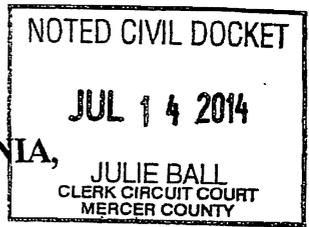


14-0790



IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA,

**HERMAN TRACY FRENCH ON HIS OWN BEHALF,  
AND IN BEHALF OF OTHERS SIMILARLY SITUATED,**

**PLAINTIFFS**

**Vs.**

*C-447-0A*  
**CIVIL ACTION NO. 13-~~477~~-0A,**

**THE MERCER COUNTY COMMISSION  
AND MERCER COUNTY E-911,**

**DEFENDANTS**

**ORDER GRANTING SUMMARY JUDGMENT.**

This day came the Court pursuant to cross-motions for Summary Judgment filed in the above-styled action and made the following finding of fact and conclusions of law.

**FINDING OF FACT:**

1. The above-styled civil action was filed in the Circuit Court of Mercer County, West Virginia, on November 6, 2013. The plaintiff is Herman Tracy French on his own behalf and in behalf of others similarly situated and is represented by R. Thomas Czarnik. The Defendants are The Mercer County Commission and Mercer County E-911 represented by Robert E. Holroyd. Thus far, Herman Tracy French is the only plaintiff who has appeared in Court and there are no other persons who appear to have an objection to the conduct of the Defendants to the extent that they are willing to appear and protest. At his deposition taken May 28, 2014, Mr. French was unable to identify "others similarly situated". (Deposition pp. 15).
2. Herman Tracy French is a resident and citizen of Mercer County, West Virginia, whose original address is 1425 Old Athens Rd. Princeton, WV 24740. His address has now been changed by E-911 to 2883 Old Athens Road, Princeton, WV 24739.
3. The Mercer County, West Virginia, County Commission is the governing body charged by

law with the establishment and appointment of an advisory board and regulation of the Mercer County E-911.

4. The Mercer County Commission is required to create and implement amendments to E-911 plan upon notice and have open public meetings.

5. The statutes require that amendments to the original E-911 plan are required to be filed with the West Virginia public service commission. The Defendants admit that amendments to the original plan are required to be so filed, but aver that there have been no such amendments.

6. Defendants produced some documents as follows:

a. Minute Order Book 30, page 554. On July 12, 1993, The Mercer County Enhanced - 911 Committee made a finding that Mercer County needs an Enhanced 911 Communications System and the County should explore the feasibility of such need and schedule public hearings as required by West Virginia Code, 2-6-6. The Court could find nothing in the documents made a part of the record to indicate that the mailing addresses of the residents would be changed, however, there was a note that reads as follows: "I move that we accept the recommendation of the enhanced 911 committee for establishment of a county-wide, centrally dispatched E-911 communications system, and that we schedule public hearings as provided by the law on August 20th at the Princeton City Hall and on August 26<sup>th</sup> at the Bluefield City Hall. There was no evidence in the production of documents that indicated whether or not public hearings ever occurred.

7. The Court reviewed Minutes of the Mercer County 9-1-1 beginning February 1, 1996 up through and including April 24, 2014. Based upon the contents of the Minutes it appears the only publications of notice were made when a building was purchased and vehicles to be used by the facility were purchased.

8. On March 23, 2006, Mr. Holroyd explained the Sunshine Law and compared the 911 meetings to other open governmental proceedings.

9. On June 22, 2006, the Minutes indicate Mr. Hoge asked members if it was necessary to advertise for bids before purchasing road signs. He said he would be purchasing them 100 at a time. The board advised Hoge to go ahead and purchase the signs from Opportunity Industries. There was no mention as to how his advertisement inquiry was answered, but another meeting revealed the signs were only \$25.00 each.

10. Minutes September 04,, 1997, indicate an advertisement for the job of a new director was being published in newspapers of Mercer, Raleigh and Kanawha Counties.
11. Minutes March 22, 2001, indicate there was an advertisement for a mapper.
12. Minutes March 23, 2000, indicate notices were to be sent to all relevant agencies for a Bio-terrorism meeting.
13. Minutes March 28, 2002, indicate a Gilbert Whitt Complained with regard to addressing on Oney Gap Road. Other than that, it is not clear if, or whether, it was resolved.
14. Minutes April 25, 2002, indicate one Ernie Asbury complained about naming a street Harley Davidson Lane. Mr. Hoge explained that the gentleman who owns the property is the one who named it and residents who live out that road are happy with that name.
15. Minutes May 23, 2002, indicate Gilbert Whitt attended the advisory board meeting to discuss his address changed. Mr Holroyd suggested he get together with other residents and come up with suggestions for a name and the board would determine if there are any other roads in the county with the same name.
16. Minutes July 25, 2002, indicate addressing, mapping and street signs were the issue and Mr. Holroyd advised them to get a sign sample and estimates for costs to present to the next meeting.
17. August 24, 2006, indicate Patricia Varga attended the meeting and advised the County Commission that she was upset about not having a physical address.
18. Minutes March 27, 2008, a recommendation will be made to the County Commission for the RFP to be advertised in the newspaper.
19. Minutes April 24, 2008, indicate they were advertising for bids for expressions of interest in construction for a new building.
20. Minutes August 25, 2011, indicate it was recommended that they advertise for bids on a pick-up truck and to advertise for the position of Deputy Director of 911.
21. Minutes-September 22, 2011, indicate advertisements for the position of Deputy Director and the purchase of a truck were completed.
22. Minutes October 24, 2013, indicate that five residents from the Old Athens Road area attended to discuss the changes being made to their mailing and physical address. (Herman French, Elizabeth French, Charles Wade, Dorothy Snider and Bob Carter). A lengthy discussion was held on the addressing procedure. Herman French commented about an abandoned animal.

He was advised that the situation had been handled.

23. On November 6, 2013, approximately 13 days later this suit was filed. The Minutes of January 23, 2014, indicate Mike Vinciguerra asked about the status of the lawsuit filed by Mr. French. Mr. Hoge stated that an answer had been filed and a list of potential witnesses had been provided Mr. Holroyd.

24. It is the position of the defendants that they did not provide public notice because they are under no obligation to provide public notice. Defendants allege that there is no legal precedence for the result sought by plaintiff.

25. County Commissions have the superintendence and administration of the establishment and regulation of roads, ways, streets, avenues, drives and the like, and the naming or renaming thereof, in cooperation with local postal authorities, the division of highways and the directors of county emergency centers.

26. In the exercise of the jurisdiction over the establishment and regulation of roads, vested by this section, County Commissions have a wide discretion.

27. County Commissions have the authority to establish enhanced emergency telephone systems.

28. The West Virginia Legislature made a finding to achieve a uniform system of addressing and mapping.

29. The Plaintiff states that he has suffered annoyance and inconvenience, a 100 point drop in his credit rating, his insurance rate has increased, his blood pressure has become elevated, the new zip code showed property to falsely be included in the flood zone, he has lost touch with old friends, he is unable to get a police officer, and annoyance and inconvenience.

30. The Mercer County E-911 Center was created by the Mercer County Commission in 1994 and a filing was sent to the West Virginia Public Service Commission. At that time an advisory board was formed to be a liaison between the County Commission and the E-911 facility. The 911 Minutes indicate that the advisory board decided to become a "stand alone" body and in 2009 petitioned the County Commission for such authority. Minutes December 3, 2009 state that the Mercer County Commission approved the formation of an Authority Board for the Mercer County 9-1-1 Center to start doing business on January 1, 2010. Pursuant to that authority. They created a calendar stating that they meet on the 4<sup>th</sup> Thursday of every month. The Calendar is distributed to each board member and posted at the 911 center. There is no other effort made to

notify the general public. There has never been a publication of notice of a meeting in the newspaper or on the public notice bulletin boards in the Mercer County Courthouse.

#### **CONCLUSIONS OF LAW:**

1. County Commissions in West Virginia have been provided certain powers, including the establishment and regulation of roads and ways. West Virginia Constitution Article IX, Section 11.
2. W. Va Code, ch. 7, art. 1, §3 (Michie 2013), under Jurisdiction, powers and duties states that it is responsible for the administration of the internal police and fiscal affairs of their counties, including the establishment and regulations of roads, ways, streets, avenues, drives and the like, in the naming or renaming thereof in cooperation with local postal authorities, the Division of Highways and the Directors of County Emergency Communications Centers, to assure uniform, non-duplicative conversion of all rural routes to city type addressing on a permanent basis.
3. W. Va Code, ch. 7, art. 1, §3cc (Michie 2013), provided the authority to establish enhanced emergency telephone systems, technical and operational standards for emergency commission centers and standards for education and training of emergency communication system personnel ...and for roadway conversion systems. The Mercer County Commission chose to implement the Enhanced 911 System in 1996.
4. W. Va Code, ch. 24, art. 6, § 6 (Michie 2013), states that if a county decides to adopt an enhanced emergency services telephone system it shall first prepare a proposal on the implementation of the system and shall hold a public meeting on the proposal to explain the system and receive comments from other public officials and interested persons. During discovery the Defendant County Commission produced a Notice of Special Meeting which was allegedly posted on the doors of the Mercer County Courthouse and what appears to be minutes of the meeting. This Notice posted on the front door of the Mercer County Courthouse should satisfy the Sunshine Law's requirements of open governmental proceedings. I see no requirements that notice of the monthly meetings of the 911 Authority be published to notify the public, because E-911 is simply complying with statutory requirements set forth by our legislature.

The meetings appear to be open and public because the minutes show the appearance by

members of the public, including plaintiff to voice complaints. Once the Authority was formed I do not believe the law requires them to give a specific notice to the happening of a meeting. This Court does not view renumbering of Mr. French's street address as an amendment to Mercer County's original 911 plan so as to require a new public hearing under W. Va Code, ch. 24, art. 6, § 6 (Michie 2013).

5. The Court finds that there is no genuine issue as to any material fact that needs to be developed by the calling of witnesses and soliciting testimony.

**ACCORDINGLY**, plaintiff's Motion for Summary Judgment shall be, and hereby is, **ORDERED** denied.

**ACCORDINGLY**, defendant's Motion for Summary Judgment shall be, and hereby is, **ORDERED** granted because there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law.

The Clerk is hereby **ORDERED** to remove this case from the docket of the Court. To all of which the Plaintiff objects and takes exception.

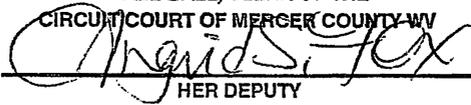
The Plaintiff has four (4) months from the date of entry of this order to seek an appeal from this **ORDER** to the West Virginia Supreme Court of Appeals in Charleston, West Virginia.

Date: July 14, 2014.

**ENTER:**

  
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**JOHN S. HRKO, SPECIAL JUDGE**

THE FOREGOING IS A TRUE COPY OF A DOCUMENT  
ENTERED IN THIS OFFICE ON THE 14<sup>th</sup> DAY  
OF July 2014  
DATED THIS 14<sup>th</sup> DAY OF July  
2014

JULIE BALL, CLERK OF THE  
CIRCUIT COURT OF MERCER COUNTY WV  
BY   
HER DEPUTY