

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO**

JESUS PEREIRA, Solely in his Official Capacity as the)	
Duly appointed and qualified Superintendent of the)	
VETERANS ASSISTANCE COMMISSION OF)	Case No. 2025 MR 50
WINNEBAGO COUNTY, a Special District and a Unit of)	
Local Government of the State of Illinois,)	Judge Ronald A. Barch
)	
Plaintiff,)	
)	
v.)	
)	
COUNTY OF WINNEBAGO, a Non-Home Rule Unit of)	
Local Government of the State of Illinois, JOSEPH V.)	
CHIARELLI, AARON BOOKER, JAMES WEBSTER,)	
RAY THOMPSON, BRAD LINDMARK,)	
DAVID TASSONI, KEITH MCDONALD,)	
PAUL ARENA, JOHN BUTITTA, JOHN PENNY,)	
JOSEPH HOFFMAN, KEVIN McCARTHY,)	
JAIMIE SELGADO, ANGIE GORAL, TIM NABORS,)	
CHRISTOPHER SCROL, CHRISTINA VALDEZ,)	
RAY THOMPSON, VALERIE HANSERD,)	
ANGELA FELLERS, and JOHN SWEENEY,)	
)	
Defendants.)	

DEFENDANTS’ COMBINED MOTION TO DISMISS PLAINTIFF’S COMPLAINT
PURSUANT TO SECTION 2-619.1
OF THE ILLINOIS CODE OF CIVIL PROCEDURE

NOW COME, the Defendants, County of Winnebago, Joseph V. Chiarelli, Aaron Booker, James Webster, Ray Thompson, Brad Lindmark, David Tassoni, Keith McDonald, Paul Arena, John Butitta, John Penney, Joseph Hoffman, Kevin McCarthy, Jaime Salgado, Angie Goral, Tim Nabors, Christopher Scrol, Christina Valdez, Valerie Hanserd, Angela Fellars and John Sweeney, (hereinafter collectively the “Defendants”) by and through their attorney, Assistant State’s Attorney John Paul Giliberti, and move this Honorable Court, pursuant to 735 ILCS 5/2-615 and

735 ILCS 5/2-619, to dismiss Plaintiff's Complaint with prejudice. This motion is a combined motion filed under 735 ILCS 5/2-619.1, supported by an accompanying Memorandum of Law.

Defendants state as follows:

1. On or about February 6, 2025, JESUS PEREIRA, (hereinafter "Plaintiff"), in his official capacity as Superintendent of the Veterans Assistance Commission of Winnebago County, filed a Complaint for mandamus, declaratory judgment, and injunctive relief, against the County of Winnebago (hereinafter "the County"), the Chairman of the Winnebago County Board and members of the Winnebago County Board in their official capacities (hereinafter "Defendants").
2. In sum, the gravamen of Plaintiff's Complaint is that the County is obligated to provide the Veterans Assistance Commission of Winnebago County (hereinafter "the VAC") with whatever sum of monies the VAC deems to be just and necessary, under a theory that the County Board is without discretion to deny VAC's request for monies, regardless of the amount sought. Plaintiff's Complaint ¶41.
3. Section 5/2-619.1 of the Illinois Code of Civil Procedure (hereinafter "the Code") permits the filing of a combined motion under Sections 5/2-615 and 5/2-619. This motion is filed in accord with those relevant sections of the Code and is divided into parts as specified by Section 5/2-619.1. Defendants' arguments and authorities are fully set forth in the accompanying Memorandum of Law.

PART I- DISMISSAL PURSUANT TO 735 ILCS 5/2-615(a)

4. Under 735 ILCS 5/2-615(a), dismissal of a Complaint is appropriate when the pleading fails to state a claim upon which relief can be granted. Such is the instant case.

5. A party seeking mandamus relief must establish the following: 1) a clear right to the requested relief; 2) a clear duty of the public official to act; and 3) clear authority allowing the public official to comply with the issuing court's writ. *Sharp v. Baldwin*, 2020 IL App (2d) 181004, ¶9.
6. Plaintiff's Complaint fails on its face because his allegations fail to establish the three requisite factors in order for mandamus relief to be granted.
7. Firstly, there is no factual support in Plaintiff's Complaint that would demonstrate that there is a duty—let alone a “clear” one—of the County Board to allocate the additional sums demanded by Plaintiff. Nor for that matter, is there any factual support for the notion that the Board is obligated to provide the additional sums sought by Plaintiff.
8. Moreover, as to the third factor, not only is there an absence of “clear authority allowing the public official to comply with the issuing court's writ,” the weight of the authority compels this Court to dismiss Plaintiff's Complaint.
9. While not mentioned in Plaintiff's Complaint, the Supreme Court of Illinois has already decided the issue before this Court—albeit under the Military Veterans Assistance Act's predecessor statute, the Indigent War Veterans Act. *Ickes v. Board of Supervisors of Macon County, et. al.*, 415 Ill. 557 (1953); (Ill. Rev. Stat. 1951, chap. 23, pars. 154-154i). In *Ickes*, the High Court reversed the order of the circuit court that had granted a mandamus action brought under the Indigent War Veterans Act and had ordered Macon County make an appropriation for necessary salaries of officers and employees. In doing so, the Supreme Court held that: “A writ of mandamus will not lie to challenge the sufficiency of an appropriation made by the board where the amount to be appropriated lies within the discretion of the board.” *Ickes*, 415 Ill. at 562.

10. Additional support for the dismissal of this mandamus action can be found in the Third District of the Appellate Court's decision in *Hazen v. Peoria County*, 138 Ill.App.3d 836 (3rd Dist. 1985). In *Hazen*, the Court affirmed the dismissal of a mandamus action brought by the Peoria County VAC against Peoria County. In doing so, the Appellate Court held that the County Board's refusal to increase its tax levy from .02% to .03% so as to meet the funding demand of the VAC, was "properly a discretionary judgment made by the officials elected to make such decisions." *Hazen*, 138 Ill.App.3d at 839. The Appellate Court further stated that: "A writ of mandamus cannot be used to review the sufficiency of the tax levy approved by the County Board in this case." *Id.*
11. Based on the foregoing precedent, it is clear that this mandamus action was not properly brought against the County and the individual board members. Since Plaintiff's Complaint fails to satisfy the trio of requisite factors that would give rise to a *prima facie* case for mandamus against the County, his Complaint should be dismissed in its entirety.
12. Despite the foregoing well-established precedent, however, Plaintiff chose to lodge a cause of action in which he has the temerity to request this Court to "order[] the repayment to the Plaintiff's Treasury of any *illegally insufficient* expenditures * * *" (emphasis added). Complaint, Page 1 of 40.
13. Plaintiff's claim is brought under 330 ILCS 45/2(2), which permits a legal avenue for a mandamus action to be lodged against the County in situations where "just and necessary sums of money" for assistance to veterans has not been provided. Plaintiff's Complaint ¶ 12.

14. While Plaintiff's Complaint essentially alleges that the County is obligated to provide the specific sums sought by the VAC, the Complaint is bereft of any factual allegations to support the unsubstantiated and generalized conclusion that the amounts sought are "just and necessary." Nor, for that matter, does Plaintiff's Complaint provide legal support for the absurd notion that the County Board must rubber stamp and approve any amount of money that the VAC requests in its annual budget, provided that the VAC Commission has determined the amount sought to be "just and necessary."
15. As reflected in the attachments to Plaintiff's pleading, the County appropriated \$1,119,000.00 to the VAC for FY 2025. Exhibit F to Plaintiff's Complaint.
16. Plaintiff's Complaint fails to allege any facts that would tend to demonstrate that the VAC is unable to operate on a budget exceeding a million dollars in taxpayer funds. While Plaintiff makes a conclusory, generalized claim that the funds he seeks are "just and necessary", the Complaint is wholly lacking in any specificity that would support a finding that the funds he is seeking on behalf of the VAC are truly "just and necessary."
17. Notably, as reflected in the attachments to Plaintiff's pleading, the County substantially increased the amount of money allocated to the VAC in FY 2025 from the preceding year. Specifically, Plaintiff's Exhibit B reflects that the County allocated \$861,155.00 to the VAC for FY 2024. As such, Plaintiff's Exhibits B & F reflect that the County granted the VAC a sizable increase in its budget with the County's \$1,119,000.00 allocation to the VAC in FY 2025.
18. Moreover, the figures provided in Plaintiff's Exhibit A belie his generalized claim that the amounts he demands are "just and necessary" in order to fulfill the VAC's statutory

duties and provide services to eligible military veterans. For example, Plaintiff's Exhibit A reflects that the VAC's budgeted amount for salaries of its employees in FY 2024 was \$126,516.66 and that this amount *more than quadrupled* to the amount of \$523,644.00 in FY 2025 under the leadership of the Plaintiff. Exhibit A also reflects that the Plaintiff sought \$20,000 for "instruction and schooling" as a budget line item in FY 2025, even though no money had been designated for such a purpose in the FY 2024 budget.

19. It is well-settled that a "plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations." *Pooh-Bah Enterprises*, 232 Ill.2d 463, 473 (2009).
20. Additional and alternative to the primary grounds of dismissal concerning Plaintiff's failure to satisfy the three prongs for a mandamus action, this cause of action is utterly lacking in any factual allegations that would give rise to a finding that the County has failed to allocate sufficient funds to the VAC for it to fulfill its duties. As such, Plaintiff's Complaint fails to state a claim upon which relief may be granted and should be dismissed with prejudice in its entirety on this basis.
21. Finally, additionally, and alternatively, Plaintiff's Complaint should be dismissed because his legal premise fails on its face. Ostensibly aware of the lack of any legal precedent to support his argument, Plaintiff appends to his Complaint as exhibits two informal opinions and one mediation opinion authored by assistant attorney generals. Exhibits I-K to Plaintiff's Complaint.
22. It is questionable whether these attachments are proper, given that they are not formal opinions of the Attorney General, but rather two informal opinions and a mediation

opinion of his assistants, and it is unclear whether the court may give any weight to an informal opinion or a mediation opinion of an assistant attorney general or whether the court must disregard such opinions altogether. As such, unless Plaintiff provides legal support that would demonstrate that it is proper for the court to consider the reasoning employed in an informal opinion and/or a mediation opinion of an assistant attorney general, we would respectfully ask that the Court decline to do so.

23. In the event this Court were to give consideration to the informal opinions or mediation opinion that have been attached to Plaintiff's Complaint, we note that the mediation opinion actually undercuts Plaintiff's legal position altogether.
24. Specifically, Plaintiff's Exhibit J, is a copy of a letter from Assistant Attorney General Ronald Michel, dated November 27, 2024, and directed to Sangamon County officials. Although the letter makes clear to state that it "is not a formal or informal opinion of the Illinois Attorney General, nor should this letter be construed as legal advice," Plaintiff chose to attach it to his Complaint in his mandamus action.
25. In reviewing Plaintiff's Exhibit J, however, it is clear that the reasoning of the Assistant Attorney General Michel set forth in pages 2-5 of the letter, actually is directly contradictory to Plaintiff's position in his mandamus action, and that, if the Court were to employ the reasoning of Assistant Attorney General Michel as expressed in Exhibit J, then Plaintiff's claim fails. This is so, because the Assistant Attorney General interprets the clause "just and necessary" as the amount established by Section 12-21.13 of the Illinois Public Aid Code ["an amount which, when added to the unobligated balance available for such purpose at the close of the preceding fiscal year will equal .02% of the last known assessed value of the taxable property in the county * * *"].

- See*, 305 ILCS 5/12-21.13. Assistant Attorney General Michel expresses in his letter that the phrase “just and necessary” pertains to the minimum amount set forth in the Statute and that *if a lesser amount* than the minimum statutory amount is allocated by the County to a VAC, then the Act provides for a remedy for a VAC in the Circuit Court.
26. Plaintiff’s Complaint avers that .02% of the Equalized Assessed Value for the County for FY 2025 amounts to \$1,226,911.16. Plaintiff’s Complaint ¶ 24.
27. The difference between the amount allocated by the County to the VAC for FY 2025 and the EAV for FY 2025 is \$107,911.16, far short of the additional amount [a figure in excess of a half a million dollars] sought by Plaintiff through this mandamus action.
28. Moreover, as noted above, the Public Aid Code calculation for the minimum amount—the amount that the assistant attorney general had opined in the Sangamon County dispute was the statutorily “just and necessary amount”—must take into account the unobligated balance available for such purpose at the close of the preceding fiscal year. 305 ILCS 5/12-21.13.
29. Plaintiff’s Complaint affirmatively states that there was an unused balance in the funds of the VAC at the close of FY 2024 in the approximate amount of \$136,242.00. Plaintiff’s Complaint ¶ 37. That \$136,242.00 carryover fund balance referred to in Plaintiff’s Complaint at the close of FY 2024 is also reflected in Exhibit E to Plaintiff’s Complaint.
30. Plaintiff’s Complaint also acknowledges that the County’s appropriation ordinance indicated that the tax rate for the VAC tax levy for FY 2025 was approximately .0183%. Plaintiff’s Complaint ¶ 35; Exhibit F to Plaintiff’s Complaint.

31. Utilizing the figures pled by Plaintiff in his Complaint, the amount allocated to the VAC for FY 2025, \$1,119,000.00, added to the amount of the projected unused balance in VAC funds for FY 2024, \$136,242.00, equals \$1,255,242.00. \$1,255,242.00 is \$28,330.84 greater than \$1,226,911.16, which is .02% of the Equalized Assessed Value for the County for FY 2025. Thus, one would conclude that Winnebago County allocated funds for FY 2025 to the VAC in an amount that would more than satisfy the minimum threshold set forth in Section 12-21.13 of the Illinois Public Aid Code.
32. Three of the four counts in Plaintiff's Complaint are based on alleged failure of the County to fund the VAC: Count I (Failure to Fund for Just, Necessary, and Needed Services by the VAC); Count III (Failure to Fund for Operational Costs of Providing Just, Necessary, & Needed Services); and Count IV (Failure to Fund for Operating Expenses). Since the figures utilized in Plaintiff's Complaint indicate that Winnebago County allocated funds for FY 2025 to the VAC in an amount that satisfies the minimum threshold set forth in Section 12-21.3 of the Illinois Public Aid Code, it is evident that Counts I, III & IV, of Plaintiff's mandamus action should be dismissed with prejudice.
33. As for Plaintiff's final Count, failure to approve or return VAC's recommended budget (Count II), Plaintiff's claim is groundless. There is no obligation by the County to approve a proposed budget by the VAC that exceeds the statutory minimum threshold set forth in Section 12-21.3 of the Illinois Public Aid Code, nor is the County Board obligated to return a proposed VAC budget to the VAC for possible amendment. The Plaintiff does not provide any legal authority to support either assertion.

34. Succinctly put, based on the foregoing reasons, and as more fully discussed in the accompanying Memorandum of Law, Plaintiff's Complaint should be dismissed because it fails to state a claim upon which relief may be granted. Accordingly, pursuant to 735 ILCS 5/2-615(a), the Complaint should be dismissed with prejudice in its entirety.

PART II- DISMISSAL PURSUANT TO 735 ILCS 5/2-619 (9)

35. Additionally, and alternatively, Plaintiff's Complaint should be dismissed because there is no justiciable issue before the Court. This is so, because Plaintiff's Complaint raises a political question [what amount of funds should be allocated to the VAC in FY 2025 and future fiscal years] which falls within the sound discretion of the County Board.

36. Involuntary dismissal under 735 ILCS 5/2-619(9) is appropriate where the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.

37. Article VII, Section VIII, of the Constitution of the State of Illinois sets forth the powers of non-home rule counties and, in addition to the enumerated powers set forth in the Constitution, refers to "powers granted to them by law."

38. The Counties Code vests the power and responsibility to enact an annual budget in the County Board. 55 ILCS 5/6-1001.

39. As noted in Plaintiff's Complaint, the County Board passed an annual appropriations ordinance for FY 2025 on or about September 26, 2024 [Plaintiff's Complaint ¶ 33]

and the County's and VAC's Fiscal Year 2025 commenced on October 1, 2024.
Plaintiff's Complaint ¶21.

40. The Counties Code prohibits the increasing of the County's budget once the monies have been appropriated outside of limited circumstances, none of which is applicable here. 55 ILCS 5/6-1002; 55 ILCS 5/6-1005.
41. "The nonjusticiability of a political question is primarily a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 210 (1962).
42. As is further discussed in the Memorandum of Law, Plaintiff's Complaint fails on its face under the political question doctrine. Since Plaintiff's claims are non-justiciable, involuntary dismissal under 735 ILCS 5/2-619(9) is appropriate.
43. As such, Plaintiff's Complaint should be dismissed with prejudice in its entirety.

WHEREFORE, based on the foregoing reasons, Defendants respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and grant any other further relief this court deems just and proper.

Respectfully submitted,

County of Winnebago, Joseph V. Chiarelli, Aaron Booker, James Webster, Ray Thompson, Brad Lindmark, David Tassoni, Keith McDonald, Paul Arena, John Butitta, John Penney, Joseph Hoffman, Kevin McCarthy, Jaime Salgado, Angie Goral, Tim Nabors, Christopher Scrol, Christina Valdez, Valerie Hanserd, Angela Fellars and John Sweeney,
Defendants.

By: /s/John Paul Giliberti
Assistant State's Attorney

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PROOF OF SERVICE

The undersigned hereby certifies that prior to 5:00 o'clock p.m. on April 3, 2025, at 400 West State Street, Room 804, Rockford, Illinois, he emailed a true and accurate copy of the foregoing document, **Defendants' Combined Motion to Dismiss Plaintiff's Complaint Pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure**, to:

Attorney for Plaintiff Jesus Pereira:

Michael J. Phillips
1490 Willowbrook Drive
Belvidere, Illinois 61008-7068
Email address: MichaelJamesTaylorPhillips@frontier.com

/s/ John Paul Giliberti

John Paul Giliberti, Assistant State's Attorney
Attorney for County of Winnebago, Joseph V. Chiarelli, Aaron Booker,
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Keith McDonald, Paul Arena, John Butitta, John Penney,
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