

**IN THE DISTRICT COURT  
FOR THE SECOND JUDICIAL DISTRICT  
STATE OF WYOMING, COUNTY OF SUBLETTE**  
Assigned to Hon. Jeffrey A. Donnell  
Civil No. 8361

THE STATE OF WYOMING, ex rel.,	)
STEPHEN R. HASKELL, in his official	)
Capacity as Sheriff for the County of	)
Sublette, State of Wyoming,	)
	)
Petitioner,	)
	)
-vs.-	)
	)
MARY LANKFORD, in her official	)
Capacity as County Clerk of the County	)
Of Sublette, State of Wyoming,	)
	)
Respondent.	)

<b>ORDER GRANTING SUMMARY JUDGMENT</b>
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THIS MATTER came before the Court pursuant to *Respondent's Motion for Summary Judgment*, filed on November 25, 2015, and responded to by Petitioner's *Memorandum in Response to Motion for Summary Judgment* on December 24, 2015. The Court, being fully advised in the premises, FINDS and ORDERS as set forth herein:

**THE PARTIES**

1. Petitioner, Stephen R. Haskell, is the current County Sheriff for Sublette County, Wyoming, having been elected and sworn in on January 5, 2015. As Sheriff, Haskell is responsible to pay and account for all monies which come into his office, as provided by law. *See* Wyo. Stat. Ann. § 18-3-609(a)(i). He also is charged with the duty of hiring deputies and other personnel necessary to properly administer the affairs of his office. *See* Wyo. Stat. Ann. § 18-3-602.
2. Respondent, Mary Lankford, is the current County Clerk for Sublette County, Wyoming, having been first elected and sworn in on January 5, 1987. As County Clerk, Lankford is the County Budget Officer, responsible for preparing and filing the budget of each county department; producing the County's accounts payable and financial reports; and maintaining other documents for use in the County's annual financial audit. *See generally* Wyo. Stat. Ann. § 16-4-101 *et seq.*

**RELEVANT FACTS AND PROCEDURAL HISTORY**

3. On August 28, 2015, Haskell, in his official capacity, filed a *Petition for Writ of Mandamus* against Lankford, in her official capacity, alleging that Lankford has been and is acting outside the scope and authority of her office by making coding changes to certain expenditures by the Sheriff's office; by interfering with the Sheriff's personnel decisions; and by engaging in other acts beyond the scope of her statutory powers. In support of his claims, Haskell complains as follows:

- a. On March 25, 2015, Lankford notified Haskell that she had modified the coding for two vouchers from the Sheriff's office, changing one from "Office Equipment" to "Office Supplies" and the other from "Training" to "Office Supplies."
  - b. On May 15, 2015, Lankford informed Haskell that she would be changing the posting/coding on the chart of accounts of three Sheriff's office expenditures.
  - c. At some point during 2015, Lankford and the Sublette County Commissioners determined it appropriate to add a new account within the County Law Enforcement Budget for "training equipment." Lankford then posted \$4,835 worth of expenditures under that account.
  - d. On August 15, 2015, Lankford questioned the change of designation of Sheriff's Office employee Michael Parker, as "court security," when he already was identified as such, so no modification was needed. On that same date, Lankford also questioned the hiring of Todd Morgan as a detention officer when the detention officer budget had a deficit of \$18,000.00.
  - e. For the past eighteen (18) years, M.L. Baxley, an employee of Sublette County Unified Fire, who previously had been an employee of the Sheriff's Office until 2015, administered all state and federal grants in the county budget. However, on February 23, 2015, Haskell requested that all law enforcement grants be forwarded to his (Haskell's) office. On February 24, 2015, Lankford responded that one law enforcement-related grant had been expended and the other was "available in [her] office now[.]"
4. Lankford has denied any official wrongdoing on her part and, on November 25, 2015, filed her *Respondent's Motion for Summary Judgment*, asking this Court to enter judgment in her favor as a matter of law. That issue is before this Court for consideration. Further facts will be addressed below as necessary for a determination of the pending motion.

#### **LEGAL STANDARD GOVERNING MOTIONS FOR SUMMARY JUDGMENT**

5. The standard for summary judgment under Wyoming Rule of Civil Procedure 56 is well established in Wyoming:

Summary judgment is appropriate when no genuine issue as to any material fact exists and the prevailing party is entitled to have a judgment as a matter of law. *Eklund v. PRI Environmental, Inc.*, 2001 WY 55 ¶ 10, 25 P.3d 511, ¶ 10 (Wyo. 2001). A genuine issue of material fact exists when a disputed fact, if it were proven, would have the effect of establishing or refuting an essential element of the cause of action or defense which has been asserted by the parties. *Williams Gas Processing-Wamsutter Co. v. Union Pacific Resources Co.*, 2001 WY 57, ¶ 11, 25 P.3d 1064, ¶ 11 (Wyo. 2001). We examine the record from the vantage point most favorable to the party who opposed the motion, and we give that party the benefit of all reasonable inferences that may fairly be drawn from the record. *Id.*

*NuHome Investments, LLC v. Weller*, 2003 WY 171 ¶ 7, 81 P.3d 940 (Wyo. 2003) (quoting *Trabing v. Kinko's, Inc.*, 2002 WY 171, ¶ 8, 57 P.3d 1248, ¶ 8 (Wyo. 2002)). See *Davis v. State*, 910 P.2d 555, 558 (Wyo. 1996).

6. "The party moving for summary judgment bears the initial burden of establishing a *prima facie* case for a summary judgment. If the movant carries this burden, the party opposing the motion must come forward with specific facts to demonstrate that a genuine issue of material fact does exist." *Hiltz v. Robert W. Horn, PC*, 910 P.2d 566, 569 (Wyo. 1996).
7. An opposition to summary judgment must assert substantiated facts rather than conclusory statements or mere opinions. *McClellan v. Britain*, 826 P.2d 245, 247-48 (Wyo. 1992); *Clark v. Industrial Co.*, 818 P.2d 626, 628 (Wyo. 1991). "Categorical assertions of ultimate facts without supporting evidence cannot defeat summary judgment. [Citations omitted.]" *Seamster v. Rumph*, 698 P.2d 103, 106 (Wyo. 1985). The material presented to the court as a basis for summary judgment "should be as carefully tailored and professionally correct as any evidence which is admissible to the court at the time of trial." *Lane Co. v. Busch Development, Inc.*, 662 P.2d 419, 426 (Wyo. 1983).
8. The Wyoming Supreme Court has defined a material fact as a fact which, if proven "would establish or refute one of the essential elements of a cause of action of a defense which has been asserted." *Wilder v. Cody Country Chamber of Commerce*, 868 P.2d 211, 216 (Wyo. 1994); *Feather v. State Farm Fire & Cas.*, 872 P.2d 1177, 1180 (Wyo. 1994); *Johnson v. Soulis*, 542 P.2d 867, 871-72 (Wyo. 1985) (A genuine issue of material facts is one which has "some legal significance, that is, under the law applicable to a given case, it would control in some way the legal relations of the parties [citations omitted].").
9. "If the evidence is subject to conflicting interpretations or reasonable minds might differ as to its significance, summary judgment is improper." *Weaver v. Blue Cross-Blue Shield*, 609 P.2d 984, 987 (Wyo. 1980). However, "[t]he motion for summary judgment should be sustained in the absence of a real and material fact issue considering movant's burden, respondent's right to the benefit of all favorable inferences and any reasonable doubt, with credibility questions to be resolved by trial." *Cordova v. Gosar*, 719 P.2d 625, 640 (Wyo. 1986).
10. In this case, the parties agree that there are no disputed material issues of fact and the matter should be determined as a matter of law.

### ANALYSIS

11. Haskell has filed a *Petition for Writ of Mandamus*, as extraordinary and drastic remedy limited to compelling the performance of a public official's "ministerial duties defined clearly and prescribed by Wyoming law." *LeBeau v. State ex rel. White*, 377 P.2d 302, 303 (Wyo. 1963). *See also State ex rel. Epp v. Mayor*, 894 P.2d 590, 595 (Wyo. 1995).
12. Wyoming statute § 1-30-101 dictates that mandamus be issued only where there is a failure to perform "an act which the law specifically enjoins as a duty resulting from an office, trust or station." *Id.* The statutory duty must be "absolutely and incontrovertible, or clear, certain, and indisputable." *State ex rel. Epp v. Mayor*, 894 P.2d 590, 595 (Wyo. 1995). Where there is any reasonable controversy about the existence of the right, mandamus is not an appropriate remedy. *See LeBeau v. State ex rel. White*, 377 P.2d 302, 303 (Wyo. 1963). An attack on discretionary functions, as opposed to clear ministerial duties, does not warrant the issuance of a writ of mandamus. *See Gose v. City of Douglas*, 2008 WY 126, ¶ 26, 193 P.3d 1159 (Wyo. 2008), overruled on other grounds by, *Brown v. City of Casper*, 2011 WY 35, 248

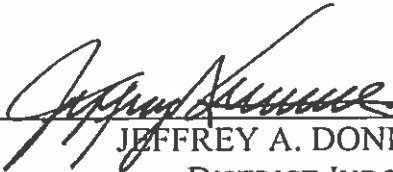
P.3d 1136 (Wyo. 2011); *State ex rel. West Park Hosp. Dist. v. Skoric*, 2014 WY 41, 321 P.3d 334 (Wyo. 2014).

13. Here, Haskell complains of Lankford's decisions to modify the account categorization/coding of certain expenditures; to question his hiring and payroll decisions; and to delay providing him with certain grants for him to administer. Simply stated, nothing in Wyoming law expressly requires and/or or prevents the complained-of acts and omissions.
14. Nothing in the Uniform Municipal Fiscal Procedures Act (Fiscal Procedures Act), Wyoming Statutes §§ 16-4-101 *et seq.*, or the Wyoming statutes governing county clerks, Wyoming Statutes §§ 18-3-401 *et seq.* dictates or mandates the complained of conduct. In fact, Lankford, as the "budget officer," has significant statutory duties vis-à-vis preparing the budget and accounting for expenditures, including the transfer of balances between departments or accounts. *See* Wyo. Stat. Ann. § 16-4-101 *et seq.*
15. Further, the Fiscal Procedures Act, Wyo. Stat. Ann. §§ 16-4-101 *et seq.*, requires county clerks to "maintain the uniform system of accounting in accordance with generally accepted accounting principles (GAAP)," which requires that every expenditure be posted accurately on the chart of accounts. *See* Wyo. Stat. Ann. § 16-4-120(c). Haskell did not establish, or even suggest, that Lankford's postings were inaccurate, only that they were not in accordance with his requests.
16. Lankford, as a citizen of Sublette County, certainly has every right to vocalize her opinion with respect to payroll and personnel decisions. Lankford's inquiry into the hiring of Todd Morgan appears to be little more than the conscientious performance of her duties to ensure the accurate reflection of payroll decisions within the county budget and to report expenditures in excess of a department's budget appropriation. *See* Wyo. Stat. Ann. § 16-4-108(a). But, where, as here, Lankford did not affect or deny the hiring decision, she cannot be said to have done anything more than exercise her First Amendment right to free speech.
17. Finally, where Haskell has complained of Lankford's delay in turning over the law enforcement grants and/or grant records he requested, the Court finds that there is no clear statutory duty obligating Lankford to relinquish all authority and responsibility to administer and account for County grants to Haskell where Sublette County was listed as a grant recipient. *Compare* Wyo. Stat. Ann. § 16-4-104(b).
18. Lankford, as County Clerk, has the authority to record County expenditures and administer County grants. And, nothing prevents her from vocalizing her concerns or doubts as to payroll decisions.
19. Her exercise of her discretion and judgment, whether good or bad, is just that – discretion. Accordingly, this Court has no authority to issue a writ of mandamus. Where "a duty as involves the exercise of discretion in the manner of its performance, then it is clear that the court cannot interfere to control that discretion." *State ex rel. Irvine v. Brooks*, 84 P. 488, 489 (Wyo. 1906). *See also N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs*, 310 P.3d 583, 589-90 (Nev. 2013) (internal citations omitted) ("Once it is concluded that the County Commissioners had authority to withhold the disbursements in this case, the precise manner in which they do so must be decided based on policy and economics. Courts exist solely to declare and enforce the law, and are without authority as to matters of mere governmental policy.").

CONCLUSION

20. For the reasons stated herein, *Respondent's Motion for Summary Judgment* must be and hereby is **GRANTED**. Petitioner's *Petition for Writ of Mandamus* is denied and dismissed.

SO ORDERED the 15 day of February, 2016.

  
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JEFFREY A. DONNELL  
DISTRICT JUDGE

Copies to:

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