

May 28, 2019

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Re: Michael V. McClary, *et al* v. Scott H. Jenkins, *et al*  
Case No.: CL-18-1373

Dear Counsel,

This matter comes before the Court on the Demurrer of Defendant Scott H. Jenkins, Sheriff of Culpeper County, and the Amended Demurrer of the Board of Supervisors of Culpeper County to the Complaint filed by Plaintiffs, which were argued before the Court on May 13, 2019. The Court took the Demurrers under advisement to consult the briefs filed with the legal authority cited therein. The Court has now reviewed the materials submitted.

**I. Demurrer of Scott H. Jenkins**

The Court is adopting the **FACTS** stated in the Memorandum in Support of Defendant Jenkins' Demurrer and Special Plea in Bar re-stated as follows:

This case arises from Sheriff Jenkins entering into a 287(g) Agreement (Agreement) with the Immigration and Customs Enforcement component (ICE) of the United States Department of Homeland Security (DHS), by which Sheriff Jenkins cooperates with the federal government's efforts to enforce immigration laws of the United States. On April 24, 2018, Sheriff Jenkins entered into the Agreement with ICE. Complaint 41. The Agreement grants Sheriff Jenkins and his deputies "*federal*" authority to perform certain immigration enforcement functions." Complaint 45 (*emphasis added*).

Plaintiffs contend local taxpayer dollars are being used to fund duties and activities carried out by Sheriff Jenkins under the Agreement, Complaint 47, and the Agreement is contrary to state law, Complaint 67-73. Plaintiffs allege they have been harmed by Sheriff Jenkins (1) entering into the Agreement with ICE, and (2) use of local taxpayer funds to pay expenses related to the Agreement, Complaint 47-73. Plaintiffs seek declaratory judgment and an injunction, requesting

the Court to find Sheriff Jenkins' entry into the Agreement and use of taxpayer funds is unconstitutional, *ultra vires*, and *void ab initio*, and enjoining further conduct by the Sheriff's office pursuant to the Agreement or payment of local taxpayer funds in furtherance of the Agreement. Complaint 73-74, 84, 98-100.

The Court is sustaining Ground 3 of the Demurrer, which states: "Plaintiffs have failed to state a claim upon which relief can be granted as Plaintiffs cannot demonstrate Sheriff Jenkins acted outside of his duty and authority when he participated in a 287(g) Agreement."

As noted, Virginia law gives Sheriff Jenkins authority to enforce the law under certain statutes, namely, Sections 15.2-1609, 19.2-81.6 (2018) and 15.2-1730.1 (2018) of the Code of Virginia. Federal law expressly authorizes cooperative efforts with state and local governments through cooperative agreements. Congress authorized DHS to enter into cooperative agreements under 8 U.S.C. Section 1357(g) (2018). As stated at page 6 in the Memorandum In Support of Defendant Jenkins' Demurrer:

...see 8 U.S.C. 1357 (g)(2018) (also known as 287(g) agreements), under which state and local officers may, 'subject to the direction and supervision of the [Secretary],' 8 U.S. C. 1357 (g)(3) (2018), perform the 'functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens,' 8 U.S.C. 1357(g)(1) (2018).

As further legal authority, this Court was cited to the recent opinions of the Attorney General of Virginia dated April 12, 2019 attached to the Rebuttal Brief of Defendant Board of Supervisors. Those opinions opine that there is no Virginia law which precludes a sheriff from entering into cooperative agreements with federal authorities to enforce immigration laws.

Since this ruling finds the existing law to allow the actions of the Sheriff, this Court sustains the Demurrer without leave to amend the Complaint and orders Counts I and II of the Complaint be dismissed.

## **II. Amended Demurrer of Board of Supervisors**

The Board of Supervisors incorporated paragraph 3 of Sheriff Jenkins' Demurrer into its Amended Demurrer. This Court sustains the Amended Demurrer on the same basis as it sustained the Sheriff's Demurrer. Therefore, any appropriation of local taxes paid by Plaintiffs to the Sheriff was lawful to be spent by the Sheriff under the above ruling. No leave is granted to amend the Complaint as to Count III and the Court orders Count III of the Complaint be dismissed.

The Court deems any remaining grounds of the Demurrer and Amended Demurrer moot. Ms. Fessier is directed to prepare an order consistent with this opinion, present it to other counsel for endorsement, and submit the order for entry by the Court.

Very truly yours,

Paul M. Peatross, Jr.  
Judge Designate

Cc: Janice J. Corbin, Clerk