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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 21-00653[1]**

WILLIAM P. O'DONNELL[2]

vs.

JOSEPH P. SHEA[3] & others[4]

**MEMORANDUM OF DECISION AND ORDER
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This case arises out of a dispute between the plaintiff William P. O'Donnell, the Register of Deeds for the County of Norfolk ("Register"), and the defendants County Commissioners for the County of Norfolk ("Commissioners") and the Advisory Board for the County of Norfolk ("Advisory Board"). The Register brings claims against the defendants for declaratory judgment, relief in the nature of mandamus, and injunctive relief regarding funding for the Norfolk County Registry of Deeds ("Registry") and personnel matters with respect to its technology department. The case is before the court on the parties' cross-motions for summary judgment.[5] For the reasons set forth below, the plaintiff's motion is **ALLOWED** in part and **DENIED** in part, and the defendants' motions are **DENIED**.

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[1] This case has been consolidated with *William P. O'Donnell* v. *Joseph J. Cronin, et al.*, Norfolk County Superior Court Civil Action No. 22-01001. The court (Cahillane, J.) previously entered summary judgment in favor of the plaintiff in that case.

[2] As Register of Deeds for the County of Norfolk

[3] As County Commissioner for the County of Norfolk

[4] Peter H. Collins and Richard R. Staiti, as County Commissioners for the County of Norfolk, and the Advisory Board for the County of Norfolk

[5] The plaintiff filed a motion for summary judgment (paper no. 59.0) and, in response, the defendants filed a cross-motion for summary judgment (paper no. 59.2). The defendants subsequently filed a separate motion for summary judgment (paper no. 61.0). The plaintiff did not submit a written opposition to that motion, but the papers that he filed in support of his motion for summary judgment effectively serve that purpose.

BACKGROUND

I. Legal Background

The Register is an elected official who operates and manages the Registry under G. L. c. 36. The Commissioners manage county business and affairs under G. L. c. 34, § 14. The Advisory Board is responsible for reviewing and approving county budgets and county appropriations under G. L. c. 35, § 28B and § 32.

General Laws c. 64D, § 1, establishes an excise tax for deeds, instruments, and writings ("Deeds Excise Tax"). General Laws c. 64D, § 11, requires certain counties, including Norfolk County (the "County"), to "establish[] upon the books of [the] county . . . a fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund." The statute provides that "10.625 per cent of the taxes collected in the county . . . under this chapter [i.e., the Deeds Excise Tax] shall be transmitted to the Deeds Excise Fund . . . ." G. L. c. 64D, § 11.

General Laws c. 64D, § 12, sets forth requirements regarding the disbursement of funds in the deeds excise funds and county expenditures for the registries of deeds. The statute states:

> "(a) Notwithstanding any general or special law to the contrary, of that portion of the amounts deposited in the Deeds Excise Fund for each county from revenues collected pursuant to this chapter which represents 10.625 per cent of the taxes collected: (1) not more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (2) not less than 40 per cent shall be disbursed and expended for the automation, modernization and operation of the registries of deeds.
>
> (b) Notwithstanding any general or special law to the contrary, with respect to funds appropriated for the purposes designated in clause (2) of subsection (a) and which are not dedicated to the Deeds Excise Fund in each county under section 11, the county budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year."

G. L. c. 64D, § 12.

II. Factual Background

The following facts are taken from the summary judgment record.

A. Funding for the Registry

The Register is responsible for collecting and disbursing the Deeds Excise Tax that is paid when an instrument is recorded at the Registry. Each month, the Register distributes 10.625 percent of the Deeds Excise Tax collected the previous month to the County treasurer. Of that amount, under G. L. c. 64D, § 12(a), the County has a share of not more than sixty percent, and the Registry has a share of not less than forty percent (the "Registry's Share") which accrues in the County's deeds excise fund. Additionally, pursuant to G. L. c. 64D, § 12(b), the County provides an expenditure for the Registry known as the "County Mandate" each fiscal year.

In the past, the Registry's budgetary allocations were greater than necessary for its operations. The funds from the Registry's Share accrued over the years and the Registry accumulated a surplus. The County attributes this in part to its prior practice of calculating its annual appropriation for the County Mandate based on 102.5 percent of the amount *allocated* to the Registry the previous year instead of the amount *expended*, which the County perceives as a misapplication of G. L. c. 64D, § 12(b).

In fiscal year 2020, the County began changing its practices regarding the Registry's Share and the County Mandate. The defendants reduced the fiscal year 2020 County Mandate to an amount equal to the Registry's fiscal year 2020 expenditures. Also, the County began to require that the funds from the Registry's Share be spent before the County spends or accounts for the County Mandate, to use part of the funds from the Registry's Share towards the County Mandate, and to retain any portion of the funds from the Registry's Share that the Registry did not spend in the preceding fiscal year.

By July 1, 2023, the funds from the Registry's Share had accumulated over the years to approximately $4.2 million. On July 10, 2023, the defendants voted to transfer all or some of the funds from the Registry's Share from the deeds excise fund to the County's general fund.

The exact amounts of some of the relevant figures are disputed.

B. The Registry's Chief Information Officer

The Commissioners exercise the functions of the now-dissolved county personnel board governed by G. L. c. 35, § 48 to § 56, according to the county personnel board's rules and regulations ("Rules and Regulations"). The Rules and Regulations apply to all County employees, with some exceptions not relevant here.

The Rules and Regulations provide:

> "Whenever any County official, Board or Committee having the power of appointment, wishes to make an appointment, fill a vacancy, transfer, promote or demote, create a new position, or terminate an employee, or make any other personnel transaction not otherwise herein stated, he shall file with the County Commissioners, a County Personnel Status Form (CPS) furnished by the County Personnel Board setting forth the necessary information as contained on said Form."

Defendants' Appendix of Exhibits, Exhibit F at E1.

The aforementioned forms are known as "blue papers" or "blue sheets." The Rules and Regulations provide that upon receipt of a blue paper, the Commissioners "shall make investigation regarding":

> "(a) Compliance with the requirement of law and especially Sections 48 to 56, Chapter 35 of M.G.L.
> (b) The necessity of the office or institution for the position.
> (c) The ability of the office or institution to provide for the position out of funds appropriated.
> (d) Whether the proposed position bears a standard title and whether the proposed salary rate is the minimum of the scale for the position; and if the proposed rate is above the minimum of the scale, whether there is conformance with M.G.L. 35, Section 51B."

Id.

In addition, "[i]f the County Personnel Status Form complies with the pertinent sections of Mass. General Law and with the administrative rules of procedure herein stated, the County Commissioners may approve the proposed action, disapprove it, or approve it with modification(s)." *Id.*

On June 2, 2021, the Commissioners voted to initiate a hiring freeze for non-essential and non-seasonal county personnel until no later than after July 1, 2021.[6] During the hiring freeze, the Commissioners approved the appointments of candidates for a number of positions.

The budgets for fiscal years 2021 and 2022 included a Registry chief information officer ("CIO") as an approved and funded position. The CIO position provides essential services according to a March 2020 order by the Governor related to the COVID-19 pandemic.

The Registry's CIO was set to retire on June 30, 2021. In anticipation of the CIO's retirement, on June 24, 2021, the Register submitted a blue paper to the Commissioners giving notice of his intent to appoint a candidate for a permanent, full-time CIO position with an effective date of July 6, 2021, and an annual salary of $129,067.40. The salary listed in the blue paper was consistent with the amount approved in the fiscal year 2022 budget. On June 30, 2021, in a two-to-one vote, the Commissioners voted against approving the appointment.

On June 14, 2021, the Register filed this case. On the same day, he moved for a preliminary injunction ordering the Commissioners to approve the blue paper for the CIO position.

On July 16, 2021, the Register submitted to the Commissioners a second blue paper for the permanent, full-time CIO position with an effective date of July 26, 2021, and an annual

[6] There is conflicting information in the record as to the exact end date of the hiring freeze.

salary of $129,067.40. On July 21, 2021, the Commissioners voted to approve the appointment of the Registry's candidate for the CIO position as a temporary employee at the proposed annual salary.

On July 27, 2021, the court (Wilson, J.) denied the Register's motion for a preliminary injunction solely on the ground that there was no irreparable harm because of the hiring of the temporary CIO.

The temporary CIO resigned in January 2022. His letter of resignation stated that the primary reason he chose to look for and accept employment elsewhere was stress and uncertainty caused by the fact that his position was temporary.

Effective July 1, 2022, the Commissioners removed all technology-related personnel and functions from the Registry, including the CIO. The Commissioners consolidated those functions with the County's technology personnel and created a County technology department under the County director's supervision.

DISCUSSION

Summary judgment is appropriate where, "viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law" (quotations and citations omitted). *Hill-Junious* v. *UTP Realty, LLC*, 492 Mass. 667, 672 (2023). See Mass. R. Civ. P. 56(c). Applying this standard, the court concludes that it has jurisdiction over this case, summary judgment in favor of the Register is appropriate with respect to some aspects of his funding claims and his claims regarding the CIO position, and summary judgment in favor of the defendants is inappropriate.

I. Jurisdiction

The defendants contend that this court lacks jurisdiction over this case under two statutes: G. L. c. 64D, § 6, and G. L. c. 35, § 35. The court disagrees.

First, the defendants argue that under G. L. c. 64D, § 6, the Register "should have sought redress" from the Commissioner of Revenue, not this court. Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of their Cross-Motion for Summary Judgment (Paper No. 59.3) at 4. The statute provides:

> "The [Commissioner of Revenue] shall administer and enforce the taxes imposed by this chapter. At any time after the making of a conveyance or transfer subject to the excise imposed by this chapter, he may investigate and ascertain whether said excise, in the proper amount, was paid. For this purpose, the commissioner may examine any books, papers, records or memoranda bearing upon the amount of excise payable, and may enforce by mandamus his right to such examination. Whoever refuses to permit the commissioner, or any of his agents or representatives, to inspect such books, papers, records or memoranda, or fails to preserve the same for two years, or alters, cancels or obliterates any part thereof, or makes any false entry therein, shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment for not less than three months nor more than two years, or both."

G. L. c. 64D, § 6.

Whether the statute deprives this court of jurisdiction is a matter of statutory interpretation. Courts interpretate statutory language according to "its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result" (citation and quotations omitted). *DiMasi* v. *Secretary of Commonwealth*, 491 Mass. 186, 191 (2023). Where the language of a statute is clear and unambiguous, it is conclusive as to the Legislature's intent, and the court will enforce the plain wording unless doing so would "yield an absurd or unworkable result." *Id.* at 191-192.

The plain language of G. L. c. 64D, § 6, provides the Commissioner of Revenue with authority to administer and enforce the taxes imposed by G. L. c. 64D and to investigate whether such taxes were properly paid. Nothing in the statute grants the Commissioner of Revenue authority to adjudicate disputes like this about the use of Deeds Excise Tax revenues, County expenditures for the Registry, or Registry personnel matters.

Second, the defendants argue that under G. L. c. 35, § 35, only the Supreme Judicial Court has jurisdiction to entertain a case challenging the County budget made under G. L. c. 35, § 32. General Laws c. 35, § 35, provides that "[t]he supreme judicial court, upon the suit of the attorney general or petition of one or more taxable inhabitants of a county, may in law or in equity enforce section[] . . . thirty-two . . . of [G. L. c. 35] . . . ."[7] General Laws c. 35, § 32, sets forth requirements and procedures for county appropriations and expenditures. In this case, the Register does not seek to enforce G. L. c. 35, § 32. Rather, he seeks declaratory, mandamus, and injunctive relief regarding his rights and the defendants' obligations under G. L. c. 64D, § 11 and §12, and with respect to Registry personnel matters. Therefore, G. L. c. 35, § 35, does not apply.[8] Even if it did apply, this court would have jurisdiction because "[a]lthough [G. L. c. 35, § 35] by its terms vests jurisdiction only in the Supreme Judicial Court, that jurisdiction may be exercised concurrently by the Superior Court under the provisions of G. L. c. 213, s 1A."[9] *Platt v. Commissioners of Hampshire Cnty.*, 6 Mass. App. Ct. 888, 888 (1978).

Therefore, the court has jurisdiction over this case.

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[7] The statutes relevant to the Commissioners' actions regarding the CIO position, G. L. c. 35, § 48 to § 56, are not enumerated in G. L. c. 35, § 35. Accordingly, G. L. c. 35, § 35, has no bearing on this court's jurisdiction over that issue.

[8] Accordingly, there is no merit to the defendants' argument that the Register lacks standing under G. L. c. 35, § 35, because he is not the attorney general or a taxable inhabitant of the county but an elected official.

[9] General Laws c. 213, § 1A, provides:

> "Unless otherwise specifically provided, the superior court shall have original jurisdiction, concurrently with the supreme judicial court, of all proceedings, cases and matters of which the supreme judicial court has jurisdiction, excepting those within the appellate jurisdiction of the full court, those provided for under section four of chapter two hundred and eleven, and those which cannot be transferred under section four A of said chapter."

II. <u>Funding for the Registry</u>

The Register contends that the defendants have violated the funding requirements set forth in G. L. c. 64D, § 11 and § 12. The court agrees.

As previously noted, G. L. c. 64D, § 11, requires the County to establish upon its books a deeds excise fund "maintained separate and apart from all other funds and accounts" of the County and to transmit 10.625 percent of the Deeds Excise Tax collected into that fund. Also, as set forth above, G. L. c. 64D, § 12(a), provides that "not less" than forty percent of the amounts deposited in the deeds excise fund pursuant to G. L. c. 64D, § 11, "shall" be disbursed and expended for the Registry's automation, modernization, and operation (again, the "Registry's Share"). Additionally, under G. L. c. 64D, § 12(b), from "funds . . . which are not dedicated to the Deeds Excise Fund" the County's budget "shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended" for the Registry's automation, modernization, and operation in the previous fiscal year (again, the "County Mandate").

The plain language of these statutes clearly establishes two mandatory and distinct sources of funding exclusively for the Registry, with no temporal limitation on the Registry's use of the funds. The use of the word "shall" in G. L. c. 64D, § 12(a) and § 12(b) makes clear that both the Registry's Share and the County Mandate are mandatory. See *DiMasi*, 491 Mass. at 192 ("We have recognized the word 'shall' as an imperative that indicates the Legislature's intent to prescribe a mandatory act."). Also, the language in G. L. c. 64D, § 12(b), that it applies "with respect to . . . funds . . . which are not dedicated to the Deeds Excise Fund . . . under section 11" makes clear that the County Mandate is a requirement that is separate and apart from the Registry's Share. See *Commonwealth* v. *James*, 493 Mass. 828, 835 (2024) (court must avoid construction of statute that would render any portion meaningless). Accordingly, each year the County must provide a County Mandate of at least 102.5 percent of the amount expended for the Registry's automation, modernization, and operation in the previous fiscal year, and may not use funds from the Registry's Share, or wait until the funds from the Registry's Share are expended, to satisfy that obligation. Thus, the defendants' actions to the contrary were unlawful.

Furthermore, the statutes plainly do not permit the County to take any funds from the Registry's Share, even if the Registry has not spent all or part of those funds within a certain amount of time. Interpreting the statutes in a manner that requires the Registry to expend its share within a certain timeframe or be subject to losing it to the County would violate the "basic tenet of statutory interpretation, [that courts] ordinarily do not add language to a statute where the Legislature itself has not done so" (citation and quotations omitted). *Commonwealth* v. *Mansur*, 484 Mass. 172, 176 (2020). Such an interpretation would also violate the clear requirement in G. L. c. 64D, § 11, that the deeds excise fund be "maintained separate and apart from all other funds and accounts" of the county. In addition, it would run afoul of the requirement in G. L. c. 64D, § 12(a), that not less than forty percent of the amounts deposited in the deeds excise fund be disbursed and expended for the Registry, and not more than sixty percent be disbursed and expended for the County. Therefore, the defendants unlawfully took funds from the Registry's Share.

The defendants contend that their actions were within their authority over the County budget under G. L. c. 35, § 28B. Primarily, they rely on G. L. c. 35, § 28B(h), which provides:

> "At the closing of the treasurer's books on July tenth, the balance to the credit of each appropriation shall become a part of the general unappropriated balance in the county treasury, but no appropriation voted for special, non-operating purposes, shall lapse until the work for which it has been made has been completed. Such appropriation, however, may not be carried forward for more

> than one extra fiscal year. Any remaining unappropriated balance thereafter, shall become a part of the general unappropriated balance in the county treasury."

This statute is inapplicable. Both G. L. c. 64D, § 12(a) and § 12(b) plainly provide that their requirements apply "[n]otwithstanding any general or special law to the contrary . . . ." Therefore, regardless of any authority that the defendants may have under G. L. c. 35, § 28B(h), or any other statute, they must comply with the requirements of G. L. c. 64D, § 12.

Moreover, G. L. c. 35, § 28B(h), itself has no application to either source of funding required under G. L. c. 64D, § 12. By its plain language, G. L. c. 35, § 28B(h), concerns county appropriations. "A general law that directs that funds be used for a specific purpose is not an appropriation." *Mazzone* v. *Attorney Gen.*, 432 Mass. 515, 523 (2000). General Law c. 64D, § 12, is such a law because it directs that funds be used for the specific purpose of the Registry's automation, modernization, and operation. Therefore, the sources of funding for the Registry required under G. L. c. 64D, § 12, are not appropriations subject to G. L. c. 35, § 28B(h).

Nor can the defendants' actions be justified as an effort to "correct" their previous calculations of the County Mandate based on amounts previously allocated to the Registry instead of amounts previously expended. General Law c. 64D, § 12(b), requires that the County Mandate be "not less" than 102.5 percent of the preceding year's expenditures but does not preclude the County Mandate from being greater than that amount. Although previous calculations of the County Mandate based on allocations may have been greater than necessary under the statute, they were not unlawful.

Therefore, the court concludes that the defendants have violated G. L. c. 64D, § 11 and § 12.[10] However, genuine issues of fact remain with respect to various figures at issue. Those

[10] While not dispositive, the court notes that prior to 2020, the County's interpretation of the statutes was largely consistent with the court's interpretation.

factual issues must be resolved at trial to afford full relief. Accordingly, the court will enter only partial summary judgment on this issue.[11]

III. The Registry's CIO Position

The Register contends that he is entitled to appoint Registry staff positions that are approved and budgeted during the County's budget process, and that the Commissioners were required to approve the appointment of the CIO on a permanent basis. The defendants disagree and contend that the Register's claims regarding the CIO position are moot. The court concludes that declaratory relief can and shall be ordered in favor of the Register, but whether the claims for mandamus and injunctive relief are moot involves factual issues that preclude summary judgment on those claims.

"It is a general rule that courts decide only actual controversies . . . and normally do not decide moot cases" (citation and quotations omitted). *Branch* v. *Commonwealth Employment Relations Bd.*, 481 Mass. 810, 816 (2019), cert. denied, 140 S.Ct. 858 (2020). A claim is moot "when the party who claimed to be aggrieved ceases to have a personal stake in its outcome" and the court "can order no further effective relief" (citations and quotations omitted). *Troila* v. *Department of Correction*, 490 Mass. 1013, 1014 (2022).

Contrary to the defendants' contention, the Register's claim for declaratory relief regarding the CIO is not moot. Although the Commissioners approved the appointment of a temporary CIO who resigned during the pendency of this case, whether they have power to exercise authority over Registry personnel issues in the manner that they did here remains a live

[11] The defendants contend that the Register's claim for relief in the nature of mandamus fails because (i) he failed to exhaust his remedies under G. L. c. 64D, § 6, and G. L. c. 35, § 35, and (ii) mandamus is only available to compel non-discretionary or ministerial acts, not to compel a different decision. However, as previously discussed G. L. c. 64D, § 6, and G. L. c. 35, § 35, do not apply, and at least some of the funding issues in this case involve non-discretionary matters. Relief in the nature of mandamus on those issues ultimately may be unnecessary or inappropriate, but the claim survives for now.

issue in which the Register has a significant interest and definite stake. Accordingly, this is a case or controversy that the court properly may address.[12]

The court turns to the merits of the declaratory judgment claim. The defendants contend that the Commissioners acted within their lawful discretion under the Rules and Regulations. The Rules and Regulations provide that an appointing authority intending to appoint someone for a County employee position must file with the Commissioners a blue paper setting forth information regarding the intended appointment. Upon receipt of the blue paper, the Commissioners must investigate whether the proposed appointment is lawful and procedurally appropriate. If so, the Commissioners "may approve the proposed action, disapprove it, or approve it with modification(s)." Defendants' Appendix of Exhibits, Exhibit F at E1.

Even if the Commissioners' actions regarding the CIO position were consistent with the Rules and Regulations on their face, the court is unpersuaded that the Commissioners acted within their authority. "An administrative agency has only the powers and duties expressly or impliedly conferred on it by statute." *Matter of Elec. Mut. Liab. Ins. Co., Ltd. (No. 1)*, 426 Mass. 362, 366 (1998). An agency has "no inherent authority to . . . promulgate rules that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created" (citations and quotations omitted). *Atlanticare Med. Ctr.* v. *Commissioner of Div. of Med. Assistance*, 439 Mass. 1, 14 (2003).

The governing statutes here, G. L. c. 35, § 48 to § 56, "provide[] for a comprehensive system of classification of county salaries, offices and positions" and "provide[] for allocation, reclassification, and other necessary adjustments." *Dolan* v. *Suffolk Cnty.*, 310 Mass. 318, 322

[12] Although the Register failed to make an adequate showing of irreparable harm so as to warrant a preliminary injunction because a temporary CIO was hired, that does not necessarily mean that the CIO controversy is moot. The Commissioners' authority in that regard is an ongoing issue.

(1941). "The primary motive underlying the enactment of the governing statutes was to bring about uniformity and order among county positions and salaries." *Id.* The statutes authorize the county personnel board to: "pass upon and finally adopt and put into effect, with such modifications, changes and additions as it shall deem proper, the classification and compensation plans and rules for their administration proposed by the director of accounts[,]" amend those plans and rules, "pass upon and finally determine appeals relative to classification," "perform such other functions and duties as may be imposed upon it" by statute, and "establish and administer uniform rules and regulations governing leaves of absence, shift differentials and overtime for officers and employees . . . ." G. L. c. 35, § 51. The statutes further authorize the county personnel board to conduct hearings on certain employee grievances. See G. L. c. 35, §§ 51, 52. In addition, the statutes authorize county commissioners to keep a roster of county officers and employees, receive and make recommendations about certain employee appeals, receive and act upon recommended salary increases, perform other functions and duties that may be imposed upon them by statute, make recommendations to the county personnel board about classification and compensation plans and rules, and be heard by the county personnel board on issues of classification and allocation. See G. L. c. 35, § 53. In sum, "[e]xamination of [G. L. c. 35, § 48 to § 56] shows that the functions and duties of the officers and agencies in charge of the county classification plan consist in investigating, recommending, allocating, classifying, re-classifying and the like." *Dolan*, 310 Mass. at 322-323.

Nothing in G. L. c. 35, § 48 to § 56, confers upon the Commissioners the authority to unilaterally decide not to hire a candidate for an approved and budgeted position that is essential to the Registry's operations whose proposed salary is consistent with that approved in the budget. Nor do the statutes confer upon the Commissioners the authority to hire such a candidate on a temporary basis where the Register wishes to hire the candidate permanently. By doing so here, the Commissioners, acting as the county personnel board, in effect eliminated the full-time CIO position and intruded upon the Register's authority over Registry personnel matters. This exceeded their statutory authority.[13] See *Dolan*, 310 Mass. at 322-323. Cf. *Norfolk County Commissioners* v. *Hall*, NO1992-2073, slip op. at 10-11 (Mass. Super. November 25, 1992) (Stearns, J.) (Commissioners lacked authority to order reinstatement of treasurer's employee fired by treasurer). Because the Rules and Regulations cannot empower the Commissioners to act beyond their statutory authority, their actions here were unlawful even if they were consistent with the Rules and Regulations.[14] Accordingly, the court will enter a declaration that the Commissioners exceeded their authority.

The Register's claims for mandamus and injunctive relief regarding the CIO stand on different footing. To the extent that the Register seeks such relief, the controversy over the CIO position may be moot because, due to the consolidation of the Registry's and County's technology departments, the Registry CIO position no longer exists. However, the Register claims that the consolidation was improper, and that the Registry should have its own CIO. If that is so, then it may be that his CIO claims involve a live controversy in which he has a definite stake that the court may properly address.

The summary judgment record contains limited facts about the consolidation, and the parties have not substantively addressed its propriety. On this record, the court is unable to conclude whether the consolidation was proper, and thus the court is unable to conclude whether

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[13] The Commissioners' actions cannot be justified by the hiring freeze because it was set to expire before the CIO candidate's anticipated start date, and because the CIO position was essential.

[14] "The authority of the [county personnel board] to issue such Rules and Regulations is derived from G. L. c. 35, § 51." *Norfolk County Commissioners*, NO1992-2073, slip op. at 6. The Rules and Regulations cannot provide authority beyond that conferred by the statute. See *Atlanticare Med. Ctr.*, 439 Mass. at 14.

the CIO controversy is moot. Therefore, summary judgment is inappropriate on the Register's claims for mandamus and injunctive relief regarding the CIO position.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiff's motion for summary judgment (paper no. 59.0) is **ALLOWED** in part as follows. The court hereby **DECLARES** that the defendants have violated G. L. c. 64D, § 11 and § 12 by: (i) not providing the Norfolk County Registry of Deeds ("Registry") a continuing amount of expenditure of not less than 102.5 percent of the amount expended for the Registry's automation, modernization, and operation in the preceding fiscal year ("County Mandate"); (ii) requiring that the Registry's share of funds in the deeds excise fund ("Registry's Share") be expended before spending or accounting for the County Mandate; (iii) using funds from the Registry's Share towards the County Mandate; and (iv) taking or retaining any portion of the Registry's Share. Also, the court hereby **DECLARES** that the defendant County Commissioners for the County of Norfolk exceeded their authority by voting against appointing the Registry's candidate for the approved, budgeted, and essential Registry chief information officer position on a permanent basis and instead voting to appoint the candidate for the position on a temporary basis. The plaintiff's motion is otherwise **DENIED**. The defendants' cross-motion for summary judgment (paper no. 59.2) and the defendants' motion for summary judgment (paper no. 61.0) are **DENIED**.

Claudine A. Cloutier
Justice of the Superior Court

Dated: 6/28/24