

SUPREME COURT

COUNTY OF ST. LAWRENCE

**ST LAWRENCE COUNTY and RENEE COLE,
in her capacity as the duly elected Treasurer
for the County of St. Lawrence,**

Index No. EFCV-21-161083

Plaintiffs,

**DECISION, ORDER
& JUDGMENT**

- against -

IAS No. 44-1-2021-0600

**CITY OF OGDENSBURG, OGDENSBURG CITY
SCHOOL DISTRICT, JEFFREY M. SKELLY,
in his official capacity as Mayor of the City of
Ogdensburg, and STEPHEN JELLIE, in his
official capacity as the City Manager for the
City of Ogdensburg.**

Defendants.

Appearances: St. Lawrence County Attorney (Stephen D. Button, Esq., of counsel), attorney for Plaintiffs; Coughlin & Gerhart, LLP (Nicholas S. Cortese, Esq. of counsel), attorneys for Defendants City of Ogdensburg, Jeffrey M. Skelly & Stephen Jellie; Bond, Schoeneck & King, PLLC (Kate I. Reid, Esq., of counsel), attorneys for Defendant Ogdensburg City School District.

FARLEY, J.

On or about September 27, 2021,

Respondent City of Ogdensburg ("City") enacted Local Law No. 2 of 2021 ("Local Law") (see NYSCEF Doc. 3), effective January 1, 2022, which concerns the interplay of responsibilities and powers of the City and Petitioner St. Lawrence County ("County") with respect to City taxes on real property located within the City. Before the Court are two requests for relief.¹ First, by Verified Petition and Application for Declaratory Judgment ("Petition") under New York C.P.L.R. § 3001, the County seeks a declaration that the Local Law is invalid under the New York State Constitution and various statutory provisions. The County also seeks a writ of mandamus and/or prohibition pursuant to C.P.L.R. Article 78, barring any requirement imposed upon it by the Local

¹ The Petition also discusses whether the City, by amendment of its City Charter, may or did shift to the County any responsibility to collect or enforce Ogdensburg City School District taxes.

Law to collect and enforce City and City School District “(District”) taxes. The City opposes the County’s Petition and seeks to dismiss on several grounds, including, as now pertinent, failure to state a claim upon which relief may be granted (see C.P.L.R. 3211[a] [7]).

On November 19, 2021, this Court issued an Order to Show Cause (Doc. 18), returnable December 10, 2021, requiring the City show cause why the relief requested by the County should not be granted. On the return date, the Court heard oral argument of counsel for all parties by means of Microsoft ‘Teams’. Oral argument was transcribed on the stenographic record. Having expressed the need to provide a timely resolution of this matter in light of the January 1, 2022, effective date, the Court now renders its written Decision, Order and Judgment.

Before addressing the substance of the parties’ contentions, the Court first makes clear what this action/proceeding is and is not about. First, the City and County do not dispute that the County may be required to collect and enforce County taxes on real property located within the City. See Petition at ¶¶ 64-65, 98. Second, the caption of the Local Law at issue (see Doc. 3 at pg. 1) is entitled:

AMENDING THE OGDENSBURG CITY CHARTER AND
ADMINISTRATIVE REGULATIONS TO RELINQUISH THE CITY’S
TAX FORECLOSURE RESPONSIBILITY WITH THE INTENT OF
ALL FORECLOSURE RESPONSIBILITY DEFAULTING TO
ST LAWRENCE COUNTY

Id. (capitalization in original; emphases added).

As a result, the Court treats the subject -- and therefore the substance -- of the Local Law as limited, by its own language, to the County’s purported “foreclosure responsibility.” Stated differently, and contrary to the assumptions of both the County (see, e.g., Petition at ¶¶ 18, 33-34, et al.) and City (see City Memorandum of Law [Doc.

42] at pgs. 1-2, 5, 8, et al.), the Local Law by its terms does not concern collection powers or duties of either the City or County with respect to City real property taxes.

The Local Law, by its terms, is limited to enforcement (and not collection) of City taxes. The Court is mindful of its limited function: “It is fundamental that the ‘function of the courts is to determine controversies between litigants. [Courts] do not give advisory opinions. The giving of such opinions is not the exercise of the judicial function.’” New York Pub. Interest Research Group v. Carey, 42 N.Y.2d 527, 529 (1977) (declaratory judgment action) (citation omitted). The Court is further cognizant of the arcane and often hyper-technical nature and structure of the New York Real Property Tax Law (RPTL), which the Court of Appeals described in 2020 as “a byzantine statutory scheme governing the imposition and collection of all types of assessments on real property.” Matter of Town of Irondequoit v. County of Monroe, 36 N.Y.3d 177, 182 (2020) (emphasis added). Perforce, the Court will limit its judgment to the precise issue before it.

In broad outline, the Local Law amended several provisions of the City Charter. As now pertinent, the Local Law provides: (1) “The County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the Real Property Tax Law” (see § C-80, as amended); (2) as to unpaid City taxes, the County Treasurer is required to “credit the City with the amount of such unpaid delinquent taxes” upon delivery of a warrant by the City Comptroller (see § C-81, as amended); and, (3) the City relieved itself of its prior obligation to remit County tax (see Local Law Section 4, deleting in its entirety § 83 of City Charter). In its Petition, the County takes the position that these provisions are contrary to the New York State Constitution, as well as various state statutes.

The County's constitutional argument (see Petition at ¶ 13) relies upon Article IX, § 2 (d), which states, in pertinent part, a "local government shall not have the power to adopt local laws which impair the powers of any other local government." Id. (emphases added). On its face, however, the Local Law does not impair any powers of the County. To the contrary, the Local Law increases the County's tax enforcement powers with respect to delinquent City taxes. The Court thus rejects the County's constitutional argument. The County's additional argument -- shifting the administrative burdens and associated costs to the County for enforcement of City taxes "impairs" County operations -- misses the point. Article IX, § 2 (d) concerns only impairment of the powers of a local government, not whether the action of one local governmental body imposes additional costs, burdens, or inconveniences upon another. Whether the Local Law affects the operations of the County simply is not germane to the question before the Court.

The County's statutory argument focuses on New York Municipal Home Rule Law ("MHRL") § 10 (5) which is, itself, derived from the above-quoted constitutional provision. This statute states:

Except in the case of a transfer of functions pursuant to the constitution or under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other public corporation.
See Petition at ¶ 13 (quoting MHRL § 10 (5) (emphasis added).

This statutory language does not support the County's position for the same reason the constitutional provision relied upon by the County fails.

The declared "Legislative Intent" of the MHRL is to "extend the field in which a local government might legislate." See MHLR § 50, subd. (1) (*cited in County of Rensselaer v. City of Troy*, 102 A.D.2d 976, 977 [3d Dep't 1984]). For that reason,

the Legislature has made clear the statute is to receive a liberal construction: “This chapter shall be liberally construed.” MHRL § 51 (emphasis added); see Kamhi v. Town of Yorktown, 74 N.Y.2d 423, 428 (1989) (“Municipal Home Rule Law [] must be liberally construed”).

Both the County and the City rely upon and cite extensively to the Third Department’s decision in County of Rensselaer. In that case, the City of Troy adopted a new charter which purported to repeal a prior legislative charter (contained in a 1918 statute) requiring county and state taxes levied on properties in Troy to be collected by the city, and then obligating the city to pay to the county “the full amount of the levied taxes.” 102 A.D.2d at 976. With respect to the MHRL, the court stated:

The Municipal Home Rule Law permits a municipality to enact a local law concerning the levy, administration and collection of local taxes even though such local law does not relate to the municipality’s property, affairs or government. The only limitation is that the State Legislature must not have restricted the adoption of such a local law.

Id. at 976-77 (emphases added). County of Rensselaer is pertinent to the issues now before this Court for two reasons. First, contrary to the County’s assertion, County of Rensselaer does not require the Court declare the Local Law invalid; that case concerned a statutory provision (the 1918 statute) not at issue here. Second, County of Rensselaer requires this Court to affirm the Local Law unless it is otherwise limited by state statute (or constitution).

As previously noted, the statute upon which the County relies -- MHRL § 10 (5) – does not impair any power of the County. Further, it does not fall within the “only limitation” to the MHRL which County of Rensselaer allows: that the Legislature “restricted the adoption of [a Local Law].” County of Rensselaer, 102 A.D.2d at 977.

Indeed, the MHRL does not so much as touch upon the subject matter of the City's Local Law -- "foreclosure responsibility."

The Court also looks to the "definitions" provision of Article 11 ("Uniform Delinquent Tax Enforcement Act") of the New York Real Property Tax Law at RPTL § 1102. In pertinent part, the definition of "tax district" provides:

"Tax district" means:

(b) a city, other than a city for which the county enforces delinquent taxes pursuant to the city charter.

RPTL § 1102 (6) (b) (emphases added).

By making specific reference to enforcement of delinquent taxes "pursuant to the city charter", this section implicitly sanctions a city charter which calls for enforcement of delinquent taxes by a county -- the precise situation now before this Court. To presume otherwise would render RPTL § 1102 (6) (b) either superfluous or meaningless. This directly contradicts a basic canon of statutory construction: "In the construction of a statute, meaning and effect should be given to all its language, if possible, and words are not to be rejected as superfluous when it is practicable to give to each a distinct and separate meaning." NY Stat. § 231 (emphasis added). "Under well-established rules of statutory construction, each word of a statute is to be given effect." Williams v. City of New York, 63 A.D.3d 1203, 1205 (3d Dep't 2009) (citing NY Stat. § 231).

Based on the forgoing, and in light of the MHRL's legislative purpose to extend the field in which local governments might legislate, the Court declares pursuant to C.P.L.R. § 3001 that Local Law §§ 2 (City Charter § C-80), 3 (City Charter § C-81), 4

(deleting former City Charter § C-83), and 6 (effective date) to be valid and enforceable. See Siegel NY Prac § 440 at 848 (6th ed 2018); North Oyster Bay Baymen's Assn. v. Town of Oyster Bay, 130 A.D.3d 885, 890 (2d Dep't 2015) ("upon a motion to dismiss for failure to state a cause of action, a court may reach the merits of a properly pleaded cause of action for a declaratory judgment where no questions of fact are presented [by the controversy]"; motion "should be taken as a motion for a declaration in the defendant's favor and treated accordingly") (*quoting* Siegel). Based on the foregoing, the Court further denies the County's request for relief under C.P.L.R. Article 78.

The Court renders no declaration with respect to Local Law § 5, which provides:

SECTION 5. Article VI, § 199-43 of the Administrative Regulations of the City of Ogdensburg entitled Collection to be Enforced Pursuant to the City Charter shall be deleted in its entirety.

Article VI, § 199-43 of the Administrative Regulations of the City of Ogdensburg is not included in the record before the Court, and the Court has been unable to locate it in an internet search of the Ogdensburg City Regulations, as published at <https://ecode360.com/8442749> ("City of Ogdensburg, NY / The Code / Part I: Administrative Regulations"). Because § 1 of the Local Law does not appear to be germane to the issues now before it, the Court expresses no opinion as to it.

For two reasons, the Court does not at this time resolve, on the merits, that portion of the Petition which concerns District taxes, or the collection and/or enforcement of those taxes. First, the District has not submitted any motion for affirmative relief. Second, December 8, 2021, correspondence to the Court by counsel for the City (see Docs. 52-53) states that the City Council has scheduled a public hearing for January 10, 2022, with respect to an amendment to the City Charter "which

will affirm the City's responsibility to enforce and collect delinquent City School District taxes for properties located within the City's boundaries." See Doc. 52 at pg. 1. If this proposed amendment to the City Charter (see Doc. 53 at pg. 4) is enacted, it would appear that so much of this action as concerns District taxes will be rendered moot. In any event, the Court does not, and may not, issue an advisory opinion regarding a proposed amendment which the City may, or may not, enact.

Nonetheless, at oral argument, counsel for the District raised the concern that its certificates for District taxes must be tendered prior to the City Council's January 10, 2022, scheduled meeting. For this reason, the District's counsel made an oral motion for the Court to issue a preliminary injunction against any new or different action by the City with respect to the collection or enforcement of delinquent District taxes until such time as the City considers and takes action on the proposed City Charter amendment. By e-mail dated December 10, 2021 (uploaded by the Court to NYSCEF as Doc. 56), counsel for the City consented -- albeit with limitations -- that the District's oral motion be considered and determined by the Court. The Court now does so. The Court grants a preliminary injunction against the City taking any new or different action with respect to enforcement or collection of District taxes until the City Council hears and takes final action with respect to the proposed amendment to the City Charter.²

CONCLUSION

For the forgoing reasons, the Court:

² At oral argument, counsel for the City made a good faith oral representation to the Court and other counsel on the stenographic record that City Council will hear and take action on the proposed Amendment to the City Charter at its January 10, 2022 meeting. However, the Court makes clear that the preliminary injunction being issued does not expire January 10, 2022, but remains in effect until such time as the City has taken formal action on the proposed amendment. The Court, upon City counsel's representation, expects formal action will be taken at the January 10, 2022, City Council meeting.

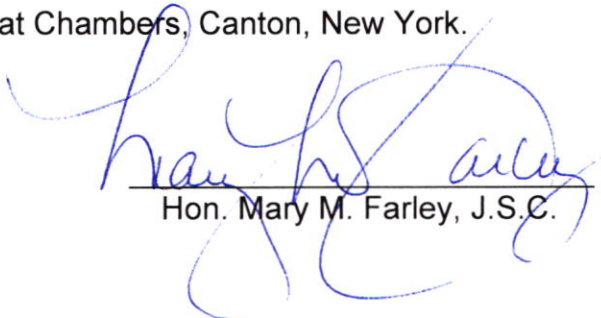
DENIES the County's Petition as against the City; and,

DECLARES pursuant to C.P.L.R. § 3001 Local Law §§ 2 (City Charter § C-80), 3 (City Charter § C-81), 4 (deleting former City Charter § C-83), and 6 (effective date) to be valid and enforceable; and,

GRANTS the District's oral motion, and issues a preliminary injunction against the City taking any new or different action with respect to District taxes until the City Council hears and takes final action with respect to the proposed amendment to the City Charter.³

Any relief requested which is not specifically granted herein is denied.

DATED: December 10, 2021, at Chambers, Canton, New York.



Hon. Mary M. Farley, J.S.C.

ENTER:

{Decision & Order, and moving papers filed}

³ See proposed "Local Law # ___ of 2022" titled: AMENDING THE OGDENSBURG CITY CHARTER TO AFFIRM THE CITY'S RESPONSIBILITY OF THE ENFORCEMENT OF DELINQUENT CITY SCHOOL DISTRICT TAXES." Doc. 53 at pp. 4 (copy of proposed 2022 Local Law) & 3 (Item listing for Agenda of January 10, 2022 City Council meeting).