

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

**In the Matter of the Application of
THE TOWN OF HEMPSTEAD, ANTHONY J.
SANTINO, Individually and as Supervisor of the
Town of Hempstead, MICHAEL PASTORE and the
TOWN OF HEMPSTEAD ANIMAL SHELTER,**

TRIAL/IAS PART 3

INDEX NO. 1208/17

Petitioners,

**MOTION SEQUENCE
NO. 1**

**For an Order and Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,**

- against -

**MOTION SUBMISSION
DATE: March 13, 2017**

**GEORGE MARAGOS, County Comptroller of the
County of Nassau,**

Respondent.

The following papers read on this motion:

Order to Show Cause	X
Affirmation	X
Affirmation in Opposition	X
Memorandum of Law	XX

Upon the foregoing papers the Petition by Petitioner, brought by Order to Show Cause, for an Order granting Petitioners, Town of Hempstead, Anthony J. Santino, Michael Pastore and the Town of Hempstead Animal Shelter a judgment pursuant to Article 78 of the CPLR in the nature of prohibition, declaring that Respondent, George Maragos, is acting or is about to act in excess of his jurisdiction; a preliminary injunction pursuant to CPLR §6301 enjoining and restraining the Respondent from conducting an investigation and audit of the operations, accounts, books and records of the Town of Hempstead Animal Shelter and an Order quashing the subpoenas issued by Respondent upon the Town of Hempstead Animal Shelter, Anthony J. Santino and Michael Pastore, is determined as hereinafter provided:

The instant proceeding is brought by the Petitioner in relation to a certain subpoena duces tecum dated February 16, 2017 by the Respondent to the Petitioner Anthony J. Santino and a February 16, 2017 subpoena to the Petitioner Michael Pastore relative to the Petitioner Town of Hempstead Animal Shelter.

The respective subpoenas set forth:

"NASSAU COUNTY COMPTROLLER
NASSAU COUNTY, NY

In re: An Audit of the Town of Hempstead Animal
Shelter, by Nassau County Comptroller George
Maragos

X

X

TO: Anthony J. Santino, Supervisor
Town of Hempstead
Hempstead Town Hall
One Washington Street
Hempstead, NY 11550

GREETINGS:

WE COMMAND YOU, pursuant to Nassau County Charter Sections 402.6 and 2213, to produce at the Offices of the Nassau County Comptroller, Room 210, Nassau County Office Building, 240 Old Country Road, Mineola, New York 11501, on March 2, 2016, at 9:30 am, the following original documents, if unavailable, copies thereof, (in any form, including, but not limited to, electronic records) in your possession or control.

1. Town of Hempstead Animal Shelter Organization Chart (All Employees & Civil Service Titles) for the years 2013, 2014, 2015, 2016 and 2017.
2. Town of Hempstead Comprehensive Annual Financial Reports (CAFR) for the years 2013, 2014, 2015 and 2016.
3. Town of Hempstead Animal Shelter Cash Receipt Logs & Registers for the period January 1, 2013 through the date of this subpoena.
4. Town of Hempstead Shelter Cash Disbursement Logs & Registers for the period January 1, 2013 through the date of this subpoena.
5. Contracts between the Town of Hempstead and/or the Town of Hempstead Animal Shelter for goods or services provided to the Town of Hempstead Animal Shelter for the period January 2013 through the date of this subpoena.
6. Town of Hempstead Animal Shelter written Policies & Procedures, for the period January 1, 2013 through the date of this subpoena, including but not limited to, the following policies: a. Cash Receipts, b. Cash Disbursements, c. Payroll & Overtime, d. List of All fees charged by the Animal Shelter, e. Animal Care requirements (vaccinations, surgeries, etc.), f. Cleaning requirements & schedules, and g. Animal Euthanasia.
7. Any and all correspondence, communications, logs and/or records relating to items 1 through 6 that are maintained and/or kept by any and all Town Of Hempstead

("TOH") offices, and any other location within the control of TOH officials and employees.

BE ADVISED THAT PURSUANT TO NASSAU COUNTY CHARTER §2213, THAT FAILURE TO COMPLY WITH THIS SUBPOENA IS A MISDEMEANOR PUNISHABLE BY A FINE OF UPON TO FIVE HUNDRED DOLLARS AND/OR UP TO THREE MONTHS IMPRISONMENT.

Dated: Mineola, New York
February 16, 2017

_____/s
James A. Garner
Chief Deputy Comptroller
Nassau County Office of the Comptroller
240 Old Country Road
Mineola, New York 11501
(516) 571-2386"

"NASSAU COUNTY COMPTROLLER
NASSAU COUNTY, NY

In re: An Audit of the Town of Hempstead Animal
Shelter, by Nassau County Comptroller George
Maragos

TO: Michael Pastore
Town of Hempstead Animal Shelter
3320 Beltagh Ave
Wantagh, NY 11793

GREETINGS:

WE COMMAND YOU, pursuant to Nassau County Charter Sections 402.6 and 2213, to personally appear at the Offices of the Nassau County Comptroller, Room 201, Nassau County Office Building, 240 Old Country Road, Mineola, New York 11501, on March 2, 2016, at 9:30 am, to be examined under oath in connection with the Comptroller's Audit of the Town of Hempstead Animal Shelter.

BE ADVISED THAT PURSUANT TO NASSAU COUNTY CHARTER §2213, THAT FAILURE TO COMPLY WITH THIS SUBPOENA IS A MISDEMEANOR PUNISHABLE BY A FINE OF UPON TO FIVE HUNDRED DOLLARS AND/OR UP TO THREE MONTHS IMPRISONMENT.

Dated: Mineola, New York
February 16, 2017

_____/s
James A. Garner
Chief Deputy Comptroller
Nassau County Office of the Comptroller
240 Old Country Road
Mineola, New York 11501
(516) 571-2386"

Of significance to the foregoing is the authority given to the Nassau County Comptroller pursuant to §402(6) of the Nassau County Charter. Notwithstanding the respective submissions there is no dispute to this Court that the powers given to the County Comptroller evolve from and are derived from the Nassau County Charter, a duly enacted special law of the State of New York particular to the operation and/or authority of the County of Nassau and its officers and employees. Article IV of the Charter is addressed to the County Comptroller and in §402 defines the Comptroller's duties. Specifically, §402(6) states:

"6. examine and audit of his own motion or when directed to do so by resolution of the County Legislature, the accounts and records of any town or special district and make reports from time to time when requested by the County Executive or County Legislature on the financial condition of the county or any or all of its political subdivisions ..."

The respective parties offer divergent contentions as to the authority granted to the comptroller. The gravamen of the Petitioner's contentions herein is that the Comptroller is limited to a purely financial inquiry/analysis pursuant to the Comptroller's statutory authority while the Respondent maintains that said inquiry is in substance broader and allows for a "performance audit". The Court notes that as to §402(6), neither submission includes a legislative intent to define the meaning of "examine and audit" (§402(6) supra). In the absence of same, the Court is guided by the provision of Statutes §92(b) which provides:

"b. Ascertainment of intention

The intention of the Legislature is first to be sought from a literal reading of the act itself, but if the meaning is still not clear the intent may be ascertained from such facts and through such rules as may, in connection with the language, legitimately reveal it.

Generally, in the construction of statutes, the intention of the Legislature is first to be sought from a literal reading of the act itself or of all the statutes relating to the same general subject matter. In this regard, the legislative intent is to be ascertained from the words and language used in the statute, and if language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation." What the Legislature intended to be done can only be ascertained from what it has chosen to enact, and it is only when words of the statute are ambiguous or obscure that courts may go outside the statute in an endeavor to ascertain their true meaning.

Where, however, after a reading of the statute, its meaning is still not clear, courts must search for legislative intent in the purpose of the enactment, and from such facts and through such rules as may, in connection with the language, legitimately reveal it. Thus it is said that the quest for legislative intent requires the courts to pierce all disguises of verbal expression,

and go straight to the purpose of the bill, aided by formulated rules when they serve, but bound by no rules that hinder discovery of such intent. All available aids to statutory construction should be explored in determining the meaning and intendment of statutes, and if the language of the statute is vague, ambiguous or uncertain, the courts are not proscribed from applying time honored presumptions to the legislative proceed in an attempt to ferret out the legislative intent.

The rules of construction are not permitted to override the doctrine that the intent of the Legislature is the primary object of all statutory construction, and no statute may be construed so strictly as to result in perversion of the legislative intent. However, the court cannot, through construction, enact an intent the Legislature totally failed to express, and courts may not read into a law any word or provision unless good grounds appear for thinking that the lawmakers intended to include something which they have failed to plainly express. In arriving at the intent of the Legislature, the courts are not to speculate as to the possible thoughts which might have been in the minds of the legislators when the statute was enacted. It is not for the court, acting upon conjecture and surmising what may have been the intent of the Legislature, to interpolate exceptions in the statute, thus in effect avoiding and nullifying the express declaration of the Legislature."

Applying the foregoing to §402(6) a plain reading of said section authorizes the Respondent to conduct an audit of the Petitioner Town of Hempstead Animal Shelter. As such resort to other general laws relative to a Comptroller's authority is not required. Said audit may be, sua sponte, initiated by the Respondent without resorting to an application to the County Legislature. Applying the same plain reading rational, this does not allow for an unfettered or performance audit in light of §402(6)'s limitation to a fiscal examination only which to this Court is clearly limited to an examination of the Petitioner Town of Hempstead Animal Shelter's balance sheets/budget evidencing its income and expenditures. In this regard, as to the subpoena duces tecum, supra, said included discovery includes: item 2,3,4 and 6(a)(b)(c)(d). In all other aspects, the requested discovery in the subpoena duces tecum is outside of the Respondent's articulated authority in §402(6). The subpoena issued to the Respondent Michael Pastore is limited to inquiry as to the foregoing areas.

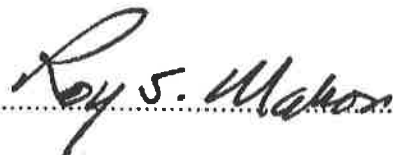
As such based upon the foregoing, to the extent that the Petitioners' seeks an Order granting Petitioners, Town of Hempstead, Anthony J. Santino, Michael Pastore and the Town of Hempstead Animal Shelter a judgment pursuant to Article 78 of the CPLR in the nature of prohibition, declaring that Respondent, George Maragos, is acting or is about to act in excess of his jurisdiction and an Order quashing the subpoenas issued by Respondent upon the Town of Hempstead Animal Shelter, Anthony J. Santino and Michael Pastore, said applications are granted consistent with this Order.

All Temporary Restraining Orders are hereby vacated.

SO ORDERED.

DATED:

3/31/2017


.....
J.S.C.

ENTERED

APR 03 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE