

Circuit Court for Harford County
Case No.: C-12-CV-24-000294

UNREPORTED

IN THE APPELLATE

COURT OF MARYLAND

No. 2182

September Term, 2024

AARON PENMAN

v.

HARFORD COUNTY,
MARYLAND

Leahy,
Zic,
Geller, Jeffrey M.
(Specially Assigned),

JJ.

Opinion by Geller, J.

Filed: April 9, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Aaron D. Penman (“Appellant”) appeals from a January 9, 2025 decision of the Circuit Court for Harford County on Appellant’s Amended Complaint for Declaratory Judgment (“Amended Complaint”).¹ The Amended Complaint alleged that the County Attorney was without legal authority to engage outside counsel to advise the Board of Ethics (“Board”) regarding an ethics complaint the County Department of Law filed against Appellant. Harford County (“Appellee”) filed a counterclaim seeking a declaratory judgment that Appellant is not qualified to serve on the Harford County Council while simultaneously employed as a Harford County Deputy Sheriff.

The trial court, in its Memorandum Opinion in support of its Declaratory Judgment and Order, determined that Section 403(b) of the Harford County Charter (“Charter”) authorized the County Attorney to retain outside counsel to advise the Board regarding the County Attorney’s ethics complaint against Appellant. It also found that the Supreme Court of Maryland’s decision in *Bennett v. Harford County*, 485 Md. 461 (2023) did not preclude the ethics complaint itself.² In granting the relief sought in Appellee’s counterclaim, the court concluded that, under § 207 of the Harford County Charter, Appellant is not qualified to serve on the County Council while simultaneously serving as a deputy in the Harford

¹ On January 9, 2025, the circuit court issued two memorandum opinions and two corresponding declaratory judgments and orders addressing the Amended Complaint for Declaratory Judgment and the Counterclaim for Declaratory Judgment and Injunctive Relief.

² The Board’s December 30, 2024 decision, which is not before this Court, concluded that the conflict-of-interest provisions of the Code of Ethics barred Appellant’s dual service as a deputy sheriff and a member of the County Council. Appellant has appealed the decision to the Circuit Court for Harford County (Case No. C-12-CV-25-000030). That case has been stayed pending the outcome of this appeal.

County Sheriff's Office. The court rejected Appellant's contention that his circumstances were analogous to those of Councilman Bennett, in whose case the Supreme Court held that the Charter did not bar simultaneous service on the County Council and employment with the Harford County Board of Education.

Appellant filed a timely appeal on January 10, 2025, and Appellee filed a cross-appeal on January 21, 2025, arguing that the trial court should have granted its motion to dismiss.

BACKGROUND

Appellant had been employed by the Harford County Sheriff's Office since 1999 and served as a deputy sheriff for his entire career. In 2022, Appellant sought election to the Harford County Council. He remained employed as a deputy sheriff during his candidacy, resigned on October 1, 2022, and was subsequently elected by the voters of his district in the November 2022 general election. He was sworn in as a County Council member in December 2022 and began serving his term.

After the Supreme Court of Maryland issued its decision in *Bennett*, the Harford County Sheriff's Office, relying on internal and external legal review of that decision, rehired Appellant. In *Bennett*, the Court held that Charter § 207 did not disqualify a County Council member from simultaneous employment as a teacher by the Harford County Board of Education. 485 Md. at 492-93. Having been advised that this decision would also allow for employment in his office, the Harford County Sheriff announced that Appellant would resume his position as a deputy sheriff, effective September 18, 2023.

Less than two weeks after Appellant's rehiring, two citizens filed complaints with

the Harford County Board of Ethics (“Board”) concerning Appellant’s dual service. On October 26, 2023, the Board dismissed the complaints “due to lack of jurisdiction,” stating that it “has purview primarily over matters of conflicts of interest” and that the complaints raised “issues of legal interpretation” that were “beyond the scope of the Board’s authority,” including interpretation and application of Charter § 207. On February 26, 2024, the Harford County Attorney filed a complaint with the Board alleging that Appellant’s dual service violated certain provisions of the Harford County Ethics Code; unlike the earlier citizen complaints, the Board concluded that this complaint fell within its authority.

After filing his complaint with the Board, the County Attorney determined that neither he nor his office, the Department of Law, could advise the Board on the matter. Additionally, the County Attorney determined that, although the Council Attorney³ would otherwise have been the next available source of legal advice under the Charter, that office had a conflict of interest precluding it from advising the Board given its primary duties to the Council. Thus, on March 12, 2024, the County Attorney retained outside counsel to advise the Board; the Council did not provide authorization for this action.

Concurrent with the Board proceedings, Appellant filed the declaratory judgment action that underlies this appeal on April 10, 2024. In his complaint, Appellant sought a declaratory judgment finding the County Department of Law lacked the authority to retain outside counsel without Council approval and that the County Attorney’s complaint before

³ Because “County Attorney” and “Council Attorney” are similar titles, the reader should note carefully which office is referenced in this discussion.

the Board was without merit and barred by *Bennett*.

The County moved to dismiss the declaratory judgment action on the ground that Appellant lacked standing. Appellant thereafter filed the Amended Complaint, which the County also moved to dismiss, again arguing lack of standing and adding that dismissal was required because Appellant failed to exhaust administrative remedies. In addition to moving to dismiss, the County filed a counterclaim seeking a declaration that Appellant was disqualified from simultaneous service as a Council member and a deputy sheriff under Charter § 207.

In the memorandum opinion issued January 9, 2025, the circuit court did not rule on the motion to dismiss, but instead proceeded directly to the merits of both the Amended Complaint and the counterclaim on cross-motions for summary judgment. In resolving the Amended Complaint, the court determined, as reflected in the court’s separate declaratory judgment and order, that the County Attorney had authority to retain outside counsel and that the filing of the Board complaint was not foreclosed by *Bennett*. As to the counterclaim, the court distinguished *Bennett* and declared that Charter § 207 barred Appellant’s simultaneous service. Specifically, the court declared; “because of his employment by the Harford County Sheriff’s Office and pursuant to Section 207 that [Appellant] is not qualified to be a member of the Harford County Council[.]” and that “effective immediately [Appellant] is permanently enjoined from exercising all rights and authorities of a member of the Harford County Council[.]”

This appeal and cross-appeal followed.

QUESTIONS PRESENTED

The parties raise several issues on appeal,⁴ which we rephrase as follows:

1. Whether Appellant has standing to challenge the County Attorney's retention of outside counsel.
2. Whether Appellant's charter-based claim challenging the retention of outside counsel is barred by failure to exhaust administrative remedies.
3. Whether the Harford County Charter authorizes the County Attorney to retain outside counsel to advise the Board of Ethics.
4. Whether Charter § 207 disqualifies Appellant from serving simultaneously as a member of the Harford County Council and a deputy

⁴ Appellant phrased the questions as follows:

1. Did the Harford County Department of Law have the legal authority under the Harford County Charter to unilaterally hire "special legal counsel" to advise the Board of Ethics on an Ethics Complaint brought by the Harford County Attorney?
2. Is a Deputy Sheriff barred from serving simultaneously as a member of the Harford County Council and Deputy Sheriff under § 207 of the Harford County Charter?

Appellee phrased the questions as follows:

1. Whether Mr. Penman's Amended Complaint for Declaratory Judgment should have been dismissed due to Mr. Penman's failure to exhaust his administrative remedy and failure to establish standing.
2. Whether the Harford County Charter authorized the County Attorney to retain legal counsel to advise the Harford County Board of Ethics with respect to the Ethics Complaint filed against Mr. Penman where representation of the Board by the County Attorney or the Harford County Council Attorney would have created the appearance of impropriety or conflict.
3. Whether Harford County Charter § 207 precludes Mr. Penman from qualifying to serve on the Harford County Council while he is in the employment of the Sheriff of Harford County.

sheriff.

For the reasons below, we hold that Appellant had taxpayer standing to challenge the retention of outside counsel and was not required to exhaust administrative remedies with respect to that claim. We further hold that the County Attorney had authority to retain outside counsel, and therefore affirm the circuit court's ruling on that issue. We reverse, however, the circuit court's conclusion that Charter § 207 disqualifies Appellant from serving on the County Council while employed as a deputy sheriff.

DISCUSSION

The issues presented require us to consider questions of standing, exhaustion of administrative remedies, and the circuit court's rulings on the cross-motions for summary judgment. We review rulings on summary judgment de novo. *Dzurec v. Bd. of Cnty. Comm'rs of Calvert Cnty.*, 482 Md. 544, 559 (2023). Questions of standing, exhaustion of administrative remedies, and statutory interpretation are questions of law, which we review for legal correctness without deference. *See id.*; *Bank of New York Mellon v. Georg*, 456 Md. 616, 651-52 (2017). *See generally Rockwood Cas. Ins. Co. v. Uninsured Employers' Fund*, 385 Md. 99 (2005).

I. STANDING

In *George v. Baltimore County*, 463 Md. 263, 275-76 (2019), the Supreme Court of Maryland explained that taxpayer standing requires both taxpayer status and a special interest in the subject matter of the suit. To establish taxpayer standing, a plaintiff must allege that he or she is a taxpayer and that the suit is brought, expressly or implicitly, on behalf of all other taxpayers. To establish the requisite special interest, the plaintiff must

make a good-faith allegation that the government engaged in an illegal or ultra vires act and that the challenged conduct reasonably may result in pecuniary loss to the taxpayer or an increase in taxes. *Id.* at 275-76. The Court emphasized that these forms of harm are disjunctive, not cumulative, such that a plaintiff need not show an actual or likely tax increase if the complaint adequately alleges waste or unlawful expenditure of public funds. *Id.* at 278-81. The Court further explained that a plaintiff establishes specific injury by showing the proper type of harm, a nexus between the alleged illegality and that harm, and some modest showing of the degree of harm; exact calculation is unnecessary at the pleading stage. *Id.* at 282-83.

We conclude that Appellant has taxpayer standing to pursue his Charter-based challenge to the retention of outside counsel. He sufficiently alleged taxpayer status by asserting that he sued on behalf of all taxpayers. He likewise sufficiently pled the requisite special interest by alleging in good faith that Appellee retained outside counsel without authority under the Charter and that the resulting expenditure of public funds reasonably may result in pecuniary loss to taxpayers or an increase in taxes. Dismissal of that claim for lack of standing, therefore, would have been inappropriate.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Maryland law strongly favors exhaustion when a statutory or regulatory scheme provides an administrative process for resolving disputes. *Maryland Reclamation Assocs., Inc. v. Harford Cnty.*, 382 Md. 348, 358-59 (2004) (“[A] fundamental precept of administrative law is the requirement that exclusive or primary administrative remedies ordinarily be exhausted before bringing an action in court.”). Absent statutory provisions

making the administrative remedy exclusive or otherwise guiding concurrent administrative and judicial proceedings, Maryland courts generally apply exhaustion and related primary-jurisdiction principles. *See Luskin's Inc. v. Consumer Prot. Div.*, 338 Md. 188 (1995) (holding doctrine of primary jurisdiction required dismissal of action seeking declaratory judgment where court and administrative agency had concurrent jurisdiction and action involved subject matter in agency's area of expertise). Courts ordinarily may not entertain declaratory judgment actions that circumvent such prescribed remedies. Md. Code Ann., Cts. & Jud. Proc. § 3-409(b) (2020 Repl. Vol. & 2025 Supp.). Exhaustion, however, is required only where the agency has the authority to decide the issue presented. It does not apply when the claim lies outside the agency's jurisdiction. *Maryland Reclamation Assocs.*, 382 Md. at 364-65; *United Ins. Co. of Am. v. Maryland Ins. Admin.*, 450 Md. 1, 34-35 (2016).

Whether exhaustion applies here turns on the scope of the Board's authority under Harford County's Code of Ethics, which defines the Board's powers and jurisdiction. The Code defines the Board's duties as follows:

The Board shall: (1) Devise, receive and maintain all forms required by this chapter; (2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them; (3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and (4) Conduct a public information program regarding the purposes and application of this chapter.

Harford County Code § 23-3. Each reference to "this chapter" pertains to the Code of

Ethics. The Board’s authority is therefore limited to administering and enforcing the Code of Ethics and does not extend to Appellant’s charter-based claim challenging the retention of outside counsel.

Appellant’s claim, as framed, challenges the County Attorney’s authority under the Charter and County Code to retain outside counsel. It presents a charter-interpretation dispute concerning the scope of the County Attorney’s powers, not an alleged violation of the Ethics Code. The Board has no authority to adjudicate such a charter-based allocation-of-power dispute. Because the Board cannot grant declaratory relief allocating authority under the Charter or invalidating a contract for legal services, it lacks primary jurisdiction over that claim. Accordingly, that claim⁵ did not require exhaustion of administrative remedies because it lies outside the Board’s jurisdiction. Dismissal on exhaustion grounds therefore would not have been warranted.

III. THE COUNTY ATTORNEY’S AUTHORITY TO RETAIN OUTSIDE COUNSEL

Harford County Charter § 403(b) designates the County Attorney as the “chief legal officer of the Executive Branch” and makes that office “responsible for all the legal affairs of the Executive Branch.” Except as otherwise provided by State law or the Charter, it

⁵ Appellant also argued in the circuit court that, under *Bennett*, the County Attorney’s ethics complaint was barred at the outset and therefore could not properly proceed before the Board. This Court need not address Appellee’s exhaustion argument as to the *Bennett*-based challenge to the ethics complaint. The circuit court rejected Appellant’s *Bennett* preclusion argument on the merits, and Appellant has not challenged that ruling on appeal. Because the issue is not before us, deciding whether dismissal for failure to exhaust was required would not affect the outcome of this appeal. We therefore do not address whether Appellant was required to exhaust administrative remedies as to that contention.

further provides that no county agency receiving county funds may “employ or retain any legal counsel other than the County Attorney.” *Id.* Under this framework, the Office of Law provides centralized legal services to county boards and commissions that receive or disburse county funds. From that authority flows the limited incidental power to secure conflict-free legal advice for an entity ordinarily represented by the Office of Law when a conflict prevents the Office from acting. *See Smith v. Edwards*, 292 Md. 60, 69-70 (1981) (municipal corporation may exercise not only express powers, but also those fairly implied from or incident to powers expressly granted, and those essential to accomplishment of its purposes); *Bradshaw v. Prince George’s Cnty.*, 284 Md. 294, 302-03 (1979) (charter counties possess powers expressly delegated and necessarily implied); *Barlow v. Friendship Heights Citizens’ Comm.*, 276 Md. 89, 93-94 (1975) (municipal body possesses powers expressly granted as well as those fairly implied from or incident to them). This conclusion is reinforced by the Maryland Attorneys’ Rules of Professional Conduct, which prohibit representation involving a conflict of interest and require withdrawal when representation would violate those rules. Md. Rule 19-301.7; Md. Rule 19-301.16(a)(1).

The circumstances here fit comfortably within that allocation of authority. The County Attorney filed an ethics complaint against Appellant and determined that neither he nor his office could advise the Board on the matter. He also determined that the Council Attorney’s duties to the Council created a conflict that precluded that office from advising the Board. In this posture, the Board required independent legal advice, and the County Attorney’s retention of outside counsel served that limited purpose under § 403(b), not the County Executive’s “special counsel” authority under § 403(c), as Appellant argues.

Charter § 403(c) does not compel a different reading. That provision addresses the County Executive’s ability, with Council approval, to employ “special legal counsel” when extraordinary circumstances require services beyond those regularly provided by the Department of Law. It does not restrict the County Attorney’s incidental authority under § 403(b) to secure conflict-free advice for a county entity when the Office of Law is disqualified. On these facts, the engagement of outside counsel functioned to ensure the Board could obtain independent advice, not as an invocation of the County Executive’s authority to retain special counsel under § 403(c).

Harford County Code § 23-3C likewise does not require a different outcome. That provision addresses who advises the Board when the usual advisor is conflicted. It contemplates an alternative advising arrangement when a complaint or request for opinion involves a member of the Department of Law or the County Executive. It does not transform that conflict-resolution mechanism into a Council-approval requirement under Charter § 403(c). Here, the County Attorney could not advise the Board because he was the complainant. The Council Attorney was also conflicted out of advising the Board because a Council member was the subject of the complaint.

Accordingly, we affirm the circuit court’s determination that the County Attorney had authority to retain outside counsel to advise the Board of Ethics in these circumstances.

**IV. APPLICATION OF *BENNETT V. HARFORD COUNTY* AND
CHARTER § 207**

In *Bennett*, the Supreme Court of Maryland articulated a framework for determining whether Charter § 207 disqualifies a Harford County Council member based on concurrent

employment. The Court began by identifying the relevant employment relationship and then, for purposes of § 207, examined the governmental character of the employer in light of governing statutes and case law. The Court concluded that the Harford County Board of Education does not possess a single, uniform governmental character for all purposes and further observed that, if § 207 applied to the Board of Education, it would do so “irrespective of the character of [the employer’s] operation in any particular area.” 485 Md. at 484. The Court then considered the statutory question of “whether the framers of the Harford County Charter intended § 207 to render [those] employees . . . ineligible to serve simultaneously on the Council.” *Id.* Section 207, the Court concluded, did not clearly resolve how employment with such an entity should be treated. It further found no legislative history that demonstrated an intent to disqualify Board of Education employees, and thus applied the presumption in favor of eligibility for public office. Under that presumption, ambiguity is resolved in favor of the electorate’s choice. *Id.* at 493.

A. The Governmental Character of the Office of Sheriff for Purposes of Charter § 207

Charter § 207 prohibits a Council member from holding “any other office of profit or employment in the government of the State of Maryland, Harford County, or any municipality within Harford County.” The County argued, and the circuit court concluded, that Appellant is disqualified because a deputy sheriff is a “State employee.” Section 207, however, does not use that term. The dispositive issue is whether employment as a deputy sheriff constitutes employment “in the government of the State of Maryland” within the meaning of the Charter. Because that inquiry turns on the nature of the employment, the

analysis must consider how the Office of Sheriff is properly characterized for the purpose at issue. Although sheriffs are constitutional officers, the Office of Sheriff does not necessarily function as a purely State entity for all purposes. Rather, as *Bennett* teaches, the inquiry is contextual.

In *Bennett*, the Supreme Court rejected a rigid or categorical approach to classifying governmental entities for purposes of charter disqualification provisions. 485 Md. at 473. Rather than assigning a fixed identity to the Harford County Board of Education, the Court emphasized that Maryland law has long recognized such boards may be characterized differently depending upon the context at issue. *Id.* at 473-83. The Court explained that county boards of education have been treated, in various contexts, as State agencies, county agencies, or independent entities and that no single, uniform characterization controls across all settings. *Id.* The proper analysis is grounded in the purpose of the provision being construed and the legal context in which the classification question arises.

In *Bennett*, the Court examined the statutory framework governing county boards of education and concluded that it reflected a mixed governmental character. The Court explained that county boards operate within a comprehensive, State-created and State-regulated public school system, headed by the State Board of Education and subject to extensive State control over administration, budgeting, and personnel. At the same time, county boards are organized, selected, and funded at the county level. Yet, despite those State and county features, the Court emphasized that county boards remain “in many respects, distinct in their operations from both State and county.” *Id.* at 477. That synthesis, rather than any statutory detail, informs the analysis here.

In its analysis, the *Bennett* Court examined county boards of education in various case law contexts and under several statutory regimes. The Court examined how county boards of education have been treated in several distinct legal contexts, including whistleblower law, sovereign immunity, procurement, tort claims, and ethics. The Court ultimately concluded that county school boards “do not have the same character for all purposes.” *Id.* at 482. In fact, boards of education are treated as separate from the State in cases arising under the Whistleblowers Protection Act and tort claims. They are also regarded as “local in flavor” when procurement law is at issue. *See id.* at 478, 481-82 (citing *Donlon v. Montgomery Cnty. Pub. Schs.*, 460 Md. 62, 96 (2018); *Chesapeake Charter, Inc. v. Anne Arundel Cnty. Bd. of Educ.*, 358 Md. 129, 135-36 (2000); *Neal v. Balt. City Bd. of Sch. Comm’rs*, 467 Md. 399, 422-24 (2020)). While considered State entities for purposes of sovereign immunity, county boards are required to adopt their own ethics rules and are listed as their own agency in the Maryland Public Information Act. *See id.* at 478-79, 482 (citing *Donlon* 460 Md. at 80-81); *see also* Md. Code Ann., Gen. Prov. §§ 5-815-5-818 (2019 Repl. Vol. & 2025 Supp.); Md. Code Ann., State Gov’t § 10-1301(f)(2) (2021 Repl. Vol. & 2025 Supp.).

The reasoning of *Bennett* applies with equal force here, and the contextual case for a non-categorical classification is, if anything, even stronger. Although a sheriff is designated by statute as a “State official,” *see* Md. Code Ann., Gen. Prov. §§ 5-101(m)(2)(ii), (ll)(1) (2019 Repl. Vol. & 2025 Supp.), that label does not by itself resolve whether deputy sheriffs are employed “in the government of the State of Maryland” for purposes of Charter § 207. Unlike the county board of education in *Bennett*, which was

created by statute pursuant to constitutional mandate, the Office of Sheriff is itself constitutionally established. Md. Const. art. IV, § 44. Unlike county boards of education, whose constitutional footing is implemented through a substantial statutory State-level framework, the Sheriff's link to the Constitution is direct; the office's powers and duties derive from the common law unless altered by statute or rule. *Prince George's Cnty. v. Aluisi*, 354 Md. 422, 432-33 (1999). Maryland law does not create a centralized statewide sheriff's office that prescribes uniform rules, regulations, or policies for county sheriffs. The Sheriff is a constitutional officer elected by the voters of the county, not appointed by State or county executives. Md. Const. art. IV, § 44; *see also Aluisi*, 354 Md. at 432-33. Sheriffs are not subject to the kind of centralized State executive or agency control that characterizes many State agencies; rather, they are directly accountable to their local electorate. That institutional autonomy is reflected not only in the constitutional structure of the office, but also in the Sheriff's authority to exert independent control over personnel decisions and operational policies.

The Sheriff has statutory authority to appoint deputies and to make decisions concerning their employment, including any disciplinary actions, subject to applicable statutory protections. *See* Md. Code Ann., Cts. & Jud. Proc. § 2-326(d), (f) (2020 Repl. Vol. & 2025 Supp.). This understanding is consistent with Attorney General opinions recognizing that “both the appointment and tenure of deputies are discretionary with the sheriff” and that “the particular matter of the appointment of deputy sheriffs is totally within the powers of the sheriff.” 58 Op. Att’y Gen. 708, 710, 716 (1973); *see also* 79 Op. Att’y Gen. 419, 421–23 (1994) (noting variation in deputies’ job security among counties).

State-level involvement in the hiring process is limited largely to the mandated training and certification deputies must complete through the Maryland Police and Correctional Training Commissions. *See* Md. Code Ann., Pub. Safety §§ 3-201(f) & 3-209 (2022 Repl. Vol. & 2025 Supp.) (prescribing that MPCTC certifies all police officers and defining “police officer” broadly to encompass all individuals authorized to enforce criminal laws); Md. Code Ann., Cts. & Jud. Proc. § 2-101(b) (2020 Repl. Vol. & 2025 Supp.) (defining “deputy sheriff” and recognizing their law enforcement authority). *See generally* Md. Code Ann., Cts. & Jud. Proc. § 2-326(d), (f) (2020 Repl. Vol. & 2025 Supp.) (describing the Harford County Sheriff’s authority in hiring and disciplining deputies).

As the Supreme Court of Maryland has recognized, sheriffs’ powers are rooted in the common law (as modified by statute) and include reasonable discretion to exercise fairly implied authority, including the adoption of operational policies. *Thornton Mellon, LLC v. Frederick Cnty. Sheriff*, 479 Md. 474 (2022) (holding mover and weather policies for executing writs of possession were valid exercises of sheriffs’ fairly implied powers). Sheriffs likewise possess authority to establish internal policies for the operation of their respective offices, and the policies of the Harford County Sheriff’s Office provide an example of that authority in practice.⁶ These features underscore the Office’s operational autonomy in day-to-day personnel and law enforcement decisions, apart from direct county or State control.

⁶ *See* Harford County Sheriff’s Office, *Personnel Policy Code of Conduct* (Nov. 4, 2024), <https://harfordsheriff.org/wp-content/uploads/2023/07/PER-0101-Code-Of-Conduct-3.pdf> [<https://perma.cc/G3N7-DLTB>].

Further context-specific treatment is reflected in the Sheriff's Office's local organization and funding. The Harford County Code expressly includes the Sheriff's Office within the definition of county agencies for purposes of procurement. Harford County Code § 41-3 (defining county agencies as "All offices, departments, institutions, boards, commissions and all other organizational elements of the county, including the Sheriff's Office, State's Attorney's Office"); *see also* Harford County Board of Ethics Op. 24-01 ("Sheriff's Office is fully funded by Harford County"). These local indicia, considered within Maryland's constitutional and statutory framework, reinforce that the Office of Sheriff is not uniformly classified as a State or county entity for all purposes. *See* Jonathan W. Acton II, Note, *The Maryland Sheriff v. Modern and Efficient Administration of Justice*, 2 U. Balt. L. Rev. 282, 288 (1973) (observing that, in Maryland, "no two county sheriffs look legally alike").

Appellee's argument relies heavily on *Rucker v. Harford County*, 316 Md. 275 (1989), superseded by statute as stated in *State v. Card*, 104 Md. App. 439, *cert. denied*, 339 Md. 643 (1995), in which the Supreme Court held that sheriffs and deputy sheriffs are State personnel for purposes of tort liability under the Maryland Tort Claims Act (MTCA). We are not persuaded that *Rucker* establishes the categorical rule Appellee urges. *Rucker* addressed the allocation of tort liability under the MTCA and is confined to that statutory premise. The Court did not purport to establish that sheriffs are State employees for all purposes or under all constitutional and statutory schemes. To the contrary, the Court acknowledged that "for some purposes and in some contexts," sheriffs may be treated as county employees, including with respect to matters such as local funding and benefits. *Id.*

at 289. That recognition mirrors the contextual approach later emphasized in *Bennett*; classification depends upon the statutory framework and function at issue. *Rucker* therefore does not announce a categorical rule that employment within a sheriff's office constitutes employment in "the government of the State" for every legal purpose. Rather, it illustrates that the character of employment by the Office is situationally dependent.

Appellee's argument also overlooks subsequent court holdings and statutory developments that further confirm the legal treatment of sheriffs and deputy sheriffs is context dependent. In *State v. Card*, this Court traced the consequences of *Rucker* and the 1989 amendment to the MTCA and explained that their combined effect was to leave sheriffs and deputy sheriffs outside both the Local Government Tort Claims Act and the MTCA during an interim period. 104 Md. App. 439, 442-46 (1995). The Court then explained that, through emergency legislation in 1990, the General Assembly sought to allocate responsibility for the various functions performed by sheriffs and deputy sheriffs and to provide an umbrella of State protection, with the cost of that protection to be borne by the State or county depending on the function involved. *Id.* at 444-45. Thus, although sheriffs and deputy sheriffs were again included within the definition of "State personnel" for purposes of the MTCA, the State assumed ultimate financial responsibility only for claims related to courthouse security, service of process, and transportation of inmates to and from court proceedings. *Id.* at 445. For all other tort claims, the counties were authorized to obtain insurance coverage and, if they failed to do so, the State could recoup its costs by setoff against funds otherwise due the county. *Id.* at 445-46. *Card* expressly observed that, although Charles County had been dismissed as a defendant and judgment

was entered only against the State, Charles County would bear the financial risk. *Id.* at 440. Because the claim in *Card* arose from the operation of the county detention center rather than from any courthouse function performed by the sheriff, the Court recognized the ultimate financial responsibility would fall on the county. *Id.* at 449-50. *Card* thus weakens Appellee's reliance on *Rucker* as a definitive answer to the § 207 question and further illustrates that, under Maryland law, the treatment of sheriffs and deputy sheriffs varies depending on the statutory context and function at issue.

In 2024, the General Assembly further addressed the issue by enacting § 12-103.3 of the State Government Article, which provides that, while the State is the proper named defendant for tort claims arising from sheriffs' or deputies' law enforcement or detention center functions, the county assumes liability for any judgment. Md. Code Ann., State Gov't § 12-103.3 (2021 Repl. Vol. & 2025 Supp.). By contrast, claims arising from courthouse security, service of process, inmate transportation, and personnel or other administrative activities remain the State's obligation to pay. *Id.*, see also Md. Code Ann., State Fin. & Proc. § 9-108 (2021 Repl. Vol. & 2025 Supp.). These developments do not control the meaning of Charter § 207, but they reinforce that Maryland law does not treat the classification of sheriffs and deputies as fixed for all purposes.

Taken as a whole, *Bennett*, *Rucker*, *Card*, and the related authorities confirm that Maryland law employs a functional, context-specific analysis when determining whether an entity is properly characterized as State, county, or independent for a particular purpose. The Office of Sheriff is a hybrid constitutional office whose classification may vary depending on the statutory and constitutional context. That remains true even though

Maryland law in some settings identifies sheriffs as State officials or treats sheriff's offices as executive units; those authorities do not eliminate the contextual ambiguity, particularly where the courts have also recognized that the office "straddles the line" between different branches and levels of government. *See* Md. Code Ann., Gen. Prov. § 5-101(m)(2)(ii) (2019 Repl. Vol. & 2025 Supp.); *Thornton Mellon, LLC v. Frederick Cnty. Sheriff*, 252 Md. App. 320, 331 (2021). In sum, these features demonstrate that sheriff's offices, while established by the Maryland Constitution and "organized, selected, and funded . . . [at the] county level," are also "distinct in their operations from both State and county entities," much like the Board of Education in *Bennett*. 485 Md. at 477. Consistent with *Bennett*, we next consider whether the framers of the Harford County Charter intended § 207 to render employees of the Harford County Sheriff's Office ineligible to serve simultaneously on the Council.

B. The Absence of Legislative Intent and the Presumption of Eligibility

Because the text and structural context did not resolve whether Board of Education employees were disqualified as employees of either the County or the State, the *Bennett* Court concluded that § 207 was ambiguous as applied to those employees. 485 Md. at 489. It therefore turned to other indicia of legislative intent, including legislative history. The Court described that history as "scant," consisting largely of statements by a Charter Board member at a public hearing. *Id.* at 489-90. Those statements were "sufficient to rule out the possibility that the framers of the Charter would have viewed employees of the Board [of Education] as County employees" for purposes of § 207. *Id.* at 490. However, the history did not resolve whether the framers would have regarded Board of Education employees

as State employees. That question remained “unresolved.” *Id.*

Faced with that unresolved ambiguity, the Court invoked a longstanding canon of construction specific to candidate qualification provisions: where ambiguity persists, courts apply a presumption in favor of eligibility. *Bennett*, 485 Md. at 490-91 (citing *Mayor & Comm’rs of Westernport v. Green*, 144 Md. 85, 89 (1923) and *Abrams v. Lamone*, 398 Md. 146, 179-80 (2007)). That presumption reflects the principle that disqualification provisions like § 207 are construed narrowly to avoid restricting the electorate’s choice absent clear language. Because the legislative materials did not clearly demonstrate an intent to disqualify Board of Education employees, the Court applied that presumption.

Applying that same analytic framework here yields a similar conclusion. As in *Bennett*, the text of § 207 does not expressly reference the Office of Sheriff or its employees. Neither party has identified Charter history indicating that the framers specifically intended to bar Councilmembers from serving as deputies in the Sheriff’s Office, and the record contains none. When read in the context of the Charter as a whole, § 207 provides no clear indication that the framers intended to treat a deputy sheriff’s employment as employment “in the government of the State of Maryland.” That reading is supported by the County Code’s inclusion of the Sheriff’s Office within the definition of county “agencies” for procurement purposes and by Maryland constitutional and statutory provisions governing the Office of Sheriff. *See* Md. Const. art. IV, § 44; Md. Code Ann., Cts. & Jud. Proc. §§ 2-309(a), 2-326 (2020 Repl. Vol. & 2025 Supp.).

Accordingly, like the Supreme Court in *Bennett*, this Court is confronted with unresolved ambiguity as to whether the framers intended § 207 to disqualify deputy sheriffs

from serving on the Council by treating their employment as “in the government of the State of Maryland.” In the absence of clear textual guidance or definitive legislative history, we must apply the presumption favoring eligibility. This principle is rooted in respect for the electorate’s choice and the avoidance of judicial disenfranchisement absent a clear legal mandate.

In this case, a county council member who also serves as a deputy sheriff and the sheriff who employs them both ultimately answer to the voters. When statutory text leaves the question open, the ultimate judgment belongs not to this Court, but to the ballot box.

CONCLUSION

For the foregoing reasons, we affirm the circuit court’s judgment denying the relief sought in the Amended Complaint and reverse the declaratory judgment entered in favor of Appellee on its Counterclaim.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED
IN PART AND REVERSED IN PART;
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID
ONE-HALF BY APPELLANT/CROSS-
APPELLEE AND ONE-HALF BY
APPELLEE/CROSS-APPELLANT.**