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2018 JUN 19 PM 1:33

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June 18, 2018

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79569

FAX FILING 318-872-4202

Honorable Jeremy M. Evans
Desoto Parish Clerk of Court
Post Office Box 1206
Mansfield, Louisiana 71052-1206

RE: Desoto Parish Sheriff Jayson Richardson v. Louisiana Legislative Auditor Daryl G. Purpera; No. _____; 42nd Judicial District Court; Desoto Parish, LA

Dear Mr. Evans:

Please find our Petition for Declaratory and Injunctive Relief and for a Protective Order on behalf of Desoto Parish Sheriff Jayson Richardson. Please create a new civil case number and present the Order to the appropriate Judge for his signature. We are placing the original and copies in the mail today and ask that you please file the original pleading in the suit record and return a stamped-filed copy of same to me.

Please note that I have not enclosed payment for the filing fees as the Sheriff of DeSoto Parish is a governmental entity and is therefore exempt from advance filing fees.

Thank you for your assistance in this matter.

Yours very truly,



James R. Sterritt

JRS/ayp

Enclosures

Cc (w/enclosures): Daryl G. Purpera
Julie Stokes
Jeffrey Landry

DESOTO PARISH SHERIFF
JAYSON RICHARDSON

2018 JUN 19 PM 1:33

NUMBER:

79569-B

VERSUS

42ND JUDICIAL DISTRICT COURT

LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA

DESOTO PARISH, LOUISIANA

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF
AND FOR A PROTECTIVE ORDER**

NOW INTO COURT, through undersigned counsel, comes Petitioner, DESOTO PARISH SHERIFF JAYSON RICHARDSON (“Sheriff”) who seeks a Declaratory Judgment and/or an Injunction against defendant, LOUISIANA LEGISLATIVE AUDITOR DARYL PURPERA (“Auditor”) and the Legislative Subpoena Duces Tecum (the “Subpoena”) which the Auditor had issued and served on the Sheriff. The Sheriff also seeks a Protective/Restraining Order against and/or Stay of the Subpoena, pending the outcome of these proceedings, as follows:

1.

Petitioner is DESOTO PARISH SHERIFF JAYSON RICHARDSON (“Sheriff”), the chief law enforcement officer of Desoto Parish and executive officer of the Judiciary. La. Const. art. V, § 27. The Sheriff hereby seeks judicial review and appropriate orders regarding a “Legislative Subpoena Duces Tecum” (the “Subpoena”) directed to the Sheriff by the Auditor.

2.

Named as Defendant is LOUISIANA LEGISLATIVE AUDITOR DARYL PURPERA (“Auditor”), a “fiscal advisor” to the legislature, whose “duties and functions” are limited “to auditing fiscal records.” La. Const. art. III, § 11. The Auditor caused the Subpoena to be issued and served.

3.

The Subpoena was served on the Desoto Parish Sheriff on Wednesday, June 13, 2018, in Mansfield, Louisiana by a representative of the Auditor with a return date of Monday, June 25, 2018.

4.

The Subpoena was not issued under authority of any Court. Instead, it is a “Legislative Subpoena Duces Tecum” pursuant to LSA R.S. 24:513M(1). A judge did not review or evaluate

the foundation for the Subpoena. Instead, it was signed by the Louisiana Legislative Auditor (Daryl G. Purpera, CPA, CFE) and the Chairwoman of Louisiana Legislative Audit Advisory Council (Representative Julie Stokes). The foundation for the Subpoena consists solely of an "Affidavit" of a "Senior Auditor II" (Sandra Whitehead). (See Exhibit 1 attached hereto: "Legislative Subpoena Duces Tecum" and "Affidavit.")

5.

The Subpoena seeks to compel the Desoto Parish Sheriff to produce "**copies of the unredacted personnel files**" of Sheriff Jayson Richardson and 12 Desoto Parish Deputies in Baton Rouge.

6.

The designated personnel files contain privileged and Constitutionally protected private information. Under the circumstances, forcing the Sheriff to comply with the Subpoena would cause the Sheriff, who is charged with enforcing the law, to instead break the law by disregarding legally protected privacy rights.

7.

The Sheriff desires to cooperate with the Auditor to fulfill his lawful purpose as soon as possible. However, a subpoena that would require the Sheriff to violate the Constitutional rights of another is not a lawful order, regardless of whether it is issued by the judicial, legislative, or executive branch of government. Thus, the Sheriff requests that this Court resolve this matter by directing the parties to an appropriate solution, by declaration, injunction, or otherwise.

8.

The personnel files are privileged and protected by Constitutional privacy rights and other laws. "Personnel records, like medical records, are by their very nature highly confidential." Johnson v. New Orleans Fire Department, 95-0546 (La.App. 4Cir. 11/16/95) 665 So.2d 126, 129. Individuals have specific and well-recognized federal and state constitutional rights of privacy in their personnel records. The Subpoena seeks to infringe upon those privacy rights without due process or just cause. See State of Louisiana v. Milton Lee Shubbie, et al, No. 91-0555 (La. 3/12/91) 575 So.2d 814; Trahan v. Larivee, 365 So.2d. 294 (La. App. 3rd Cir. 1979); Detroit Edison v. NLRB, 99 S.Ct. 1123 (1979); Whalen v. Roe, 97 S.Ct. 869 (1977); Johnson v. Department of Treasury, 700 F.2d. 971 (5th Cir. 1983); International Union v. NLRB, 648 F.2d.

18 (5th Cir. 1980); Vaughn v. Rosen, 383 F.Supp. 1049 (D.C. 1974).

9.

Names, job titles, duties, salaries and dates of employment that may be included in personnel records are subject to disclosure. *However*, it is clearly established that “personally identifiable information which is protected by the right of privacy” is not subject to disclosure without due process and adequate safeguards. La. Attorney General Opinion No. 85-724 (Oct. 1, 1985). For example, unlisted phone numbers and addresses, social security numbers, employee performance evaluations, internal affairs and disciplinary matters, unfounded complaints, banking and financial information, medical records, claim forms, requests for payment of benefits, and other personal information are protected from disclosure by law. Id.; See also cases cited above.

10.

As an accommodation, the Sheriff offered to remove or redact the protected information. But the Auditor, through its representatives and employees, refused. The only accommodation that the Auditor would agree to was that medical records could be removed while the Auditor (via representatives and/or employees) supervised the removal of those records.

11.

The Auditor, through its representatives and employees, claims to have “unfettered” authority and discretion to obtain, copy, and peruse any and all records which the Sheriff may have in his custody, without regard for the Constitutional rights of those affected, and regardless of whether the records are financial in nature or whether they are relevant or necessary for auditing fiscal records.

12.

The Sheriff submits that no public official has such unfettered and unrestrained authority and discretion. The Auditor, like every other public servant, is limited by the Constitution and other laws. “The duties and powers of the Legislative Auditor’s office are provided by statute, and its authority is **limited** by the constitution.” Kyle v Louisiana Public Service Com’n, 2003-0584 (La. App. 1Cir. 4/2/04), 878 So.2d 650, 655. [Emphasis in original].

13.

No law enforcement officer, no district attorney, no attorney general, no inspector general, and no other governmental official has the authority to obtain subpoenas without just, reasonable, or probable cause. There is no law that authorizes the Auditor to do what others can not.

14.

The Subpoena does not satisfy due process. Without providing those affected with any opportunity to be heard, the Subpoena seeks personnel records that are not relevant to or within the scope of any authorized function or inquiry of the Auditor. See LSA R.S. 24:513.

15.

The information which the Auditor may be entitled to under LSA R.S. 24:513 does not include privileged information or personnel records protected by Constitutional privacy rights and other laws.

16.

The Affidavit used to obtain the subpoena is defective. It is not based on personal knowledge. It contains conclusory, unsupportable legal arguments and opinions -- not facts. It contains mischaracterization and/or misrepresentation of the Auditor's authority. It omits relevant matters. It would not be sufficient to establish the foundation necessary for a subpoena issued by a judicial officer.

17.

There is nothing included in the Affidavit that would establish probable or reasonable cause for the intrusion upon the Constitutionally protected private information which the Subpoena seeks. There is no articulable basis, no demonstrated need, and no relevant reason for violating the Constitutional privacy rights of those affected.

18.

Not only is the subpoena unauthorized and lacking in foundation, but it is also overly broad and creates an unreasonable burden and unnecessary expense. The proposed production will be unduly time-consuming and expensive. It will not result in a legally justifiable use of public resources.

The Sheriff has the right to judicially challenge the Auditor's access to any documents which the Sheriff believes he is not legally required to submit, and any such legal challenge should be decided expeditiously. La. Dept. of Insurance, Donelon v. Theriot, La. Leg. Auditor, 2010-0069 (La.App. 1Cir. 5/3/11), 64 So.3d 854, 862.

WHEREFORE, Petitioner, Desoto Parish Sheriff Jayson Richardson, respectfully prays that after due proceedings the Court issue a Declaratory Judgment that:

- (1) The Subpoena implicates and infringes upon Constitutionally protected privacy rights;
- (2) The type of information enumerated in LSA R.S. 24:513 A(1)(a) excludes all parts or portions of personnel files protected by Constitutional privacy rights, privileges, and other laws; and
- (3) Sheriff Jayson Richardson is relieved of any obligation or duty to comply with the Subpoena.

The Petitioner further prays for an Injunction, via TRO, Preliminary and/or Permanent Injunction, as necessary:


- (1) Relieving Sheriff Richardson from any obligation or duty to comply with the Subpoena;
- (2) Preventing any enforcement or prosecution of the Subpoena in any manner;
- (3) Prohibiting any further attempts by the Auditor to compel or produce privileged or legally protected information without a proper foundation and due process.

The Petitioner also requests that the Court:

- (1) Immediately issue a protective or restraining order against and/or stay of the Subpoena at issue herein, pending the outcome of these proceedings, or until such time as a show cause hearing can be held for the Court to evaluate, balance, and rule upon the competing interests involved herein;
- (2) Issue a Rule to Show Cause for the Auditor to appear and show cause why the Subpoena should not be declared unlawful and why an injunction should not be issued prohibiting any enforcement of the Subpoena.

Respectfully submitted:

COOK, YANCEY, KING & GALLOWAY
A Professional Law Corporation

By: 

James R. Sterritt #18447
Gregg A. Wilkes #20419
Jason B. Nichols #28704
333 Texas Street, Suite 1700
P. O. Box 22260
Shreveport, LA 71120-2260
Telephone: (318) 221-6277
Telecopier: (318) 227-7850

ATTORNEYS FOR DESOTO PARISH
SHERIFF JAYSON RICHARDSON

AFFIDAVIT OF VERIFICATION AND CERTIFICATION

STATE OF LOUISIANA

PARISH OF CADDO

BEFORE ME, the undersigned authority, personally came and appeared James R. Sterritt, who did depose and say that he is attorney of record for Desoto Parish Sheriff Jayson Richardson in the above and foregoing petition for declaratory and injunctive relief; that the allegations of the petition are true and correct to the best of his knowledge, information and belief, and that copies of the petition have been served on the 18 day of June, 2018, upon the following:

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397
Ph: (225) 339-3839
Fax: (225) 339-3870
E-mail: DPURPERA@LLA.LA.GOV

Julie Stokes
Representative – District 79
Chairwoman Louisiana Legislative Audit Advisory Council
4203 Williams Blvd.
Suite 200
Kenner, Louisiana 70065
Ph: (504) 468-8603

E-mail: stokesj@legis.la.gov

Jeffrey Martin Landry
Attorney General of Louisiana
Post Office Box 940005
1885 North Third Street
Baton Rouge, LA 70802
Civil division: (225) 326-6000
Fax: 225-326-6096
Litigation division: 225-326-6300
Fax: 225-326-6490

by fax, e-mail, or by placing a copy of same in the United States mail, properly addressed and adequate postage affixed.



JAMES R. STERRITT

SWORN TO AND SUBSCRIBED before me, the undersigned Notary, on this the 18th day of June, 2018.



NOTARY PUBLIC

Gregg A. Wilkes, Bar ID No. 20419
Notary Public
Bossier Parish, Louisiana
My Commission Is For Life

DESOTO PARISH SHERIFF
JAYSON RICHARDSON

2018 JUN 19 PM 1:33
NUMBER: 33 79569-B

VERSUS

42ND JUDICIAL DISTRICT COURT

LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA

DESOTO PARISH, LOUISIANA

PROTECTIVE ORDER
AND
RULE TO SHOW CAUSE

The foregoing considered:

IT IS ORDERED that the "Legislative Subpoena Duces Tecum" of June 11, 2018, addressed to and served upon Sheriff Jayson Richardson (the "Subpoena") is hereby stayed pending the outcome of these proceedings or until further order of this Court. Sheriff Richardson is relieved of any obligation to comply with the Subpoena unless further ordered by this Court.

IT IS FURTHER ORDERED that Louisiana Legislative Auditor Daryl G. Purpera appear before this Court on the 21st day of June, 2018, at 9:30 o'clock and show cause why the Subpoena should not be declared unlawful and why an injunction should not be issued prohibiting any enforcement of the Subpoena as prayed for in the Petition.

THUS DONE AND SIGNED, on this 20th day June, 2018.


DISTRICT JUDGE

EXHIBIT 1

STATE OF LOUISIANA

LEGISLATIVE SUBPOENA DUCES TECUM

BY

THE HONORABLE LEGISLATURE OF THE STATE OF LOUISIANA

AND THE LEGISLATIVE AUDIT ADVISORY COUNCIL

TO: Hon. Sheriff Jayson Richardson
DeSoto Parish
205 Franklin Street
Mansfield, Louisiana 71052

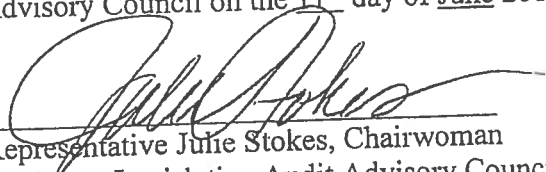
Under the authority of Article III, §7 of the Louisiana Constitution of 1974 and Title 24:513M(1) and 24:554A(1) of the Louisiana Revised Statutes of 1950, as amended, and by order of the Honorable Legislature of the State of Louisiana and the Legislative Audit Advisory Council, you are hereby commanded to produce the following documents to Daryl G. Purpera, Louisiana Legislative Auditor, at 1600 North Third Street, Baton Rouge, Louisiana 70802, on or before **Monday, June 25, 2018**, no later than 05:00 p.m.:

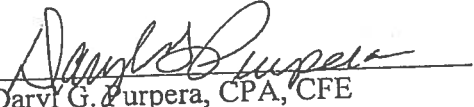
Copies of the unredacted personnel files for each of the following:

1. Jayson Richardson
2. Monica Cason
3. Blake Woodward
4. Karen Miller
5. Robert Davidson
6. Chato Atkins
7. Kenneth Gingles
8. Gregory Perry
9. Stephanie White
10. Patrick Jones
11. Donnie Barber
12. Carolyn Davis
13. Luther Butler

Fail not under penalty of law.

By order of the Honorable Legislature of the State of Louisiana and the Legislative Audit Advisory Council on the 11th day of June 2018, at Baton Rouge, Louisiana.


Representative Julie Stokes, Chairwoman
Louisiana Legislative Audit Advisory Council


Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor

***This subpoena is being issued for RECORDS ONLY. If the records are produced by the date set forth herein, no appearance is required.**

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared, Sandra Whitehead, Senior Auditor II, Investigative Audit Services, Louisiana Legislative Auditor (LLA), whose business address is 1600 N. Third St, Baton Rouge, LA 70802, who after being duly sworn, deposed and said:

In my capacity as a Senior Auditor II with the LLA, I was directed to perform an investigative audit, pursuant to R.S. 24:513, of the DeSoto Parish Sheriff's Office (Sheriff), including but not limited to, the Sheriff's Local Agency Compensated Enforcement (L.A.C.E.) program. Fieldwork began on September 18, 2017.

In the performance of this investigative audit, I have requested documents of the Sheriff, pursuant to the authority granted the LLA by R.S. 24:513(A)(1)(a), which states in relevant part:

... the legislative auditor shall have access to and be permitted to examine all papers, books, accounts, records, files, instruments, documents, films, tapes, and any other forms of recordation of all auditees, including but not limited to computers and recording devices, and all software and hardware which hold data, is part of the technical processes leading up to the retention of data, or is part of the security system. ...

Auditees, including the Sheriff, are directed to assist the LLA in providing information requested pursuant to R.S. 24:513(H)(1), which states in relevant part:

All auditees and their officials and staff are hereby directed to assist the legislative auditor in his work and to furnish such information, reports, aid, services, and assistance as may be requested, all without any cost or charge. ...

The LLA has had unfettered access to the Sheriff's personnel files throughout the course of this audit and has reviewed the Sheriff's personnel files multiple times. On June 7, 2018, the affiant again requested and received certain personnel files; however, when the affiant requested temporary custody of those personnel files, the Chief Civil Deputy contacted the Sheriff and legal counsel. The Chief Civil Deputy then advised affiant that, upon advice of counsel, the Sheriff would not allow the LLA to review, copy or take the requested personnel files. Copies of these personnel files are necessary for the completion of the LLA's investigative audit.

In the ordinary course of business, the LLA is authorized to receive confidential information pursuant to R.S. 24:513(I), which states:

The authority granted to the legislative auditor in this Section to examine, audit, inspect or copy shall extend to all books, accounts, papers, documents, records, files, instruments, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices, whether confidential or otherwise. However, the legislative auditor shall comply with any and all restrictions imposed by law on documents, data, or information deemed confidential by law and furnished to the legislative auditor.

Upon receipt of confidential information, the LLA is required to preserve the confidentiality of audit documentation. Further, a violation of this confidentiality may result in criminal penalties pursuant to R.S. 24:513(K), which states:

Whoever violates the provisions of this Section shall be fined not more than one thousand dollars and shall be deemed guilty of malfeasance and gross misconduct in office, and shall be subject to removal.

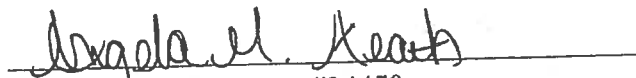
The relevant Audit Law was explained to the Sheriff, staff and counsel. However, the LLA was still denied unfettered access to the requested information.

As of today, June 11, 2018, the LLA has not received the requested information from the Sheriff.

Further affiant sayeth naught.


Sandra Whitehead

SWORN to and subscribed before me, Notary, this 11th day of June 2018, in my office in the City of Baton Rouge, Louisiana.


Angela M. Heath #24450
Notary Public
My Commission is for Life

**SERVICE RETURN
HON. SHERIFF JAYSON RICHARDSON LEGISLATIVE AUDIT
ADVISORY COUNCIL SUBPOENA**

FOR USE BY INVESTIGATIVE AUDITOR

SERVICE DATE: 6/13/18

Monica Casm
SIGNATURE OF RECEIPT

DATE: 6/13/18

Ken Kelley
SIGNATURE OF
INVESTIGATIVE AUDITOR

RETURN TO:

JENIFER SCHAYE
GENERAL COUNSEL
LOUISIANA LEGISLATIVE AUDITOR