

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 14-1118

**J. MICHAEL TEETS, COMMISSIONER;
WILLIAM E. KEPLINGER, JR., COMMISSIONER;
and THE HARDY COUNTY COMMISSION,
Respondents Below,**

Petitioners,

v.

**Civil Action No: 14-C-17
Circuit Court of Hardy County**

**WENDY J. MILLER, JOHN A. ELMORE,
B. WAYNE THOMPSON, OVID NEED, and
BONNIE L. HAGGERTY, Petitioners Below,**

Respondents.

**BRIEF OF PETITIONERS J. MICHAEL TEETS AND WILLIAM E. KEPLINGER
IN THEIR INDIVIDUAL CAPACITIES**

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TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF AUTHORITIES	ii
ASSIGNMENTS OF ERROR	1
STATEMENT OF THE CASE	1
I. Procedural History	1
II. Statement of the Facts	4
SUMMARY OF ARGUMENT	8
STATEMENT REGARDING ORAL ARGUMENT AND DECISION	10
ARGUMENT	10
I. Standard of Review	10
II. The Circuit Court Erred in Voiding the Purchase of the Baker Building and the Adoption of Special Emergency Ambulance Service Fee Based on a Finding of Inadequate Notice	11
III. The Circuit Court Erred in Enjoining the Hardy County Commission From Ratifying or Repeating Its Actions at Future Meetings Even If Such Meetings Satisfy All Procedural Requirements	16
IV. The Circuit Court Erred in Voiding the Purchase of the Baker Building Without Joining All Parties to That Transaction Into the Case	24
V. The Circuit Court Erred in Holding Commissioners Teets and Keplinger Personally Liable for the Purchase Price of the Baker Building	26
CONCLUSION	29

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<u>Chrystal R.M. v. Charlie A.L.</u> , 194 W. Va. 138, 459 S.E.2d 415 (1995)	10
<u>City of Los Angeles v. Alameda Books, Inc.</u> 535 U.S. 425 (2002)	21
<u>Cnty. Court of Mingo Cnty. v. Bailey</u> , 97 W. Va. 351, 125 S.E. 253 (1924)	17
<u>Cnty. Court of Tyler Cnty. v. Duty</u> 77 W. Va. 17, 87 S.E. 256 (1915)	26
<u>Conrad v. Crouch</u> 68 W. Va. 378, 69 S.E. 888 (1910)	25
<u>Fluent v. Salamanca Indian Lease Auth.</u> 928 F.2d 542 (2d Cir. 1991)	25
<u>Imaginary Images, Inc. v. Evans</u> 612 F.3d 736 (4th Cir. 2010)	21
<u>Lomayaktewa v. Hathaway</u> 520 F.2d 1324 (9th Cir. 1975)	25
<u>McComas v. Board of Education of Fayette County</u> 197 W.Va. 188, 475 S.E.2d 280 (1996)	16, 23, 24
<u>Natwick v. Liston</u> 132 W. Va. 352, 52 S.E.2d 184 (1949)	25
<u>O'Daniels v. City of Charleston</u> , 200 W. Va. 711, 490 S.E.2d 800 (1997)	24
<u>State ex rel. Canterbury v. Cnty. Court of Wayne Cnty.</u> 151 W. Va. 1013, 158 S.E.2d 151 (1967)	17
<u>State ex rel. One-Gateway v. Johnson</u> 208 W. Va. 731, 542 S.E.2d 894 (2000)	25
<u>State ex rel. Shull v. U.S. Fid. & Guar. Co., Syl. Pt. 6</u> 81 W. Va. 184, 94 S.E. 123 (1917)	25

STATUTES

PAGES

W.Va. Code § 6-6-1 22

W. Va. Code § 6-9A-1 3

W. Va. Code § 6-9A-2 14

W. Va. Code § 6-9A-3 15

W.Va. Code § 6-9A-6 15, 18

W.Va. Code § 6-9A-10 14

W.Va. Code § 6-9A-11 14

W.Va. Code § 6B-1-1 22

W.Va. Code § 7-1-2 1, 3, 8, 10, 11, 12, 13, 14, 22, 27, 28

W. Va. Code § 7-3-5 17, 24

W.Va. Code § 7-15-1 8

W.Va. Code § 7-15-2 11, 16, 19

W.Va. Code § 7-15-4 18, 19, 20, 21

W.Va. Code § 7-15-17 12, 17, 20, 21

W.Va. Code § 7-15-18 11, 12, 13, 16, 19, 20, 21, 24

W.Va. Code § 11-8-26 26, 27

W.Va. Code § 11-8-27 27

W.Va. Code § 11-8-29 26, 27

W.Va. Code § 18-5-13a 23, 24

ASSIGNMENTS OF ERROR

1. The circuit court erred in voiding the Hardy County Commission's purchase of a building in Baker, West Virginia to serve as an emergency medical services headquarters, and its adoption of a special emergency ambulance service fee, based upon the Commission's purported failure to comply with the Open Governmental Proceedings Act and W.Va. Code § 7-1-2.

2. The circuit court erred in enjoining the Hardy County Commission from re-establishing the special emergency ambulance service fee and in ruling that the Commission could not simply reaffirm the purchase of the building at a subsequent meeting.

3. The circuit court erred in voiding the Hardy County Commission's purchase of the building in Baker, West Virginia without joining the sellers of the building as parties to the action.

4. The circuit court erred in holding Hardy County Commissioners J. Michael Teets and William E. Keplinger, Jr. personally liable for the purchase price of a building that they voted to purchase for the benefit of the citizens of Hardy County, West Virginia.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

This is an appeal of two orders by the Circuit Court of Hardy County, West Virginia dated August 8, 2014 and October 10, 2014. The Respondents (petitioners below) commenced the instant lawsuit on or about November 4, 2014 by filing a petition to remove Hardy County Commissioners J. Michael Teets and William E. Keplinger, Jr. from office (hereinafter "the Petition to Remove") together with a petition to "invalidate, nullify, and

vacate” the Hardy County Commission’s adoption of a special emergency ambulance service fee and purchase of a building located in Baker, West Virginia (hereinafter “the Petition to Invalidate”). App. at p. 0005.¹ These petitions named the Hardy County Commission (hereinafter “the Commission”), as well as Mr. Teets and Mr. Keplinger in their official capacities as Commissioners, as the respondents below.

The Petition to Remove was assigned to a three-judge panel, which conducted a full evidentiary hearing on March 17, 18, and 19 of 2014. On or about May 1, 2014, after consideration of all of the evidence and exhibits, the three-judge panel entered an Order denying the Petition for Removal. App. at 0451. In its Order, the three-judge panel found that the Commission considered various options prior to deciding to purchase the subject building in Baker, West Virginia (hereinafter “the Baker building”), and determined that purchasing the Baker building was the best option for the County. App. at pp. 0456-0457. The three-judge panel also found that the Commission was authorized by statute to adopt and impose the special emergency ambulance service fee (hereinafter “the ambulance fee”). App. at pp. 0457-0458. The three-judge panel concluded that the fact that citizens of Hardy County disagree with the Commission’s decision to purchase the Baker building and impose the ambulance fee did not warrant removing Commissioners Teets and Keplinger from office. Id.

After the three-judge panel denied the Petition for Removal, the Circuit Court of Hardy County, West Virginia addressed the Petition to Invalidate. The circuit court proceeded on the record developed in front of the three-judge panel in the removal action, but declined to adopt the three-judge panel’s findings. App. at p. 0678. In an Order dated

¹ References to the Appendix will be made as "App. at p. ____."

August 8, 2014, the circuit court found that the Commission violated W.Va. Code § 7-1-2 and the Open Governmental Proceedings Act, W. Va. Code § 6-9A-1, et seq. (hereinafter “the OGPA”) by failing to provide adequate notice of the matters to be addressed at the meetings at which the Commission voted to purchase the Baker building and adopt the ambulance fee. App. at pp. 0694-0707. Based on these findings, the circuit court declared that the Commission’s actions in purchasing the Baker building and adopting the ambulance fee were void,² and ordered the Commission to refund all moneys to those citizens who had previously paid the ambulance fee. Id.

The Commission filed several motions in the wake of the circuit court’s August 8, 2014 Order, including, *inter alia*, a motion to join the Capon Valley Bank and Trustee Jack Walters, who sold the Baker building to the Commission, as parties. The Respondents (petitioners below) also filed several motions, including, *inter alia*, a motion for injunctive relief. On September 29, 2014, the circuit court held a hearing regarding several of the matters that arose in the wake of its August 8, 2014 Order. Then on October 10, 2014, the circuit court entered an Order denying the Commission’s motion to join Capon Valley Bank and Trustee Jack Walters, granted an injunction preventing the Commission from re-establishing the ambulance fee, and rendered judgment holding Commissioners Teets and

² In the final paragraphs of its August 8, 2014 Order, the circuit court declares that the “[t]he vote of the Hardy County Commission . . . relating to and authorizing the purchase [of] the building at Baker and the use of Hardy County funds to finance the same are VOID,” and that “[t]he vote of the Hardy County Commission . . . authorizing the institution of a Special Emergency Ambulance Fee and adopting [an] Ordinance to accomplish [the] same are VOID.” App. at p. 0706 (emphasis added). However, in paragraph 45 of the body of the Order, the circuit court refers to the purchase of the Baker building and adoption of the ambulance fee and states that “those *actions* are void.” Id. (emphasis added). To the extent there is any practical difference between voiding the Commission’s votes to take these actions and voiding the *actions* themselves, Commissioners Teets and Keplinger interpret the effect of the circuit court’s order as voiding the Commission’s purchase of the Baker building and adoption of the ambulance fee.

Keplinger liable in their individual capacities for the purchase price of the Baker building (\$1,130,000.00) plus interest. App. at 1078-1098.

The circuit court's orders were timely appealed, but on January 15, 2015, this matter was remanded to the circuit court for the purpose of making a record and findings regarding any conflict of interest that may exist in the wake of the circuit court's October 10, 2014 Order entering judgment against Commissioners Teets and Keplinger in favor of the Commission. By Order dated February 19, 2015, the circuit court disqualified counsel for the respondents below from any further representation of the Commission and/or Commissioners Teets and Keplinger in this matter, and appointed John W. Cooper as special prosecuting attorney to represent the Commission. On March 2, 2015, the Clerk of this Court entered an order providing that Mr. Cooper may file an amended notice of appeal on or before March 31, 2015, and by email dated March 6, 2015, the Clerk indicated that if Commissioners Teets and Keplinger wished to retain counsel to represent them in their individual capacities, they may do so and inform the Court by filing a notice of appearance. Accordingly, counsel for Commissioners Teets and Keplinger in their individual capacities filed notices of appearance on March 26, 2015, and submitted an amended notice of appeal on March 30, 2015.

II. STATEMENT OF THE FACTS

In December of 2011, it came to the Commission's attention that Mathias-Baker Rescue Squad (hereinafter "MBRS"), one of the entities providing emergency ambulance service to Hardy County at the time, was having financial problems. App. at pp. 2185, 2276-77, 2447-51. At a meeting on December 20, 2011, the Commission voted to give MBRS \$300,000.00 in order to help it continue to operate. Id. Unfortunately, the

Commission's financial support did not permanently resolve MBRS's financial woes, and MBRS went out of business in or about October of 2012 (though it continued to operate as a volunteer group for several more months). App. at pp. 2188, 2277, 2453. On October 9, 2012, the Commission held an emergency meeting to discuss how to respond to the closure of MBRS. App. at p. 2453. At a subsequent meeting on November 20, 2012, the Commission voted to hire a county medic and to create the Hardy County Emergency Ambulance Authority (hereinafter "HCEAA"). App. at pp. 2190, 2281-82, 2461-63. Commissioner A.J. Wade made the motion to create the HCEAA. Id.

Months later at a meeting on March 5, 2013, a representative of MBRS informed the Commission that the bank would be foreclosing on the Baker building (which was the MBRS headquarters at the time) in 45 to 60 days. App. at pp. 2193, 2486-88. At a meeting on April 2, 2013, a representative of the Mathias-Baker Fire Company requested funding to purchase the Baker building. App. at pp. 2195-96, 2494-96. The Commission considered this option, along with several others, but concluded that the best option was for the Commission and/or the HCEAA to own the building. App. at pp. 2196-97, 2290-94.³

At a meeting on or about April 16, 2013, the HCEAA advised the Commission that MBRS would be closing its doors on May 1, 2013 and no longer running even as a volunteer group. App. at pp. 2199, 2284-85, 2502-04. Then at a meeting on May 21, 2013, the Commission went into executive session to discuss the potential purchase of the

³ As Commissioners Teets and Keplinger testified, if the Commission gave money to help another entity such as the Mathias-Baker Fire Company purchase the building, that entity could mortgage the building and potentially put it in foreclosure all over again. App. at pp. 2196-97, 2290-94. Similarly, if the Commission leased the building from another entity, the lessor could potentially increase the rent or terminate the lease. Id. The Commission also considered hiring a third-party company to provide emergency ambulance service, but the yearly cost of doing so was substantial and the county would still need to provide a suitable building for such company to use as a base of operations. Id.; see *also* App. at p. 3750.

Baker building, and the HCEAA recommended that the Commission purchase the building. App. at pp. 1990-92, 2203-06, 2286, 2513-14, 4316-17.

At the next meeting on June 4, 2013, the Commission voted to authorize the HCEAA to bid on the Baker building at the foreclosure sale, which was scheduled to take place that same day. App. at pp. 2207-08, 2287-89, 2520-22. Commissioners Teets and Keplinger voted in favor of this authorization to bid, while Commissioner Wade voted against it. App. at p. 2521. Notice of this June 4, 2013 meeting was published on May 29, 2013. App. at p. 4239. The appointments agenda for this meeting includes the following entry: "11:15 Jerry and Greg Authorize Amb. Authority to purchase Bld @ Baker." App. at p. 3939.⁴ However, the entry is hand-written rather than typed, and it is not clear whether it was written before, during, or after the meeting. App. at pp. 1781, 1807, 2248-50, 2287. In any event, the HCEAA was the highest bidder at the foreclosure sale, with a bid of \$1,130,000.00. App. at p. 2817-19.

Following the HCEAA's commitment to purchase the Baker building, the Commission noticed and held two public hearings, one on June 24, 2013 and one on July 15, 2013, to receive comments on the implementation of a special emergency ambulance fee. App. at pp. 0160, 0179, 2219-23, 2295-96. The Commission was not required to hold any public hearings on this issue, but did so because it felt that the people of Hardy County

⁴ Hardy County Clerk Gregory Ely explained that there are two agendas for meetings of the Hardy County Commission: a regular business agenda, and an appointments agenda. App. at pp. 1753-54, 1762, 1767-68, 1776. The business agenda contains the regular business that is conducted at every meeting, such as reviewing the minutes of the last meeting, exonerations, and settlements. App. at p. 4297. The appointments agenda reflects appointments with the Commission to discuss particular items for decision. App. at p. 4297. Both agendas are available to the public, and if someone comes to Mr. Ely's office and asks for the agenda for a meeting, Mr. Ely gives them both the business agenda and the appointments agenda. App. at p. 4298. App. at 1753-54, 1767-68, 1777, 4298.

should be informed of what the Commission felt was necessary for the good of the county. App. at pp. 2295-96.

Thereafter, at a Commission meeting on July 16, 2013, many of the people who attended the public hearings arrived and voiced opposition to the purchase of the Baker building and the adoption of the ambulance fee. App. at pp. 2224, 2299. Commissioner Keplinger felt that the county really needed the building and the fee, and expressed this sentiment to those present at the meeting. App. at pp. 2225-26, 2557. However, due to pressure from the members of the public who attended the meeting, Commissioner Keplinger ultimately voted with Commissioner Wade at the July 16, 2013 meeting to *not* purchase the building or adopt the fee. App. at pp. 2226-27, 2557.

After the July 16, 2013 meeting, numerous people called Commissioner Keplinger and expressed support for the purchase of the Baker building and adoption of the ambulance fee. App. at pp. 2227-28. At the next Commission meeting on August 2, 2013, former volunteer EMT George Crump and many other members of the public showed up in support of the purchase of the Baker building and adoption of the ambulance fee. App. at pp. 2229-31, 2299, 2342-49, 2575-78. As a result, Commissioner Keplinger made a motion to complete the purchase of the Baker building and adopt the ambulance fee, and the motion passed, with Commissioners Teets and Keplinger voting in favor of it, and Commissioner Wade voting against it. App. at pp. 2233-34, 2575-78. Notice of this August 2, 2013 meeting was published on July 24, 2013, and the appointments agenda for this meeting included the following entries: "10:30 George Crump ET ALS EAA Fee" and "11:00 Em Ambulance Authority update/questions." App. at pp. 2565, 4244.

Then at a meeting on August 20, 2013, the Commission adopted and signed an

ordinance implementing the ambulance fee. App. at p. 2581-85, 2591-95. Notice of this August 20, 2013 meeting was published on August 14, 2013, and the appointments agenda for this meeting includes the following entry: "11:00 order adopting fee ordinance – fee ordinance – order creating special checking acct." App. at pp. 4042, 4245. The above-described actions taken by the Commission's at its meetings on June 4, 2013, August 2, 2013, and August 20, 2013 are the actions that gave rise to this litigation, and that were ultimately voided by the circuit court.

SUMMARY OF ARGUMENT

First, the circuit court's order voiding the Commission's actions in purchasing the Baker building and adopting the ambulance fee based on the Commission's alleged failure to comply with the notice provisions of the OGPA and W.Va. Code § 7-1-2 is directly contrary to West Virginia law. The Emergency Medical Services Act of 1975 (hereinafter "the EMSA"), W.Va. Code 7-15-1 et seq., expressly provides county commissions with the authority to take actions to provide emergency ambulance service without complying with notice procedures set forth elsewhere in the West Virginia Code. Furthermore, even if the Commission was required to comply with the notice provisions of the OGPA and W.Va. Code § 7-1-2 despite the plain language of the EMSA, the Commission did make efforts to provide notice and the circuit court's findings regarding the inadequacy of such notice contravene the purpose and intent of the EMSA.

Second, even assuming *arguendo* that the circuit court properly voided the Commission's actions, the circuit court exceeded its authority and improperly construed the EMSA when it enjoined the Commission from ratifying or repeating its actions at future meetings even if such meetings satisfy all procedural requirements. The circuit court has

no power to control, by injunction, the substantive acts of the Commission, and the circuit court's crabbed construction of the EMSA effectively thwarts the express purpose of the statute. The OGPA gives the circuit court the power to enforce procedural requirements, not to second-guess the Commission's substantive factual determinations regarding the needs of the county. Furthermore, the circuit court's ruling that the Commission cannot simply re-vote to purchase the Baker building and must "[start] the process completely over" makes no sense, because the only "process" necessary to purchase the Baker building is a simple vote by the Commission.

Third, the circuit court erred in voiding the purchase of the Baker building without joining Capon Valley Bank, the seller of the Baker building, as a party to the case. Under West Virginia law, the seller was an indispensable party, and when the circuit court voided the purchase, it should have put the parties back into the relative positions that they occupied before the purchase by returning the purchase money from the bank to the Commission and returning title to the building from the Commission to the bank.

Finally, the circuit court erred in holding Commissioners Teets and William E. Keplinger personally liable for the \$1,130,000.00 purchase price of a building that they voted to purchase for the benefit of the citizens of Hardy County, especially when there were much less drastic alternatives available (such as joining and ordering the seller to return the purchase price, or allowing the Commission to simply re-vote to purchase the building at a properly-noticed meeting). If this judgment is allowed to stand, it will deter citizens from serving as county commissioners, and will have a chilling effect on the willingness of county commissioners to make large purchases for the benefit of the county. Furthermore, because Commissioner Wade was just as responsible for any failure to

provide adequate notice as Commissioners Teets and Keplinger but was not held liable, the circuit court has effectively punished Commissioners Teets and Keplinger for voting in favor of purchasing the building, not for failing to provide adequate notice of the Commission's meetings.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioners J. Michael Teets and William E. Keplinger, in their individual capacities, believe that oral argument is appropriate in this case, insofar as the parties have not waived oral argument, the appeal is not frivolous, the decisional process will likely be aided by oral argument, and the case involves issues of fundamental public importance. Petitioners Teets and Keplinger further believe that the case should be set for a Rule 20 argument, rather than a Rule 19 argument, because the case involves issues of fundamental public importance.

ARGUMENT

I. STANDARD OF REVIEW

This appeal involves the circuit court's interpretation and application of several statutes, including the EMSA, the OGPA, and W.Va. Code § 7-1-2. This appeal also involves questions of law relating to the scope of the circuit court's authority to issue injunctive relief and to void a transaction involving real property without joining all parties to that transaction in the case. Where the issue on an appeal from a circuit court is a question of law or involves the interpretation of a statute, this Court applies a *de novo* standard of review. Syl. Pt. 1, Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995).

II. THE CIRCUIT COURT ERRED IN VOIDING THE PURCHASE OF THE BAKER BUILDING AND THE ADOPTION OF THE AMBULANCE SERVICE FEE BASED ON A FINDING OF INADEQUATE NOTICE.

The circuit court voided the Commission's purchase of the Baker building and adoption of the ambulance fee based on the circuit court's finding that the Commission failed to comply with the notice requirements of the OGPA and W.Va. Code § 7-1-2. However, as set forth below, the Commission was not required to provide notice of the above-described actions, and went above and beyond the requirements of the law.

A. The EMSA expressly allows county commissions to take actions in furtherance of the provision of emergency ambulance service without complying with the notice procedures relied upon by the circuit court.

When the West Virginia Legislature passed the EMSA, it found and declared that “a significant part of the population of this State does not have adequate emergency ambulance service;” that “the establishment and maintenance of adequate emergency ambulance systems for the entire State is necessary to promote the health and welfare of the citizens and residents of this State;” and that “emergency ambulance service is a public purpose and a responsibility of government for which public money may be spent.” W.Va. Code § 7-15-2. The Legislature further declared that the EMSA “is enacted in view of these findings and shall be *liberally construed* in the light thereof.” *Id.* (emphasis added).

Critically, the EMSA provides that

[t]his article shall constitute ***full and complete authority for the provision of emergency ambulance service*** within a county *by a county commission* and for the creation of any authority and carrying out the powers and duties of any such authority. The provisions of this article shall be ***liberally construed*** to accomplish its purpose and ***no procedure or proceedings, notices, consents or approvals shall be required*** in connection therewith except as may be prescribed by this article.

W.Va. Code § 7-15-18 (emphasis added). Thus, not only did the Legislature state ***twice***

that the EMSA is to be liberally construed in light of its purpose of establishing and maintaining adequate emergency ambulance systems for the entire State, and give county commissions “full and complete” authority to provide emergency ambulance service, but the Legislature also expressly stated that ***no procedures or notices shall be required*** with respect to a county commission’s actions under the EMSA except as prescribed by the EMSA. Importantly, the EMSA does not prescribe any of the notice procedures set forth in the OGPA and/or W.Va. Code § 7-1-2.

In the case at bar, the Commission’s actions in purchasing the Baker building and adopting the ambulance fee were within the ambit of the EMSA. It is undisputed that the Commission purchased the Baker building to serve as an emergency medical services headquarters, and the EMSA plainly provides the Commission with the authority to impose and collect a special emergency ambulance service fee. See W.Va. Code § 7-15-17. Accordingly, § 7-15-18 of the EMSA states that the Commission was not required to comply with the notice provisions of the OGPA and/or W.Va. Code § 7-1-2 in connection with those actions.

Nevertheless, the circuit court voided the Commission’s purchase of the Baker building and adoption of the ambulance fee based on the Commission’s alleged failure to comply with the notice requirements of the OGPA and W.Va. Code § 7-1-2. The circuit court essentially ignored § 7-15-18 of the EMSA, and simply stated without discussion that “this Court does not believe that [§ 7-15-18] can possibly trump the mandates of the OGPA.” App. at p. 0706. Contrary to the circuit court’s conclusory statement, the plain language of the EMSA provides that county commissions have “full and complete authority for the provision of emergency ambulance service,” that “[t]he provisions of [the EMSA]

shall be liberally construed to accomplish its purpose,” and that “no procedure or proceedings, notices, consents or approvals shall be required in connection therewith except as may be prescribed by this article.” See W.Va. Code § 7-15-18. Again, the EMSA does not prescribe any of the notice procedures set forth in the OGPA and/or W.Va. Code § 7-1-2. Thus, the circuit court erred in voiding the purchase of the Baker building and the adoption of the ambulance fee based on the Commission's alleged failure to comply with the notice provisions of the OGPA and/or W.Va. Code § 7-1-2.

B. Even if some notice was required despite the plain language of the EMSA, the Hardy County Commission did make efforts to provide notice and the circuit court's findings regarding the inadequacy of such notice are inconsistent with the policy goals of the EMSA.

The actions of the Commission that were voided by the circuit court were (1) the vote at the June 4, 2013 meeting to authorize the HCEAA to bid on the Baker building; (2) the vote at the August 2, 2013 meeting to complete the purchase of the Baker building and implement the ambulance fee; and (3) the vote at the August 20, 2013 meeting to adopt the ordinance imposing the ambulance fee. App. at p. 0706. Hardy County Clerk Gregory Ely testified that he prepared the notices for these meetings in the same way he has prepared all meeting notices since he took office in 2005, and that the agendas for these meetings were available in his office. App. at pp. 4283-84.

Mr. Ely explained that since 2005, his standard practice has been to send notice of the Commission's meetings to the local newspaper for publication in advance of each meeting, and post a copy on the courthouse door. App. at pp. 1775-80. The notice for each meeting states that a copy of the meeting agenda is available in advance to any member of the public at the Hardy County Clerk's office, and if any citizen calls or visits the Clerk's office to request an agenda, Mr. Ely's practice is to provide him or her with a copy

of the regular business agenda and the appointments agenda for the next meeting. App. at pp. 1767-68, 1775-80.⁵ Thus, despite the fact that the EMSA absolved the Commission of any duty to provide notice with respect to the purchase of the Baker building and adoption of the ambulance fee, the Commission still provided notice of the meetings at which these actions took place through the general procedure outlined above.

Nevertheless, the circuit court found that the agendas for the meetings did not adequately describe the actions that the Commission ultimately took at such meetings, and therefore did not comply with the W.Va. Code § 7-1-2 and the OGPA. App. at pp. 0694-0703. Section 7-1-2 provides for county commissions to hold both regular and special sessions, and that the county clerk must post notice of any *special session* “and of the purpose for which it will be held” at the front door of the courthouse at least two days before such session is to be held. W.Va. Code § 7-1-2.⁶ The OGPA provides that “[e]ach

⁵ The West Virginia Legislature has charged the West Virginia Ethics Commission with interpreting the OGPA, and authorized the Ethics Commission to issue binding advisory opinions regarding the OGPA. W.Va. Code §§ 6-9A-10, 6-9A-11. The Ethics Commission’s Open Meetings Advisory Opinion No. 2007-09 provides that meeting agendas may be made available by posting on a bulletin board or providing copies at a designated location on a counter or table in a public place which can be accessed by the general public during normal working hours. Thus, Clerk Ely’s practice of making meeting agendas available at his office complies with the OGPA.

⁶ Commissioners Teets and Keplinger maintain that none of the meetings at issue were “special sessions,” and that therefore the notice requirements of W.Va. Code § 7-1-2 do not apply. While § 7-1-2 does not contain definitions of the terms “regular session” and “special session,” the OGPA defines a “regular meeting” as “a meeting of a governing body at which the regular business of the public is conducted,” and defines a “special meeting” as “a meeting of a governing body other than a regular meeting or an emergency meeting.” W.Va. Code § 6-9A-2. Here, the meeting minutes and agendas for the Commission’s meetings on June 4, 2013, August 2, 2013, and August 20, 2013 plainly reflect that the Commission was conducting the regular business of the county. See App. at pp. 2564-2580, 3938-3944, 4041-4055. Furthermore, to the extent that the circuit court is correct that “regular meetings” must be fixed and entered of record by the Commission in advance, each of the meetings at issue was fixed in advance at the previous meeting and entered of record in the previous meeting’s minutes. See App. at pp. 2514, 2558, and 2578. Thus, the meetings at issue were regular meetings, not special meetings.

governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media." W. Va. Code § 6-9A-3.⁷

Although the circuit court harshly criticized the Commission's meeting agendas, the fact remains that the Commission did include entries on its agendas relating to the purchase of the Baker building and adoption of the ambulance fee. The appointments agenda for the June 4, 2013 meeting included a handwritten entry stating "11:15 Jerry and Greg Authorize Amb. Authority to purchase Bld @ Baker." App. at p. 3939. Even if this entry was added during the meeting and/or is deemed insufficient to provide adequate notice that the Commission would be voting to authorize the HCEAA to bid on the Baker building at the foreclosure sale, the OGPA provides that a citizen may file suit to enforce the OGPA "within one hundred twenty days after the action complained of was taken or the decision complained of was made." W.Va. Code § 6-9A-6. The Respondents (petitioners below) filed this action in November of 2013. As such, any action taken by the Commission on June 4, 2013 is well outside the 120 day limitations period.

The appointments agenda for the August 2, 2013 meeting includes entries stating "10:30 George Crump ET ALS EAA Fee" and "11:00 Em Ambulance Authority update/questions." App. at pp. 2565. At the very least, these entries provided notice to any interested member of the public that the Commission would be taking up the issue of the ambulance fee and addressing the subject of ambulance service for the county. In addition, the appointments agenda for the August 20, 2013 meeting includes an entry

⁷ At all times relevant hereto, the Commission had in place rules as required by the OGPA. See App. at pp. 0949-0950. The Commission adopted new rules in August of 2014. App. at pp. 0742-43.

stating "11:00 order adopting fee ordinance – fee ordinance – order creating special checking acct." App. at p. 4042. This entry plainly indicates that the Commission would be taking up the issue of the ambulance fee ordinance. To the extent that the agendas could have been more precise, Clerk Ely testified that the Commission never asked him to intentionally obscure the agendas. App. at p. 4300.

Again, the Legislature enacted the EMSA with the goal of providing adequate emergency ambulance service for the entire State, and stated twice that the EMSA was to be liberally construed in light of that purpose. See W.Va. Code §§ 7-15-2, 7-15-18. It is clear from the circuit court's Orders that the circuit court ignored this Legislative pronouncement when it evaluated the adequacy of the notice procedures employed by the Commission with respect to the purchase of the Baker building and adoption of the ambulance fee. The circuit court's categorical rejection of the Commission's efforts directly contravenes the policy goals of the EMSA.

III. THE CIRCUIT COURT ERRED IN ENJOINING THE HARDY COUNTY COMMISSION FROM RATIFYING OR REPEATING ITS ACTIONS AT FUTURE MEETINGS EVEN IF SUCH MEETINGS SATISFY ALL PROCEDURAL REQUIREMENTS.

In its October 10, 2014 Order, the circuit court enjoined the Commission from re-establishing the ambulance fee "unless and until ambulance service is not otherwise available to all residents of Hardy County." App. at pp. 1165-1170, 1174. Similarly, the circuit court found that the Commission could not simply reaffirm its purchase of the Baker building at a subsequent meeting, and that "nothing short of starting the process completely over would satisfy the requirements of the OGPA and the holding in McComas v. Board of Education of Fayette County, 197 W.Va. 188, 475 S.E.2d 280 (1996)." App. at pp. 1163-1164. As set forth below, the circuit court exceeded its authority by making

these rulings, and erred in its application of the law.

A. The circuit court has no power to control, by injunction, the substantive acts of the Commission in this case.

This Court has long held that “[g]enerally, the courts of this state have no power to control, by injunction, a county court in the exercise of its purely legislative or governmental functions.” See Syl. Pt. 1, Cnty. Court of Mingo Cnty. v. Bailey, 97 W. Va. 351, 125 S.E. 253 (1924); State ex rel. Canterbury v. Cnty. Court of Wayne Cnty., 151 W. Va. 1013, 1024, 158 S.E.2d 151, 159 (1967). As the Court explained in Bailey, “[i]t is clear from our decisions that governmental functions of a county court cannot be controlled by injunction, unless the complainants have suffered or will suffer a private or peculiar injury—an injury or wrong not common to the other citizens of the county.” 97 W. Va. 351, 125 S.E. at 256.

Here, the adoption of a special emergency ambulance service fee and purchase of a building for use in the providing of ambulance service to the county are clearly governmental functions of the Commission. See W. Va. Code § 7-15-17.⁸ Respondents have neither alleged nor proven that they have suffered or will suffer a private or peculiar injury not common to the other citizens of the county if the Commission re-establishes the ambulance fee and/or reaffirms its purchase of the Baker building. Thus, the circuit court has no power to enjoin the Commission from taking these actions. While the OGPA may give the circuit court the power to invalidate past actions of the Commission which did not comply with the procedural requirements of the OGPA, and to enter an injunction ordering “that subsequent actions be taken or decisions be made in conformity with the provisions of [the OGPA],” the OGPA does not give the circuit court the power to control, by

⁸ Even apart from the EMSA, county commissions have broad authority to acquire real estate. See W. Va. Code § 7-3-5.

injunction, the substantive acts of the Commission at future meetings which satisfy the procedural requirements of the OGPA. See W.Va. Code § 6-9A-6.

B. The circuit court misconstrued and misapplied the EMSA.

In enjoining the Commission from re-establishing the ambulance fee, the circuit court focused on a single section of the EMSA, § 7-15-4, which provides that “the county commission shall cause emergency ambulance service to be made available to all the residents of the county where such service is not otherwise available,” and that a county commission is obligated to provide ambulance service only if it makes an affirmative determination that there are funds available to do so and only at a level commensurate with the amount of funds actually available for such purpose. W.Va. Code § 7-15-4.

The circuit court found that because three existing licensed ambulance services provide service to Hardy County, service was “otherwise available” and therefore the Commission had no duty to provide ambulance service under § 7-15-4. App. at pp. 1165-1170. The circuit court dismissed the Commission’s arguments about the inadequacy of the existing ambulance service, finding that such arguments “would be better directed towards the licensing agency” which is “far more qualified than the Circuit Court of Hardy County to make determinations on the appropriateness and adequacy of ambulance service.[.]” App. at pp. 1167-1168. The circuit court also found that the Commission’s budget allotted only \$15,935.00 to the HCEAA, and so the Commission had no duty to provide ambulance service in excess of the budgeted amount. App. at pp. 1169. The circuit court then concluded that because the Commission had no *duty* to provide ambulance service under the EMSA, it had no *power* to enact the ambulance fee under the EMSA. App. at pp. 1169-1170.

In so ruling, the circuit court failed to properly construe and apply the EMSA. The West Virginia Legislature enacted the EMSA in view of the Legislature's findings that "a significant part of the population of this State does not have **adequate** emergency ambulance service," and that "the establishment and maintenance of **adequate** emergency ambulance systems for the entire State is necessary to promote the health and welfare of the citizens and residents of this State." W.Va. Code § 7-15-2 (emphasis added). The Legislature then stated **twice** that the EMSA is to be liberally construed in light of its purpose of establishing and maintaining adequate emergency ambulance systems for the entire State. See W.Va. Code § 7-15-2; W.Va. Code § 7-15-18.

Contrary to the Legislature's clear mandate, the circuit court gave the EMSA a crabbed construction which frustrates and severely limits the Commission's ability to establish and maintain adequate emergency ambulance service in Hardy County. First, the circuit court construed the words "otherwise available" in § 7-15-4 to mean that a county commission has no duty to provide emergency ambulance service as long as some entity is licensed to provide ambulance service in all areas of the county, regardless of whether that entity is adequately meeting the needs of the county. See App. at pp. 1166-1170. In doing so, the circuit court failed to liberally construe the EMSA in light of the Legislature's finding that "the establishment and maintenance of **adequate** emergency ambulance systems for the entire State is necessary to promote the health and welfare of the citizens and residents of this State." See W.Va. Code § 7-15-2 (emphasis added). By enjoining the Commission from re-adopting the ambulance fee "until ambulance service is not otherwise available to all residents of Hardy County," the circuit court has thwarted the Commission's ability to ensure **adequate** ambulance service coverage for the citizens

of Hardy County. See App. at p. 1174.

Second, even if the circuit court were correct that the words “otherwise available” in § 7-15-4 limited the *duty* of the Commission, the circuit court erred in finding that they also limited the Commission’s *power* to act under § 7-15-17. The circuit court cites no authority for the proposition that a county commission’s *power* to act under § 7-15-17 is limited by the parameters of the *duty* set forth in § 7-15-4. Neither § 7-15-17 nor any other section of the EMSA provides for such a limitation. To the contrary, § 7-15-18 provides that “[t]his article shall constitute **full and complete authority** for the provision of emergency ambulance service within a county by a county commission” W. Va. Code § 7-15-18 (emphasis added). In light of the twice-stated mandate that the EMSA is to be liberally construed, the circuit court’s severe limitation of the Commission’s “full and complete authority” to provide emergency ambulance service violates the plain language of the EMSA.

The same goes for the portion of § 7-15-4 which limits a county commission’s duty to provide emergency ambulance service based on the amount of funds available. This limitation on *duty* is not a limitation on power or authority. Indeed, while § 7-15-4 states that the EMSA does not impose a *duty* to provide emergency ambulance service beyond a level commensurate with the amount of funds actually available for such purpose, § 7-15-17 expressly provides county commissions with the *power* to generate additional funds for such purpose through the adoption of a special emergency ambulance service fee. See W.Va. Code § 7-15-17.

Third, the circuit court effectively ruled that as long as a licensed entity is providing some degree of ambulance service in all areas of the county, a county commission’s only

recourse for addressing insufficient ambulance service is to seek relief from the licensing agency which regulates the existing ambulance service providers. This ruling directly contravenes the EMSA, which not only provides county commissions with “full and complete authority for the provision of emergency ambulance service,” but also expressly provides county commissions with the power to provide emergency ambulance service, create emergency ambulance service authorities, and impose fees to pay the reasonable and necessary expenses incurred in providing emergency ambulance service. See W.Va. Code §§ 7-15-4, 7-15-17, and 7-15-18.

C. The circuit court cannot second guess the Commission’s findings regarding the inadequacy of ambulance service in Hardy County.

When it passed the EMSA, the West Virginia Legislature vested county commissions with “full and complete authority for the provision of emergency ambulance service,” and decreed that “no . . . consents or approvals shall be required in connection therewith except as may be prescribed by this article.” W.Va. Code § 7-15-18. Nowhere in the EMSA did the Legislature state that a county commission’s determinations regarding the adequacy or inadequacy of ambulance service in the county are subject to the judicial approval of a circuit court. As one court has recognized, “courts should not be in the business of second-guessing fact-bound empirical assessments” made by local policymaking bodies. Imaginary Images, Inc. v. Evans, 612 F.3d 736, 748 (4th Cir. 2010)(citing City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 451 (2002)).

Here, the Commission found that the emergency ambulance service in the county was inadequate, and took steps to correct this problem, including the purchase of the

Baker building and the adoption of the ambulance fee.⁹ The Respondents petitioned to set aside these actions based on alleged violations of the notice requirements of the OGPA. While the OGPA gives the circuit court the power to correct procedural violations, it does not give the circuit court the power to second-guess the Commission's substantive factual determinations regarding the needs of the county. Likewise, § 7-1-2 contains certain notice requirements, but does not provide the circuit court with power to overrule the substantive determinations of the Commission. Nevertheless, the circuit court went beyond addressing the Commission's purported failure to comply with statutory notice procedures, and effectively ruled that the Commission was wrong when it determined that the existing emergency ambulance service in Hardy County was inadequate. App. at pp. 1167-1169, 4337. Thus, the circuit court improperly usurped the Commission's authority to make decisions regarding the emergency ambulance service needs of the county.

If the Commission's decisions were wasteful or the result of official misconduct, those are matters to be addressed by a removal action pursuant to W.Va. Code § 6-6-1 et seq., a complaint to the West Virginia Ethics Commission pursuant to W.Va. Code § 6B-1-1 et seq., and/or the democratic process at the next election. Notably, the Respondents (petitioners below) in this case filed both a removal action and an ethics complaint, and did not prevail in either forum. The three-judge panel presiding over the removal action found

⁹ Commissioners Teets and Keplinger explained that the factors weighing in favor of purchasing the Baker building were that (1) the Commission would own the building and would not have to worry about it being leveraged again; (2) the building was unique in that it was designed to function as an emergency services headquarters; and (3) the building was centrally located with relatively quick access to all major areas of the county. App. at pp. 2209-10, 2294. Commissioners Teets and Keplinger further explained that the purpose of the ambulance fee was to provide for the operation of ambulance service for the whole county, and that the fee was necessary because there was no funding for an undertaking of that nature. App. at p. 2216-18, 2295.

no basis for removing Commissioners Teets and Keplinger from office, and the West Virginia Ethics Commission dismissed the Respondents' complaint. App. pp. 0451-0462, 0673-0675. If the citizens of Hardy County nonetheless disagree with the Commission's decisions, then they can show their disapproval at the next election. However, it is not the circuit court's place to substitute its judgment for that of the Commission.¹⁰

D. The circuit court erred in relying on McComas to hold that the Commission cannot simply reaffirm the purchase of the Baker building.

In McComas, the Fayette County Board of Education had attempted to close Falls View Elementary School and consolidate Gauley Bridge High School with Valley High School pursuant to the statutory procedure set forth in W.Va. Code § 18-5-13a. See 197 W. Va. at 191, 475 S.E.2d at 283. This Court found that the Board violated the OGPA by holding a private meeting in the course of that procedure. Id. at 201, 475 S.E.2d at 293. In discussing potential corrective actions for the Board's violation of the OGPA, the Court stated that "[i]t may well be that nothing short of starting the entire process over could have provided an adequate cure." Id. at 202, 475 S.E.2d at 294. The Court ultimately held that "[i]f the Board wants to revisit the issue of school closings and consolidation, it must repeat the prescribed statutory procedure." Id.

However, McComas is plainly distinguishable because there is a detailed statutory procedure for closing and consolidating public schools, which includes such steps as

¹⁰ Assuming *arguendo* that the circuit court had authority to review the substantive factual determinations of the Commission in this matter, then the circuit court erred in cutting off the Commission's evidence regarding the inadequacy of the existing ambulance service in Hardy County. At the September 29, 2014 hearing, counsel for the Commission attempted to present additional testimony and evidence regarding the lack of adequate ambulance service, but the circuit court denied her the opportunity to do so. App. at pp. 4339-4343. If the circuit court was going to substitute its judgment for the Commission's regarding the ambulance service needs of the county, then the circuit court should have at least allowed the Commission to make a full presentation of the evidence necessary to make an informed decision.

preparing a written report and making it available to the public for 30 days, and noticing and conducting a public hearing. See W. Va. Code § 18-5-13a. By contrast, county commissions have broad, general authority to acquire real estate, and there is no detailed statutory procedure comparable to that in § 18-5-13a for closing and consolidating schools. See W. Va. Code § 7-3-5. Furthermore, the EMSA specifically states that no special procedures or proceedings shall be required in connection with a county commission's efforts to provide emergency ambulance service within a county. W. Va. Code § 7-15-18. Thus, in order to purchase or re-purchase the Baker building, the Commission need only vote to do so at its next meeting. Accordingly, the circuit court's finding that "nothing short of starting the process completely over would satisfy the requirements of the OGPA and the holding in McComas" is effectively meaningless in this case, because the only necessary "process" is a simple vote of the county commissioners. See App. at pp. 1163-1164.

IV. THE CIRCUIT COURT ERRED IN VOIDING THE PURCHASE OF THE BAKER BUILDING WITHOUT JOINING ALL PARTIES TO THAT TRANSACTION INTO THE CASE.

This Court has held that "[w]hen a court proceeding directly affects or determines the scope of rights or interests in real property, any persons who claim an interest in the real property at issue are indispensable parties to the proceeding," and that "[a]ny order or decree issued in the absence of those parties is null and void." Syl. Pt. 2, O'Daniels v. City of Charleston, 200 W. Va. 711, 490 S.E.2d 800 (1997). Likewise, this Court has held that "[g]enerally, all persons who are materially interested in the subject-matter involved in a suit, and who will be affected by the result of the proceedings, should be made parties thereto, and when the attention of the court is called to the absence of any of such

interested persons, it should see that they are made parties before entering a decree affecting their interests.” State ex rel. One-Gateway v. Johnson, 208 W. Va. 731, 735, 542 S.E.2d 894, 898 (2000).¹¹ Furthermore, this Court has recognized that when a transaction is declared void, the proper course of action is to restore the status quo by returning the parties to the transaction to the relative positions which they occupied prior to the transaction. See Natwick v. Liston, 132 W. Va. 352, 365, 52 S.E.2d 184, 191 (1949); Syl. Pt. 6, State ex rel. Shull v. U.S. Fid. & Guar. Co., 81 W. Va. 184, 94 S.E. 123 (1917); Conrad v. Crouch, 68 W. Va. 378, 69 S.E. 888, 891 (1910).

In the case at bar, the circuit court ruled that the Commission’s purchase of the Baker building was void without joining Capon Valley Bank, the seller of the Baker building, as a party to this action.¹² As the seller of the Baker building, Capon Valley Bank has an interest in the real property at issue because, as set forth above, the status quo prior to the sale is to be restored when a sale is declared void. Similarly, as the seller of the Baker building and the recipient of the purchase price for the building, Capon Valley Bank is materially interested in the subject matter of this lawsuit and is affected by the circuit court’s order voiding the Commission’s purchase of the Baker building. Thus, pursuant to the foregoing authorities, Capon Valley Bank was an indispensable party to this case and the circuit court’s order issued in the absence of Capon Valley Bank should be declared

¹¹ In addition, courts in other jurisdictions have held that “[n]o procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable.” See Lomayaktewa v. Hathaway, 520 F.2d 1324, 1325 (9th Cir. 1975); see also Fluent v. Salamanca Indian Lease Auth., 928 F.2d 542, 547 (2d Cir. 1991).

¹² The foreclosure sale of the Baker building was conducted by Trustee Jack H. Walters, but Capon Valley Bank received the benefit of the purchase price from the sale. The Commission moved to join both Capon Valley Bank and Mr. Walters in the action below, but the circuit court denied the motion. See App. at pp. 0928, 1097.

null and void. Furthermore, by voiding the purchase of the Baker building without joining Capon Valley Bank as a party to this action, the circuit court violated West Virginia law by making no effort to return the Commission and Capon Valley bank to the relative positions they occupied prior to the purchase.¹³

V. THE CIRCUIT COURT ERRED IN HOLDING COMMISSIONERS TEETS AND KEPLINGER PERSONALLY LIABLE FOR THE PURCHASE PRICE OF THE BAKER BUILDING.

In support of its decision to hold Commissioners Teets and Keplinger personally liable for the \$1,130,000.00 purchase price of the Baker building, the circuit court cited Cnty. Court of Tyler Cnty. v. Duty, 77 W. Va. 17, 87 S.E. 256 (1915). App. at p. 1171. However, Duty was merely applying statutes which no longer exist. See 77 W. Va. 17, 87 S.E. at 256. The modern analogues for these statutes are codified at W.Va. Code §§ 11-8-26 and 11-8-29. Section 11-8-26 provides, in relevant part, that “a local fiscal body shall not expend money or incur obligations . . . [i]n an unauthorized manner,” while § 11-8-29 provides that “[a] person who in his official capacity negligently participates in the violation of . . . section twenty-six of this article shall be personally liable, jointly and severally, for the amount illegally expended.” W.Va. Code § 11-8-26; W.Va. Code § 11-8-29.

As previously discussed, the Commission did not act “in an unauthorized manner” when it purchased the Baker building, and thus W.Va. Code §§ 11-8-26 and 11-8-29 do not provide the circuit court with the authority to hold Commissioners Teets and Keplinger

¹³At the September 29, 2014 hearing, the circuit court even recognized that since it ruled that the purchase of the Baker building was void, the appropriate procedure was “to go back to the very beginning and put the parties in the position they were in before it happened[.]” App. at 4338. However, instead of putting the parties in the position they were in before the purchase (which would have entailed ordering the Commission to convey title to the building back to Capon Valley Bank and ordering the Bank to refund the purchase money to the Commission), the circuit court held Commissioners Teets and Keplinger liable to the Commission for the purchase price of the building.

liable for the purchase price of the building. However, even assuming *arguendo* that the Commission did act in an unauthorized manner and that the circuit court did have authority under these code sections to hold Commissioners Teets and Keplinger personally liable, the circuit court still had other options for recovering the purchase price that it should have employed prior to imposing such a drastic sanction on Commissioners Teets and Keplinger. As discussed in greater detail above, the circuit court could and should have joined Capon Valley Bank, the seller of the Baker building, and ordered it to refund the purchase price after the transaction was declared void.¹⁴ Likewise, the circuit court could and should have allowed the Commission to re-vote to purchase of the Baker building at a subsequent meeting that conforms to the requirements of the OGPA and W.Va. Code § 7-1-2.

By choosing to forgo these simple and equitable solutions in favor of holding two county commissioners individually liable for the \$1,130,000.00 price of a building that they voted in their official capacities to purchase for the benefit of the county, the circuit court has set a dangerous precedent that will likely dissuade citizens from running for the office of county commissioner and place a chilling effect on the actions of existing county commissioners. Few citizens will be willing to run for the office of county commissioner if they face the prospect of being held personally liable for huge sums of money every time

¹⁴ W.Va. Code § 11-8-27 provides that “[a]ny indebtedness created, contract made, or order or draft issued in violation of sections twenty-five and/or twenty-six of this article **shall be void.**” W.Va. Code § 11-8-27(emphasis added). Thus, if the circuit court determined that the Commission’s purchase of the Baker building violated § 11-8-26 as necessary to impose personal liability under § 11-8-29, then the purchase was void. As previously discussed, if the purchase was void, then the parties should have been returned to their relative positions prior to the purchase, such that the Commission would return the building to Capon Valley Bank, and the Bank would return the purchase money to the Commission. Instead, the circuit court chose to allow the Bank to keep the purchase money and the Commission to keep the building, and ordered Commissioners Teets and Keplinger to pay for the building.

a group of citizens challenges the sufficiency of the notice for a meeting. Likewise, sitting county commissioners will be apprehensive to make large purchases necessary for the public good if circuit courts are quick to make the commissioners pay for those purchases out of their own pockets. Thus, from a public policy standpoint, courts should refrain from holding public servants personally liable for the purchase price of public buildings based on procedural defects that can be otherwise remedied.¹⁵

Furthermore, to the extent that the Commission violated the notice requirements of the OGPA and W.Va. Code § 7-1-2, Commissioner Wade is just as guilty as Commissioners Teets and Keplinger. Commissioners Teets and Keplinger had no greater responsibility than Commissioner Wade for ensuring that Commission meetings complied with all applicable statutory notice procedures. The only difference between Commissioner Wade and Commissioners Teets and Keplinger is that Commissioner Wade voted differently than Commissioners Teets and Keplinger at the purportedly unlawful meetings at issue. In other words, the circuit court is effectively punishing Commissioners Teets and Keplinger for the *manner in which they voted*, not for their failure to provide adequate notice of Commission meetings. If the conduct that the circuit court seeks to remedy is the Commission's purported failure to provide adequate notice of its meetings, and all members of the Commission bear the same responsibility for ensuring that such notice is provided, then it is manifestly unjust to hold Commissioners Teets and Keplinger personally liable for \$1,130,000.00 while Commissioner Wade faces no consequences whatsoever.

¹⁵ Notably, the circuit court made no ruling with respect to the ownership of the building. If Commissioners Teets and Keplinger are forced to pay the purchase price of the building with their own money, then they should be given title to the building. To hold otherwise would be to force Commissioners Teets and Keplinger to personally buy a \$1,130,000.00 gift for the county.

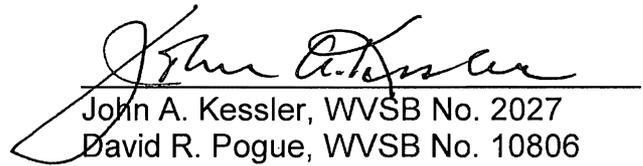
CONCLUSION

For all of the reasons set forth above, Petitioners J. Michael Teets and William E. Keplinger, in their individual capacities, respectfully request that this Court reverse the circuit court's order voiding the Commission's purchase of the Baker building and adoption of the ambulance fee. In the alternative, Petitioners Teets and Keplinger respectfully request that this Court (1) strike down the circuit court's injunction and allow the Commission to re-visit the purchase of the Baker building and the adoption of the ambulance fee at a future meeting of the Commission that complies with all notice procedures deemed necessary by this Court; or (2) remand the case to the circuit court with instructions to join Capon Valley Bank and return the parties to the relative positions that they occupied prior to the Commission's purchase of the Baker building; and/or (3) overrule that portion of the circuit court's order which holds Petitioners Teets and Keplinger personally liable for the \$1,130,000.00 purchase price of the Baker building.

Respectfully Submitted,

J. MICHAEL TEETS AND WILLIAM E.
KEPLINGER, in their individual capacities,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 14-1118

J. MICHAEL TEETS, COMMISSIONER;
WILLIAM E. KEPLINGER, JR., COMMISSIONER;
and HARDY COUNTY COMMISSION,
Respondents Below,

Petitioners,

vs.

Civil Action No: 14-C-17
Circuit Court of Hardy County

WENDY J. MILLER, JOHN A. ELMORE,
B. WAYNE THOMPSON, OVID NEED, and
BONNIE L. HAGGERTY, Petitioners Below,

Respondents.

CERTIFICATE OF SERVICE

I, John A. Kessler, do hereby certify that on the 22nd day of June, 2015, I have served the foregoing "**Brief of Petitioners J. Michael Teets and William E. Keplinger in Their Individual Capacities**" upon the parties to this action, via United States Mail, postage pre-paid, addressed as follows:

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