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Representing self, Norfolk register wins battle over funding for legal fees

Kris Olson//November 10, 2023

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The Norfolk County commissioners [may have gotten their way with the recent consolidation of the county's technology department](#) (https://masslawyersweekly.com/2022/04/22/battle-over-now-vacant-cio-position-at-norfolk-registry-of-deeds-continues/). But they and Register William P. O'Donnell are still battling in Superior Court, where O'Donnell — representing himself — recently scored a victory that may ensure the litigation does not end any time soon.



On Oct. 19, Judge Michael A. Cahillane allowed O'Donnell's motion for summary judgment in a case seeking mandamus, declaratory and injunctive relief after the commissioners and County Director John J. Cronin blocked O'Donnell's attempts to move money around his budget.

Among the purposes of the proposed transfers was to pay the legal bills O'Donnell was accruing in a [suit he filed against the commissioners on July 12, 2021](#) (https://masslawyersweekly.com/2021/07/23/register-of-deeds-pleas-to-fund-chief-information-officer-position-fall-on-deaf-ears/), after they refused to allow him to hire a chief information officer for the Registry of Deeds.

With only \$7,000 in his initial Fiscal Year 2023 budget, O'Donnell first requested that the commissioners allow him to transfer \$60,000 from the Registry of Deeds Dedicated Deeds Excise Revenue account to pay his legal bills. But the commissioners failed to submit that request to the Advisory Board, which ultimately would have decided whether to release to the funds.

In the context of his original case, O'Donnell filed an "Emergency Motion for Order Enjoining Interfering with the Register's Ability to Fund this Litigation," which Judge Brian A. Davis denied on Oct. 6, 2022.

A couple of weeks later, O'Donnell filed the new mandamus case, coupled with a motion for a preliminary injunction, again designed to end the commissioners' blockade on his requested transfers including \$75,000 for legal fees, which this time would have been drawn from a different source.

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Judge Janet L. Sanders denied the request for an injunction, citing Davis' determination that those legal fees "should not come out of public funds."

But the third time proved to be the charm for O'Donnell.

Cahillane first noted that he disagreed with the defendants' contention that he was bound by Davis' decision in the lead case, as the "law of the case."

"His ruling was in a different case and on an entirely different issue than is before the Court here," Cahillane wrote.

Rather than seeking a transfer of funds from the registry's Dedicated Deeds Excise Revenue, O'Donnell was now seeking to reallocate funds between budgetary "subclasses" under G.L.c. 35, §32, the judge explained.

Sanders' decision, too, did not preclude him from reaching different legal conclusions, now that the record was more complete, Cahillane added.

Turning to the substantive issue, Cahillane found that G.L.c. 35, §32 was "unambiguous." O'Donnell could move money around "whenever in his opinion public necessity and convenience so requires."

Contrary to the defendants' contention, there was nothing in the statute that required the plaintiff to submit justification for this opinion or permitted the withholding of approval if the county director or commissioners did not share the opinion, Cahillane wrote.

A 1925 Supreme Judicial Court case the defendants cited, *City Council of Salem v. East Massachusetts St. R. Co.*, was inapposite because the statute at issue in that case, G.L.c. 161, §77, was markedly different from the one at issue in O'Donnell's, Cahillane decided.

Cahillane rejected the defendants' contention that, if officials like O'Donnell were not required to demonstrate why transfers are in the interest of public necessity and convenience, it would undermine the Legislature's budgetary process.

"In permitting an authorized official such as the Register to determine whether certain transfers within a main group may be made, the statute recognizes that the Register is in the best position to understand the daily needs of the Registry of Deeds and to take certain actions in the interests of the public that elected him," Cahillane wrote.

For several years, the county had routinely granted and quickly posted his requests for transfers between budget subclasses without asking him to justify them, the judge noted.

On Oct. 27, Cronin and the county commissioners filed a notice of appeal and followed that up on Nov. 6 by filing an emergency motion to stay, suspend or modify Cahillane's injunction pending that appeal, arguing that the judge's analysis "reflects legal errors that are likely to result in reversal."

"Specifically, in cases where motive, intent, or other state of mind questions are at issue, summary judgment is often inappropriate," they write.

The defendants also argue that Cahillane failed to require O'Donnell to sustain his burden of demonstrating that there was no genuine issue as to every material fact — particularly his opinion that public necessity and convenience required the requested transfers.

Cahillane's order should also be modified because it ignores the fact that the funds, which were available in the county's fiscal year 2023, are no longer available in fiscal year 2024, the defendants contend.

For the moment O'Donnell is savoring the victory which is not just one for the registry but all its users, including attorneys, engineers, title examiners and homeowners, he says.

"Any time an official, a county commissioner or a bureaucrat oversteps their bounds, you have got to stand up to that abuse of power," he says.



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If Cahillane's decision withstands review, O'Donnell should be better equipped to have a "fair fight" with his adversaries. Cronin and the commissioners are being represented by Scott P. Lopez of Lawson & Weitzen, while in the lead case, O'Donnell had been represented by Leonard H. Kesten of Brody, Haroon, Perkins & Kesten of Boston.

The lead case involves not just O'Donnell's allegation that the commissioners improperly failed to allow him to hire an information officer for the registry after approving and funding the position but that they converted millions of dollars in deeds excise revenue that is dedicated for the registry's exclusive use under state law, according to O'Donnell.

"In July, they just wiped it out; they took it all for county purposes," O'Donnell says.

Cronin and Lopez did not respond to Lawyers Weekly's request for comment.