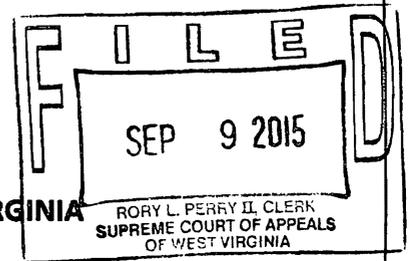


ARGUMENT DOCKET



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

PETITIONER,

Vs.) NO. 14-0790

THE MERCER COUNTY COMMISSION AND
MERCER COUNTY E-911,

RESPONDENTS.

SUPPLEMENTAL BRIEF OF RESPONDENTS

**Counsel for Respondents, The Mercer County
Commission and Mercer County E-911**

JOHNSTON, HOLROYD & ASSOCIATES

A handwritten signature in black ink, appearing to read "Robert E. Holroyd", written over a horizontal line.

ROBERT E. HOLROYD
WVSB# 1773
1438 Main Street
Princeton, WV 24740
304-425-2103
Email – janetwood@citlink.net

**JOHNSTON, HOLROYD
& ASSOCIATES**
ATTORNEYS AT LAW
1438 MAIN STREET
PRINCETON, WV 24740

TABLE OF CONTENTS

1)	Nature of the Case	4
2)	Argument	5
3)	Conclusion	7

TABLE OF AUTHORITIES

W.Va. Code, Chapter 6, Article 9A, Section 1

W.Va. Code, Chapter 7, Article 1, Section 3

W.Va. Code, Chapter 24E, Article 1, Sections 1 and 2

W.Va. Code, Chapter 3, Article 9A, Section 1

W.Va. Code, Chapter 16, Article 5G

R. E. Hamrick, Jr., M.D. vs. Charleston Area Medical Center, Inc.,
220 WV 295 648 SE 2d 1, 2007, WV, Lexis 9 (2007)

NATURE OF THE CASE

The Court has directed counsel to file a supplemental brief addressing the issue of if the 911 advisory board is required to give notice of its scheduled meeting and its agenda under the Open Government Proceedings Act of West Virginia – Code §6-9A-1 et seq.

911 is a telephone answering arm of the County Commission dealing generally with directing first responders to emergencies and with statutory duties under West Virginia Law. As it relates to this appeal, the statutory duties are found in West Virginia Code Section 7-1-3 (the Powers and Duties of the County Commission “including the establishment and regulation of roads, ways, streets, avenues, dikes and the like, and the naming or renaming thereof, in cooperation with local postal authorities.”)

Section 24E-1-1 (2) (the finding of the legislature, “that city type addressing is essential to the prompt and accurate dispatch of emergency service providers,” and “(4)” that a statewide system for the city – type addressing would provide citizens of rural areas throughout the state with security, safety and peace of mind”). These are the statutory duties of the county commission through its 911 agency.

The Open Government Proceedings Act, West Virginia Code Section 3-9A-1 et seq. defines in section 2 “decision” as meaning “any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is

present” and defines “governing body” as “the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration....”

For there to be a requirement of notice under West Virginia Code 6-9A-1 et seq. the agency (911) must either be a “governing body” or an agency that has the authority to make recommendations to the governing body.

II.

ARGUMENT

No one will argue that 911 with its small number of people answering the telephone is a “governing body.” Therefore, in order for it to come within the provisions of the Open Governmental Proceedings, it must be an advisory board that has authority to make decisions or make recommendations to, in this case the County Commission on policy or administration.

There is no evidence that the 911 did any act not specifically required by the above recited code sections. Its only act was to follow the statutes and the law. The Petitioner’s principle complaint appears to be with the post office changing his zip code and it is significant that in spite of his advertisement he was unable to give the court the name of any person who was “otherwise affected” by the actions of the 911 in the change of their address to the extent that they were willing to join him in the lawsuit.

Simply stated the 911 agency is an arm of the County Commission no more than other arms such as the landfill, the dog pound, the juvenile center, the day report

center and numerous others, all of these agencies have meetings and follow the law all without being named a governmental agency and required to give notice of their meetings.

There is very little law on this matter but a case somewhat similar discusses the issues raised here in defining the open hospital proceedings under West Virginia Code Chapter 16, Article 5G. That case is R. E. Hamrick, Jr., M.D. vs. Charleston Area Medical Center, Inc. 220 West Virginia 495, 648 SE 2d 1, 2007 West Virginia, Lexis 9 (2007). In that case a medical executive committee of Charleston Area Medical Center had meetings and made recommendations to the Board of Directors of the Charleston Area Medical Center. It was clear that Charleston Area Medical Center, Inc., was subject to the Sunshine Law and the argument of the medical staff was that it only made recommendations and was not a governing body. Basically, the Court in that case made a finding that the medical staff's recommendations were on a wide range of issues and were "routinely" approved by the Board of Trustees of Charleston Area Medical Center without change and with little or no discussion and that the overwhelming decisions actually took place at the meetings of the medical staff.

In the instant case there is no evidence presented to the Court or even argued that the County Commission made any decisions or for that matter that 911 made any decisions or further that there was even any policy with regard to changing the addresses in the rural areas.

As discussed in the Charleston Area Medical Center case, the policy of the law was for the people to be informed regarding the decisions and the decision making

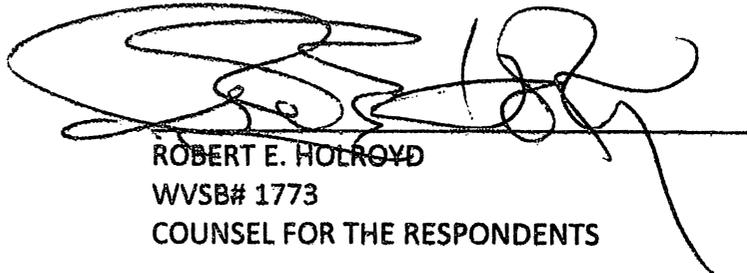
process. In the instant case, the only "decision" that was made was for the 911 to follow the law and do that which was required of the law to be done in following the legislative mandate that "city type addressing is essential to the prompt and accurate dispatch of emergency service personnel" (Code 24E-1-1)(2). It would appear that the Petitioner's complaint should be with the legislature to change the statute.

III.

CONCLUSION

No act of the Defendants to make any decisions or do any act, other than to follow the clear law, has been shown. This appeal should be dismissed.

Respectfully submitted,



ROBERT E. HOLROYD
WVSB# 1773
COUNSEL FOR THE RESPONDENTS

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

PETITIONER(S),

VS: NO. 14-0790

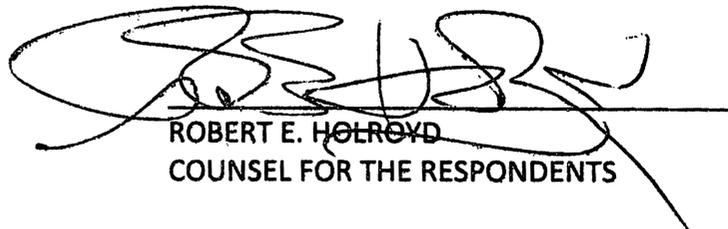
THE MERCER COUNTY COMMISSION AND
MERCER COUNTY E-911,

RESPONDENTS.

CERTIFICATE OF SERVICE

I, Robert E. Holroyd, attorney for the Respondents, do hereby certify that I served a true and correct copy of the foregoing SUPPLEMENTAL BRIEF OF RESPONDENTS, upon the following, by United States Mail, postage prepaid, on this the 8th day of September, 2015, addressed as follows:

R. Thomas Czarnik, Esq.
205 South Walker Street
Princeton, WV 24740
304-425-2103


ROBERT E. HOLROYD
COUNSEL FOR THE RESPONDENTS