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PROTHONOTARY'S OFFICE
PERRY COUNTY

Attorneys for Plaintiffs, Barbara
Hench, Donna Jones and Kimberly
McMullen, in their official
Capacity as Auditors of Perry
County, Pennsylvania

Barbara Hench, Donna Jones and
Kimberly McMullen, duly elected,
Auditors of Perry County, Pennsylvania,
Plaintiffs

vs.

Carl Nace, Sheriff of Perry County,
Defendant

: IN THE COURT OF COMMON PLEAS
: OF THE 41st JUDICIAL DISTRICT OF
: PENNSYLVANIA PERRY COUNTY BRANCH
:
: NO.: 2014-454
:
:
: CIVIL ACTION - LAW
:

COMPLAINT

INTRODUCTION

1. Plaintiffs, duly appointed auditors of Perry County ("Auditors"), seek a declaration of rights, status, and other legal relations between themselves and the Defendant, the Sheriff of Perry County ("Sheriff"), under certain provisions of the County Code and the Uniform Firearms Act, specifically, whether the Sheriff is required to provide the Auditors with access to the complete, original unredacted documents in which the Sheriff records the receipt and disbursement of the application fees paid by applicants for licenses to carry concealed firearms, for the sole purpose of performing the Auditors' statutory duties to audit, settle and

adjust the accounts of county officers, and to audit, settle and adjust the accounts of officers in the county receiving money for use by the Commonwealth.

PARTIES

2. Barbara Hench is a duly elected Auditor for Perry County, having been sworn into office initially in January, 2008, and subsequently re-elected and sworn into office in January, 2012.

3. Donna Jones is a duly elected Auditor for Perry County, having been sworn into office initially in January, 2008, and subsequently re-elected and sworn into office in January, 2012.

4. Kimberly McMullen is a duly appointed Auditor for Perry County having been appointed and sworn into office in November, 2013.

5. Carl Nace is currently the duly elected Sheriff of Perry County.

BACKGROUND

6. Plaintiffs are required to audit, settle and adjust the accounts of all county officers of the county and to make an annual report thereof, on or before the first day of the following July, to the court of common pleas and the Department of Community and Economic Development. 16 P.S. § 1721(a) and (c). The report must be in detail, showing distinctly and separately all receipts and expenditures of the several offices, and all debts and accounts due, and the amount raised from each source of revenue, and the expenditures in detail and classified by reference to the object thereof, together with a full statement of the financial conditions of the county, and a statement of the balance due from or to such county officers. Id.

7. The Auditors are further required to audit, settle and adjust the accounts of officers in the county receiving money for use by the Commonwealth. 16 P.S. § 1724.
8. The Sheriff is required to issue licenses to carry concealed firearms to individuals 21 years of age or older, as long as it appears that the applicant is an individual concerning whom no good cause exists to deny a license. 18 Pa.C.S. § 6109(b) and (e).
9. The Sheriff collects a twenty dollar (\$20.00) application fee from each individual who applies for a license to carry a concealed firearm.
10. If the Sheriff grants an application for a license to carry a concealed firearm, he distributes nineteen dollars (\$19.00) from the application fee to Perry County, and one dollar (\$1.00) from the application fee to the Treasury of the Commonwealth of Pennsylvania.
11. If the Sheriff denies an application for a license to carry a concealed firearm, he refunds fifteen dollars (\$15.00) to the applicant.
12. An applicant for a license to carry a concealed firearm must complete the uniform Application for a Pennsylvania License to Carry Firearms. See 18 Pa.C.S. § 6109(c). The applicant must provide information including his or her name, address, date of birth, employer, and other demographic information.
13. The Sheriff maintains the information obtained from applicants for licenses to carry firearms, including a record of the receipt and disbursement of the application fee, in a ledger book or similar record for recording such receipts.
14. This ledger book or record of the Sheriff is the only source of information for the receipt of payments of the required fees by citizens applying for such licenses. No other county official has or maintains these records.

15. Other than the Auditors, there is no other individual, official, or agency that audits or otherwise reviews the accounts of the Sheriff under the County Code.

Count I
Declaratory Judgment Pursuant to 42 Pa.C.S.A. § 7533

16. Paragraphs 1-15 are incorporated herein by reference.

17. The Auditors cannot perform their statutory duties under 16 P.S. §§ 1721(a) and 1724 to audit the Sheriff's receipt and disbursement of the application fees for licenses to carry firearms unless the Auditors review the original, unredacted records where the Sheriff records the receipt and disbursement of such fees.

18. Prior to year 2013, the Sheriff provided the Auditors with access to these original, unredacted records so that the Auditors could conduct the audits as required by 16 P.S. §§ 1721(a) and 1724.

19. On prior occasions when the Auditors would review these records of the Sheriff for the sole purpose of conducting their statutory duties, they would review the records and then return them to the Sheriff.

20. The Auditors neither made copies nor any duplicates of the Sheriff records reviewed nor kept any of said records nor made any disclosure, public or private, of the records reviewed to any other person or agency.

21. The Auditors have requested that the Sheriff provide them with access to the necessary records for the purpose of conducting the statutorily mandated audits for year 2013 as required by 16 P.S. §§ 1721(a) and 1724.

22. Despite repeated requests, the Sheriff has refused to provide the Auditors with access to the necessary records.

23. The Sheriff has insisted that certain provisions of the Uniform Firearms Act, specifically 18 Pa.C.S.A. §§ 6109(1)(2)¹ and 6111(i)², prevent him from providing the Auditors with access to the complete, unredacted records needed for the audit.

24. In particular, the Sheriff contends that providing his office's records which contain, inter alia, the names and addresses of applicants is forbidden by 18 Pa. C.S. §6111(i) as disclosure to the "public." The Sheriff also contends such a disclosure is prohibited by 18 Pa. C.S. §6109(1)(2).

25. The Auditors contend that 18 Pa.C.S.A. §§ 6109 and 6111 do not prevent the Sheriff from providing the Auditors with access to the original, unredacted records required for their audit where the Sheriff records the receipt and disbursement of application fees for licenses to carry concealed firearms which involve receipt of funds received by a "county officer" and accountable to both the County and the Commonwealth.

26. The Auditors are not members of the "public" but are rather duly elected/appointed public officials that are statutorily required to review these complete and unredacted records in order to carry out their duties under 16 P.S. §§ 1721(a) and 1724.

¹ 18 Pa.C.S.A. § 6109(1)(2) provides "[n]otwithstanding any other law regarding the confidentiality of information, inquiries to the Firearms License Validation System regarding the validity of any Pennsylvania license to carry a firearm may only be made by law enforcement personnel acting within the scope of their official duties."

² 18 Pa.C.S.A. § 6111(i) provides, "[a]ll information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure."

27. The Auditors need to review the Sheriff's original, unredacted records to ensure the accuracy of the information in the audit reports that they prepare annually.

28. Although the Auditors do not suspect any misfeasance by the Sheriff, the Auditors believe and therefore aver that the failure to inspect the original, unredacted ledger is a violation of their statutory duty to the taxpayer of Perry County and the Commonwealth. In addition, the inability to audit these records weakens the internal controls endorsed by generally acceptable accounting practices and required by statute.


29. The Declaratory Judgment Act provides "[a]ny ... 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.

30. An actual controversy of justiciable nature exists between the parties that involve their rights, status, or other legal relations under 16 P.S. §§ 1721(a) and 1724, and 18 Pa.C.S.A. §§ 6109(l)(2) and 6111(i).

WHEREFORE, the Plaintiffs, Barbara Hench, Donna Jones and Kimberly McMullen, respectfully request declaratory judgment be entered in their favor and against Carl Nace, Sheriff of Perry County, Defendant, declaring that the Sheriff must provide the Plaintiffs with access to any and all original and unredacted records in which the Sheriff records the receipt and

disbursement of the application fees paid by applicants for licenses to carry concealed firearms, for the sole purpose of performing the Auditors' statutory duties to audit, settle and adjust the accounts of county officers, and to audit, settle and adjust the accounts of officers in the county receiving money for use by the Commonwealth.

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: 
Craig J. Staudenmaier, Esquire
Supreme Court ID #34996

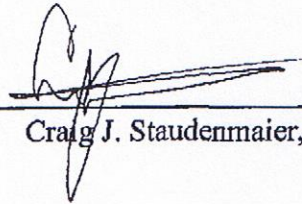
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Attorneys for Plaintiffs, Barbara Hench, Donna
Jones and Kimberly McMullen

Date: June 9, 2014

VERIFICATION

I, **Craig J. Staudenmaier**, a member of the firm of Nauman, Smith, Shissler & Hall, LLP, attorneys for Barbara Hench, Donna Jones and Kimberly McMullen, in their official capacity as Auditors of Perry County, Pennsylvania, in the *foregoing proceeding*, make this verification on behalf of the Auditors and do state that as attorney for the Auditors, I am authorized to make this Verification on behalf of the Auditors, and further state that, based on information provided to me by the Auditors, the facts set forth in the foregoing **Complaint** are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. § 4904 providing for criminal penalties for unsworn falsification to authorities.



Craig J. Staudenmaier, Esquire

Date: June 9, 2014