

IN THE SUPERIOR COURT OF DECATUR COUNTY  
STATE OF GEORGIA

City of Bainbridge, Georgia; :

Petitioner, :

vs. :

Civil Action File No. 14CV00681

Decatur County, Georgia; Decatur County :  
Board of Commissioners; Decatur County :  
Board of Commissioners Chairman Frank :  
Loeffler, Vice Chairman Dennis Brown, :  
Commissioner Jan Godwin, Commissioner :  
David C. Mosely, Commissioner Russell :  
Smith, and, Commissioner Oliver Sellers, in :  
their official capacities; :

Respondents. :

FILED IN OFFICE  
2014 Nov 14 03:01 PM  
CECILIA WILLIS  
CLERK OF SUPERIOR COURT  
DECATUR COUNTY, GEORGIA  
2014-3345

SUMMONS

TO THE ABOVE NAMED RESPONDENTS:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

David A. Kendrick  
Floyd & Kendrick, LLC  
P. O. Box 1026  
Bainbridge, GA 39818

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 14<sup>th</sup> day of November, 2014.

Clerk of Superior Court

By: Rebecca K. Harter  
Deputy Clerk

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VERIFIED PETITION FOR MANDATORY MEDIATION OF SERVICE DELIVERY  
STRATEGY AND OTHER RELIEF

COMES NOW Petitioner, City of Bainbridge, Georgia, and files this, its Verified Petition for Mandatory Mediation of Service Delivery Strategy and Other Relief. In support thereof, Petitioner shows the court as follows:

THE PARTIES, JURISDICTION, AND VENUE

1.

Petitioner, City of Bainbridge, Georgia (“Bainbridge”), is a municipal corporation duly authorized and existing under the laws of the State of Georgia. Bainbridge is the County Seat of Decatur County, Georgia.

2.

Respondent Decatur County, Georgia (“County”), is a county in the State of Georgia. It may be served by service on the Chairman of its governing authority, Chairman Frank Loeffler, of the Decatur County Board of Commissioners, at 203 West Broughton Street, Bainbridge, Georgia, 39818.

3.

Respondent Decatur County Board of Commissioners (the “Commission”) is the governing authority of Decatur County. It may be served by delivering service on the Chairman of the Board of Commissioners, Frank Loeffler, at 203 West Broughton Street, Bainbridge, Georgia 39818.

4.

Respondents Chairman Frank Loeffler, Vice Chairman Dennis Brown, Commissioner Jan Godwin, Commissioner David C. Mosely, Commissioner Russell Smith, and Commissioner Oliver Sellers, are duly-elected members of the Decatur County, Commission. They are sued in their official capacities and may be served at 203 West Broughton Street, Bainbridge, Georgia 39818.

5.

Jurisdiction and venue are proper in this court.

## FACTS

6.

Bainbridge hereby incorporates all paragraphs contained above as if the same were reprinted verbatim here.

7.

Bainbridge and the County implemented a Service Delivery Strategy (“SDS”) comprised of a series of agreements related to the provision of governmental services. The SDS was last updated in October 2007.

8.

Bainbridge has identified areas in the existing Service Delivery Strategy Agreements (“SDS Agreements”) with the County that result in funding inequities and City property taxpayers paying for County services the City property taxpayers do not receive—all of which results in double taxation of City residents, businesses, and property located inside the corporate limits of Bainbridge.

9.

Bainbridge desires to review, revise, and reach an agreement on new SDS Agreements with the County that eliminates any and all areas of funding inequities and taxation of Bainbridge residents, businesses, and taxpayers by the County for services that the County does not provide to the property taxpayers located within the corporate limits of Bainbridge.

10.

Bainbridge further wishes to coordinate with its fellow Cities of Decatur County to negotiate with the County so that the Cities and County can implement a new SDS comprised of revised Agreements that meet the requirements of Georgia law.

11.

The "Cities of Decatur County" include the following:

- A. City of Attapulgas
- B. City of Bainbridge
- C. Town of Brinson
- D. City of Climax

12.

The total population of the County is 27,842 people according to the most recent U.S. decennial Census. The total population is split as follows:

- A. Unincorporated area of the County: 14,201 people or 51.01 percent of the total county population.
- B. City of Attapulgas: 449 people or 1.61 percent of the total county population.
- C. City of Bainbridge: 12,697 people or 45.60 percent of the total county population.
- D. Town of Brinson: 215 people or 0.77 percent of the total county population.

- E. City of Climax: 280 people or 1.01 percent of the total county population.

13.

Bainbridge representatives have tried on numerous occasions to enter into negotiations and mediation with representatives of the County prior to instituting the present action. The following subsections elaborate more fully on these efforts:

- A. On August 19, 2014, Bainbridge sent proposed SDS Agreements to the County, divided into four categories, to wit:
- 1.) County-wide services;
  - 2.) City Services;
  - 3.) County Services provided primarily for the benefit of the unincorporated area residents, individuals, and property owners.
  - 4.) Services provided through Intergovernmental Agreement.
- B. On August 19, 2014, Bainbridge also requested that the County provide two (2) proposed mediators and three (3) proposed dates to meet for purposes of beginning discussions related to the review and revision of SDS Agreements.
- C. On September 9, 2014, Bainbridge's attorney sent the County attorney a letter requesting that the County provide Bainbridge with the legal basis for the County's refusal to discuss the revisions of SDS Agreements; whether or not the County is prepared to meet and discuss each of the City's proposed SDS Agreements; and, what dates and time the

County is prepared to meet with City representatives to discuss the resolution of the SDS Agreements.

- D. On September 16, 2014, the County attorney sent Bainbridge's attorney a response to the September 9, 2014, letter in which the County attorney represented that the County had no legal basis for its refusal to discuss revisions to the SDS Agreements except insofar as the next regularly scheduled meeting of the Commissioners (at that time) was to occur on September 23, 2014, and that SDS would be on the agenda.
- E. On September 23, 2014, Board of Commissioners Chairman Frank Loeffler sent Bainbridge Mayor Edward Reynolds a letter representing that the County has decided to form a committee to address the issues Bainbridge presented with the existing SDS Agreements and that the County would notify Bainbridge as soon as they are prepared to participate in an initial discussion, without legal representation being present.
- F. On October 23, 2014, the City Attorney sent the County Attorney a letter requesting the County Attorney inform the City Attorney when and where the SDS negotiations would start.
- G. On November 12, 2014, another meeting took place among Bainbridge representatives, one sitting member of the Board of Commissioners, and two members-elect of the Board of Commissioners. SDS issues were discussed, but no favorable results or material progress toward renegotiations resulted from this meeting.

14.

The County, however, has since refused to move forward with negotiations or the use of Alternative Dispute Resolution. As a result, Bainbridge has no choice but to seek the assistance of the judicial system to compel compliance with the provisions of Georgia law applicable to Service Delivery Strategy.

LEGAL PROVISIONS AND THEIR APPLICATION TO THE INSTANT CASE

15.

Bainbridge hereby incorporates all paragraphs contained above as if the same were reprinted verbatim here.

The Service Delivery Strategy Act

16.

The Service Delivery Strategy Act (“SDS Act”) requires local governments to implement agreements that specify the manner and nature to which all governmental services will be provided for between and among a particular Georgia county and any municipality located wholly or partially within that county’s geographical boundary. O.C.G.A. § 36-70-21.

17.

The SDS Act requires that “funding equity” be obtained and duplication of governmental services be minimized. O.C.G.A. § 36-70-20.



The SDS Act requires the following local governments to adopt a resolution approving said Strategy:

- A. The County governing authority
- B. The governing authority of municipalities located within the county which have a population of 9,000 or greater within the county.
- C. By the municipality which serves as the county site if not included in paragraph (B); and,
- D. By no less than 50 percent of the remaining municipalities within the county which contain at least 500 persons within the county if not included in paragraph (B) or (C).

See O.C.G.A. § 36-70-25(b). As a result, approval in the County must be accomplished by the County governing authority and the governing authority of Bainbridge. Bainbridge is the county “site” and is the only city in the County with a population greater than 9,000. Moreover, no other city in the County has a population that meets or exceeds 500 persons. Consequently, a valid SDS must be accompanied by approval from Bainbridge and the County.

O.C.G.A. § 36-70-28(b) requires the review of and revision, if necessary, of existing SDS Agreements. Specifically, O.C.G.A. § 36-70-28(b)(2) provides that each government shall review and revise its SDS agreement “[w]henever necessary to change service delivery or revenue distribution arrangements[.]” (*brackets added*).

COUNT I—MANDATORY MEDIATION OF SERVICE DELIVERY STRATEGY

20.

Bainbridge hereby incorporates all paragraphs contained above as if the same were reprinted verbatim here.

21.

O.C.G.A. § 36-70-28(c) provides that:

In the event that a county or an affected municipality located within the county refuses to review and revise, if necessary a strategy in accordance with paragraphs (2) and (3) of subsection (b) of this Code section, then any of the parties may use the alternative dispute resolution and appeal procedures set forth in subsection (d) of Code section 36-70-25.1.

22.

O.C.G.A. § 36-70-25.1(d)(1) provides that when a county and affected municipalities fail to reach an agreement on Service Delivery Strategy, then a County or any affected municipality may file a petition in Superior Court seeking mandatory mediation in accordance with the procedure set forth in that Code Section.

23.

Bainbridge is left with no alternative but to seek mandatory mediation through the Superior Court pursuant to O.C.G.A. § 36-70-25.1(d)(1) because the County has refused to move

forward with negotiations and voluntary mediation provided for in O.C.G.A. § 36-70-25.1(c). As a result, the City files the instant Petition.

24.

Since the County has refused to review the SDS Agreements and revise them in accordance with the provisions of O.C.G.A. § 36-70-28(b), Bainbridge is now proceeding under the provisions of O.C.G.A. § 36-70-25.1(d)(1) that provide the ability to petition the court for an order compelling Mandatory Mediation. This action is authorized by O.C.G.A. § 36-70-28(c).

25.

O.C.G.A. § 36-70-25.1(d)(1)(A) provides that a Petition seeking mandatory mediation shall be assigned pursuant to O.C.G.A. §§ 15-1-9.1 or 15-6-13 to a judge who is not a judge of the circuit and further provides the judge selected may be a senior judge pursuant to O.C.G.A. § 15-1-9.2 who resides in another circuit.

26.

The assigned judge shall appoint a mediator and mandatory mediation of service delivery strategy shall follow the procedures set forth in that Code Section.

27.

If Mandatory Mediation fails, Bainbridge will Petition the court to resolve all remaining items in dispute pursuant to the provisions of O.C.G.A. § 36-70-25.1(d)(2).

COUNT II—INJUNCTION FOR COLLECTION OF PROPERTY TAXES

28.

Bainbridge hereby incorporates all paragraphs contained above as if the same were reprinted verbatim here.

29.

Generally, a County may exercise its taxing authority for any public purpose provided for by law. See Ga. Const. Art. IX, Sec. IV, Para. I. Counties and Cities of the State of Georgia, however, derive all taxing authority from either the State Constitution or the General Assembly. Id. To that end, “any public purpose provided for by law” means that the legislature must affirmatively confer the power to tax through enactment of a statute unless the purpose for a proposed tax is authorized by the Constitution.

30.

The Supreme Court of Georgia has held numerous times that:

The power of county boards of commission in Georgia is not unlimited. Neither the counties of this state nor their officers can do any act, make any contract nor incur any liability not authorized by some legislative act applicable thereto. If there is reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative. Powers of county commissioners are strictly limited by law, and they can do nothing except under authority of law.

E.g., Channell v. Houston, 287 Ga. 682, 683 (2010) (*internal citations omitted*).

31.

Through adoption of the SDS Act, the legislature affirmatively limited a county's ability to use its tax revenue for the provision of services so that city residents would not pay for governmental services that they do not receive or that are provided primarily for the benefit of the unincorporated area of the county. The method chosen by the legislature to accomplish this intent was the provision of a specific framework by which local governments are supplied with the goals, methods, and criteria, to be used in connection with the development and implementation of a strategy for the provision, costing, and funding of public services.

32.

The Service Delivery Strategy Act provides:

The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents, individuals, and property owners who receive the service. Further, when the county and one or more municipalities jointly fund a county-wide service, the county share of such funding shall be borne by the unincorporated residents, individuals, and property owners that receive the service.

O.C.G.A. § 36-70-24(3)(A) (*emphasis added*). As a result, the Act prevents counties from using tax revenue for services that are not provided to the taxpayer and requires the unincorporated tax payers to pay for services that are primarily for their benefit. See id.

33.

The Service Delivery Strategy Act also provides:

Such funding shall be derived from special service districts created by the county in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed or through such other mechanism agreed upon by the affected parties which complies with the intent of subparagraph (A) of this paragraph.

O.C.G.A. § 36-70-24(3)(B) (*emphasis added*). As a result, the Act also limits a County's authority to levy taxes, assessments, or fees, within any incorporated areas to fund the provision of certain SDS services in order to minimize unnecessary duplication of governmental services and create funding equity. See id.

34.

The County is misapplying the revenue generated from the service.

35.

The County is currently levying and collecting property taxes on property located inside the corporate limits of Bainbridge for services that it does not provide within the corporate boundaries of Bainbridge and for services that are provided by the County that are primarily for the benefit of the unincorporated area of the County.

36.

Certain existing SDS Agreements do not comply with the funding or taxing requirement of the SDS Act.

37.

The Board of Commissioners has acted beyond its discretionary powers conferred upon them. Through its failure to comply with the mandates of the legislature in the SDS Act relative to the power for costing and funding of services, the Board of Commissioners has created a non-uniform scheme of taxation that creates inequities among taxpayers similarly situated, is arbitrary and capricious, and illegal.

38.

The County and its official's and employee's failure to follow the expressed intent and directions of the Act amounts to an abuse of power and discretion.

39.

The law, as well as the public, seeks to avoid taxation for the unnecessary duplication of governmental services. "A tax law will not be construed to tax the same property twice, unless such a conclusion is constrained either by the express provisions of the law or by necessary implication." Cobb Cnty. v. Allen, 236 Ga. 910, 911 (1976).

40.

The resulting effect of the existing SDS is that City property tax payers are subject to double taxation and illegal taxation.

41.

The express provisions of the SDS Act prohibit the continued taxation of City property taxpayers by the County for services that the County does not provide to the City or that is

provided primarily for the benefit of the unincorporated area of the County. As a result, any associated property tax levy is ultra vires, null, and void.

42.

Without this court's intervention, the Board of Commissioners for the County will continue to make illegal levy of property taxes within the corporate limits of Bainbridge.

43.

County Citizens who reside inside the corporate limits of Bainbridge will suffer irreparable injury if the Board of Commissioners are permitted to continue making an illegal tax levy.

44.

As a result, Bainbridge needs the court's enforcement powers to enjoin the continued property tax levy on all properties located in Bainbridge for all services the County is either not providing to the residents, individuals, or property owners located inside the corporate limits of Bainbridge; that the County is not authorized to provide within Bainbridge; and for services that are primarily for the benefit of the unincorporated area of the County.

#### COUNT III—ATTORNEY'S FEES

45.

Bainbridge hereby incorporates all paragraphs contained above as if the same were reprinted verbatim here.



46.

The Civil Practice Act (“CPA”) applies provisions of the SDS Act. O.C.G.A. § 9-11-81 explicitly provides that the CPA applies to all special statutory schemes unless “specific rules of practice and procedure in conflict herewith are expressly prescribed by law.”

47.

Bainbridge has asked the County to participate in mediation of its SDS dispute. The County refused. Bainbridge asked the County to provide the legal basis upon which it was relying in its refusal. The County provided none. The County has continually delayed taking any substantive action toward renegotiating its SDS so that the agreements that comprise it comply with simple and explicit directions from the General Assembly. The actions taken by Decatur County thus far have lacked substantial justification. As a result, Bainbridge has incurred attorney’s fees and expenses in furtherance of asserting its clear legal rights.

48.

Bainbridge is entitled to reasonable attorney’s fees and expenses of litigation pursuant to O.C.G.A. § 9-15-14.

WHEREFORE, Petitioner prays for the following RELIEF:

COUNT I

A. That this Court order the parties to undergo mandatory mediation of service delivery strategy in accordance with the procedure established by O.C.G.A. § 36-70-25.1(d)(1);

B. That this Petition be assigned pursuant to O.C.G.A. §§ 15-1-9.1 or 15-6-13 to a judge who is not a judge of the circuit or to a senior judge pursuant to O.C.G.A. § 15-1-9.2 who resides in another circuit; and,

C. That the assigned visiting or senior judge appoint a mediator and that mediation commence, proceed, and be completed as soon as possible, but in any event no later than the time frame set forth in O.C.G.A. § 36-70-25.1(d)(1)(B).

COUNT II

A. That this Court issue a permanent injunction preventing the Board of Commissioners of Decatur County from levying ad valorem tax on property within the corporate limits of Bainbridge that is not authorized by law.

COUNT III

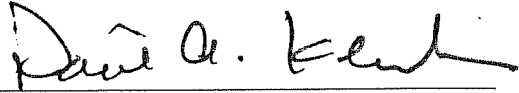
A. That this Court find that Decatur County's elected officials and other representatives acted without substantial justification.

B. That this Court impose reasonable attorney's fees and expenses of litigation upon Decatur County in favor of Bainbridge based on the County's actions.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

This 14<sup>th</sup> day of November, 2014.

**Respectfully Submitted,**



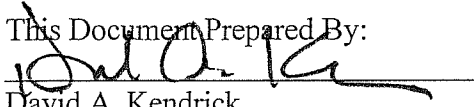
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STATE OF GEORGIA

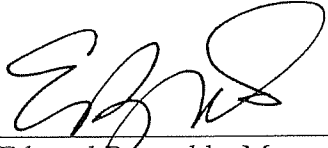
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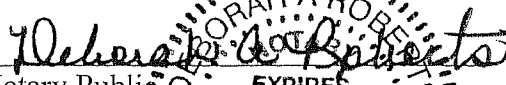
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**CERTIFICATION OF VERIFICATION**

Personally appeared before the undersigned authority, Edward Reynolds, Mayor, City of Bainbridge, Georgia, who after first being duly sworn, on oath, says that the statements contained in the foregoing City of Bainbridge, Georgia's Verified Petition for Mandatory Mediation of Service Delivery Strategy and Other Relief are true and correct based on personal knowledge at this time.

  
\_\_\_\_\_  
Edward Reynolds, Mayor  
City of Bainbridge, Georgia

Sworn to and subscribed before me,  
this 14 day of November, 2014.

  
Notary Public  
My commission expires \_\_\_\_\_  
{Doc: 01334177}

DEBORAH A. ROBERTS  
NOTARY PUBLIC  
STATE OF GEORGIA  
EXPIRES  
JUNE 17, 2015  
DECATUR COUNTY