

Date: 12/10/2021

Lycoming County Prothonotary

NO. 0216610

Time: 01:30 PM

Receipt

Page 1 of 1

Received of: Rogers, Krista (plaintiff)

\$ 146.25

One Hundred Forty-Six and 25/100 Dollars

Case: CV-2021-0001228-CV

Litigant: Krista Rogers vs. Scott Metzger

Amount

Civil Action Complaint

146.25

Total:

146.25

Check: 27246969606 Bank: USPS

Payment Method: Check

Amount Tendered: 146.25

Clerk: MDONAHAY

Thomas D. Heap, Prothonotary

By: _____
Deputy Clerk

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Lycoming County _____ County

For Prothonotary Use Only:	
Docket No:	CV 21-01228

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:			
<input checked="" type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons	<input type="checkbox"/> Petition	
<input type="checkbox"/> Transfer from Another Jurisdiction	<input type="checkbox"/> Declaration of Taking		
Lead Plaintiff's Name: Krista Rogers, Lycoming County Controller		Lead Defendant's Name: Tony Mussare, Rick Mirabito, Scott Metzger, LYCOMING <i>County Commission</i>	
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits	
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Plaintiff/Appellant's Attorney: Mark P. Flaherty, Esq. Pa id#87854			
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)			

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

<p>TORT (do not include Mass Tort)</p> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____ _____	<p>CONTRACT (do not include Judgments)</p> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____ _____	<p>CIVIL APPEALS</p> <p>Administrative Agencies</p> <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____ _____
<p>MASS TORT</p> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____ _____	<p>REAL PROPERTY</p> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____ _____	<p>MISCELLANEOUS</p> <input type="checkbox"/> Common Law/Statutory Arbitration <input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input checked="" type="checkbox"/> Other: injunctive relief _____ _____
<p>PROFESSIONAL LIABILITY</p> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____ _____		

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
CASE MONITORING NOTICE

KRISTA ROGERS, CONTROLLER
LYCOMING COUNTY CONTROLLER

Plaintiff

vs.

TONY MUSSARE, RICK MIRABITO,
SCOTT METZGER, LYCOMING
COUNTY BOARD OF COMMISSIONERS

Defendant

CV 21 - 01228

DOCKET NO: _____

CIVIL ACTION

I. This matter is:

_____ Mortgage Foreclosure (file once an Answer has been filed).

Time needed for trial ____ (1 day) ____ (1/2 day).

_____ Credit Card Collection Case (file once an Answer has been filed)

a) _____ Arbitration. (\$50,000 or less) Time needed for discovery? _____ months

b) _____ Trial. Time needed for discovery? _____ months

_____ Forfeiture (file once an Answer has been filed)

_____ Administrative Agency Appeal (file with Notice of Appeal)

X General Civil Case (file with Complaint):

a) _____ Arbitration. (\$50,000 or less) Time needed for discovery? _____ months

b) X Fast track (4 month discovery period)

c) _____ Normal track (9 month discovery period)

d) _____ Complex track (12 month discovery period)

e) _____ Medical Malpractice (14 month discovery period)

_____ Other. Action requested: _____

II. Jury trial demanded? _____ YES X NO

III. Please note any special scheduling concerns:

Name Of Filing Counsel Or Pro Se Party: Mark P Flaherty, Esq. for Krista Rogers, Lycoming County Controller

Address: 145 Altadena Dr, Pittsburgh Pa 15228

Telephone number: 412 999-1225

Email address: mpflaherty22@gmail.com

Opposing Counsel Or Pro Se Party: Tony Mussare, Rick Mirabito, Scott Metzger, LYCOMING COUNTY BOARD OF COMMISSIONERS

Address: 330 Pine Street, Suite 204, Williamsport, PA 17701

Telephone number: (570)320-2124

Email address: county.commissioners@lyco.org

FILED
LYCOMING COUNTY
2021 DEC 10 PM 1:31
THOMAS D. HEAR
PROthonotary

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTA ROGERS,
LYCOMING COUNTY CONTROLLER,
Plaintiff

vs.

Tony Mussare, Rick Mirabito,
Scott Metzger, LYCOMING
COUNTY BOARD OF COMMISSIONERS,
Defendants

CASE NUMBER: 2021 -

RECORDED
INDEXED
JULY 15 2021
NOTARIAL
CIVIL
LYCOMING COUNTY

CV 21 - 01228

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

Pennsylvania Bar Assn.
100 South Street, PO Box 186
Harrisburg, Pa 17108-0186
(800) 692-7375

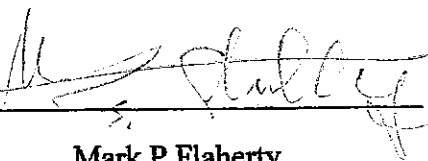
IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

North Penn Legal services
25 west Third Street, Suite 400
Penn Tower Building
Williamsport, Pa 17701
(800) 323-8741

AMERICAN WITH DISABILITIES ACT OF 1990

The Court of Common pleas of Lycoming County is required by law to comply with the American with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact the office of the Lycoming County Court, Administrator, Lycoming County Courthouse, 48 West Third Street, Williamsport, Pa 17701, (800) 327-2330. All arrangements must be made at least 72 hours prior to any or business before the Court. You must attend the scheduled conference or hearing.

Respectfully submitted,

By: 

Mark P Flaherty
Pa. I.D. No. 87854
Attorney for Lycoming County Controller
145 Altadena Dr
Pittsburgh, Pa 15228
(412)999-1225
Mpflaherty22@gmail.com

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTA ROGERS,
LYCOMING COUNTY CONTROLLER,
Plaintiff

vs.

CASE NUMBER: 2021 - - CIVIL

TONY MUSSARE, RICK MIRABITO,
SCOTT METZGER, LYCOMING
COUNTY BOARD OF COMMISSIONERS,
Defendants

CV 21 - 01228

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LYCOMING COUNTY PROTHONOTARY
LYCOMING COUNTY COURTHOUSE
Lycoming County Courthouse
48 West Third Street, 1st Floor
Williamsport, PA 17701
(570) 327-2251**

FILED
LYCOMING COUNTY
2021 DEC 10 PM 1:32
THOMAS D. NEAP
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTA ROGERS,
LYCOMING COUNTY CONTROLLER,
Plaintiff

vs.

TONY MUSSARE, RICK MIRABITO,
SCOTT METZGER, LYCOMING
COUNTY BOARD OF COMMISSIONERS,
Defendants

CASE NUMBER: 2021 - - CIVIL

CV 21 - 01228

CODE AND CLASSIFICATION:
Complaint for Declaratory Judgment/
Mandamus/Injunction

FILED ON BEHALF OF:
Plaintiff Krista Rogers,
Lycoming County Controller

NAME, ADDRESS AND TELEPHONE

OF:

Counsel of Record
 Individual, if Pro Se

Mark P. Flaherty, Esq., Solicitor
145 Altadena Dr
Pittsburgh, PA 15228
412 999-1225

Attorney's State ID #87854

FILED
LYCOMING COUNTY
2021 OCT 19 PM 1:32
THOMAS D. HEAP
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTA ROGERS,
LYCOMING COUNTY CONTROLLER,
Plaintiff

vs.

TONY MUSSARE, RICK MIRABITO,
SCOTT METZGER, LYCOMING
COUNTY BOARD OF COMMISSIONERS,
Defendants

CASE NUMBER: 2021 - - CIVIL

CV 21 - 01228

FILED
LYCOMING COUNTY
2021 DEC 15 PM 1:52
TIMOTHY D. NEASE
PROT. CLERK

COMPLAINT

Statement of the case

1. Krista Rogers, is the duly-elected Controller of Lycoming County, whose business address is currently Lycoming County Courthouse, 48 West Third Street, Williamsport, PA 17701, and who is hereinafter sometimes referred to as "Controller".

2. Scott Metzger is a duly-elected Commissioner of Lycoming County, currently serving as the Board Chairperson.

3. Tony Mussare is a duly-elected Commissioner of Lycoming County, currently serving as the Board Vice Chairperson.

4. Rick Mirabito is a duly-elected Commissioner of Lycoming County, currently serving as the Board Secretary

5. The defendants' business address is Commissioners, Lycoming County Courthouse, 48 West Third Street, Williamsport, PA 17701. Defendants may also be collectively referred to as "Commissioners."

6. Prior to April 9, 2021, the Lycoming County Controller was the supervisor of the fiscal affairs of the County with regard to accounts payable, payroll, maintaining and administering the General Ledger and financial system, and producing the DCED Report and Annual Financial Statement per 16 Pa Code Article I-Article XXXII, hereinafter referred to as "County Code".

7. On or Before April 9, 2021 Commissioners met and agreed to transfer three Controller office employees and their duties to their office of Fiscal Services and rename Office of Budget and Finance. This was done outside any public meeting and without any notice to the Controller. The Commissioners memorialized this agreement in 3 different memos to the three Controller office employees Heather Lehman, Matt Tierney and Cindy Gira.

8. On April 9, 2021, Commissioner Metzger summoned the Controller to a meeting on 15 minutes notice in the Commissioner's Office. Controller, after waiting an additional 30 minutes, was eventually provided 3 memos from Commissioners to Controller's employees 2nd Deputy General Accountant Heather Lehman, Accountant Matt Tierney and Financial Technician Cindy Gira. The memos were not transmitted to the employees.

9. The memos stated that effective Sunday April 11, 2021 their positions will be transferred to the Budget and Finance Office at their current salary rate. In the meeting the Commissioners said that the transfer was only temporary upon the employees receiving the proper training.

10. Controller immediately objected to the proposed transfer, not only because it infringed upon her supervisory powers, but violated several sections of The County Code. Controller reiterated that she would gladly work with Commissioners on a joint training program whereby each office could maintain their independence while still training together as a team on the financial system. Commissioners refused and demanded Controller comply with their transfer memo by the end of the day. Controller said she would not and the meeting adjourned.

11. On Monday April 12, 2021 Controller received another email summoning her to a meeting in Commissioners' Office on short notice purportedly to:

- 1) Re name the Fiscal Services Office to Budget and Finance Office;
- 2) Change the name of Director of Fiscal service to Director of Budget and Finance Office;
- 3) Move positions from Controllers' office to the newly created Budget and Finance Office. Because of the short notice and a Covid situation in her office, Controller could not make the meeting.

12. The next day, at their regular meeting, the Commissioners voted unanimously to transfer the 4 Controller positions and their duties of accounts payable, payroll, general ledger and the annual financial statement to the newly created Office of Budget and Finance.

13. When the meeting adjourned, the Commissioners called a Salary Board meeting. In the Salary Board Meeting the Commissioners voted to transfer the 4 positions in the Controller's office to the newly created Office of Budget and Finance. Commissioners voted yes and the Controller voted no. There was never a vote to create 4 new positions in the Office of Budget and Finance and there was no vote to set the salaries of the 4 "transferred" positions during the Salary Board Meeting. The Controller objected that the Salary Board Action was contrary to law and violated her statutory Supervisory Rights enumerated in 16 PS 1620 as well as powers of the Salary Board to fix positions and set salaries. Salary Board has no statutory authority to "transfer employees". The Salary Board then adjourned and the Commissioners resumed their weekly county public meeting.

14. On April 13, 2021 Matt McDermott walked into the Controller's office and told The Controller that the Commissioners would be transferring 3 existing employees and an duly approved open position to the Office of Budget and Finance and also transferring her duties of accounts payable, payroll, general ledger and the annual financial statement with them. She told Mr. McDermott that she would have to decline that transaction as it was not according to law. Mr. McDermott told the Controller that the Commissioners were going to process payroll, accounts payable, general ledger and the annual financial statement without her approval one way or another. In response to this statement the Controller said she would not allow her electronic signature to be used on any transactions not done in accordance with the County Code forcing her office to go through a manual approval process on all financial transactions. Then Mr. McDermott left.

15. On April 15, 2021, Controller then followed up with a memo to Commissioners that she is refusing to approve the Salary Board transaction on April 13th that transferred her employees and duties to Office of Budget and Finance because it was not according to law, unlawful and may be a violation of a criminal statute and an abuse of office, all according to 16 P.S. 1752.

16. Under 16 PS 1752, when a Controller refuses a financial transaction, the Commissioners' legal remedy is to send it back to the Controller for approval a second time, and if still refused by the Controller, file a mandamus or declaratory action to get a court order to force the Controller approve it. Commissioners failed to follow this prescribed legal remedy.

17. Instead, Commissioners filed an *ex parte* injunction, mandamus and permanent injunction, seeking this Court's equitable powers to further their illegal scheme.

18. Commissioners also filed a subsequent Contempt motion against the Controller for continuing process payroll, accounts payable, maintaining the general ledger, and producing the DCED Report and annual financial statement.

19. On April 21, 2021 Senior Judge Leete granted Commissioners' *ex parte* injunction, and held several hearings over a 2 month period keeping the injunction in force.

20. On May 14, 2021 Controller filed an answer and new matter with preliminary objections to the injunctions and mandamus along with Commissioners' contempt motion.

21. On July 14, 2021, S. Judge Leete ruled for Controller on the preliminary injunction and mandamus, and on August 20, 2021 Judge Leete ruled against the Commissioners' contempt motion.

22. Controller has sought an amicable restoration of her employees and duties per the County Code to the status quo prior to when this controversy started. Commissioners have rejected all amicable efforts to restore the Controllers powers and employees.

23. On September 7, 2021, Commissioners voted to deny Controllers' request to restore the employees and positions in her office to perform her statutory duties of processing fiscal transactions according to the County Code.

24. The Controller has no adequate remedy at law to restore duties her statutory duties and employees hired to perform those duties, than to seek injunctive and declaratory relief from this court.

COUNT I- PRELIMINARY INJUNCTION

25. The allegations set forth in the paragraphs above are incorporated by reference as if fully set forth herein.

26. The purpose of a preliminary injunction is to preserve the status quo as it existed before the acts complained of, thereby preventing irreparable injury or gross injustice which might occur before the merits of a case can be heard and determined. American Express Travel Related Services Co., Inc. v. Laughlin, 623 A. 2d 854, 856 (Pa. Super. 1993); Township of Clinton v. Carmat, Inc., 432 A.2d 238, 239 (Pa. Super. 1981).

27. The criteria governing the issuance of a preliminary injunction are well settled. An injunction is warranted when the moving party demonstrates:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest

I. The injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;

28. Where the offending conduct sought to be restrained through a preliminary injunction violates a statutory mandate, irreparable injury will have been established. SEIU Healthcare Pennsylvania v. Com., 628 Pa. 573, 104 A.3d 495 (2014).

29. Commissioners' conduct of holding secretive non-public meetings with decisions being taken on official actions outside of Salary Board, "transferring" or "moving" employees and their duties from the Controller's office to the Commissioners' Office of Budget and Finance clearly violates 7 statutory mandates. To establish irreparable harm *per se*, only one violation would need to be proven. The six statutes are as follows:

- i. 16 PS 1620-Actions of Salary Board. "... The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be

vested in the judges or other county officers.”

- ii. 16 PS 1623- Salary Board is limited to creating positions and fixing salaries. The powers of the Salary Board are purely administrative and clearly limited to those listed in the County Code, i.e., setting the number of County employees and setting salaries for those employees.” Lewis v. Monroe Cty., 737 A.2d 843, 848 (Pa. Cmwlth. 1999). Nothing in the code allows them to transfer/move employees, duties and responsibilities of the Controller to their own Office of Budget and Finance.

Commissioners’ “Transfer/move” of employees done through multiple actions of Commissioners before the public Salary Board meeting was not done according to law. Salary Board action must come first, creating positions and fixing their salaries, before any legislative action taken by the Commissioners.

- iii. 16 PS 1702(b)- With regards to federal and state reporting requirements, any accounting contractors or employees the commissioners hire are to supplement and not replace the official acts and audits of the Controller. The commissioners action of transferring/moving the employees, duties and resources of the Controllers accounting department to have the commissioners perform the state required annual report and the DCED report strips the Controller of her ability of performing the annual report and DCED report required by state law in section 16 PS 1720. The commissioners have replaced the Controllers duties with employees, accountants and contractors they have moved/transferred to the Office of Budget and Finance and this is a violation of 16 Ps 1702b
- iv. 16 PS 1703 Accounts of officers-The Controller shall furnish the commissioners of the county, whenever required by them, a detailed account of any officer or other person having in that individual's possession or under that individual's control funds belonging to the county, and shall, during regular office hours, give information respecting any of said accounts to any taxpayer of the county demanding the same.” Because of the action of the commissioners of transferring all her accounting employees, duties and resources in her accounting department, the Controller is unable to perform the duties specified under 1703 of furnishing the commissioners or taxpayers, a detailed account of any officer or other person having in that individual's possession or under that individual's control funds belonging to the county.
- v. 16 P.S. § 1704 Custody of documents, states, “The Controller shall have custody of and retain in original or other acceptable form, as provided in the

most recent edition of the County Records Manual issued for the County Records Committee by the Pennsylvania Historical and Museum Commission, all title deeds to real estate owned by the county, and all executed contracts entered into by or on behalf of the county, and all records relating to its financial affairs...” Because the commissioners forced the Controller to move financial records out of the Controller’s office into their Office of Budget and Finance , the commissioners violated 16 PS 1704 by transferring the documents into their custody.

- vi. 16 PS 1705 Financial Records states,” The Controller shall maintain a full and regular set of financial records, including the general ledger, in electronic form or otherwise, which support financial statements in accordance with generally accepted accounting principles of all the fiscal operations of the county...” The commissioners’ actions of transferring/moving the duties, employees and resources for the purpose of maintaining the general ledger, the financial system that supports the general ledger violates the Controller legislative mandate that the Controller shall do this duty and not the commissioners. 16 PS 1705 also states, “The Controller shall select and administer the form and manner of maintaining the official financial records in connection with the fiscal affairs of the county...” The Commissioners action of seizing control of the Controller’s duties, employees, and resources and then sent the Controller a memo which forced the Controller to change their her prescribed form and manner of bookkeeping clearly violate 16 PS 1705 legislative mandate of the Controller prescribing the form and manner of maintaining the official financial records.
- vii. 16 PS 1720 states, “The Controller ... shall before the first day of July in every year, make a report, verified by oath or affirmation, to the county court of common pleas, ... of all receipts and expenditures of the county for the preceding year, in detail, ..Together with a full statement of the financial conditions of the county. The actions of the commissioners prevent the Controller from making an oath or affirmation of the receipts and expenditures because the commissioners have transferred this duty to their Office of Budget and Finance of preparing these reports.

30. The Commissioners’ action of transferring/moving employees/positions, duties and resources from the Controller’s office to their Office of Budget and Finance violates 7 statutory mandates of the legislature and is irreparable harm *per se*.

II. Greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;

31. The unlawful transfer of jobs, personnel and duties by Commissioners is causing substantial and serious injury to Controller. As a result, Controller has a greater injury that would result from refusing an injunction than from granting it. Without the injunction, the Controller can neither swear nor attest to the state mandated county financial reports, because her office did not create them.

32. Controller cannot maintain the general ledger, scrutinize claims or bills as is statutorily required, because of the unlawful transfer of manpower and duties.

33. The issuance of an injunction will not substantially harm Commissioners, because they would return to their regular mandated County Code duties. The issuance of an injunction would allow Commissioners to retain all their managerial and administrative duties of budgeting, borrowing, contracting and collective bargaining, yet still have a role in approving invoices according to the County Code

34. Not issuing an injunction, however, would result in a greater harm by ratifying Commissioners' continued statutory violations of the County Code and, therefore, be injurious to Controller.

III. A preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;

35. The aforementioned April 13, 2021 wrongful transfer/move of positions/employees duties and resources is the pre-harm *status quo* this action seeks to restore.

36. A mandatory injunction nullifying the illegal transfers and restoring the parties and employees to their lawful positions prior to the illegal transfer would restore the parties to their last uncontested status at the end of March 2021 and preserve the status quo.

37. A preliminary injunction is appropriate where it restores the parties to the *status quo* that existed prior to the alleged wrongful conduct. Ambrogi v. Reber, 932 A.2d 969, 979 (Pa. Super. 2007). Moreover, an injunction addresses the status quo as it existed between the parties before the event that gave rise to the lawsuit, not to the situation as it existed after the alleged wrongful act but before entry of the injunction.

IV. Controller has a clear right to relief and is likely to prevail on the merits

38. Commissioners' illegal transfer of jobs, duties and employees as discussed in detail above is prima facie evidence of seven statutory violations of the County Code demonstrating Controller is likely to succeed on the merits.

39. To establish a clear right to relief, the party seeking an injunction need not prove the actual merits of the underlying claim but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties. SEIU Healthcare Pennsylvania v. Com., 628 Pa. 573, 104 A.3d 495 (2014).

V. The injunction is reasonably suited to abate the offending activity

40. An injunction is reasonably suited to abate the illegal transfer—an unlawful action that violates the Pennsylvania County Code.

41. Enjoining Commissioners from proceeding with this unlawful action is reasonably suited to abate the offending activity, as Commissioners can still perform all the duties enumerated in the County Code, but prevent them from illegally performing Controller's statutory duties.

VI. Granting a Preliminary Injunction will not Adversely affect the Public Interest.

42. When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public." Dillon v. City of Erie, 83 A.3d at 474 (Pa. Cmwlth. 2014),

43. Commissioners clearly violated the Controller's independent supervision of the fiscal affairs of the county. Their conduct harms the public by eliminating the independence of running the Controller's office as well as the ability to perform necessary checks and balances the legislature has reserved for the Controller over spending of county funds. As a direct result, Commissioners' conduct is adversely affecting the public interest.

VII. The elements for granting Controller's Injunction have been Established

44. The Controller meets the standard for securing a preliminary injunction, to wit:

a. The Commissioners have violated seven statutory mandates causing irreparable harm which cannot be compensated by money damages.

b. Greater injury would result from refusing the injunction than granting it. Controller needs the personnel and resources which Commissioners have moved/transferred to perform her statutory duties. Commissioners have no legal right to interfere with the duties or withhold documents necessary to the proper performance of the payroll, accounts payable or general ledger functions.

- c. The injunction will restore the parties to the status quo before the illegal conduct of the Commissioners occurred.
- d. the Controller has a clear right to relief and is likely to prevail on the merits. In the absence of injunctive relief, the Controller is left without an adequate remedy at law;
- e. The injunction is suitable to abate the offending activity harm that the Commissioners' have caused and will still allow the commissioner to perform their fiscal duties enumerated in the County Code; and,
- f. The injunction will not adversely affect the public interest.

WHEREFORE, Controller requests that this Honorable Court enter a preliminary injunction while the merits of the Complaint are litigated:

- (1) Return the 4 employees /positions that were unlawfully moved from the Controller's office to the Office of Budget and Finance on April 13, 2021. Also order Commissioners to fully fund the positions, including training, to perform the functions of accounts payable/ payroll, general ledger and the annual financial statements.
- (2) Return the duties of accounts payable/ payroll, general ledger, DCED report and the annual financial statement to the Controller's office
- (3) direct that the Commissioners' to preserve and transfer to the Controller all documents reasonably necessary for the proper performance of the payroll, accounts payable and general ledger functions and annual financial statements.
- (5) prevent the Commissioners from arbitrarily and capriciously attempting to use their office to interfere with the enumerated statutory functions of the Controller with respect to the County Code and to include the issuance of payroll checks, accounts payable checks and general ledger functions; and,
- (6) to fully fund the Office of Controller in order to allow the Controller to carry out the statutory duties discussed above pursuant to law.
- (7) Awarding such other relief as is deemed necessary and proper under the circumstances to ensure the Controller properly performs the functions of the Controller's Office.

COUNT II--DECLARATORY JUDGMENT

45. All of the allegations set forth in the paragraphs above are incorporated by reference as if fully set forth herein.

46. The rights, powers, duties and legal relations between the Parties are affected by the County Code; therefore, the parties may have this Court determine the question of construction

or validity arising under that statute, and obtain a declaration of rights, status, or other legal relations regarding the following enumerated County Code provisions, among others:

47. 16 PS 1620- Actions of Salary Board. "... The exercise of such responsibilities [of collective bargaining] by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers." Even though the commissioners are the sole representative for Collective Bargaining for County Officers, the Commissioners cannot exceed this power to hire, fire and supervise row office employees.

48. Commissioners' actions of move/transfer employees of the Controller to the Office of Budget and Finance violated the 1620 Managerial rights of the Controller.

49. 16 PS 1623-- Salary Board shall fix the compensation of all appointed county officers, and the number and compensation of all deputies, assistants, clerks and other persons whose compensation is paid out of the county treasury. The Salary board is subject to the limitation imposed by law of only fixing, "and the number and compensation of all deputies, assistants, clerks and other persons whose compensation is paid out of the county treasury." It is not empowered to move /transfer employees of other county officers.

50. Moreover, Commissioners' "transfer/move" of employees done through multiple actions of Commissioners before the public Salary Board meeting was not done according to law. Salary Board action must come first, creating positions and fixing their salaries, before any legislative action taken by the Commissioners.

51. Section 1701 of the County Code, 16 PS 1701 delegates "fiscal affairs" of their respective counties to the Commissioners, "in accordance with the provisions of this act and other applicable law." In other words, the delegation of powers to the Commissioners is general, and subject to the other fiscal duties specifically delegated to the Controller. The County Code delegates the commissioners the following specific powers and duties: (i) Budgeting (Section 1780); (ii) Borrowing (Section 2258); (iii) Collective Bargaining (Section 1620); and (iv) Contracting (Section 1801). In these areas the Courts have ruled that the Commissioners powers are discretionary.

52. Section 1702(a) of the County Code, 16 PS 1702(a), provides Commissioners the power and duty to manage and administer the fiscal affairs of the county, but in those enumerated areas of Budgeting, Borrowing, Contracting and Collective Bargaining.

53. On the other hand, the Controller 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. The discretionary powers of the Controller are applicable to matters or official acts

involving the accounts and transactions of officers or other persons of the county including those indicated in Section 1705(f) the County Code, which include: (i) maintaining a full and regular set of financial records, including the general ledger.

54. The Controller, and not the Commissioners, is empowered with the discretion to select and administer the form and manner of maintaining the official financial records in connection with the fiscal affairs of the county pursuant to Section 1705 of the County Code as well .

55. In addition, Commissioners illegal actions have replaced Controller's duties with employees, accountants and other contractors. With regards to federal and state reporting requirements, any accounting contractors or employees the commissioners hire are to supplement and not replace the official acts and audits of the Controller pursuant to Section 1702(b) of the County Code, 16 PS 1702(b).

56. Commissioners' transferring Controller's' accounting employees, duties and resources has also precluded Controller from performing the duties specified under Section 1703 of The County Code, i.e., furnishing the commissioners or taxpayers, a detailed account of any officer or other person having in that individual's possession or under that individual's control funds belonging to the county.

57. Section 1704 of the County Code, 16 PS 1704, regarding "Custody of Documents" provides, "The Controller shall have custody of and retain in original or other acceptable form, as provided in the most recent edition of the County Records Manual issued for the County Records Committee by the Pennsylvania Historical and Museum Commission, all title deeds to real estate owned by the county, and all executed contracts entered into by or on behalf of the county, and all records relating to its financial affairs..."

58. Commissioners forced the Controller to move financial records out of the Controller's office and into their Office of Budget and Finance. As a result, Commissioners actions are also in violation of Section 1704 of the County Code.

59. Similarly, Section 1705 of the County Code requires the Controller to maintain a full and regular set of financial records, including the general ledger, in electronic form or otherwise, which support financial statements in accordance with generally accepted accounting principles of all the fiscal operations of the county.

60. Commissioners' actions of transferring/moving the duties, employees and resources for the purpose of maintaining the general ledger, the financial system that supports the general ledger violates the Section 1705 requirements detailed above.

61. Another Controller statutory duty requires the Controller, before the first day of July in every year, to make a report, verified by oath or affirmation, to the county court of common pleas, of all receipts and expenditures of the county for the preceding year, in detail, together with a full statement of the financial conditions of the county. 16 PS 1720.

62. The actions of the commissioners prevent the Controller from making an oath or affirmation of the receipts and expenditures because the commissioners have transferred this duty to their Office of Budget and Finance of preparing these reports.

63. Section 1750 of the County Code requires the Controller to scrutinize, audit and decide on all bills, claims and demands against the county. In so doing, it enables the Controller to call a vendor to make an oath or affirmation if necessary to attest to the correctness of the claims.

64. Commissioners' actions in moving/transferring employees have denied Controller the resources necessary to perform this statutory mandate

65. Controller is also supposed to hold the position of Secretary of the Salary Board, pursuant to 16 P.S. §1622.

66. Controller has been denied this statutory position by the Commissioners, who have denied her the ability to maintain the minutes of the Board meetings, maintaining the agenda, recording of the votes, despite repeated requests.

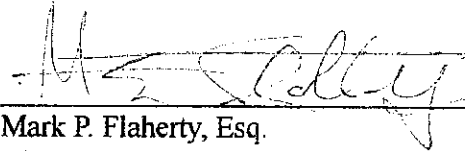
67. Plaintiff seeks a declaration that the Controller's statutory powers entitle and require her to be responsible for the general ledger, payroll, and accounts payable functions and to perform the duties of Salary Board Secretary of the Lycoming County government.

68. Plaintiff seeks a further declaration that the Commissioners illegally transferred the employees from the Controller's office and that the positions "transferred" be immediately reinstated within the Office of the Controller.

69. This Court's declaration in the form of a judgment or decree will terminate the controversy and remove an uncertainty as to the rights, duties and obligations of the Parties under the County Code, the Pennsylvania Constitution, and other statutes.

WHEREFORE, it is respectfully requested that this Honorable Court declare that the Controller's statutory powers entitle and require her to be responsible for the general ledger, payroll, and accounts payable functions of the Lycoming County government, and all of the statutory powers enumerated above in the County Code, and further declare that the Commissioners illegally transferred the employees from the Controller's office in violation of the County Code and other statutory authority, and any other relief as is just under the circumstances, including costs of suit and reasonable attorneys' fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark P. Flaherty", written over a horizontal line.

Mark P. Flaherty, Esq.
145 Altadena Dr
Pittsburgh, PA 15228
412 999-1225

Attorney's State ID #87854

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTA ROGERS,
LYCOMING COUNTY CONTROLLER,
Plaintiff

vs.

CASE NUMBER: 2021 - - CIVIL

TONY MUSSARE, RICK MIRABITO,
SCOTT METZGER, LYCOMING
COUNTY BOARD OF COMMISSIONERS,
Defendants

ORDER OF COURT

And Now, this ___ day of _____, 2021, in consideration of the Petition for Preliminary Injunction of the Plaintiff, Krista Rogers, Controller of Lycoming County, it is hereby ORDERED, ADJUDGED AND DECREED that the preliminary injunction is GRANTED as follows:

- (1) Commissioners' transfer of the 4 employees /positions that were unlawfully moved from the Controller's office to the Office of Budget and Finance on April 13, 2021 is rescinded.
- (2) Commissioners shall adequately fund the Office of Controller going forward, including the transferred positions, with funding for training, to enable Controller to perform her functions of accounts payable/ payroll, general ledger and the annual financial statements.
- (3) Commissioners shall further return the duties of accounts payable/ payroll, general ledger, DCED report and the annual financial statement to the Controller's office.
- (4) Commissioners are directed to preserve and transfer to the Controller all documents reasonably necessary for the proper performance of the payroll, accounts payable and general ledger functions and annual financial statements.
- (5) Controller shall be afforded the rights and privileges of the Secretary of the Salary Board, including maintaining the minutes and official records of the meetings.
- (6) Commissioners shall neither arbitrarily nor capriciously attempt to use their office to interfere with the functions of the enumerated functions of the Controller with respect to the county code and to include the issuance of payroll checks, accounts payable checks and general ledger functions.

BY THE COURT

_____, J.

VERIFICATION

Plaintiff, Krista Rogers, Lycoming County Controller, verifies that the facts set forth in the foregoing are true and correct to the best of his/her information, knowledge and belief.

Defendant further understands that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 12/10/2021

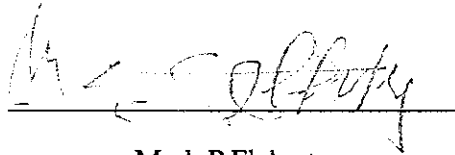


KRISTA ROGERS
LYCOMING COUNTY CONTROLLER

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark P Flaherty", is written over a horizontal line.

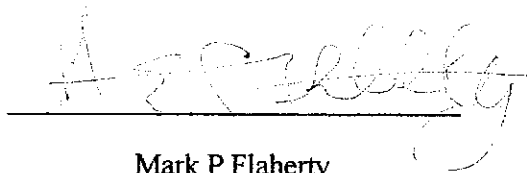
Mark P Flaherty
Pa. I.D. No. 87854
Attorney for Lycoming County Controller
145 Altadena Dr
Pittsburgh, Pa 15228
(412)999-1225
Mpflaherty22@gmail.com

CERTIFICATE OF SERVICE

I, Mark P. Flaherty, Esquire, hereby certify that I have served a copy of the foregoing Petition for Preliminary injunction and Declaratory Judgement upon the following, this 10th day of December, 2021, as follows:

VIA LYCOMING COUNTY SHERIFF:

Tony Mussare, Rick Mirabito,
Scott Metzger, LYCOMING
COUNTY BOARD OF COMMISSIONERS
330 Pine Street, Suite 204
Williamsport, PA 17701



Mark P Flaherty
Pa. I.D. No. 87854
Attorney for Lycoming County Controller
145 Altadena Dr
Pittsburgh, Pa 15228
(412)999-1225
Mpflaherty22@gmail.com