

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

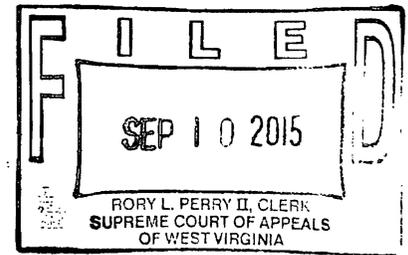
**HERMAN TRACY FRENCH ON HIS OWN
BEHALF AND IN BEHALF OF OTHER
SIMILARLY SITUATED,**

PETITIONER,

vs.) No. 14-0790

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

RESPONDENTS.



PETITIONER'S SUPPLEMENTAL BRIEF

Counsel for Petitioner, Herman Tracy French

R. THOMAS CZARNIK & ASSOCIATES

R. Thomas Czarnik, WVSB # 916

205.South Walker Street

Princeton, WV 24740

(304) 487-1212

Email - 1czar@frontiernet.net

Table of Contents

	Page
1) Supplemental Brief	1
2) Relevant Facts	1
3) Relevant Law & Argument	1 & 2
4) Conclusion	2

TABLE OF AUTHORITIES

1. **W.Va. Code Section 7-1-3cc;**
2. **W.Va. Code Section 6-9A-2;**
3. **W.Va. Code Section 6-9A-4;**
4. **W.Va. Code Section 6-9A-3;**
5. **W.Va. Code Section 6-9A-2(4);**
6. **Appalachian Power Company vs. PSC; 162 W.Va. 839, 253 SE2d 377 (1979).**

SUPPLEMENTAL BRIEF

Pursuant to Order of this Court in vacation, Petitioner submits supplemental brief as follows:

RELEVANT FACTS

A County Commission is authorized to establish a 911 emergency telephone system pursuant to W.Va. Code Section 7-1-3cc. Mercer County chose to delegate all this authority to "Mercer County E-911" and created its "Advisory Board" upon one public notice meeting. No public notice of any meeting of Mercer County E-911 Advisory Board was ever given thereafter, which is undisputed on the record.

RELEVANT LAW & ARGUMENT

W.Va. Code Section 6-9A-2 "Definitions" in relevant parts, reads as follows:

As used in this article:

1. "Decision" means 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.
2. "Governing Body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members.....
3. "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action.
4. "Official Action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.
5. "Public Agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power.

The exceptions to public notice are contained in W.Va. Code Section 6-9A-4. None apply to this case. The requirements of notice to be given are contained in W.Va. Code Section 6-9A-3.

A quorum was required for meetings of E-911. Whether it is called an "Advisory Board", or any other name, E-911 was given total authority to act on behalf of and independent of any action by the

County Commission. Clearly it is, and was, the “governing body” pursuant to W.Va. Code Section 6-9A-2(4). Clearly it took all its actions without notice to the citizens of Mercer County.

To uphold the Respondent’s argument and the ruling below means any “administrative or legislative unit of state, county, or municipal government, including any department, division, bureau, office, commission, authority, board (emphasis added), public corporation, section, committee, subcommittee or any other agency or submit of the forgoing, authorized by law to exercise some portion(emphasis added) of executive or legislative power”, has to do is create a “starchamber”, (call it what they will) delegate its authority to it, and exercise its will over the citizens of this state in secret; without citizen input or outcry; or accountability.

Even if the County Commission had the final say in the decisions or operations of E-911 (which never did happened) and even if the function of the “Advisory Board” was to only give “advice” to the County Commission; the “Advisory Board” would have been a “public agency” “governing body” making “recommendations” to a “public agency”, the County Commission, pursuant to W.Va. Code Section 6-9A-2.

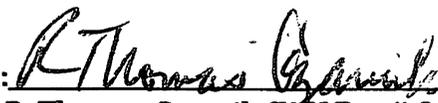
Day to day operations, informal meeting and administrative actions not requiring a quorum of the Board or any agency, are not subject to the “Sunshine Law”. See: Appalachian Power Company vs. PSC; 162 W.Va. 839, 253 SE2d 377 (1979).

CONCLUSION

Whether E-911 was called an “Advisory Board” or any other name; whether it gave “recommendations” (i.e. advice) to the County Commisioner, or not; makes no difference.

However, in fact it acted to affect the rights and wellbeing of the citizens of Mercer County without public notice required by law.

Respectfully Submitted
Herman Tracy French, Petitioner

Signed: 
R. Thomas Czarnik (WV Bar # 916)
Counsel of Record for Petitioner

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.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2015 true and accurate copies of the foregoing Petitioner's Supplemental Brief were hand-delivered to the addressed counsel for all other parties to this appeal as follows:

Robert Holroyd
1438 E. Main St.
Princeton, WV 24740

Signed: _____


R. Thomas Czarnik (WV Bar # 916)
Counsel of Record for Petitioner