for payroll, accounts payable, and general ledger functions be transferred to her office.
5. The Commissioners agreed and from sometime in 2019 until April 2021, these functions were performed in the Controller's office.
6. In April 2021, due to dissatisfaction with the Controller, the Commissioners returned these functions and the Controller's employees responsible for performing these functions to the office of budget and finance where these functions had been performed prior to 2019.
7. In earlier litigation, Commissioners acknowledged that they took this action due to their dissatisfaction with the Controller's performance of some of her duties, as detailed in prior litigation filed in the case of Board of Commissioners of Lycoming County v. Krista B. Rodgers, CV 21-0365, Lycoming County Court of Common Pleas.

8. The Controller did not undertake legal action at that time, although she did protest the transfer and requested the Commissioners to return the functions and employees to her office.
9. Through various electronic means, the Controller can review all the transactions and ledgers, and take exception where appropriate. The Controller's office has access to all the information in the financial system as well as the supporting paper files for various invoices and other financial functions.
10. The Controller continues through this means to approve or deny invoices for payments.
11. The Controller continues to be able to print reports, access records, and revise the general ledger entries, and can access the financial system to make changes to any entry.
12. All paperwork related to the general ledger is accessible by the Controller's office at any point in time.
13. The Controller can view all transactions in the financial system and make changes or entries in the system, allowing that office to question particular transactions and obtain all documentation necessary to confirm a particular transaction.
14. The employees transferred by the Commissioners from the Controller's office are necessary to perform functions of the accounts payable, payroll and general ledger functions.
15. As presently configured, the Controller does not control the level of access she has to the county's financial system, nor does she select the form and manner of maintaining the official records of the county, nor can she maintain the official financial records in connection with the fiscal affairs, nor is she part of the process of approving processes within the Financial system.

II. Conclusions of law:

1. While the county Commissioners are managers and administrators of the fiscal affairs of the County, they may not perform duties which are specifically delineated by the County code to the elected County Controller, in counties that have a Controller.

2. Under the County Code, the general ledger is a statutory function under the responsibility of the County Controller in counties which have a Controller.
3. The County Code provides the Controller is in charge of accounts payable and payroll functions.
4. Under the current structure created, the Controller cannot perform her functions as required by the County Code, 16 P.C.S.A. Sections 1702, 1705, 1720 and 1750.
5. The employees transferred from the Controller's office into the Commissioner controlled office of budget and finance in April of 2021 are necessary for the Controller to perform her statutory functions.
6. The Commissioners lacked legal authority to transfer the Controller's employees to the Commissioner supervised office of budget and finance because the Controller is an independent row officer who has sole authority to supervise her employees.
7. The actions of the Commissioners were improper and in derogation of various provisions of the County Code.

III. Discussion:

The issue here is one of statutory construction—whether the Commissioners had the statutory authority to transfer the functions relating to the general ledger, payroll and accounts payable, and related employees to the office of budget and finance. This Court finds they did not.

Statutory interpretation is a question of law for the court. *Crown Castle NG E. LLC v. Pennsylvania Pub. Util. Comm'n*, 234 A.3d 665, 677 (Pa. 2020). The Court's objective in statutory interpretation is to ascertain the intent of the legislature. 1 Pa.C.S.A. § 1921(a). In ascertaining the intent of the legislature, the Court must presume that the legislature intends the entire statute to be effective and certain. 1 Pa.C.S.A. § 1922 Where a "general provision in a statute conflicts with a special provision in the same or another statute," the Court must construe them "so that effect may be given to both." 1 Pa.C.S.A. § 1933. "If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision." *Id.* "Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." 42 Pa.C.S.A. § 7532 "Any person interested… whose rights, status, or other legal relations are affected by a statute… may have determined any question of construction or validity arising under the statute… and obtain a declaration of rights, status, or other legal relations thereunder." 42 Pa.C.S.A. § 7533

Lycoming County is a Fifth Class Pennsylvania County, governed by the County Code. 16 P.S. § 102. County Commissioners are the responsible managers and administrators of the fiscal affairs… in accordance with [The County Code] and other applicable laws." 16 P.S. § 1701. "The [C]ontroller shall supervise the fiscal affairs of the county including the related accounts and official acts of all officers or other persons who shall collect, receive, hold or disburse, or be charged with the management or custody of, the public assets of the county." 16 P.S. § 1702(a). The County Commissioners may contract an independent auditor to prepare a report of the fiscal affairs of the county to "supplement, but not replace, the official acts and audits of the Controller." 16 P.S. § 1702(b). The Controller is statutorily responsible for maintaining a "full and regular set of financial records, including the general record," and "shall select and administer the form and manner of maintaining the official financial records in connection with the fiscal affairs of the county." 16 P.S. § 1705. The salaries and benefits of employees are determined by the Commissioners but "the exercise of such responsibilities by the county Commissioners shall in no way affect the hiring, discharging and supervision rights and obligations with respect to such employees as may be vested in the judges or other county officials." 16 P.S. § 1620. Except in counties where there is no Controller, Controller is responsible for claims and demands against the county. 16 P.S. § 1750.

The county code carves out separate powers related to the fiscal affairs of the county to both the Commissioners and the Controller. § 1701 assigns the Commissioners as the managers and administrators of the fiscal affairs of the county while § 1702(b) enables the Commissioners to organize an audit to supplement the official acts of the Controller. On the other hand, § 1702 (a) assigns the responsibility for supervision of the fiscal affairs of the county, including supervision of employees related to the fiscal affairs of the county to the Controller. § 1705 requires the Controller to select and administer the form and manner of maintaining financial records connected with the fiscal affairs of the county.

Sections 1701 and 1702 (a) are not in conflict and, as statutorily required, the court reads them in harmony. § 1701 assigns the Commissioners as the *general managers and administrators* of the fiscal affairs of the county whereas § 1702 (a) assigns responsibility for the *supervision* of the fiscal affairs of the county. This Court must presume that the legislature selected different language for these consecutive provisions purposely. It follows that the separate offices have separate roles in overseeing those affairs. This reading is reinforced by the limiting language "…in accordance with the provisions of this act and other applicable laws," in § 1701. The legislature clearly intended for § 1702 (a), among other provisions, to limit the authority granted to the Commissioners in § 1701. The broadly worded § 1701 must be read in the context of other sections of the code, including those relating to an elected county Controller. Why else would the legislature provide a mechanism for the Commissioners to audit the fiscal affairs of the county and include specific language stating that the audit supplements but does not replace the official acts and audits of the Controller? If § 1701 truly provided broad discretion of the fiscal affairs of the county, the code would not need to provide permission for the Commissioners to act in a manner they are already entitled to act. The legislature narrowed the scope of the authority it provided the Commissioners to undermine the Controller under § 1702 (b) by specifying that the Commissioners may "supplement but not replace" the acts of the Controller.

In simple terms, the interplay between § 1702 (a) and § 1701 places the responsibility for supervision of the fiscal affairs of the county with the Controller and gives agency to the Commissioners to act as a check to ensure, generally, that the fiscal affairs of the county are being managed adequately. The Commissioners are the general overseers of the fiscal affairs of the county, whereas the Controller is the supervisor who controls the everyday management of those affairs, including its employees. This reading is consistent with statutory construction canon requiring the court to read separate provisions in harmony and to give precedence to the specific provision over the general provision. 16 P.S. § 1750 for example, delegates everyday management of a specific aspect of fiscal affairs to the Commissioners only in the absence of a Controller. This is similarly consistent with § 1705 which gives authority to the Controller to select and administer the form and manner of maintaining the official financial records of the county.

The Commissioners claim, without merit, that the Controllers' access to county records, such as they provide, is adequate to fulfill these legal mandates. This position contradicts the plain language of the statutes. Section 1750 provides that the Controller is required to "... scrutinize, audit, and decide on all bills, claims and demands whatsoever against the County...". While the county Commissioners seem to somewhat agree with this proposition, much of their argument relates to the access that the Controller has under the system created by the Commissioners in 2021. The issue here is not one of access, nor ability to question transactions or print reports. Rather the question is one of the ability of Commissioners to control the functioning of an elected row officer and the employees of that office.

The employees in question were transferred without the consent of the Controller which runs afoul of the County code. While salaries and benefits are determined by the Commissioners, section 1620 the County code provides that "the exercise of such responsibilities by the County Commissioners shall in no way affect the hiring, discharging and supervision rights and obligations with respect to such employees as may be vested in the judges or other County officials." In the case of in the case of *Ricci v. Matthews*, 2 A3d 1297 (Pa. Cmwlth. 2010), *aff'd sub nom. Behr v. Matthews* 21 A3d 1187 (Pa. 2011), the Commonwealth court noted that row officers have power to appoint as well as remove employees, and further, that this removal power is 'exclusive." While the Ricci case dealt with different issues, its logic is compelling in the present circumstance. There, the Commissioners of Montgomery County adopted an ordinance restricting the political activity of the employees of county row officers. The Court found that the powers of the Commissioners were limited to the specific mandate of the County Code and that there are no provisions in the Code enabling the Commissioners to regulate row employee behavior. Here the Commissioners controlled not row employee political activity, but the very functions of the row employees related to duties that are the statutory providence of the Controller.

The Commissioners argue that the issue in the case is whether the Commissioners' actions usurp the more specific powers of the Controller because the Controller still has the ability to access all of the fiscal affairs of the county, and intervene when necessary, and that she is not locked out of the management of such affairs. In other words, the Commissioners, ironically, argue that they may control the day to day fiscal affairs of the county so long as the Controller has the power to supervise them. Even under such context, this court has determined that the Commissioners have in fact usurped the more specific powers of the Controller.

The Commissioners appear to suggest that declaratory judgment is inappropriate in a case such as this. The Declaratory Judgement act provides relief to "any person interested… whose rights, status, or other legal relations are affected by a statute… may have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status, or other legal relations thereunder." The present matter involves a question of law pertaining to a statute. The Controller is an interested person whose rights are affected by the statute, because, under the Commissioner's statutory reading, her providence over the fiscal affairs of the County, and any related employees, are substantially narrower than This Court's reading. The factual disputes noted by the Commissioners are not material relative to statutory requirements. Thus, the Court reaffirms its prior position that a judgement is appropriate as a remedy in this case and is available to the court based on the record. 42 Pa.C.S.A. § 7531 *et seq.* Declaratory judgment is entered in favor of the Controller and against the Commissioners as follows.

ORDER

And now, November 29, 2022, a declaratory judgement is entered in favor of Krista Rogers, County Controller, and against the Commissioners of Lycoming County. The court has determined that the actions of the Commissioners In removing responsibility, functions, and personnel from the Controller's office violated the County Code. The Commissioners shall forthwith return all ledgers, accounts, payroll and all related documentation to the Controller, and facilitate the return of her employees to her office, all of the same being necessary for the Controller to perform her statutory duties. Any injunctive relief is denied as moot. Plaintiff Controller is awarded the costs of suit.

By The Court,

Hon. John B. Leete, Judge

cc:
David Smith, esq.; Michael Wiley, esq.; Marc F. Lococchio, esq.
835 West Fourth Street
Williamsport, PA 1771
Michael P. Clarke, esq.; Michael L. Barbiero, esq.; Derek A. Keightly, esq.
Seven Neshaminy Interplex
Suite 200
Trevose, PA 19053