

**Shelley v Onondaga County Legislature**

2024 NY Slip Op 34667(U)

April 8, 2024

Supreme Court, Onondaga County

Docket Number: Index No. 005761/2023

Judge: Joseph E. Lamendola

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STATE OF NEW YORK  
SUPREME COURT ONONDAGA COUNTY

**TOBIAS SHELLEY,**  
**as SHERIFF OF ONONDAGA COUNTY,**

**DECISION AND ORDER**

Index No: 005761/2023

Petitioner,

v.

**THE ONONDAGA COUNTY LEGISLATURE,**  
**and THE COUNTY OF ONONDAGA,**

Respondents.

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Before: Hon. Joseph E. Lamendola, JSC

Petitioner commenced this action on June 6, 2023, pursuant to CPLR Article 78 and/or CPLR §3001, seeking a judgment declaring Onondaga County Local Law No. 1-2023 to have been illegally enacted, invalid, and unenforceable as not having been passed by the electorate via mandatory referendum in accordance with Municipal Home Rule Law §23. Petitioner alleges that Municipal Home Rule Law §23 required Local Law No. 1-2023 to have been submitted as a mandatory referendum as it curtails the power of an elected official, to wit: the Petitioner Sheriff.

In lieu of an answer/objections in point of law, Respondents filed a motion to dismiss pursuant to CPLR §7804(f) and §3211(a)(7) for Petitioner's failure to state a cognizable cause of action. Petitioner opposes such relief.

It is well settled that, "[i]n assessing a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction . . . We accept the facts as alleged in the complaint as true, accord [petitioner] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Whether a [petitioner] can ultimately establish [his] allegations is not part of

the calculus in determining a motion to dismiss.” (*Pottorff v Centra Fin. Group., Inc.*, 192 AD3d 1552, 1553 [4th Dept 2021] [internal citations and quotation marks omitted]).

“However, bare legal conclusions are not presumed to be true, nor are they accorded every favorable inference.” *Breytman v. Olinville Realty, LLC*, 54 AD3d 703, 704 [2<sup>nd</sup> Dept. 2008]

Based upon the Petition and the submissions presently before the Court, the following facts are not in dispute:

- Onondaga County presently has two facilities that house incarcerated persons: Jamesville Correctional Facility, a penitentiary for sentenced inmates, and the Patrick J. Corbett Justice Center, a/k/a “Justice Center,” the County jail which houses detained persons.
- Local Law 14-2017 transferred responsibility for the “operation, maintenance, supervision, repair, custodial care and security of the Onondaga County penitentiary” from the Onondaga County Executive to the Onondaga County Sheriff.
- Because Local Law 14-2017 curtailed the powers of the County Executive, it was subject to a mandatory referendum before enactment.
- The Sheriff retained responsibility for the operation, maintenance, supervision, repair, custodial care and security of the Onondaga County jail.
- On February 7, 2023, the Legislature passed Onondaga County Local Law No. 1-2023, which removed the word “penitentiary” and provided the Sheriff’s Office with sole authority over the “County jail” and the sentenced, assigned or otherwise housed inmates therein
- Local Law 1-2023 was not submitted for the approval of Onondaga County electors via mandatory referendum

Respondents seek to dismiss the Petition, arguing that it fails to state a cause of action. More specifically, Respondents assert that prior to Local Law 14-2017 authority over sentenced individuals in Onondaga County resided in the County Executive. The County Executive was charged with the appointment of a Commissioner assigned to oversight of the Department of Corrections. Prior to Local Law 14-2017, the Department of Corrections under the authority of the County Executive was responsible

for the “operation, maintenance, supervision, repair, custodial care and security of the *Onondaga County penitentiary and penitentiary farm...*[and] the receipt, housing, care, custody, control and employment of *all inmates sentenced or assigned to such facilities or otherwise housed therein...*[inter alia] (Respondent’s Ex. 5, §18.02, *emphasis added*). Local Law 14-2017 transferred the responsibilities of the County Executive’s Department of Corrections to the Sheriff’s Department and added a Corrections Division within the Office of the Sheriff under the direction of an appointed “Chief Deputy” to administer the same. Local Law 14-2017 therefore granted the Sheriff the same powers over “sentenced or assigned” inmates in the “Onondaga County penitentiary” as it had over individuals detained in the Onondaga County jail (i.e., both sentenced and unsentenced individuals)

Local Law 1-2023 struck the distinction between “penitentiary” and “jail” in essence, providing in amended Section 10.03(b):

“The Sheriff shall appoint a chief deputy of custody in a manner consistent with applicable laws... Except as may otherwise be provided in the Charter or this Code, the chief deputy shall: be responsible for the operation, maintenance, supervision, repair, custodial care and security of the Onondaga County jail; be responsible for the receipt, housing, care, custody, control and employment of all inmates sentenced or assigned to the jail or otherwise housed therein; initiate, implement and coordinate programs for the rehabilitation, education and training of inmates sentenced or assigned to such jail or otherwise housed therein; initiate, implement and coordinate programs for the distribution of food and other products manufactured or produced within such jail; and have all the powers and perform all the duties now or hereafter conferred or imposed by law.” (see Respondents’ Ex. A & 3, §3)

Respondents submit that Local Law 1-2023 did not require a referendum pursuant to Municipal Home Rule Law because the local law did not alter the ultimate powers of the Sheriff. A referendum is only required when a local law abolishes,

curtails, or transfers an elected official's power in the governmental structure, not merely regulating the operations of the local government.

The power of a local government to adopt and amend local laws consistent with other legal and constitutional mandates is to be liberally construed. *Krolick v. Lowery*, 32 AD2d 317, 322 [1<sup>st</sup> Dept., 1969] *affd*, 26 NY2d 723 [1970]. Municipal Home Rule Law enshrines the proposition that local governments are empowered to “adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs, or government...[including] the transaction of its business...[and] acquisition, care, management and use of its...property...”(MHRL §50(1)) Most local laws are passed by the legislative body with the necessity of a referendum, however, there are some limited actions that require a local law be submitted to the electorate by way of referendum (MHRL §23)

Municipal Home Rule §23(2)(f) requires any local law that “abolishes, transfers or curtails” the power of an elective officer to be submitted to voters as a referendum. Whether a referendum is required under such circumstances is contingent upon whether the proposed local law “alters the ultimate powers” of the elected official. *Biffer v. City of Saratoga Springs*, 279 AD2d 749, 751 [3<sup>rd</sup> Dept., 2001]

“A great many local laws limit the actions ...[an] elected official may take. A local law requiring the recycling of solid waste prevents the Mayor from ordering the sanitation department to dispose of such waste less expensively; a local law suspending alternate side of the street parking on certain holidays prevents the Mayor from enforcing it on those days; a local law requiring an office to be open at certain hours prevents the Mayor from closing it. But the Municipal Home Rule Law and the City Charter cannot sensibly be read to subject all local laws of this kind to a mandatory referendum. If they were, there would be more referendums than any community could well manage.” *Mayor of the City of New York v. Council of the City of New York*, 9 NY3d 23, 32-3 [2007] (internal citations omitted).

The Court of Appeals went on to hold that, “the requirement of a referendum...must be read as applying only to legislation that impairs a power conferred on the officer as a part of the framework of local government...But as a general rule a law that merely regulates the operations of [local] government...is not a curtailment of an officer’s power.” *Id.*, 9 NY3d at 33

So here, the Petitioner’s ultimate power and responsibility over all inmates in Onondaga County, sentenced or otherwise, is unimpaired. The County’s discretion over the acquisition and disposition of its buildings or facilities is not an encroachment on the Sheriff’s role in the housing and control of incarcerated individuals. The Sheriff’s reliance upon the location of housing is without support in the underlying legislative history herein.

The crux of Petitioner’s argument in opposition to Respondents’ motion is that the Sheriff’s authority pursuant to 14-2017 was not based upon an individual’s status as “detained” or “sentenced,” but rather based upon the facility within which the person was held. Therefore, Petitioner alleges that the revocation of the Sheriff’s authority over the Jamesville penitentiary *facility* “abolished, transferred, or curtailed that power and should have been subject to mandatory referendum.” (NYSCEF Doc. 28, pg. 2)

Petitioner’s argument is without merit.

Petitioner’s position is contrary to the plain language set forth in Local Law 14-2017, which did not give the Sheriff authority over *where* the Onondaga County penitentiary was to be located. The very use of the words “Onondaga County penitentiary” in Local Law 14-2017 belies Petitioner’s argument that his authority was over particular buildings/facilities as opposed to those individuals housed therein. As

there was only one "County jail" in 2017 (i.e., the Justice Center), and there was only one "Onondaga County penitentiary" at the time (i.e., Jamesville), had the intent been to grant authority over those specific facilities they would have been specifically named therein. However, consistent with the fact that the buildings being utilized to house detained and/or sentenced persons may change over time, generic terms were used in Local Law 14-2017. Put more succinctly, Local Law 14-2017 did not state that the "Onondaga County penitentiary facility" was or would remain in Jamesville.

Additionally, Correction Law §2(16)(a) provides that "[w]henver the term 'jail,' 'penitentiary,' or 'workhouse' is used...such term shall be deemed to mean local correctional facility. It goes on to define a "local correctional facility" as any place *operated by a county* to confine persons to secure their attendance in criminal cases, awaiting trial, committed for contempt/civil process, or convicted and sentenced or awaiting transport following sentencing. (Corrections Law §2(16)(a)) As a local correctional facility is operated by the County, pursuant to County Law §216, it is the County that shall "select and change the site of any county office or building," so long as the location of the correctional facility has been "approved by the state commission of correction." It is the County's province, not the Sheriff's, to acquire and/or dispose of real property in accordance with County Law.

Contrary to Petitioner's arguments, nothing in Local Law 1-2023 changes the Sheriff's authority over operating whatever facility within which detained and/or sentenced persons are housed. As a result, the new law does not abolish, curtail, or transfer Petitioner's structural powers.

Petitioner's position that because Local Law 14-2017 was passed by referendum, that Local Law 1-2023 must be passed by referendum is without support in Municipal Home Rule Law. Local Law 14-2017 irrefutably transferred the authority and responsibilities of one elected official (i.e., County Executive) to another (i.e., Sheriff). Local Law 1-2023 does not transfer the authority and responsibilities of the Sheriff to another entity, nor in any way limit the custodial control over all the same detained and sentenced individuals. In fact, under the new provision, the Sheriff was granted more flexibility in his control over such incarcerated individuals by removing the requirement that he do so through a legislatively-mandated Corrections Division/Chief Deputy.

The Court has considered the remainder of Petitioner's arguments and has found them to be unavailing. Examining the four corners of Petitioner's pleadings, there exists no cognizable cause of action. Accepting all allegations as true, Petitioner has failed to set forth grounds upon which to allege that the Respondents either failed to perform a duty enjoined upon it by law; proceeded without or in excess of their jurisdiction; or in violation of lawful procedure. (see CPLR §7803(1),(2),&(3)). There is simply no support for the allegation that a referendum pursuant to Municipal Home Rule Law was required upon the facts before the Court. Respondents are therefore entitled to dismissal pursuant to CPLR §3211(a)(7).

Accordingly, it is hereby

**ORDERED**, that Respondents' motion to dismiss is **GRANTED** and the Petition herein is **DISMISSED** in its entirety.

DATED: April 8, 2024  
Syracuse, New York



HON. JOSEPH E. LAMENDOLA, JSC

**PAPERS CONSIDERED:**

- 1) Notice of Motion, filed October 19, 2023 (NYSCEF #20).
- 2) Attorney Affirmation in Support, with annexed exhibits, filed on October 19, 2023 (NYSCEF #21-26).
- 3) Memorandum of Law in Support, filed October 19, 2023 (NYSCEF #27).
- 4) Memorandum of Law in Opposition, filed November 30, 2023 (NYSCEF #28).
- 5) Attorney Affirmation in Opposition, filed November 30, 2023 (NYSCEF #29).
- 6) Petitioner's Affidavit in Opposition with Exhibit, filed November 30, 2023 (NYSCEF #30-31).
- 7) Affirmation in Reply, filed January 10, 2024 (NYSCEF #34).