



FIFTEENTH JUDICIAL DISTRICT COURT  
PARISH OF LAFAYETTE  
STATE OF LOUISIANA

DIV. "A"

Number: 20190286 A  
Mark Garber, Sheriff of Lafayette Parish; and  
The Lafayette Parish Law Enforcement District

Division:

Versus

Lafayette Parish and  
Lafayette City-Parish Consolidated Government

FILED: \_\_\_\_\_ DY. CLERK: \_\_\_\_\_

**Petition**

Mark Garber, in his official capacity as Sheriff of Lafayette Parish, and the Lafayette Parish Law Enforcement District (collectively, the "Sheriff's Office") petition this Court as follows:

**Plaintiffs**

1.

Mark Garber is the Sheriff of Lafayette Parish.

2.

Under Article 5, §27 of the Louisiana Constitution, the sheriff is the chief law enforcement officer in the parish.

3.

The Lafayette Parish Law Enforcement District was created by La. R.S. 33:5901 (formerly La. R.S. 33:9001). The creation of the Lafayette Parish Law Enforcement District's boundaries include all of Lafayette Parish.

4.

The creation of the district did not diminish the powers of the Sheriff. See La. R.S. 33:5909 (formerly La. R.S. 33:9008).

**Defendants**

5.

Made defendant herein is the Parish of Lafayette.

6.

The Parish of Lafayette is a political subdivision of the State of Louisiana, created by the Louisiana Constitution. See La. Const. Art. 6, § 1.

7.

As such, the Parish of Lafayette has the power to adopt a home rule charter under Article 6, § 5 of the Louisiana Constitution.

8.

The Parish of Lafayette has adopted a home rule charter.

9.

Under §1-04(A) of the home rule charter in effect as of the filing of this petition, the Parish is governed by "the Lafayette City-Parish Consolidated Government." Therefore, that entity is also made a defendant.

#### **Nature of the Suit and Relief Sought**

10.

In addition to any other relief sought, this action seeks a declaratory judgment under La. C.C.P. art. 1871 *et seq.*

11.

For the reasons described below, there currently exists a dispute and uncertainty between the Sheriff's Office and defendants regarding their legal rights and responsibilities in relation to operating the jail in Lafayette Parish.

12.

Plaintiffs request a judicial declaration of the rights and responsibilities of the parties as provided by law.

#### **Background**

13.

In Lafayette Parish, the jail is called the "Lafayette Parish Correctional Center," referred to hereinafter as "LPCC" or the "jail."

14.

Through various statutory provisions, amplified by a string of consistent court decisions, Louisiana law has developed an allocation of responsibilities for operating parish jails and paying for the costs of jail operations.

15.

The Parish has failed to meet its legal responsibilities regarding the jail by failing and refusing to pay certain costs it is mandated to pay, either by not funding these costs directly

or by not reimbursing the Sheriff when he has advanced those costs and sought reimbursement.

### Legal Framework

16.

Louisiana Revised Statutes 15:701 *et seq.* and various statutes in Title 33 provide the general statutory framework outlining the relative responsibilities of the Sheriff and Parish defendants regarding the jail, including the financial obligations of each.

17.

This general statutory scheme has been fully interpreted by the Louisiana First Circuit Court of Appeal in the case of *Amiss v. Dumas*<sup>1</sup>.

18.

Under Louisiana law, the Sheriff is the keeper of the public jail of his parish (La. R.S. 15:704).

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<sup>1</sup> *Amiss v. Dumas* is the quintessential case on the division of jail responsibility (financial or otherwise) between a parish sheriff and parish governing authority. In *Amiss*, the First Circuit held that, "(1) responsibility for providing a jail in each parish rests with police jury of that parish or city parish council; (2) sheriff was not responsible for expense of prisoners' clothing; (3) general statutory scheme is that city parish is responsible for expenses of establishing, maintaining and operating jail and for all expenses of feeding, clothing, and providing medical treatment to prisoners while sheriff has duty of operating jail and seeing to it that prisoners are properly cared for, fed and clothed; (4) sheriff was not financially responsible for supplies necessary for cleaning and routine daily maintenance, for all accessory medical personnel and for those items such as minor appliances and utensils necessary to prepare food for prison inmates." *Amiss v. Dumas*, 411 So.2d 1137 (La. App. 1 Cir. 1982).

The Court of Appeal not only held that the parish was responsible for expenses associated with the maintenance and operation of the jail, including feeding, clothing and providing medical care for the prisoners; but also that the sheriff was not financially responsible for supplies for cleaning and routine daily maintenance, any accessory medical personnel, or for items such as appliances and utensils necessary to prepare food for the inmates. *Id.* at 1141.

The Court went on to explain that the general scheme gathered from a reading of all of the statutes is that the city-parish is responsible for all expenses of establishing, maintaining and operating the jail and for all expenses of feeding, clothing and providing medical treatment to the prisoners, while the sheriff has the duty to operate the jail and see to it that the prisoners are properly cared for, fed and clothed. "These statutes, in effect, establish that prisoners incarcerated in the parish jail, either awaiting trial or serving parish sentences, are wards of the parish and the sheriff is simply the warden ('keeper') of the parish jail." *Id.* Most importantly, the Court noted that it found no provision in any law which mandates that any of the duties required to be performed by the sheriffs are to be at their expense, as there would certainly be no need to compensate them for the performance of their statutory duties if they were to be at their expense in the first instance. *Id.*

19.

However, it is the parish government that is responsible for the physical maintenance of parish jails and prisons. La. R.S. 15:702.

20.

In addition to physical maintenance of the jail, under La. R.S. 15:304, "All expenses incurred in the different parishes of the state...by the arrest, confinement, and prosecution of persons accused or convicted of crimes, their removal to prison...shall be paid by the respective parishes in which the offense charged may have been committed..."

21.

It is also the parish government that is required to hire and pay a physician to provide all medical care to prisoners in the parish jail or, in the alternative, contract with and pay a state-licensed health care provider to render those services. La. R.S. 15:703.

22.

"Thus, the parish is responsible for all expenses of providing medical treatment to prisoners." *Prudhomme v. Russell*, No. CV 17-1344, 2018 WL 2110684, at \*4 (W.D. La. Apr. 19, 2018), report and recommendation adopted, No. CV 17-1344, 2018 WL 2107194 (W.D. La. May 7, 2018), citing *O'Quinn v. Manuel*, 778 F.2d 605, 608 (5th Cir. 1985) (holding that the parish "is responsible for the expenses of establishing, maintaining and operating the jail and for all expenses of feeding, clothing, and providing medical treatment to the prisoners...").

23.

The statutes cited above and related laws establish that, although "day-to-day operation of the parish prison is the responsibility of the local sheriff,...financing and maintenance are the responsibility of the" parish. *Fairley v. Stalder*, 294 F. App'x 805, 812 (5th Cir. 2008).<sup>2</sup>

24.

The defendants are charged with the following affirmative statutory obligations:

- a.) Providing a good and sufficient jail. La. R.S. 33:4715.
- b.) Bearing the responsibility for the physical maintenance of the jail. La. R.S. 15:702.
- c.) Appointing annually a physician to provide care to prisoners housed in the jail, and paying his salary. In the alternative, the parish may pay for health care provided by a third-party contractor. La. R.S. 15:703.
- d.) Paying the Sheriff compensation for "keeping and feeding" prisoners in the jail. La. R.S. 13:5535.

<sup>2</sup> Sometimes a parish does not provide an adequate jail facility, or adequate medical care at the facility. In such cases, it is the Parish—not the Sheriff—which is legally liable for any damage this causes to the inmates. *Roper v. Marino*, No. CIV. A. 92-3988, 1995 WL 222185, at \*2 (E.D. La. Apr. 13, 1995). See also *Arce v. Louisiana*, 226 F. Supp. 3d 643, 649 (E.D. La. 2016).

- e.) Paying for all expenses incurred in the "arrest, confinement, and prosecution" of persons accused or convicted of crimes, including their removal to prison and witness fees. La. R.S. 15:304.
- f.) Providing and bearing the expense for suitable offices and furniture for various offices of the parish, including the Sheriff. La. R.S. 33:4713.

25.

Furthermore, and as discussed in a fairly recent Louisiana Attorney General opinion, the fixed costs associated with operating and maintaining a parish jail are to be paid in whole by the parish, regardless of the make-up of the jail population. In responding to a request from the Catahoula Parish Police Jury President, the Attorney General stated that "The presence of non-parish prisoners in a parish jail does not affect the amount of money the parish owes the sheriff for the fixed costs of running the jail but may allow for a reduction or reimbursement of the variable costs owed by the parish." La. Atty. Gen. Op. No. 13-0185 (November 5, 2014).

26.

The Sheriff is charged with the following affirmative statutory obligations:

- a.) Serving as the "keeper of the public jail of his parish". La. R.S. 15:704.
- b.) Supplying each prisoner with wholesome food in sufficient quantity.
- c.) Providing clothing suited to the season.
- d.) Enforcing cleanliness among the prisoners.
- e.) Furnishing soap and towels.

27.

The Sheriff's obligations mentioned herein are, however, at the sole expense of the parish.

28.

On August 23, 2019, the Sheriff sent a letter to Lafayette Parish (attached as Exhibit A) explaining services provided by the Sheriff's Office corrections division and detailing the cost for them in the immediate past fiscal year, which had ended on June 30, 2019.

29.

The Sheriff made it clear that while Lafayette Parish has no obligation to fund certain programs like the Community Corrections Campus, Juvenile Assessment Center, Direct Supervision Unit or the Transitional Housing Facility, it is obligated by statute to cover expenses for medical treatment and transportation.

30.

In the August 23, 2019 letter, the Sheriff did not request that Lafayette Parish budget and pay for all that it owed.

31.

Instead, the Sheriff requested that Lafayette Parish provide funding for a much lower amount, just that needed to cover the ealaries of certain mandated positions within the Lafayette Parish Correctional Center, including the categories of maintenance, food service, dietitian, laundry deputies, mental health professionals, educational instructors, and the chaplain.

32.

Those salaries total \$1,752,768.39, cover 35 positions, and are currently being paid for by the Sheriff's Office. See attached Exhibit B, with descriptions for those 35 salary positions.

33.

The Sheriff requested the parish pay only for employees providing services for which the Parish is legally obligated to bear the expense:

- a.) Maintenance.
- b.) Food Service.
- c.) Health Care, including Mental Health Care.
- d.) Education
- e.) Chaplain/Clergy

**Item in Dispute**

**Medical Care**

34.

Despite its statutory obligation to do so, Lafayette Parish has not fully paid for medical care of prisoners in the jail.

35.

By informal arrangement going back many years, the Parish has left selection of the medical care provider to the Sheriff.

36.

However, it remains the Parish's responsibility to pay for the medical care of prisoners at the LPCC.

37.

In the August 23, 2019 letter, the Sheriff detailed the cost for the following services, payments made by Lafayette Parish, and the deficit remaining:

- a.) **Treatment Programs** – clinical services provided at the Lafayette Parish Correctional Center by licensed personnel, including assessments and counseling sessions for groups and individuals

Total expenses including salaries - \$1,490,451.70  
No Funding Received from Lafayette Parish;

b.) **Transportation Department** – includes transportation of offenders to and from other facilities, hospital visits, specialty doctors' appointments, order of protective custody transports, and all court transports

Total expenses including salaries - \$711,314.09  
Funding Received from Lafayette Parish (2018-19) - \$185,867.00  
Deficit remaining - \$525,447.09; and

c.) **Medical and other services** – includes all medical services at the jail, educational programs, counseling and religious programs

Total expenses including salaries - \$15,286,430.68.

Funding Received from Lafayette Parish (2018-19):

Sheriff's Office employed nurses	\$333,099
Contract Agency Nurses	\$1,396,259
Dentist	\$50,912
Physician & Mid Level Provider	\$107,026
Psychological Services	\$267,182
Ambulance Contract	\$46,336
Professional Liability Insurance	\$38,678
City Inmates	\$1,000,000
Parish Mandays in other facilities	\$1,272,467
Total Received from Parish:	\$4,510,959
Deficit remaining -	\$10,775,472

38.

Lafayette Parish is legally obligated to bear the expense of medical care of parish prisoners at LPCC.

39.

Lafayette Parish has failed to pay for all expenses of medical care of parish prisoners at LPCC.

40.

In particular, Lafayette Parish has failed to pay the salary or fees of physicians to treat prisoners.

41.

Lafayette Parish has also failed to pay for malpractice insurance for physicians hired to treat prisoners.

42.

Lafayette Parish is legally obligated to bear the expense of mental health care for prisoners at LPCC.

43.

Lafayette Parish has failed to pay for all expenses of mental health care for prisoners at LPCC.

44.

Lafayette Parish is legally obligated to bear the expense of dental care for prisoners at LPCC.

45.

Lafayette Parish has failed to pay for all expenses of dental care for prisoners at LPCC.

**Maintenance**

46.

According to La. R.S. 33:4715 "The police jury of each parish shall provide... a good and sufficient jail..."

47.

Also, under La. R.S. 15:702, "The governing authority of each parish shall be responsible for the physical maintenance of all parish jails and prisons."

48.

The Parish of Lafayette is legally responsible to pay for maintenance of the LPCC.

49.

The Parish of Lafayette has failed to pay for all maintenance of the LPCC.

**Food Service**

50.

The case *Amiss v. Dumas*, 411 So. 2d 1137, 1141 (La.App. 1 Cir. 1982), writ denied, 415 So. 2d 940 (La. 1982) held:

the City-Parish is responsible for the expenses of establishing, maintaining and operating the jail and for all the expenses of feeding, clothing, and providing medical treatment to the prisoners while the sheriff has the duty of operating the jail and seeing to it that the prisoners are properly cared for, fed and clothed.

51.

This holding is a correct statement of the law.

52.

Lafayette Parish is legally obligated to bear the expense of acquiring, preparing, and serving food to parish prisoners at LPCC.

53.

The expense of preparing and serving food to parish prisoners at LPCC includes the cost of dietician services.

54.

The Parish of Lafayette has failed to pay for all costs of acquiring, preparing, and serving food to parish prisoners at LPCC.

#### **Education and Chaplain/Clergy**

55.

Educational services and chaplain/clergy services are provided to prisoners in the normal course of their imprisonment, and are part of the cost of that imprisonment.

56.

Lafayette Parish is legally obligated to bear the expense of education given to parish prisoners at LPCC.

57.

Lafayette Parish has failed to pay for all expenses of education given to parish prisoners at LPCC.

58.

Lafayette Parish is legally obligated to bear the expense of chaplain/clergy services provided to parish prisoners at LPCC.

59.

Lafayette Parish has failed to pay for all expenses of chaplain/clergy services given to parish prisoners at LPCC.

#### **Amount Originally Requested Was Less Than Was Owed**

60.

It is the obligation of the Parish to bear the full cost of care for Parish prisoners because Parish jail inmates are wards of the Parish. Atty. Gen'l Opinion 16-0161, 9/9/2016.

61.

It is the Sheriff's legal duty to provide for those persons arrested in the parish according to the mandates of the Legislature. Atty. Gen'l Opinion 16-0161, 9/9/2016.

62.

The Parish government is required to bear the cost of the Sheriff's execution of this duty to care for inmates because these inmates are wards of the Parish while in the Sheriff's custody. Atty. Gen'l Opinion 16-0151, 9/9/2016.

63.

The Parish has refused to budget and pay for the 35 positions requested by the Sheriff, much less budget and pay for the much larger amount the Parish actually owes.

64.

As the Sheriff and the Parish have been unable to negotiate a satisfactory partial payment of amounts due by the Parish, the Sheriff needs this Court to issue a declaratory judgment establishing which items the Parish must pay for, and in what amounts for all amounts due, not just the 35 positions originally requested by the Sheriff as a compromise.

WHEREFORE, plaintiffs pray that this Court issue a judgment declaring the rights and responsibilities of the parties for funding jail-related expenses, including but not limited to those for medical care, maintenance, food service, mental health care, education, and chaplain services.

Respectfully submitted this 4<sup>th</sup> day of October, 2019.

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**Please Serve:**

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FAX FILED THIS 4  
DAY OF Oct, 2019  
  
Deputy Clerk of Court