

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

<b>JEFFREY MANN, in his individual capacity</b>	)	
<b>and his official capacity as Sheriff of</b>	)	
<b>DeKalb County</b>	)	
<b>Petitioner,</b>	)	<b>CIVIL ACTION FILE NO.:</b>
	)	
<b>V.</b>	)	
	)	
<b>Attorney General CHRISTOPHER CARR,</b>	)	
<b>Sheriff EZELL BROWN, and Sheriff</b>	)	
<b>TERRY DEESE, in their respective official</b>	)	
<b>capacities and their collective capacity as the</b>	)	
<b>committee appointed by Governor Nathan Deal</b>	)	
<b>pursuant to O.C.G.A. §15-16-26 to investigate</b>	)	
<b>Sheriff Jeffrey Mann</b>	)	
<b>Respondents.</b>	)	

**EMERGENCY APPLICATION FOR WRIT OF PROHIBITION**

COMES NOW, Jeffrey Mann, in his individual capacity and his official capacity as Sheriff of DeKalb County, who pursuant to O.C.G.A. §9-6-40 et. seq., moves this Court for a Writ of Prohibition against Respondent Attorney General Christopher Carr, Respondent Sheriff Ezell Brown and Respondent Sheriff Terry Deese, in their respective official capacities and in their collective capacity as the committee (hereinafter “Respondents” or “the committee”) appointed by Governor Nathan Deal pursuant to O.C.G.A. §15-16-26 to investigate Sheriff Jeffrey Mann.

This Application for Writ of Prohibition is being made for the simple reasons that (1) the committee’s investigation of Sheriff Mann is not statutorily authorized by O.C.G.A. §15-16-26; and (2) O.C.G.A. §15-16-26 deprives Sheriff Mann of basic due process rights and is therefore unconstitutional. Because O.C.G.A. §15-16-26 requires that the

committee issue a report to the Governor within 30 days of May 16, 2017, this application is being filed as an Emergency Application for Writ of Prohibition, and it is hereby requested that this matter be expedited and set down for a hearing within five (5) days of the filing of this application.

**PARTIES, JURISDICTION AND VENUE**

1.

Petitioner, Jeffrey Mann, is a resident of DeKalb County, Georgia, and the duly elected Sheriff of DeKalb County, Georgia.

2.

Respondent Christopher Carr is the Attorney General for the State of Georgia. Respondent Christopher Carr may be served, in his official capacity, and in his capacity as a member of the committee appointed by Governor Deal to investigate Sheriff Jeffrey Mann, at his office located at 40 Capitol Square, Atlanta, Georgia 30322.

3.

Respondent Ezell Brown is the Sheriff of Newton County. Respondent Ezell Brown may be served, in his official capacity, and in his capacity as a member of the committee appointed by Governor Deal to investigate Sheriff Jeffrey Mann, at his office located at 15151 Alcovy Road, NE, Covington, Georgia 30014.

4.

Respondent Terry Deese is the Sheriff of Peach County. Respondent Terry Deese may be served, in his official capacity, and in his capacity as a member of the committee appointed by Governor Deal to investigate Sheriff Jeffrey Mann, at his office located at 1007 Spruce Street Extension Fort Valley, Georgia 31030.

5.

This Court has jurisdiction over this matter and Respondents pursuant to O.C.G.A. §9-6-40 & O.C.G.A. §9-6-42.

6.

Venue is proper is Fulton County.

7.

A Writ of Prohibition is the proper remedy for Sheriff Mann to challenge the Respondents' O.C.G.A. §15-16-26 investigation as Sheriff Mann alleges that the Respondents are exceeding their limited statutory jurisdiction, thus conducting an investigation that is not statutorily authorized by O.C.G.A. §15-16-26. Sheriff Mann also alleges that O.C.G.A. §15-16-26, which authorizes that the Governor suspend him for a period of up to 90 days, order a further investigation by the Georgia Bureau of Investigation, and request the DeKalb County District Attorney to initiate removal proceedings, violates his State and Federal constitutional rights to due process. Sheriff Mann alleges that he has no other legal remedy to challenge his unlawful investigation by the committee other than through this Application for Writ of Prohibition.

**FACTS APPLICABLE TO ALL COUNTS**

Sheriff Mann incorporates by reference all the allegations of Paragraphs 1 through 7 as if each allegation was fully stated below.

8.

Jeffrey Mann is the duly elected Sheriff of DeKalb County, Georgia.

9.

On May 6, 2017, Jeffrey Mann was arrested in the City of Atlanta for two city ordinance violations. (Exhibit 1).

10.

A city ordinance violation, by definition, is not considered a “crime.” *O.C.G.A. §16-2-1*; (Exhibit 2).

11.

On May 11, 2017, citing an allegation of criminal charges against Sheriff Mann, Governor Nathan Deal issued an Executive Order, pursuant to O.C.G.A. §15-16-26, appointing Respondent Attorney General Christopher Carr, Respondent Sheriff Ezell Brown and Respondent Sheriff Terry Deese to a committee to investigate Sheriff Mann. (Exhibit 3).

12.

On May 12, 2017, Sheriff Jeffrey Mann, through counsel, asked the Governor to withdraw his Executive Order appointing the committee to investigate Sheriff Mann, because he is not facing criminal charges and therefore an investigation is not authorized by O.C.G.A. §15-16-26. (Exhibit 4).

13.

On May 16, 2017, Governor Deal rescinded the May 11, 2017, Executive Order and issued a new Executive Order appointing Respondent Attorney General Christopher Carr, Respondent Sheriff Ezell Brown and Respondent Sheriff Terry Deese to a committee to investigate Sheriff Mann for allegations of criminal charges, alleged misconduct in office or alleged incapacity of the sheriff to perform the functions of his office. (Exhibit 5).

14.

On May 17, 2017, Sheriff Jeffrey Mann, through counsel, asked the Governor to withdraw his Executive Order appointing the committee to investigate Sheriff Mann because, once again, he is not facing criminal charges, and because there have been no allegations of misconduct in office or alleged incapacity of the sheriff to perform the functions of his office. (Exhibit 6).

15.

As the Governor has not withdrawn his Executive Order dated May 16, 2017, as it is clear that an investigation of Sheriff Mann is not authorized by O.C.G.A. §15-16-26, as O.C.G.A. §15-16-26 denies Sheriff Mann his constitutional rights to due process, and as Sheriff Mann has no other legal remedy to challenge his investigation by the committee, it is imperative that a Writ of Prohibition be issued in this matter to stop the committee from investigating Sheriff Mann. As the committee only has 30 days from May 16, 2017, to make a report of its investigation to the Governor, it is hereby requested that this matter be expedited and that a hearing be held within five (5) days of the filing of this application.

#### COUNT I

#### **THE COMMITTEE'S INVESTIGATION OF SHERIFF MANN IS NOT STATUTORILY AUTHORIZED BY O.C.G.A. §15-16-26**

Sheriff Mann incorporates by reference all the allegations of Paragraphs 1 through 15 as if each allegation was fully stated below.

16.

Sheriff Mann is a constitutionally elected official. *Ga. Const. Art. IX, §I, Para. III.*

17.

The Governor's Executive Order appointing Respondents to the committee to investigate Sheriff Mann is based solely on the Governor's limited statutory authority pursuant to O.C.G.A. §15-16-26.

18.

O.C.G.A. §15-16-26 only authorizes the Governor to order an investigation of a sheriff of this state if (1) the sheriff is facing criminal charges; (2) there is alleged misconduct in office; or (3) the sheriff is allegedly incapacitated such that the sheriff cannot perform the functions of his office. *O.C.G.A. §15-16-26*; (Exhibit 7). If none of these three conditions is present, then Governor has no authority to order an investigation of a sheriff.

19.

O.C.G.A. §15-16-26 fails to define "criminal charges." However, it is clear that Georgia law does not consider a city ordinance violation to be a criminal charge because an ordinance violation is not a "violation of a statute of this state." *O.C.G.A. 16-2-1*; *see also Horace Mann Ins. Co. v. Drury*, 213 Ga. App. 321 (1994). Therefore, since O.C.G.A. §15-16-26 does not permit an investigation of Sheriff Mann for the alleged commission of city ordinance violations, this Court should issue a Writ of Prohibition to stop the committee from exceeding its jurisdiction by conducting an investigation of Sheriff Mann for alleged criminal charges.

20.

O.C.G.A. §15-16-26 fails to define "alleged misconduct in office." However, a common-sense definition of the term requires that Sheriff Mann be accused of misconduct in his

official capacity as Sheriff of DeKalb County. This definition is supported by the Supreme Court of Georgia's definition of the same term as it applies to judges, which requires actions taken in bad faith by a "judge acting in her judicial capacity."<sup>1</sup> *In Re Inquiry Concerning a Judge* #94-70, 265 Ga. 326, 328 (1995); *In Re Inquiry Concerning a Judge*, 265 Ga. 843 (1995). Therefore, since there is no allegation that Sheriff Mann committed any misconduct in office, or in his official capacity as the DeKalb County Sheriff, this Court should issue a Writ of Prohibition to stop the committee from exceeding its jurisdiction by conducting an investigation of Sheriff Mann for alleged misconduct in office.

21.

O.C.G.A. §15-16-26 fails to define "alleged incapacity of the sheriff to perform the functions of his office." However, incapacity is universally understood to mean that there is a physical or mental inability to perform one's duties. Therefore, since there is no allegation that Sheriff Mann is incapacitated, and unable to perform the functions of his office, this Court should issue a Writ of Prohibition to stop the committee from exceeding its jurisdiction by conducting an investigation of Sheriff Mann for alleged incapacity to perform the duties of his office.

22.

Since not one of the three conditions listed in O.C.G.A. §15-16-26 is present in this case, an investigation of Sheriff Mann is not authorized by O.C.G.A. §15-16-26. Therefore,

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<sup>1</sup> Similarly, the Georgia Supreme Court has defined "malpractice in office" to mean 'evil, bad or wrong practice in office.' *Beauchamp v. Smith*, 250 Ga. 16, 17 (1982) (citing *Cole v. Holland*, 219 Ga. 227 (1963)).

any attempt by the committee to investigate Sheriff Mann exceeds the jurisdiction of the committee granted by O.C.G.A. §15-16-26. As Sheriff Mann has no other legal means to challenge the authority of the committee to conduct an investigation, and as necessity and justice demand that this Court issue a Writ of Prohibition in this matter, Sheriff Mann prays that this Court set this matter for an expedited hearing, issue a Writ of Prohibition, and for all other relief that this Court deems just.

## COUNT II

### **O.C.G.A. §15-16-26 DEPRIVES SHERIFF MANN OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND IS THEREFORE UNCONSTITUTIONAL**

Sheriff Mann incorporates by reference all the allegations of Paragraphs 1 through 22 as if each allegation was fully stated below.

23.

Upon an authorized investigation pursuant to O.C.G.A. §15-16-26, the committee has the ability to recommend suspension of Sheriff Mann, which can result in the Governor suspending Sheriff Mann for up to 90 days, further investigation of Sheriff Mann by the Georgia Bureau of Investigation or other law enforcement agencies, and the initiation of removal proceedings by the DeKalb County District Attorney.<sup>2</sup>

24.

Sheriff Mann, as an elected official, has a property interest in his office, which can only be taken away from him through due process. *Ludowici v. Stapleton*, 258 Ga. 868

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<sup>2</sup> Unlike suspension pursuant to O.C.G.A. §45-5-6, which provides for suspension with pay for a public official who is under felony indictment, O.C.G.A. §15-16-26 appears to authorize the Governor to suspend Sheriff Mann without pay.



(1989); *Eaves v. Harris*, 258 Ga. 1 (1998). He also has a property interest in receiving his lawful compensation as the Sheriff of DeKalb County.

25.

Both the Constitution of the State of Georgia and the Constitution of the United States proclaim that no person should be deprived of life, liberty or property without due process of law. *Ga. Const. Art. I, §I, Para I.*; *U.S. Const. amend. V & XIV.*

26.

Any Legislative act in violation of the Constitution of the State of Georgia or the United States is void. *Ga. Const. Art I, §II, Para. V.* Therefore, if O.C.G.A. §15-16-26 violates the Constitution of the State of Georgia or the Constitution United States, the law is void and the committee has no authority to conduct an investigation of Sheriff Mann.

27.

O.C.G.A. §15-16-26 violates the Constitution of the State of Georgia and the Constitution of the United States because it fails to provide even the basic principles of due process.

For example:

1. O.C.G.A. §15-16-26 fails to define “criminal charges” “alleged misconduct in office” and “alleged incapacity of the sheriff to perform the functions of his office.”<sup>3</sup>

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<sup>3</sup> If these terms are not defined, how is Sheriff Mann, or any other sheriff, able to conform his behavior so as not subject himself to an investigation pursuant to O.C.G.A. §15-16-26? Does O.C.G.A. §15-16-26 have a different definition of a crime than O.C.G.A. §16-2-1 such that a city ordinance violation qualifies as a criminal charge? If so, would traffic tickets also be considered criminal charges? After all, the maximum punishment for a speeding ticket is 12 months in jail, whereas the maximum punishment for a City of Atlanta ordinance violation is only 6 months in jail. What is alleged

2. O.C.G.A. §15-16-26 makes no provision for notice and a hearing for Sheriff Mann.<sup>4</sup>
3. O.C.G.A. §15-16-26 fails to inform Sheriff Mann if he is entitled to be represented by a lawyer.<sup>5</sup>
4. O.C.G.A. §15-16-26 fails to inform Sheriff Mann if he has the right to present evidence or witnesses, including character witnesses, to the committee.<sup>6</sup>
5. O.C.G.A. §15-16-26 fails to inform Sheriff Mann whether he has the right to cross-examine witnesses.<sup>7</sup>
6. O.C.G.A. §15-16-26 fails to provide any guidance to the committee as to the parameters of investigation, the scope of the investigation, the scope of the report to be provided to the Governor, and most importantly, the standard to be applied.<sup>8</sup>

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misconduct in office and who is authorized to allege the misconduct? What if a sheriff has the flu and is unable work for a week? Does that qualify as incapacity that would allow the Governor to appoint a committee to investigate a sheriff?

<sup>4</sup> Is there any requirement that Sheriff Mann be notified of the fact that he is being investigated by the committee? Does O.C.G.A. §15-16-26 even require that a hearing?

<sup>5</sup> If there is a hearing, does Sheriff Mann have the right to have a lawyer appear with him? Is the lawyer allowed to speak? Can Sheriff Mann remain silent or will his silence be used against him by the committee?

<sup>6</sup> If a hearing is held by the committee, what are the rules? Can Sheriff Mann present evidence and/or witnesses?

<sup>7</sup> Can Sheriff Mann or his lawyer question witnesses who will appear before the committee, such as the arresting officer?

<sup>8</sup> How does the committee decide whether to recommend that Sheriff Mann be suspended? What is their decision based on? Does their decision need to be unanimous? What is the standard of proof? What needs to be determined? Compare with O.C.G.A. §45-5-6, which provides that the commission appointed when a public official is under indictment is charged with determining whether the “indictment relates to and adversely

## THE REMEDY OF A WRIT OF PROHIBITION

Sheriff Mann incorporates by reference all the allegations of Paragraphs 1 through 27 as if each allegation was fully stated below.

28.

Pursuant to O.C.G.A. §9-6-40 & O.C.G.A. §9-6-42, a Writ of Prohibition may issue at any time to restrain Respondents from exceeding their jurisdiction in investigating Sheriff Mann. A Writ of Prohibition, which is the counterpart of Mandamus, is the proper remedy as Sheriff Mann has no other legal remedy or relief against the committee appointed to investigate him.<sup>9</sup>

29.

For the reasons that:

- (1) The committee's authority to investigate Sheriff Mann is based exclusively on O.C.G.A. §15-16-26;
- (2) O.C.G.A. §15-16-26 clearly does not authorize an investigation of Sheriff Mann for allegedly committing city ordinance violations, since ordinance violations are by definition not criminal charges;

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affects the administration of the office of the indicted public official and that the rights and interests of the public are adversely affected thereby.” *O.C.G.A. §45-5-6.*

<sup>9</sup> All official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights; provided, however, that no writ of mandamus to compel the removal of a judge shall issue where no motion to recuse has been filed, if such motion is available, or where a motion to recuse has been denied after assignment to a separate judge for hearing. *O.C.G.A. §9-6-20.*

- (3) There has been no allegation that Sheriff Mann either committed misconduct in office or is incapacitated;
- (4) Any action by the committee to investigate Sheriff Mann for anything other than criminal charges, misconduct committed in office or incapacitation is not authorized, beyond the scope of O.C.G.A. §15-16-26, and therefore beyond the jurisdiction of the committee;
- (5) O.C.G.A. §15-16-26 fails to provide Sheriff Mann with the basic rights to due process and is therefore unconstitutional; and
- (6) Sheriff Mann has no other legal remedy to stop the committee from conducting an investigation pursuant to O.C.G.A. §15-16-26, other than filing this Application for Writ of Prohibition,

Sheriff Mann HEREBY PRAYS: that since the committee is required to provide the Governor with a report of its investigation within 30 days of May 16, 2017, this Court set this matter down for a hearing within five (5) days of the filing of this application; that this Court GRANT this Application for Writ of Prohibition pursuant to O.C.G.A. §9-6-40 & O.C.G.A. §9-6-42 and Order the committee to cease its investigation of Sheriff Mann; that this Court, through its inherent authority and through its authority pursuant to O.C.G.A. §9-4-2, declare O.C.G.A. §15-16-26 unconstitutional; and for all other relief that this Court deems just.

Respectfully submitted, this 22<sup>nd</sup> day of May, 2017.

**Jeffrey Mann v. Christopher Carr et al.**  
**Superior Court of Fulton County, CAFN \_\_\_\_\_**

/S/ NOAH H. PINES  
NOAH H. PINES  
Attorney for Petitioner  
Georgia Bar No.: 580324

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**JEFFREY MANN, in his individual capacity )  
and his official capacity as Sheriff of )  
DeKalb County )  
Petitioner, )**

**) CIVIL ACTION FILE NO.:**

**V. )**

**)  
Attorney General CHRISTOPHER CARR, )  
Sheriff EZELL BROWN, and Sheriff )  
TERRY DEESE, in their respective official )  
capacities and their collective capacity as the )  
committee appointed by Governor Nathan Deal )  
pursuant to O.C.G.A. §15-16-26 to investigate )  
Sheriff Jeffrey Mann )  
Respondents. )**

**VERIFICATION**

Pursuant to O.C.G.A. §9-10-110, NOAH H. PINES, as attorney for the Petitioner in the above-styled case, being duly sworn, states that the facts as set forth in the forgoing Application for Writ of Prohibition are true and correct.

This 22<sup>nd</sup> day of May, 2017.



NOAH H. PINES  
Attorney for Petitioner  
Georgia Bar No.: 580324

Sworn and subscribed before me

This the 22<sup>nd</sup> day of May, 2017



NOTARY PUBLIC

My commission expires:



## EXHIBIT 1

CITY OF ATLANTA  
ARREST CITATION

2341659

1. Incident / CICA Number; 1:71:2 612:5:0 :7		2. GA Code(s):		3. UCR:		4. Family Violence: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5. <input type="checkbox"/> Reported Case <input checked="" type="checkbox"/> Witnessed Case		Off Days: <u>SM</u> <u>EW</u> <u>T</u> <u>F</u> <u>S</u>		Court Day: <u>MON</u>		Time: <u>5:30</u>	
6. Incident Report Made? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If yes, indicate report type		<input checked="" type="checkbox"/> Original <input type="checkbox"/> Supplement		<input checked="" type="checkbox"/> Computer <input type="checkbox"/> Handwritten	
7. Name: (last) <u>Mann</u>		(first) <u>Jeffrey</u>		(middle) <u>L.</u>		(alias)	
8. Address: St. No. <u>[REDACTED]</u>		Street Name <u>[REDACTED]</u>		Type <u>[REDACTED]</u>		Apt. <u>[REDACTED]</u> <input type="checkbox"/> NW <input type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE	
9. City <u>[REDACTED]</u>		State <u>[REDACTED]</u>		Zip <u>[REDACTED]</u>		Telephone # <u>[REDACTED]</u> <input checked="" type="checkbox"/> Physical Arrest <input type="checkbox"/> Copy of Charges	
10. Race/ Sex <u>B/M</u>		DOB <u>7/27/62</u>		<input checked="" type="checkbox"/> DL# <u>[REDACTED]</u> <input type="checkbox"/> SSN <u>[REDACTED]</u>		If DL # issuing State: <u>GA</u>	
11. On <u>5/1/11</u> at <u>11:00</u> AM/PM on the City of Atlanta, <u>Fulton</u> County the above accused did commit the offense(s) of: NOTE: (If arrest is based on a warrant; list the warrant #, and issuing jurisdiction in block 12.)							
a. <u>Indecency</u> against section <u>16-129</u> (X) state law ( ) city of ordinance							
b. <u>Obstruction of Officer</u> against section <u>16-81.7</u> (X) state law ( ) city of ordinance							
c. against section ( ) state law ( ) city of ordinance							
12. In that the accused did: <u>later around in Piedmont Park in an area highly known for sexual acts after dark. Accused was feeling on his penis when he noticed me. He then turned back and walked in my direction. Accused exposed his penis and was actively masturbating. Accused then fled on foot when I</u>							
13. Place of Offense: (Street address) <u>1073 Piedmont Ave</u> <input type="checkbox"/> NW <input checked="" type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE Beat <u>502</u>							
14. Place of Arrest: (Street address) <u>341 9th St</u> <input type="checkbox"/> NW <input checked="" type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE Beat <u>502</u> at <u>11:07</u> AM/PM on <u>5/1/11</u>							
15. YOU ARE HEREBY COMMANDED to appear at the Municipal Court, General Division of the City of Atlanta, to be held at 150 Garnett St., S.W. on: <u>May 8th</u> , 20 <u>11</u> AM/PM							
Signature <u>[Signature]</u>							
16. Arresting Officer: (print) <u>Snell, S</u> APD ID # <u>4724</u> Radio # <u>9129</u>				17. Arresting Officer: <u>[Signature]</u> APD ID # <u>4724</u> Radio # <u>9129</u>			
18. Investigating Officer: <u>[Signature]</u> APD ID # <u>4724</u> Radio # <u>9129</u>				19. Transporting Officer: <u>[Signature]</u> APD ID # <u>4724</u> Radio # <u>9129</u>			
20. Codefendants (list name, first initial) List all on this line: <u>[REDACTED]</u>							
21. Name (Victim/ Witness/Business Name): <u>City of Atlanta</u>				Telephone # <u>[REDACTED]</u> Race/ Sex <u>[REDACTED]</u> Rel Code <u>[REDACTED]</u> Hospital <input type="checkbox"/>			
22. Name (Victim/ Witness/Business Name): <u>[REDACTED]</u>				Telephone # <u>[REDACTED]</u> Race/ Sex <u>[REDACTED]</u> Rel Code <u>[REDACTED]</u> Hospital <input type="checkbox"/>			
23. Rel Code: (1) Domestic (2) Acquaintance (3) Stranger (4) Bias Crime (W) Witness Check block if victim sent to hospital							
24. ARRESTING OFFICER'S CERTIFICATION: The undersigned, being duly sworn, upon his/her oath, deposes and states that he/she has just and reasonable grounds to believe, the person named herein has committed the offense(s) herein set forth, contrary to law. Affiant states that the foregoing is true, complete and legible to the best of his/her knowledge and belief.							
OFFICER'S SIGNATURE <u>[Signature]</u>							
These charges, have been reviewed for accuracy (under the laws of the State of Georgia and the City of Atlanta) and have been sworn and subscribed before me this <u>May 8th</u> day of <u>May</u> Yr. <u>2011</u>							
SUPERVISOR'S SIGNATURE <u>[Signature]</u>							
25. Security Risk <u>[REDACTED]</u>							

DEFENDANT

VIOLATION

SUMMONS

WITNESS

CERTIFICATION

shined my flashlight on him. Accused ran and disrobed

COURT COPY

# EXHIBIT 2

## O.C.G.A. § 16-2-1

Current Through the 2016 Regular Session

**Official Code of Georgia Annotated > TITLE 16. CRIMES AND OFFENSES > CHAPTER 2. CRIMINAL LIABILITY > ARTICLE 1. CULPABILITY**

### **§ 16-2-1. "Crime" defined**

- (a) A "crime" is a violation of a statute of this state in which there is a joint operation of an act or omission to act and intention or criminal negligence.
- (b) Criminal negligence is an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby.

### **History**

Laws 1833, Cobb's 1851 Digest, p. 779; Code 1863, § 4188; Code 1868, § 4227; Code 1873, § 4292; Code 1882, § 4292; Penal Code 1895, § 31; Penal Code 1910, § 31; Code 1933, § 26-201; Code 1933, § 26-601, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 2004, p. 57, § 2.

Annotations

### **Notes**

#### **EDITOR'S NOTES. --**

Ga. L. 2004, p. 57, § 6, not codified by the General Assembly, provides that the amendment by that Act shall apply to all crimes which occur on or after July 1, 2004.

### **Case Notes**

GENERAL CONSIDERATION  
INTENT  
CRIMINAL NEGLIGENCE

#### **JUDICIAL DECISIONS**

#### **GENERAL CONSIDERATION**

*ONLY VIOLATIONS OF PUBLIC LAWS ARE RECOGNIZED AS CRIMINAL OFFENSES. Jenkins v. State, 14 Ga. App. 276, 80 S.E. 688 (1914).*

*AN ACT SPECIALLY AUTHORIZED BY PUBLIC LAW CANNOT BE A CRIME. Vason v. South Carolina R.R., 42 Ga. 631 (1871).*



# EXHIBIT 3



## THE STATE OF GEORGIA

### EXECUTIVE ORDER

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BY THE GOVERNOR:

**WHEREAS:** On May 6, 2017, DeKalb County Sheriff Jeffrey Mann was arrested by the Atlanta Police Department; and

**WHEREAS:** Pursuant to O.C.G.A. § 15-16-26, upon criminal charges against a sheriff, the Governor has the authority to appoint an investigative committee consisting of the Attorney General and two sheriffs who are members of the Georgia Sheriff's Association.

**NOW THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY**

**ORDERED:** That Attorney General Chris Carr, Sheriff Ezell Brown of Newton County, and Sheriff Terry Deese of Peach County are hereby appointed as the committee to investigate charges pending against Sheriff Mann.

**IT IS FURTHER**

**ORDERED:** That the committee shall make a report of its investigation to me within 30 days of the date of this Executive Order.

This 11<sup>th</sup> day of May, 2017.

*Nathan Deal*

GOVERNOR

# EXHIBIT 4



## ROSS & PINES

PERSONAL INJURY • IMMIGRATION • CRIMINAL DEFENSE

5555 GLENRIDGE CONNECTOR, SUITE 435  
ATLANTA, GEORGIA 30342

T: 404.812.4300 | F: 404.812.4303  
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**VIA FACSIMILE NO.: 404-657-7332  
AND FIRST CLASS MAIL**

May 12, 2017

The Honorable Nathan Deal  
Governor, State of Georgia  
206 Washington Street  
111 State Capitol  
Atlanta, Georgia 30034

Dear Governor Deal:

On May 9, 2017, the Georgia Sheriffs' Association requested that you appoint a committee to investigate DeKalb County Sheriff Jeff Mann due to his arrest for "indecenty and obstruction." The Sheriffs' Association's request was pursuant to O.C.G.A. §15-16-26 and based on the assertion that Sheriff Mann has "pending criminal charges." On May 11, 2017, pursuant to O.C.G.A. §15-16-26, you issued an Executive Order appointing Attorney General Chris Carr, Sheriff Ezell Brown and Sheriff Terry Deese as the committee to investigate Sheriff Mann.

As you are aware, O.C.G.A. §15-16-26 grants you the authority to appoint a committee to investigate a Sheriff, such as the committee you appointed in your Executive Order, under certain limited circumstances. The limited circumstance alleged by the Sheriffs' Association, and referenced in your Executive Order, is that Sheriff Mann is facing "criminal charges." However, Sheriff Mann is not facing "criminal charges" as defined by Georgia law; instead Sheriff Mann was only accused of violating City of Atlanta ordinances (Sec. 106-129 & Sec. 106-81), which are not criminal charges.<sup>1</sup> Therefore, because O.C.G.A. §15-16-26 does not provide for an investigation of Sheriff Mann for city ordinance violations, I respectfully request that you reconsider your Executive Order dated May 11, 2017.

Thank you for your attention to this matter. Please contact me if you need any additional information.

Sincerely,

Noah H. Pines

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<sup>1</sup>See O.C.G.A. §16-2-1 (defining a 'crime' as a violation of a statute of this state); *Horace Mann Ins. Co. v. Drury*, 213 Ga. App. 321 (1994) (a violation of municipal ordinances is not recognized as a 'crime'); O.C.G.A. §36-32-1 (establishing the authority and jurisdiction of municipal courts over municipal violations); O.C.G.A. §36-32-5 (giving municipal courts the authority to impose sentences for violations of the laws of the municipality).

# EXHIBIT 5



## THE STATE OF GEORGIA

### EXECUTIVE ORDER

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BY THE GOVERNOR:

**WHEREAS:** On May 6, 2017, DeKalb County Sheriff Jeffrey Mann was arrested by the Atlanta Police Department; and

**WHEREAS:** Pursuant to O.C.G.A. § 15-16-26, upon "criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office," the Governor has the authority to appoint an investigative committee consisting of the Attorney General and two sheriffs who are members of the Georgia Sheriff's Association.

**NOW THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY**

**ORDERED:** That Attorney General Chris Carr, Sheriff Ezell Brown of Newton County, and Sheriff Terry Deese of Peach County are hereby appointed as the committee to investigate "criminal charges, alleged misconduct in office, or alleged incapacity" as it relates to Sheriff Mann.

**IT IS FURTHER**

**ORDERED:** That the committee shall make a report of its investigation to me within 30 days of the date of this Executive Order.

**IT IS FURTHER**

**ORDERED:** That Executive Order 05.11.17.01 is hereby rescinded.

This 16<sup>th</sup> day of May, 2017.

*Nathan Deal*

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GOVERNOR

# EXHIBIT 6



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**VIA FACSIMILE NO.: 404-657-7332  
AND FIRST CLASS MAIL**

May 17, 2017

The Honorable Nathan Deal  
Governor, State of Georgia  
206 Washington Street  
111 State Capitol  
Atlanta, Georgia 30034

Dear Governor Deal:

I understand that on May 16, 2017, you rescinded your May 11, 2017, Executive Order appointing Attorney General Chris Carr, Sheriff Ezell Brown and Sheriff Terry Deese as the committee to investigate Sheriff Jeffrey Mann for “criminal charges.” I also understand that on May 16, 2017, you issued a new Executive Order appointing the same committee to investigate Sheriff Mann for “criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office.”

As I stated in my letter dated May 12, 2017, O.C.G.A. §15-16-26 grants you the authority to appoint a committee to investigate a Sheriff under limited circumstances. The three limited circumstances are that a Sheriff is facing criminal charges, he allegedly committed misconduct in office or he is allegedly incapacitated, such that he cannot perform the functions of his office.<sup>1</sup> Since I already detailed why Sheriff Mann is not facing criminal charges in my previous letter to you, I will focus my attention on why there are no allegations of misconduct in office and/or incapacity that would authorize an investigation of Sheriff Mann pursuant to O.C.G.A. §15-16-26.

Although “misconduct in office” is not defined by O.C.G.A. §15-16-26, a common-sense definition of the term requires that Sheriff Mann commit some type of misconduct in his official capacity as Sheriff of DeKalb County, not that he the allegedly commit a city ordinance violation while not acting in his official capacity.<sup>2</sup> Such a common-sense definition

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<sup>1</sup>None of these three apply to Sheriff Mann’s current situation of facing two city ordinance violations.

<sup>2</sup>If “misconduct in office” encompassed the commission of a city ordinance not committed in his official capacity as Sheriff of DeKalb County, then the “criminal charges” provision of O.C.G.A. §15-16-26 would be mere surplusage because any violation of a city ordinance, or commission of a crime, would be covered under the “misconduct in office” provision of O.C.G.A. §15-16-26. *See State v. Randle* 298, Ga. 375 (2016) (the canon of statutory construction requires courts to avoid a construction that makes some of the language mere surplusage).



**Governor Deal**  
**May 17, 2017**

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of “misconduct in office” is supported by the Supreme Court of Georgia’s definition of the same term as it applies to judges. *See In Re Inquiry Concerning a Judge #94-70, 265 Ga. 326 (1995)* (“actions taken in bad faith by the judge acting in her judicial capacity”); *see also In Re Inquiry Concerning a Judge, 265 Ga. 843 (1995)*. Therefore, since there are no allegations that Sheriff Mann committed any misconduct in his official capacity as the DeKalb County Sheriff, O.C.G.A. §15-16-26 does not authorize the appointment of an investigative committee.

Although “incapacity of the sheriff to perform the functions of his office” is also not defined by O.C.G.A. §15-16-26, incapacity is commonly defined as a physical or mental inability to perform one’s duties. Therefore, since there are no allegations that Sheriff Mann is suffering from a physical or mental disability that prevents him from performing the functions of his office, O.C.G.A. §15-16-26 does not authorize the appointment of an investigative committee.

Therefore, because O.C.G.A. §15-16-26 does not provide for an investigation of Sheriff Mann for city ordinance violations and because there are no allegations that Sheriff Mann committed misconduct in office or is incapacitated, such that he cannot perform the functions of his office, I respectfully request that you reconsider your Executive Order dated May 16, 2017, which appointed a committee to investigate Sheriff Mann.

Thank you for your attention to this matter. Please contact me if you need any additional information.

Sincerely,

  
Noah H. Pines

# EXHIBIT 7

## O.C.G.A. § 15-16-26

Current Through the 2016 Regular Session

**Official Code of Georgia Annotated > TITLE 15. COURTS > CHAPTER 16. SHERIFFS > ARTICLE 1. GENERAL PROVISIONS**

### **§ 15-16-26. Investigation of charges against sheriff; suspension; additional investigations; assumption of sheriff's duties; indictment for felony**

- (a) Whenever the Governor determines that an investigation of a sheriff of this state should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office, he shall appoint two sheriffs who are members of the Georgia Sheriffs' Association who, along with the Attorney General, shall constitute a committee to conduct an investigation. Such sheriffs may be from any two counties in the state other than the county of the sheriff under investigation. The members of any such committee shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with an investigation. The funds necessary to conduct an investigation shall come from the funds appropriated to the executive branch of state government.
- (b) Any member of the committee shall be authorized to administer oaths to any witness before the committee. The committee shall make a report of its investigation to the Governor within 30 days from the date of the appointment of both sheriff members by the Governor.
- (c) If the committee recommends the suspension of the sheriff, the Governor shall be authorized to suspend the sheriff for a period of up to 60 days. In any case where a sheriff has been suspended for 60 days, the Governor may extend the period of suspension for an additional 30 days. Upon such recommendation, the Governor shall also be authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff pursuant to subsection (b) of Code Section 15-16-10 based upon the evidence reported by the committee. In the event that the Governor determines that further investigation should be made, he or she may then order additional investigation by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies of this state, or by any special committee appointed by the Governor for such purpose.
- (d) Except as provided in subsection (e) of this Code section, the chief judge of the superior court of the county of the sheriff's residence shall appoint a person who meets the qualifications for sheriffs pursuant to Code Section 15-16-1 to assume the duties and responsibilities of the office of sheriff during any period of suspension.
- (e) Upon indictment for a felony, the provisions of Code Section 45-5-6 shall apply.
- (f) The remedy provided by this Code section is intended to be cumulative of other remedies available on the subject and is not intended to repeal such remedies.

### **History**

Ga. L. 1968, p. 1248, §§ 1-4; Ga. L. 1982, p. 425, § 1; Ga. L. 1984, p. 1279, § 2; Ga. L. 2012, p. 173, § 2-8/HB 665; Ga. L. 2013, p. 141, § 15/HB 79.

### **Annotations**

### **Notes**