33.0

JUDGMENT ON THE PLEADINGS	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 2282CV01001	Walter F. Timilty, Clerk of Courts Norfolk County
CASE NAME William P O'Donnell In his/her capacity Register of Deeds for the County of Norfolk vs. John J Cronin In his/her capacity The County Director for the County of Norfolk et al	COURT NAME & ADDRESS Norfolk County Superior Court 650 High Street Dedham, MA 02026

This action came before the Court, Hon. Michael A Cahillane, presiding, upon a motion for judgment on the pleadings,

After hearing or consideration thereof;

the Court issued its Memorandum of Decision and Order on Cross Motions for Summary Judgment

It is **ORDERED AND ADJUDGED:**

The Court hereby DECLARES that any actions on the part of the defendants to interfere with transfers within an appropriation between classes and between subclasses within a main group are arbitrary and capricious and contrary to the law. The defendants are hereby ORDERED to refrain from interfering with or otherwise hindering the Register's lawful transfers within Group 2 of the Registry of Deeds' budget codes, and to the extent that the transfers at in this decision remain outstanding, the defendants are ORDERED to implement them.

I ATTEST THAT THIS DOCUMENT IS A CERTIFIED PHOTOCOPY OF AN ORIGINAL ON FILE.

Deputy Assistant Clerk 10/19/23

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
10/19/2023	X Mary K. Doherty

Date/Time Printed: 10-19-2023 09:56:34

SCV117: 07/2016

CLERK'S NOTICE	DOCKET NUMBER 2282CV01001	Trial Court of Massachusetts The Superior Court
CASE NAME: **William P O'Donnell In his/her capacity Register of Deeds for the County of Norfolk vs. John J Cronin In his/her capacity The County Director for the County of Norfolk et al**		Walter F. Timilty, Clerk of Courts Norfolk County
TO: William P O'Donnell In his/her capacity Register of Deeds for the C 649 High Street Dedham, MA 02026		COURT NAME & ADDRESS Norfolk County Superior Court 650 High Street Dedham, MA 02026

You are hereby notified that on 10/19/2023 the following entry was made on the above referenced docket:

Endorsement on Motion for summary judgment, MRCP 56 (defendants' cross-motion).----After hearing; Motion is (#27.2): DENIED
See Memorandum of Decision and Order. (dated 10/19/2023) ns ni

Judge: Cahillane, Hon. Michael A

DATE ISSUED	ASSOCIATE JUSTICE/ ASSISTANT CLERK	SESSION PHONE#
10/19/2023	Hon. Michael A Cahillane	

CLERK'S NOTICE	DOCKET NUMBER 2282CV01001	Trial Court of Massachusetts The Superior Court

CASE NAME:	
William P O'Donnell In his/her capacity Register of Deeds for the County of Norfolk vs. John J Cronin In his/her capacity The County Director for the County of Norfolk et al	Walter F. Timilty, Clerk of Courts Norfolk County
TO: William P O'Donnell In his/her capacity Register of Deeds for the C 649 High Street Dedham, MA 02026	COURT NAME & ADDRESS Norfolk County Superior Court 650 High Street Dedham, MA 02026

You are hereby notified that on 10/19/2023 the following entry was made on the above referenced docket:

Endorsement on Motion for summary judgment, MRCP 56 on consolidated case.----After hearing; Motion is (#27.0): ALLOWED
See Memorandum of Decision and Order. (dated 10/19/2023) ns ni

Judge: Cahillane, Hon. Michael A

DATE ISSUED	ASSOCIATE JUSTICE/ ASSISTANT CLERK	SESSION PHONE#
10/19/2023	Hon. Michael A Cahillane	

CLERK'S NOTICE	DOCKET NUMBER 2282CV01001	Trial Court of Massachusetts The Superior Court
CASE NAME: **William P O'Donnell In his/her capacity Register of Deeds for the County of Norfolk vs. John J Cronin In his/her capacity The County Director for the County of Norfolk et al**		Walter F. Timilty, Clerk of Courts Norfolk County
TO: William P O'Donnell In his/her capacity Register of Deeds for the C 649 High Street Dedham, MA 02026		COURT NAME & ADDRESS Norfolk County Superior Court 650 High Street Dedham, MA 02026

You are hereby notified that on 10/19/2023 the following entry was made on the above referenced docket:

Endorsement on Motion for judgment on the pleadings MRCP 12(c) on consolidated case. (#24.0): No Action Taken
See, footnote 5 if the Memorandum of Decision and Order. (dated 10/19/2023) ns ni

Judge: Cahillane, Hon. Michael A

DATE ISSUED	ASSOCIATE JUSTICE/ ASSISTANT CLERK	SESSION PHONE#
10/19/2023	Hon. Michael A Cahillane	

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 22-01001[1]

WILLIAM P. O'DONNELL[2]

vs.

JOHN J. CRONIN[3] & others[4]

MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter arises out of a dispute over the allocation of money budgeted for the Norfolk County Registry of Deeds. Pursuant to G. L. c. 35, § 32, the plaintiff, William P. O'Donnell, the Register of Deeds for Norfolk County, made several requests to the defendants, County Director John J. Cronin and the County Commissioners, for the defendants to transfer certain funds designated in the budget for one purpose to be used for another. After the defendants refused to grant such requests, the plaintiff filed this complaint for mandamus and for declaratory and injunctive relief seeking a declaration that the defendants' actions are unlawful and arbitrary and capricious and an order requiring the defendants to refrain from interfering with said transfers.

The matter is now before the Court on cross motions for summary judgment.[5] For the following reasons, the plaintiff's motion for summary judgment is **ALLOWED** and the defendants' cross motion for summary judgment is **DENIED**.

---

[1] This case has been consolidated with *William P. O'Donnell* v. *Joseph P. Shea, et al.*, Norfolk Superior Civil Action, No. 2182CV00653.

[2] As Register of Deeds for the County of Norfolk

[3] As County Director for the County of Norfolk

[4] Joseph P. Shea, Peter H. Collins, and Richard R. Staiti, as the County Commissioners for the County of Norfolk

[5] The plaintiff also filed a motion for judgment on the pleadings. Because the arguments in that motion and the plaintiff's motion for summary judgment are the same, and the motion for summary judgment presents the Court with a fuller record of the case, the Court takes no action on the motion for judgment on the pleadings and only rules on the motion for summary judgment.

BACKGROUND

The following facts are not in dispute.

The Norfolk County Registry of Deeds (the "Registry of Deeds") is an organizational unit of Norfolk County. The plaintiff, as the Register of the Registry of Deeds, is a duly elected official with statutory duties and obligations to operate, direct, and manage the Registry of Deeds. He is also "the authorized official" of the Registry of Deeds for purposes of G. L. c. 35, § 32.

On May 11, 2022, the Norfolk Advisory Board, the entity responsible for reviewing and approving the County budgets and appropriations, approved the Fiscal Year 2023 Norfolk County Budget (the "2023 Fiscal Budget") for the fiscal year beginning July 1, 2022 through June 30, 2023. The 2023 Fiscal Budget included $140,000 for County legal fees.

With respect to the Registry of Deeds, the 2023 Fiscal Budget included six main budget groups: Group 1 - Personnel Services; Group 2 - Contractual Services; Group 3 - Supplies and Materials; Group 4 - Current Charges and Obligations; Group 5 - Equipment; and Group 6 - Structures and Improvements. The main budget groups were further broken down into subgroups. Group 2 contained several subgroups including: Computer Hardware, Legal Fees, and Miscellaneous Contractual Services. The budget allocated just $7,000 for legal fees.

On July 12, 2021, the plaintiff filed suit in this Court against the County Commissioners, whose role it is administer the budget and submit supplementary requests to the Advisory Board, after they refused to allow the plaintiff to hire a Chief Information Officer ("CIO") for the Registry of Deeds. See *William P. O'Donnell* v. *Joseph P. Shea, et al.*, Norfolk Superior Civil Action, No. 2182CV00653 (the "Lead Case").[6] Thereafter, on July 7, 2022, the plaintiff

[6] According to the Amended Complaint in the Lead Case, the funding for a Registry CIO had been voted and approved by the County Commissioners and Norfolk County Advisory Board in May 2021 for Fiscal Year 2022.

requested that the Commissioners transfer $60,000 from the Registry of Deeds Dedicated Deeds Excise Revenue[7] into the Legal Fees subgroup of Group 2 to be used for legal expenses in connection with the Lead Case. When the Commissioners failed to submit the plaintiff's request to the Advisory Board, the plaintiff filed an Emergency Motion for Order Enjoining Interfering with the Register's Ability to Fund this Litigation ("Emergency Motion"). On October 6, 2022, this Court (Davis, J.) denied the plaintiff's Emergency Motion, finding that the plaintiff "has not shown any statutory or common law basis to require the Commissioners to fund this litigation by Plaintiff at the level demanded by Plaintiff." Lead Case at Docket Entry Dated Oct. 7, 2022. That case remains ongoing.

On September 21, 2022, the County Director refused to approve an email request by First Assistant Register of Deeds, for transfers of $1,500 from Group 2, subgroup 281, "Travel out of State" and Group 2, subgroup 282, "Travel in State" into Group 2, subgroup 299 "Misc. Contractual Services." J.A. Exh. 9, par. 6. The request, sent on behalf of the plaintiff, stated that it was his opinion that the request was out of public necessity and a matter of convenience.

On October 11, 2022, the plaintiff hand delivered to the County Director three written request to transfer appropriated funds between subgroups of Group 2. The first request stated:

> This transfer request is made pursuant to Massachusetts General Law Ch. 35 s.32. Kindly transfer $75,000 from Group 2 Subgroup 276 Computer Hardware into Group 2 Subgroup 235 Legal Fees. It

However, starting Fiscal Year 2023, the County Commissioners consolidated the functions of the County's technology personnel (including the CIO) and created a County Technology Department. With the establishment of the new department, the County Director, not the Registry, would hire a CIO although "the majority of the services" performed by the new CIO would be for the Registry and "a significant share of the new County [Technology] Department [would] be funded by the Registry." See Amended Complaint, Background Information at 5.

[7] Pursuant to G. L. c. 64D, § 11, on the first day of each month, 10.625 percent of the taxes collected in the County are transmitted to a Deeds Excise Fund. "[N]ot more than 60 percent of the deposits" is then disbursed for the operation and maintenance of the County and "not less than 40 percent" are disbursed for the operation of the Registry of Deeds. See G. L. c. 64D, § 12(a). It is this Court's understanding that when the plaintiff refers to the "Registry of Deeds Dedicated Deeds Excise Revenue," he is referring to the Registry of Deed's share of Fiscal Year 2022's Deeds Excise Fund, which according to Amended Complaint in the Lead Case, was not properly allocated to the Registry of Deeds for Fiscal Year 2023.

> is my opinion that this request is of a public necessity and a matter of convenience.

Joint Appendix ("J.A.") Exh. 4. The second request asked for a transfer of "$18,000 from Group 2 subgroup 276 Computer Hardware into Group 2 subgroup 299 Misc. Contractual Services," and the third request asked for a transfer of "$32,000 from Group 2 subgroup 276 Computer Hardware to Group 2 subgroup 239 Misc. Prof. & Technical Services." *Id.* at Exhs. 5 and 6. The second and third requests similarly stated that it was the plaintiff's opinion that the requests are "of a public necessity and a matter of convenience." *Id.* The County Director did not approve the posting of any of the three transfer requests dated October 11, 2022.

On October 21, 2022, the plaintiff filed the instant suit and a motion for preliminary injunction requesting that the Court order the defendants not interfere with transfers within an appropriation between classes and subclasses within a main budget group. This Court (Sanders, J.) denied the motion in a margin entry. The denial stated:

> Plaintiff has failed to show a substantial likelihood of prevailing on the merits AND has not demonstrated that he will suffer irreparable harm if injunction request is denied. In particular, $75,000 of requests at issue are for plaintiff's legal fees in a related action—fees which another Judge has determined should not come out of public funds. See 21CV0653-A.

Docket 2282CV01001, Entry Dated Nov. 16, 2022.

DISCUSSION

The parties here cross move for summary judgment. Summary judgment is appropriate where, "viewing the evidence in the light most favorable to the nonmoving or opposing party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Jinks* v. *Credico (USA) LLC*, 488 Mass. 691, 704 (2021) (citation and quotations omitted). See Mass. R. Civ. P. 56(c). "The moving party bears the burden of demonstrating the

absence of a triable issue of fact on every relevant issue." *Scholz* v. *Delp*, 473 Mass. 242, 249 (2015). The moving party may satisfy this burden by submitting affirmative evidence negating an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of her case at trial. *Flesner* v. *Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis* v. *General Motors Corp.*, 410 Mass. 706, 716 (1991). Once the moving party establishes the absence of a triable issue, "the nonmoving party must respond and make specific allegations sufficient to establish a genuine issue of material fact." *Barron Chiropractic & Rehab., P.C.* v. *Norfolk & Dedham Grp.*, 469 Mass. 800, 804 (2014).

As an initial matter, the defendants argue that Judge Davis's decision in the Lead Case and Judge Sanders's denial of the preliminary injunction in the instant matter are the "law of the case" and therefore, the Court should rule on this motion that the plaintiff cannot use any public funds to pay for his attorney's fees.[8] The Court finds this argument unavailing.

The premise of the "law of the case" doctrine is that judicial efficiency suggests that when a judge decides an issue of law, that decision should continue to govern the same issues in subsequent stages of the "same case" even when heard by another judge. See, e.g., *Christianson* v. *Colt Indus. Operating Corp.*, 486 U.S. 800, 815–816 (1988); *Commonwealth* v. *Clayton*, 63 Mass. App. Ct. 608, 611 (2005). The application of the doctrine is permissive, not mandatory, *Vittands* v. *Sudduth*, 49 Mass. App. Ct. 401, 413 n. 19 (2000), and it is beyond dispute that the second judge to hear the case or issue retains "the power to rule differently from the first judge . . . in order to reach a just result." *Goulet* v. *Whitin Mach. Works*, 399 Mass. 547, 554 (1987).

[8] To the extent that the defendants characterize the plaintiff's request as one to pay for his "personal attorney's fees," all actions taken by the plaintiff, including the filing of this case and the Lead Case, have been in his capacity as Register of Deeds for Norfolk County.

Judge Davis's decision on the plaintiff's Emergency Motion in the Lead Case is not the law of this case. His ruling was in a different case and on an entirely different issue than is before the Court here. In the Emergency Motion, the plaintiff sought a transfer of funds for legal fees from the Registry's Dedicated Deeds Excise Revenue. Judge Davis held that there was no statutory or common law basis to require the Commissioners to make such a transfer. Here, the plaintiff seeks to transfer funds from an appropriation between subclasses under G. L. c. 35, § 32. Whether that statute authorizes him to do so was not an issue before Judge Davis and thus, his ruling has no bearing on the matter before the Court here. Cf. *Ms. M.* v. *Falmouth Sch. Dep't*, 875 F.3d 75, 78 (1st Cir. 2017) (law of the case precluded re-litigation of legal issue present in single case where that issue was decided at an earlier stage of the case).

As to Judge Sanders's decision on the preliminary injunction in this case, it was made on a less complete record than is now before the Court and under a different standard. As a matter of law, her ruling on the preliminary injunction does not preclude the Court from reaching different legal conclusions at a subsequent stage in the litigation. See *TEC Eng'g Corp.* v. *Budget Molders Supply, Inc.*, 82 F.3d 542, 546 (1st Cir.1996) (findings made in preliminary injunction proceeding "do not bind the court in subsequent proceedings"); *Aoude* v. *Mobil Oil Corp.*, 862 F.2d 890, 894 (1st Cir. 1988) ("The web of conclusions upon which a preliminary injunction rests are 'statements as to probable outcomes,' nothing more.").

Moving to the parties' substantive arguments, the plaintiff contends that pursuant to G. L. c. 35, § 32, he is entitled to transfer funds between subgroups without interference from the defendants. The defendants argue that the statute does not give the plaintiff such unbridled discretion and that the plaintiff has not provided the required justification for his requested transfers. The Court concludes that the plaintiff has the better argument.

General Laws c. 35, § 32 sets forth the procedures for county appropriations and transfers among main groups, classes, and subclasses of appropriated funds. The statute provides, in pertinent part:

> Sums appropriated in appropriation acts for counties . . . shall be based upon detailed schedules approved by the county advisory boards, copies of which shall be deposited with the director of accounts.
>
> Said director shall file with the county commissioners and the county treasurer of each county a certification of the amounts appropriated as set forth in the approved schedules. Except as provided by such acts or except as otherwise provided by law, no liability may be incurred and no expenditure shall be made in excess of the amount available in an existing appropriation for a function, a main group, a class or a subclass.
>
> Transfers within an appropriation from one main group to another main group may be made upon written request of the authorized official of the organization unit with the written approval of the county commissioners, and copies of said request and approval shall be filed with the county treasurer; provided, however, that no transfer shall be made from the main groups "personal services", "equipment", "structures and improvements" or "improvements to land" to another main group nor shall any transfer be made from any other main group into any of the aforementioned main groups.
>
> Transfers within an appropriation between classes and between subclasses within a main group may be made by the authorized official of the organization unit whenever in his opinion public necessity and convenience so requires; provided, however, that no transfer shall be made within the classes of the main groups "personal services" or "equipment". . . .

As noted, the parties dispute the extent to which the statute confers authority on the plaintiff, as the Register, to transfer funds between subclasses. "Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent . . . and the courts enforce the statute according to its plain wording . . . so long as its application would not lead to an absurd result" (citations and internal quotation omitted). *Worcester* v. *College Hill Properties, LLC*,

465 Mass. 134, 138 (2013). "All the words of a statute are to be given their ordinary and usual meaning, and each clause or phrase is to be construed with reference to every other clause or phrase without giving undue emphasis to any one group of words, so that, if reasonably possible, all parts shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose." *Id.*, quoting *Selectmen of Topsfield* v. *State Racing Comm'n*, 324 Mass. 309, 312–313 (1949).

The statute at issue here is unambiguous. It distinguishes between "[t]ransfers within an appropriation from one main group to another main group" from "[t]ransfers within an appropriation between classes and between subclasses within a main group." G. L. c. 35, § 32. While the former requires a "written request of the authorized official of the organization unit with the written approval of the county commissioners," the latter "may be made by the authorized official of the organization unit *whenever in his opinion public necessity and convenience so requires*." General Laws c. 35, § 32. Thus, transfers between classes and between subclasses of appropriated funds within a main group is left, with express exceptions that are not applicable here, to the authorized official's sole discretion.

It is undisputed in this case that the plaintiff is the "authorized official" of the Registry of Deeds, an organizational unit within the County. As noted, he made four requests for transfers between subgroups within Group 2 - Contractual Services. Each request noted that it was the plaintiff's opinion that the transfer was of a public necessity and a matter of convenience. Contrary to the defendants' contention, nothing in the statute requires the plaintiff to submit justification for this opinion or permits the withholding of approval if the County Director or Commissioners do not share the opinion. The defendants' actions in preventing the transfers, therefore, are directly contradictory to the unambiguous language of the statute.

Relying on *City Council of Salem* v. *East Massachusetts St. R. Co.*, 254 Mass. 42 (1925), the defendants argue that there is at least a genuine dispute of material fact as to whether the transfers are in the interests of public necessity and convenience. *City Council of Salem* is inapposite. In that case, the Court analyzed action undertaken under G. L. c. 161, § 77, which requires "good and sufficient reasons to be stated" in an order by a board of selectmen if it determines that for "public necessity and convenience" the location of a street railway in a public way should be revoked. G. L. c. 161, § 77. It held that whether "public necessity and convenience in the use of a public way require that the location shall be revoked presents an issue of fact." *Id.* at 45. General Laws c. 161, § 77 is markedly different from the statute at issue in this case. It contains no similar language stating that the determination of public necessity and convenience is in "the opinion" of any individual or individuals.

The Court is also not convinced by the defendant's contention that other portions of G. L. c. 35, § 32 demonstrate that the plaintiff has no authority to effectuate the transfers at issue. The defendants point to language in the first two paragraphs of G. L. c. 35, § 32 stating that "sums appropriated in appropriation acts for counties . . . shall be based upon detailed schedules approved by the county advisory boards . . . ." and that "[e]xcept as provided by such acts or except as otherwise provided by law, no liability may be incurred and no expenditure shall be made in excess of the amount available in an existing appropriation for a function, a main group, a class or a subclass." They argue that pursuant to these provisions, the plaintiff cannot expend any more money on legal fees than allotted for in the legal fees subclass. This language, however, cannot be read in isolation from the remainder of the statute, see *Chin* v. *Merriot*, 470 Mass. 527, 532 (2015), and moreover, it explicitly states that it applies "[e]xcept as provided by such acts or except as otherwise provided by law." See G. L. c. 35, § 32. The language allowing

for the authorized official to determine that a transfer between subclasses is necessary operates as one of the exceptions to the general rule articulated above.[9]

To the extent that the defendants argue that allowing the transfers to go forward without requiring the plaintiff to demonstrate why they are in the interest of public necessity and convenience will undermine the budgetary process established by the Legislature, the Court does not agree. General Laws c. 35, § 32 establishes limits on an authorized official's discretion by disallowing certain transfers between main groups and requiring additional authorization for certain other transfers. 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. Indeed, as demonstrated by the record before the Court, for several years the County has recognized the Register's discretion to determine the necessity for such transfers by routinely granting and quickly posting his requests for transfers between subclasses without requiring any justification for his opinion. See Affidavit of Marguerite Lee at pars. 9-10. See also J.A. Exh. 7 (December 28, 2022 email from County to First Assistant Register of Deeds explaining that "[a]ny transfer within the same code (239 to 299 or 311 to 317) does not require Commissioners' or Advisory Board Approval"). Accordingly, there is no basis under the law for any further justification to be required now.

[9] The defendants also cite language elsewhere in the statute providing that "[n]o county expenditures shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation therefor, except as provided in sections fourteen and thirty-four." G. L. c. 35, § 32. The defendants have not directed the Court to any evidence in the record or any case law suggesting that this portion of the statute was triggered by what occurred in this case.

ORDER

For the foregoing reasons, the Plaintiff's Motion for Summary Judgment (Docket No. 27) is **ALLOWED**. The Defendants' Motion for Summary Judgment (Docket No. 27.2) is **DENIED**.

The Court hereby **DECLARES** that any actions on the part of the defendants to interfere with transfers within an appropriation between classes and between subclasses within a main group are arbitrary and capricious and contrary to the law. The defendants are hereby **ORDERED** to refrain from interfering with or otherwise hindering the Register's lawful transfers within Group 2 of the Registry of Deeds' budget codes, and to the extent that the transfers at in this decision remain outstanding, the defendants are **ORDERED** to implement them.

Michael A. Cahillane
Justice of the Superior Court

Dated: October 19, 2023

I ATTEST THAT THIS DOCUMENT IS A CERTIFIED PHOTOCOPY OF AN ORIGINAL ON FILE.

Deputy Assistant Clerk