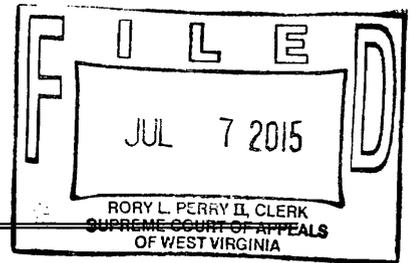


No. 14-1118



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

At Charleston

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

v.

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

BRIEF OF RESPONDENTS
To: Teets and Keplinger, Individually

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Respondents

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III. STATEMENT OF CASE OF RESPONDENTS

On November 4, 2013, the Respondents in this Court, Petitioners below, filed a two part Petition against Commissioners J. Michael Teets and William E. Keplinger, Jr., and the Hardy County Commission in the Circuit Court of Hardy County, West Virginia. The first part, demanded the Removal of J. Michael Teets and William E. Keplinger, Jr., hereinafter "Teets" and "Keplinger", respectively, from the Hardy County Commission pursuant to Chapter 6, Article 6, Section 7, of the West Virginia Code. The second part, demanded that the Circuit Court of Hardy County, West Virginia, invalidate, nullify, and vacate the "Special Emergency Ambulance Service Fee Ordinance", hereinafter "the Ordinance", including the ambulance fee implemented by the Ordinance in Hardy County, West Virginia, and to vacate and nullify the purchase of the building purportedly to house a county ambulance service to be created by the Hardy County Commission in Baker, West Virginia, hereinafter "Baker building". The Petition cited violations by Teets and Keplinger and the Hardy County Commission of Chapter 6, Article 9A, Section 3, of the West Virginia Code as well as other statutory violations in the enactment and passing of the Ordinance and in the processes of purchase of the Baker building by the Hardy County Commission all of which are set forth within the Petitioners' Petition filed below in the Circuit Court of Hardy County, West Virginia, which is incorporated herein by reference in its entirety. App 3. The Petition for Removal filed against Teets and Keplinger was supported by the signatures of over one thousand (1,000) registered voters of Hardy County, West Virginia, who sought to remove Commissioners J. Michael Teets and William E. Keplinger, Jr., from their offices as County Commissioners of Hardy County, West Virginia, upon official misconduct, malfeasance and neglect of duty in the processes of passage of the

“Special Emergency Ambulance Service Fee Ordinance” by waste of public funds, violating the public trust, ethical violations of office and disregarding the will of the public, as well as for other causes provided by statute, for example, voting outside of agenda; two (2) commissioners meeting outside published meetings; and “taxing” against the will of the public. Based upon the Petition for Removal and the acceptance of the Petition by the Circuit Court of Hardy County, West Virginia, a three-judge panel was appointed by Administrative Order of this Supreme Court of Appeals of West Virginia dated November 21, 2013, pursuant to Chapter 6, Article 6, Section 7(c) of the West Virginia Code for the specific purpose of entering a Final Order either removing or refusing to remove Teets and Keplinger from office.

The jurisdiction of the three-judge panel is limited by Chapter 6, Article 6, Section 7, of the West Virginia Code to the removal or refusing to remove Teets and/or Keplinger from office. The three-judge panel granted the motion of the Respondents below to bifurcate the two (2) separate portions of the Petition as announced from the bench on March 17, 2014. By Order dated March 29, 2014, filed with the Circuit Clerk on April 16, 2014, the three-judge panel denied the Motion to Dismiss filed on behalf of the Respondents below to the Petition to Remove Teets and Keplinger from the Hardy County Commission. A Final Order was entered by the three-judge panel dated May 1, 2014, filed with the Circuit Clerk of Hardy County, West Virginia, on May 12, 2014, therein denying the Petition for Removal of both, Teets and Keplinger. The Circuit Court of Hardy County, West Virginia, retained all other jurisdiction for all other issues contained within the Petition filed below. The sitting judges of the 22nd Judicial Circuit, the Honorable Charles E. Parsons and the Honorable H. Charles Carl, III, stated their wish to be voluntarily recused. An Administrative Order of the Supreme Court of

Appeals of West Virginia was entered on June 17, 2014, appointing the Honorable Andrew N. Frye, Jr., Senior Status Judge, to be recalled for temporary assignment to the Circuit Court of Hardy County, West Virginia.

While awaiting the decision of the three-judge panel, a tax levy was defeated by the voters of Hardy County, West Virginia. The County Commission tried to replace the Fee Ordinance with a tax levy against property owners of Hardy County. Certain of the Petitioners below, as well as other individuals representing citizens of Hardy County, caused advertisements to be placed in the Moorefield Examiner, a paper of general circulation in Hardy County, West Virginia, in opposition to the proposed tax levy. Teets and Keplinger, personally, took upon themselves to approach the Hardy County Prosecuting Attorney, Lucas J. See, and to cause a Petition to be filed with the Circuit Clerk of Hardy County, West Virginia, on May 9, 2014, Action Number 14-P-39, purportedly on behalf of the Hardy County Commission, for purposes of obtaining subpoenas in an "investigation" for the prosecution of members of a committee known as "Informed Citizens of Hardy County". App. 636. The Petition alleged statutory violations of voting procedures under Chapter 3, Article 8, Section 4, of the West Virginia Code; the Petition was then amended; and a Response was filed. It was ultimately determined that the Petition filed by the Hardy County Prosecuting Attorney had not come before the Hardy County Commission, but was at the insistence of Teets and Keplinger personally and without official mandate; was completely unfounded and unlawful; and was dismissed by an Agreed Order of Dismissal entered by Judge Charles E. Parsons May 14, 2014. Thereafter, a Motion for Protection and Motion to Consolidate the Testimony and Evidence between Civil Action No. 13-C-76 and 14-C-17 was filed on behalf of the Petitioners below by Certificate dated May 30, 2014, which

includes copies of each of the documents described in this paragraph. App. 582. The Motion to Consolidate the Testimony and Evidence taken by the three-judge panel on March 17, 18, and 19, 2014, was unopposed by the Respondents below. The Respondents below filed a Motion to Adopt the Findings of Fact and Conclusions of Law of the three-judge panel by Judge Andrew N. Frye, Jr., in the bifurcated second portion of the original Petition which was opposed by Petitioners below and considered by Judge Frye initially on July 8, 2014.

Judge Frye entered a Final Order dated August 8, 2014, therein noting the previous bifurcation of the issues of removal considered by the three-judge panel and the remaining bifurcated issues assigned for Judge Frye. Rather than recite the various findings, conclusions and order of Judge Frye made within the Order of August 8, 2014, your Respondents note the entirety of the Order and incorporate herein by reference the entire contents of the Final Order entered by Judge Frye dated August 8, 2014. App. 463. Judge Frye made specific findings of fact and conclusions of law based upon documented evidence and the testimony taken within the trial before the three-judge panel on March 17, 18 and 19, 2014. Upon jurisdictional violations by the Hardy County Commission pursuant to Chapter 7, Article 1, Section 2 of the West Virginia Code, and upon violations of the Open Governmental Proceedings Act under Chapter 6, Article 9A, Judge Frye ordered: (1) that the votes taken by the Hardy County Commission to purchase the Baker building consummated on August 2, 2013, were void; (2) that the vote taken by the Hardy County Commission on August 20, 2013, consummating and adopting the Ordinance was void; and (3) that the Hardy County Commission was ordered to forthwith refund all money to those citizens who had previously paid the Special Emergency Ambulance Fee collected under the Ordinance.

The Petitioner, Hardy County Commission, has failed to notice or appeal the jurisdictional findings and conclusions of Judge Frye of violations by the Hardy County Commission of Chapter 7, Article 1, Section 2, of the West Virginia Code, upon which, in part, the votes for the Ordinance and purchase of the Baker building were ordered "void".

Upon the Order of the Circuit Court below, finding that the County Commission, and specifically, Teets and Keplinger, violated the Open Governmental Proceedings Act of the State of West Virginia, and upon other statutory violations, the Petitioners below filed a Petition for Attorney's Fees pursuant to Chapter 6, Article 9A, Section 7(b) of the West Virginia Code. The Petition for Attorney's Fees was granted by the Circuit Court within its Final Order of October 10, 2014, and the Hardy County Commission was ordered to pay \$112,000.00 plus interest to counsel for Respondents herein .

Motions were made on behalf of the Petitioners below to enforce the Final Order of the Court of August 8, 2014, and for injunctive relief filed with the Circuit Court on August 26 and August 27, 2014, respectively. By Order entered August 29, 2014, Judge Frye granted a temporary injunction prohibiting the Hardy County Commission from taking further action on the Special Emergency Ambulance Fee Ordinance or the purchase of the Baker building until such time as a full hearing could be had on motions filed by the parties below. A Notice of Hearing was filed by the Petitioners below scheduling a full evidentiary hearing to take place before Judge Frye on September 29, 2014, to take up all issues mandated within the Order of Judge Frye of August 29, 2014.

Within the Order entered by Judge Frye dated October 10, 2014, specific findings of fact and conclusions of law were made on each of the issues scheduled and

heard by Judge Frye from the Order of August 29, 2014, including a rule to show cause; the Petition for Attorney's Fees filed on behalf of the Petitioners below; the Motion of Respondents below to Amend or Correct a prior filing; the Motion of Respondents below to join the Capon Valley Bank and Jack H. Walters as parties; the Motion of Wendy J. Miller, a Petitioner below, to withdraw; the Motion of Petitioners below for Injunctive Relief Against the Hardy County Commission; the issue of repayment of County funds by Commissioners Teets and Keplinger, personally, which had been demanded in the original Petition, and which included a finding by the Circuit Court of a conflict which then existed on the part of Attorney Bridget M. Cohee and the Law Firm of Steptoe and Johnson; and the Motion for Stay requested by Respondents below. App. 1078. The entirety of the Order of October 10, 2014, is incorporated herein by reference.

Following entry of the Order of October 10, 2014, there were motions filed on behalf of the Petitioners below including Motions for Contempt, a Motion for Supplemental Attorney's Fees, and Motions to Enforce the Orders of Judge Frye. A Motion was made by Prosecuting Attorney, Lucas J. See, to appoint a Special Prosecuting Attorney, and an Emergency Motion for Stay was filed on behalf of the Petitioners in this Court. It is necessary that this Court consider each of these motions, supplements to motions, responses to motions, and documents filed in support of all of those motions, all of which are incorporated herein by reference as filed with the Circuit Clerk of Hardy County, West Virginia, or alternatively, remand the motions for further consideration by the Circuit Court. App. 1112, 1132, 850,870, 1141, and 1498.

IV. SUMMARY OF ARGUMENT

The Assignments of Error claim that Chapter 7, Article 15, Section 18, of the

West Virginia Code, a part of the Emergency Ambulance Service Act of 1975, somehow “trumps”, overcomes and repudiates the requirements of Chapter 6, Article 9A, Section 3, of the West Virginia Code, the Open Governmental Proceedings Act.

6-9A-3 states at subsection (a):

(a) except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in Section Four of this article, all meetings of any governing body shall be open to the public.

6-9A-3(e) goes on to specifically require notices and the content of each notice and agenda to be published in advance of meetings of a public body, including the Hardy County Commission. There is nothing within Chapter 7, Article 15, which either expressly or specifically overcomes the requirements of 6-9A-3, the Open Governmental Proceedings Act of the State of West Virginia. In fact, to make such a claim violates Article II, Section 2, of the Constitution of the State of West Virginia.

There can be no contradiction that the subdivisions of the government of the State of West Virginia are operated “by the people” and “for the people” as required by the Constitutions of both, the State of West Virginia and the United States of America.

Teets and Keplinger would do well to understand that, in the exercise of “the sovereign power of the State”, the government is at the will of the people, and at all times answerable to them. State ex rel. Preissler v. Dostert, 163 W.Va.719, 260 S.E. 2d 279 (1979). Respondents strongly object to the miswriting of the contents of 7-15-18 in the Assignments of Error by the Petitioners, to include the term “agendas”. There is nothing within 7-15-18 that precludes the necessity of advanced notice of an agenda. Respondents suggest that a reading of Ralston v. Town of Weston, 46 W.Va. 544, 33 S.E. 326 (1899), is in order. “The powers of the government reside in all of the citizens

of the State and can be rightfully exercised only in accordance with their will and appointment.” Ralston, supra. Respondents also strongly dispute that Chapter 7, Article 15, Section 18, of the West Virginia Code, in any way precludes the necessity of notices, agendas or procedures as required under the Open Governmental Proceedings Act, Chapter 6, Article 9A, Section 3; Chapter 6, Article 9A, Section 4; or Chapter 6, Article 9A, Section 5, in the passage of an ordinance or in the purchase of a building for a price in excess of one million dollars(\$1,000,000.00).

There are distinct differences between the subject matter and jurisdiction of the Orders entered by the three-judge panel and the Orders entered by Judge Frye. While the three-judge panel took testimony and accepted evidence, the Order which they entered lacks specificity, generally addresses issues of removal, and ignores much of the documentary evidence filed. The three-judge panel explicitly did not consider matters within the jurisdiction of Judge Frye. Judge Frye carefully considered not only all of the testimony and transcripts of the trial from March 17 through March 19, but clearly, Judge Frye considered carefully all of the documents, including the minutes of the meetings of the County Commission in reaching the decision upon which the Final Order of August 8, 2014, was made. The August 8, 2014, Order demonstrates the specificity and the depth of review undertaken by Judge Frye in processes involving jurisdictional and statutory violations which were solely within his jurisdictional purview. Simply stated, the Order of Judge Frye is well written, well reasoned, factually sound and legally supported. The two processes were bifurcated, with each, the three-judge panel and Judge Frye of the Circuit Court of Hardy County, retaining separate jurisdiction and separate processes with a separate burden of proof.

There is no overlap between the Order entered by Judge Frye of August 8, 2014, and the Order of the three-judge panel entered May 1, 2014; there is no preclusion of facts or law from the consideration of Judge Frye; and the jurisdictional issues and issues of the Open Governmental Proceedings Act considered by Judge Frye were not considered by the three-judge panel in any manner. In fact, the findings by Judge Frye of a lack of jurisdiction based upon Chapter 7, Article 1, Section 2, of the West Virginia Code in the Order voiding votes for the Ordinance and the purchase of the Baker building have not been appealed by the Petitioner, and therefore, stand. It is clear that the findings of Judge Frye of violations of jurisdiction and of the Open Governmental Proceedings Act as specifically set forth within the Order of August 8, 2014, are solely within his jurisdiction to be decided, and cannot be disputed, denied or overcome. Based thereon, it is within the discretion of Judge Frye to fashion the remedies, including voiding the previous acts of the County Commission; requiring repayment of County funds; enjoining future acts by the County Commission; and granting attorney's fees. McComas v. Board of Education of Fayette County, 197 W.Va 188, 475 S.E. 2d, 280 (1996); 6-9A-1, et seq.; 6-9A-6.

At the time of the entry of the October 10, 2014, Order, there was no part of Hardy County that did not have a State licensed ambulance service available. Therefore, the County Commission had no exigent circumstance upon which to premise a re-passage or re-enactment of the ambulance service fee ordinance or to purchase a building which was unnecessary. The Mathias-Baker Volunteer Fire Company had obtained their own license and their own building approximately one half (½) mile from the disputed Baker building.

Teets and Keplinger acted in opposition to the overwhelming majority of citizens in Hardy County, West Virginia. This is demonstrated by the bond Levy being defeated when the County Commission sought an alternative to the Special Emergency Ambulance Service Fee Ordinance. There is a violative personal interest of Commissioner Teets by his ownership of stock of Capon Valley Bank and by his historical family interest in Capon Valley Bank. (7-15-15). The Capon Valley Bank made a loan which was less than adequately secured to protect Gerald Smith, an officer of the fraudulent Mathias-Baker Volunteer Rescue Squad, Inc., hereinafter "Rescue Squad" and a director of the Capon Valley Bank. Teets and Keplinger not only assisted the Capon Valley Bank by protecting their deficient loan, but they also competed with E.A. Hawse Health Center and the Mathias-Baker Volunteer Fire Company in the purchase of the Baker building, and by the passage of the Ordinance to establish a publically funded County ambulance service which is still non-existent in Hardy County. There are private and volunteer state licensed ambulance services throughout Hardy County.

The findings of fact, conclusions of law and Orders of Judge Frye are clearly supported by the evidence in the record. The documentary evidence cannot be disputed or disproved by the Petitioners herein. Teets and Keplinger acted without jurisdiction, without statutory authority, and without any lawful notice to the public, and therefore, in violation of West Virginia Law. (6-9A-3 and 7-1-2). Teets and Keplinger also acted without the interests of the citizens of Hardy County. The Orders of Judge Frye are supported by the facts and the law in entering an injunction against the Hardy County Commission, and in reality, against Teets and Keplinger to prevent re-enactment of an Ambulance Service Fee and repurchase of the building at Baker.

6-9A-6. The Court was correct in granting judgment against Teets and Keplinger, personally, as well as in granting attorney fees and litigation expenses to Petitioners below. 6-9A-7; McComas, supra. Respondents request additional attorney fees and litigation expenses generated in their efforts to enforce the Orders of Judge Frye and for their efforts in this Appeal. 6-9A-7.

V. STATEMENT REGARDING ORAL ARGUMENT

Respondents believe that Rule 20 Oral Argument would be beneficial to the Court in this action based upon fundamental public importance; the construction and interpretation of statutory law by the Circuit Court; the issue of a bifurcated action below upon which there are allegations of inconsistencies and conflicts of decisions by a three-judge panel and the sitting Circuit Judge of the 22nd Circuit, appointed by special assignment, hearing separate jurisdictional issues in the same action; and procedures which appear to be matters of first impression.

VI. ARGUMENT

A. AUTHORITY OF THE CIRCUIT COURT, BURDEN OF PROOF, AND STANDARD OF REVIEW

The authority of the Circuit Court to enforce Chapter 6, Article 9A, of the West Virginia Code, is found within 6-9A-6 and 6-9A-7 giving authority to the Circuit Court of Hardy County, West Virginia, and specifically the Honorable Andrew N. Frye, Jr., for the Orders entered on August 8, 2014; August 29, 2014; and October 10, 2014.

In reviewing challenges to the findings and conclusions of the Circuit Court made after a bench trial, a two-prong differential standard of review is applied. The Final Order and the ultimate disposition are reviewed under an abuse of discretion standard, and the Circuit Court's underlying factual findings are reviewed under a clearly

erroneous standard. Questions of law are subject to a *de novo* review. Public Citizen, Inc. V. First National Bank in Fairmont, 198 W.Va 329, 480 S.E. 2d 538 (1996); Clark Apartments ex rel. Hood v. Walszczyk, 213 W.Va, 369, 582 S.E. 2d 816 (2003).

Because of the nature of the errors charged by the Petitioners in this appeal, it is necessary for the Court to consider the requirements of burden of proof before the three-judge panel under Chapter 6, Article 6, Section 7, of the West Virginia Code and before Judge Frye under Chapter 6, Article 9A. The removal of a public officer from a public position for official misconduct, malfeasance in office, incompetence, neglect of duty, or gross immorality, is considered a “drastic remedy”, and statutory provisions prescribing the grounds for removal are strictly construed. In re Moore, 200 W.Va. 335, 489 S.E. 2d 492 (1997). The proof required by the Circuit Court to remove a person from public office requires “satisfactory proof of the charges” which has been held to equate to clear and convincing evidence. Smith v. Godby, 154 W.Va. 190, 174 S.E. 2d 165 (1970). There appears to be no specific statutory designation of the burden of proof required within Chapter 6, Article 9A. Therefore, the burden of proof for the Petitioners below before Judge Frye was “by preponderance of the evidence”. This is also supported by Killen v. Logan County Commission, 170 W.Va. 602, 295 S.E. 2d 689 (1982), which held that the burden of proof for lack of notice for a Board of Equalization review before a County Commission was the preponderance standard. Killen, supra 295 S.E. 2d 689 at page 719.

The application of the doctrine of collateral estoppel is discretionary with the trial court. Conley v. Spillers, 171 W.Va. 584, 301 S.E. 2d 216 (1983). In Spillers this Court held that “trial courts are undoubtedly sensitive as we are to the need to preclude repetitive and vexatious litigation”. Spillers, supra, 301 S.E. 2d 216, 226-227. The

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Court further held that “ in a close case, the trial court may well decline to enforce collateral estoppel, but such declination means only that the party seeking collateral estoppel must litigate the issue which is what would have to be done if there were no earlier proceeding”. *Id.* In other words, the trial court has very broad discretion on issues of preclusion which cannot be disturbed on appeal unless there is a showing of an abuse of such discretion. Jordache Enterprises, Inc., v. National Union Fire Ins. Co. of Pittsburgh, Pa., 204 W.Va. 465, 513 S.E. 2d 692 (1998). The Appellate Court must be careful not to substitute its discretion for that of the trial court when the latter has not abused its discretion. *Id.* “It is the burden of the Appellant to show that there was error in the proceedings below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial court”. *Id.*

B. RESPONSE TO ASSIGNMENTS OF ERROR

1. Your Respondents dispute the claimed error in the application of the Open Governmental Proceedings Act; that the Court erred in rulings of the notices or lack thereof of the meetings as violations of the Open Governmental Proceedings Act; and the Respondents dispute any requirement of the Circuit Court to find “intentional violations” of the Open Governmental Proceedings Act. Respondents also strongly dispute that Chapter 7, Article 15, Section 18, of the West Virginia Code, in any way precludes the necessity of notices, agendas or procedures as required under the Open Governmental Proceedings Act, Chapter 6, Article 9A, Section 3; Chapter 6, Article 9A, Section 4; or Chapter 6, Article 9A, Section 5.

The documentation presented at the three day trial in March, 2014, by Petitioners, and as reviewed by Judge Frye clearly demonstrates violations of the Open

Governmental Proceedings Act as well as violations of the statutory requirements of the County Commission for jurisdictional purposes. 6-9A-3 and 7-1-2. The County Commission violated the statutory mandates cited by the Circuit Court and thereby acted without jurisdiction in the purchase of the Baker building as well as in the passage of the Ordinance. The Petitioners appear to simply ignore the statutory requirements of notice to the public of matters on the agenda of the Hardy County Commission found by the Circuit Court to have been violated within the Order of August 8, 2014. There is absolutely no language within Chapter 6, Article 9A, requiring violations of the Open Governmental Proceedings Act to be "intentional". McComas, supra.; 6-9A-3. With that said, Judge Frye used very descriptive language in finding that the violations of the Open Governmental Proceedings Act (hereinafter OGPA) did not just happen at one meeting, but "represented a chronic and systemic problem in the manner in which the Hardy County Commission does all its business". The Circuit Court noted that the Hardy County Commission had previously admitted that a "properly alleged ... technical procedural error" existed, and that Respondents below then ask the Circuit Court to excuse the violations of the OGPA under West Virginia Code 7-15-18. The Circuit Court found that the "procedural error" presented in the case is "overwhelming in its impact on the public and cannot be excused or ignored by this Court". The Circuit Court was "deeply troubled" by the "atrocious" violations of not only the OGPA, but also of the public trust. Order of August 8, 2014, at page 25. The Order of Judge Frye of August 8, 2014, is well written, factually sound, and supported by the legal principles cited therein from the OGPA, Chapter 6, Article 9A, and within Chapter 7, Article 1, Section 2, of the West Virginia Code.

Petitioners ignore the fact that violations of the OGPA, 6-9A-1, et seq., and 7-1-2 are "statutory violations" by Teets and Keplinger as alleged within the original Petition below. These violations were overlooked or not considered by the three-judge panel in the removal process as being outside their jurisdiction. Judge Frye appropriately considered these violations in his decisions in the Orders of August 8, 2014, and October 10, 2014.

7-15-18, specifically states as follows:

This 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.

Respondents would say that at best, 7-15-18 relates to the procedures of an ambulance authority. There is nothing within 7-15-18, or in fact, within 7-15-1, et seq. of the West Virginia Code which in any way expressly or specifically overcomes the requirements of the Open Governmental Proceedings Act, 6-9A-3, of the West Virginia Code. There is nothing within 7-15-18 that allows the County Commission to purchase a building which costs in excess of one million (\$1,000,000.00) dollars without notice to the public. There is further nothing within 7-15-18 which would allow the County Commission to pass an Ordinance which would collect fees from County residents of almost one million (\$1,000,000.00) dollars without notice to the public. Such a claim by the Special Prosecuting Attorney defies all logic; defies Article II, Section 2, of the Constitution of the State of West Virginia; and it defies the rights of the free citizens of the State of West Virginia and the United States of America as were enforced by an armed revolution against the tyranny of Britain. No judge or other officer of this State

can act in any manner to invalidate, nullify, change or amend any provision of the Constitution of the State of West Virginia, except as manifested in Sections 1 and 2 of Article XIV of the West Virginia Constitution. State ex rel. Moats v. Janco, 154 W.Va. 887, 180 S.E. 2d 74 at page 89 (1971). There is also the required reading of Capriotti v. Jefferson County Planning Commission, Far Away Farm, LLC, No. 13-1243 (2015) filed by the West Virginia Supreme Court of Appeals, February 26, 2015, in which this Court addressed the requirements of the Open Governmental Proceedings Act; the recitation of Justice Dent in Ralston V. Town of Weston, 46 W.Va. 544, 33 S.E. 326 at page 328 (1899), in which Justice Dent made a timeless proclamation of the rights of the citizens of the State of West Virginia under Article II, Section 2, of the Constitution of West Virginia, therein prohibiting a government agency from in any way violating the rights of the people who make the government sovereign; and two cases involving the actions of the past Honorable Pierre E. Dostert, State ex rel. Preissler v. Dostert, 163 W.Va. 719, 260 S.E. 2d,279 (1979), and State ex rel. Hamstead v. Dostert, 173 W.Va. 133, 313 S.E. 2d 409 (1984), both of which require a prosecuting attorney to exercise sovereign power of the State at the will of the people and, at all times, answerable to the people pursuant to the West Virginia Constitution, Article II, Section 2. 7-15-18 has no application in this case in the face of Chapter 6, Article 9A, Section 3, of the West Virginia Code, commonly known as the Open Governmental Proceedings Act, and there is no basis in the claim that the provisions of 7-15-15 are somehow trumped by Chapter 6B, Article 1, Section1, et seq., of the West Virginia Code, regarding general ethics. Commissioner Teets owns approximately one hundred seventy five thousand dollars (\$175,000.00) in stock ownership which includes the Capon Valley Bank, yet he signed the license application of the Hardy County Emergency Ambulance Authority as

its representative in violation of Chapter 7, Article 15, Section 15, of the West Virginia Code which prohibits “any interest” in “any company” in the sale or lease of ambulance equipment or facilities. 7-15-15. Petitioners’ Trial Exhibits 31 and 52; App. 2893 and 3195. Clearly, there is no basis in the claims of Teets and Keplinger that the Hardy County Commission has no responsibility under law or the constitution to give notice to the citizens of their official actions and proceedings, including their agendas which are specifically required to be made public pursuant to the Open Governmental Proceedings Act under 6-9A-3.

2. Respondents would maintain that the Petitioners have waived any claim or argument of any “preclusive effect” from the findings of fact of the three-judge panel resulting from the removal trial. While the Petitioners have mentioned in passing a claimed “preclusive effect” from the three-judge panel, Respondents would say that any specific argument regarding this issue is waived, however, within the Notice of Appeal, the Petitioners have alleged that the Circuit Court erred as a matter of law by failing to give preclusive effect to the findings of fact of the three-judge panel, claiming that the litigation upon which the Order was entered by the three-judge panel and the Orders of Judge Frye involve the same subject matter. Petitioners had previously claimed that the Circuit Court erred in failing to adopt the findings of fact found by the tribunal in their Final Order of May 1, 2014, following the three (3) day evidentiary hearing conducted on March 17, 19 and 19, 2014, in Civil Action No. 13-C-76. Petitioners’ Brief fails to argue this claimed error, and it is therefore waived. In caution, response is made.

This Court has previously determined that the two preclusion concepts which may be considered are “issue preclusion” and “claim preclusion”, issue preclusion typically considered under collateral estoppel, and claim preclusion under res judicata.

Rowe v. Grapevine Corporation, 206 W.Va. 703, 527 S.E. 2d 814 (1999). Res judicata generally applies when there is a final judgment on the merits which precludes the parties or their privies from relitigating the issues that were decided or the issues that could have been decided in the earlier action. Citing Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L. Ed. 2d 308, 313 (1980). Collateral estoppel requires identical issues raised in successive proceedings and requires a determination of the issues by a valid judgment to which such determination was essential to the judgment. Rowe v. Grapevine Corp., supra, 527 S.E. 2d 814 at 820. For collateral estoppel or res judicata to apply to a judgment, the Court making the decision is required to have jurisdiction of the subject matter and the parties for those issues within the legitimate purview of the subject matter of the action. Conley v. Spillers, 171 W.Va. 584, 301 S.E. 2d 216 (1983)

In this instant case, following the evidentiary trial which concluded on March 19, 2014, a bifurcation Order was entered by the three-judge panel leaving all issues unrelated to the removal action for the consideration of the Circuit Court of Hardy County, West Virginia, to which the Honorable Andrew N. Frye, Jr., was appointed as Special Assignment. Bifurcation had been directed from the bench on March 17, 2014. The three-judge panel reserved to itself the jurisdiction to hear the charges and all evidence proffered in support of or in opposition to the issues raised within the Petitioners' Petition below pursuant to Chapter 6, Article 6, Section 7, leaving to the Circuit Court of Hardy County, West Virginia, jurisdiction over the Petition to vacate the Ordinance and the purchase of the Baker building. The Order of the Court of March 19, 2014, specifically avoided prejudice to any claim intended to be brought before either, the tribunal for the removal of Commissioners Teets and Keplinger, or the Circuit Court

of Hardy County, West Virginia, in litigating the remaining issues contained within the Petition filed on behalf of the Petitioners below regarding the processes involved in the passage of the Ordinance and the purchase of the Baker building and the Petition to vacate both. App. 374. The bifurcation of the two parts of the Petition does not create any collateral estoppel or res judicata. Conley v. Spillers, supra. As noted within the Order entered by Judge Frye on August 8, 2014, the removal issues were tried first with the remaining bifurcated issues assigned to Case No. 14-C-17. Judge Frye specifically found that the three-judge panel lacked jurisdiction to decide any issue outside of the impeachment question, and that the Circuit Court of Hardy County, West Virginia, is not bound by any stated findings of the three-judge panel in the Final Order entered May 1, 2014, in reaching their decision. Judge Frye relied upon the evidence and testimony presented during the three-day trial before the three-judge panel by agreement of the parties. Judge Frye found that the issues and the evidence were intertwined as presented before the three-judge panel, however, the three-judge panel ruled only on the impeachment or removal issue.

There remains the issue of a differential burden of proof and a different focus on the issues between the three-judge panel and Judge Frye based on jurisdiction. The Final Order of the three-judge panel entered May 1, 2014, generally reviewed removal issues without significant discussion of the specific actions of Teets and Keplinger and the Hardy County Commission as are demonstrated within the first Final Order of Judge Frye entered August 8, 2014. Judge Frye recounts the minutes of specific meetings and the actions of the Hardy County Commission and the Clerk giving notice or lack thereof in those specific meetings with conclusions of law made by Judge Frye based upon Chapter 7, Article 1, Section 2, of the West Virginia Code from which the Hardy

County Commission derives its jurisdiction. **Not only was 7-1-2 not considered by the three-judge panel, but conclusions of Judge Frye based on 7-1-2 were not raised as error on appeal by the Petitioners herein.** Judge Frye then reviewed specifically the requirements of the Open Governmental Proceedings Act under Chapter 6, Article 9A, of the West Virginia Code. Violations of the Open Governmental Proceedings Act by the Hardy County Commission were specifically excluded from consideration of the three-judge panel by the Bifurcation Order entered by the three-judge panel on March 19, 2014. In fact, upon review of the Order of the three-judge panel of May 1, 2014, and the findings and conclusions of Judge Frye in the Order of August 8, 2014, the focus and the findings and conclusions within the two Orders do not overlap under any theory of preclusion, collateral estoppel or res judicata. Therefore, the issues stated in the Order of Judge Frye of August 8, 2014, voiding the votes taken by the Hardy County Commission for the purchase of the Baker building and passage of the Ordinance were in no way considered or mentioned by the three-judge panel. Neither was the issue of the Order requiring the monies collected as the Special Emergency Ambulance Fees to be refunded.

The Order of Judge Frye dated October 10, 2014, considered evidence taken during the March trial as well as matters as they existed following the three (3) day trial. The evidence relied upon by Judge Frye in the Order of October 10, 2014, is within the jurisdiction of the assignment of Judge Frye and was not within the jurisdiction of the three-judge tribunal. Therefore, there is no preclusion, collateral estoppel or res judicata to prevent any rulings of Judge Frye.

3. The Petitioners, Teets and Keplinger, have noted that assuming *arguendo* that some violations of the Open Governmental Proceedings Act occurred ...

the Circuit Court erred as a matter of law by enjoining the County Commission from conducting future proceedings on the same subject matter even if such future proceedings would comply with the Open Governmental Proceedings Act. Error assigned in the Notice of Appeal as No. 3 is considered in Assignment of Error 2 of Petitioners' Brief claiming that the Circuit Court erred by enjoining the County Commission from conducting future proceedings to enact an Emergency Ambulance Service Fee or to purchase the Baker building.

These Assignments of Error arise from the Final Order of Judge Frye entered October 10, 2014, under the heading of "Petitioners' Motion for Injunctive Relief" beginning at paragraph 27, page 11. App. 1088. There can be no dispute that the Petitioners claim to have acted pursuant to Chapter 7, Article 15, in the purchase of the Baker building and passage of the Ordinance. As noted by the Circuit Court, Chapter 7, Article 15, Section 4, of the West Virginia Code imposes a duty upon the County Commission to "cause emergency ambulance service to be made available to all residents of the County where such service is not otherwise available" and then, only if money is available in the current projected budget. The findings of Judge Frye state that "it is clear that state-licensed ambulance service is presently available throughout Hardy County". Paragraph 34, page 14, Order of October 10, 2014. App. 1091. There were no funds budgeted by the Hardy County Commission in 2014 for Ambulance service. September 29, 2014, hearing Petitioners' Ex. 1 and 2; App. 4347 and 4350. The Court found "therefore, under the statute, the Hardy County Commission is not presently required to do anything with respect to ambulance service". Order of October 10, 2014, at page 14. App. 1091.

Judge Frye articulated various factual and legal bases why the County

Commission was enjoined from further passage of an ambulance service fee ordinance and the purchase of the Baker building. The findings and conclusions made by the Court cannot be disputed, either granting the injunction enjoining any further action to purchase the Baker building, or to again pass the Ordinance. It is within the discretion of the Circuit Court to enforce the Open Governmental Proceedings Act by injunction under Chapter 6, Article 9A, Section 6, of the West Virginia Code; to annul and void actions by the County Commission; and to enjoin subsequent actions which are sought to be made in violation of the statutory law of the State of West Virginia. 6-9A-6, West Virginia Code; State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E. 2d 367 (1969); McComas, supra. Therefore, the Circuit Court acted within its jurisdictional parameters and within the law of the State of West Virginia in its findings and conclusions in its Orders of August 8, 2014, August 29, 2014, and October 10, 2014. App. 463, 1017, and 1078.

Respondents dispute that the Circuit Court ordered the parties to return to their positions prior to the purchase of the building. In fact, the effect of the Order of Judge Frye of October 10, 2014, requires Teets and Keplinger, personally, to purchase the Baker building by reimbursing the County for the monies expended unlawfully by them in the amount of one million, one hundred thirty thousand dollars (\$1,130,000.00), rather than requiring Hardy County to reimburse the Capon Valley Bank for its bad loans. Judge Frye articulated numerous impermissible private meetings of Teets and Keplinger in violation of the OGPA. By the time Judge Frye heard the remaining issues on September 29, 2014, the Mathias-Baker Volunteer Fire Company was up and running with ambulance service and there no longer existed any exigent circumstances to pass an Emergency Ambulance Fee Ordinance nor to purchase the Baker building at a cost

of one million one hundred thirty thousand dollars (\$1,130,000.00). The Mathias-Baker Fire Company has its own building within one-half (½) mile of the building sought to be purchased by Teets and Keplinger, and at no expense to the County. The Hardy County Emergency Ambulance Authority has no ambulance service created under its authority. The County had two (2) paramedics paid by the County, two (2) ambulances which they provided for use by ambulance services, and one (1) Chase unit used by employees of the County, yet Teets and Keplinger seek to charge the County residents seven hundred and eight thousand five hundred dollars (\$708,500.00) in overhead to maintain the Baker building, two paramedics, a couple of ambulances and a chase unit which they do not independently use as an ambulance service, plus another two hundred twenty thousand dollars (\$220,000.00) in other expenses for a total of nine hundred twenty eight thousand five hundred dollars (\$928,500.00) projected on a yearly basis.

Paragraph 30, page 12, Order of October 10, 2014 . App. 1089. This is clearly public waste. The County does not have this money in its budget. If there ever was an exigent circumstance requiring the creation of a County ambulance service, the time had passed by the time Judge Frye entered the Order of October 10, 2014. Also, the voters of Hardy County had spoken against the tax levy sought to be created by the County Commission to pay for a government ambulance service which was unnecessary and the unnecessary purchase of the Baker building. Chapter 7, Article 15, Section 1, et seq, of the West Virginia Code can no longer be used by Teets and Keplinger to try to establish their own pet ambulance service at the expense of the residents of Hardy County. There is no necessity to create an ambulance service because there are licensed ambulance services already available in all parts of the County. Therefore, Teets and Keplinger are again attempting to violate Chapter 7, Article 15, Section 4, of

the West Virginia Code. Current efforts to create a county-wide public ambulance service at a cost of over nine hundred, twenty-eight thousand dollars (\$928,000.00) per year are completely unreasonable and unnecessary given the private ambulance services that are available in Hardy County.

4. The Petitioners have claimed that the Circuit Court abused its discretion by excluding evidence at the hearing of September 29, 2014, claiming that violations by Teets and Keplinger of the OGPA were unintentional; that the County Commission's challenged actions "were a good faith attempt" to comply with the duty to provide emergency ambulance service to Hardy County; and remedies imposed by the Circuit Court exceeded permissible remedies for violations of the Open Governmental Proceedings Act. Further, the Circuit Court has not "second guessed" Teets and Keplinger. The Court enforced statutory law.

The processes of Teets and Keplinger in the passage of the Ordinance and purchase of the Baker building clearly violated the OGPA. The Circuit Court entered judgment against Teets and Keplinger, personally, for what appear to be gross violations of the OGPA, and for chronic and systemic violations of statutory jurisdictional authority of the County Commission in their votes to purchase the Baker building and in passage of the Ordinance. The award of attorney's fees and litigation expenses are to be paid by the Hardy County Commission upon the Petitioners below having prevailed in their allegations of violations of the OGPA and other statutory law. Clearly, the Hardy County Commission, representing the interests of the citizens, cannot and would not complain about the findings that Teets and Keplinger acted unlawfully and therefore are required to reimburse the County by the judgment entered against them in the Order of October 10, 2014. At the same time, the offending Ordinance and purchase of the building have

been corrected, and the citizens of Hardy County have prevailed in proving violations of the OGPA and jurisdiction by Teets and Keplinger. The citizens of Hardy County have benefitted greatly by the efforts of counsel for the Petitioners below.

Commissioner Teets has learned nothing from these proceedings. Counsel hired by Commissioner Teets, unilaterally, and without the authority of the Hardy County Commission in violation of the OGPA, on August 25, 2014, could not represent both, the individual interests of Teets and Keplinger, personally, and the interests of the Hardy County Commission regardless of the content of the written agreement. A debtor and a creditor cannot be represented in the same action by the same attorney. West Virginia Rules of Professional Conduct, Rule 1.7, 1.9, and 1.10. Commissioner Wade noted the problem at the October 21, 2014, meeting of the Hardy County Commission, App. 1136. The actions of Commissioner Teets on August 25, 2014, again violated the OGPA. App. 1620.

The OGPA does not require violations to be intentional. McComas, supra; 6-9A-3. The evidence does not demonstrate that Teets and Keplinger acted in good faith, and in fact, Teets and Keplinger clearly acted without jurisdiction and in knowing violation of statutory law in their unreasonable efforts to purchase a building and to pass an ambulance service fee ordinance, neither of which were necessary, and the processes of both of which violated statutory law and the Constitution of the State of West Virginia as otherwise noted within this Response and within the August 8 and October 10, 2014, Orders of Judge Frye. The Petitioners herein, and specifically, Teets and Keplinger, are trying to claim a requirement of proof that they acted intentionally outside the Open Governmental Proceedings Act or to intentionally violate their jurisdictional parameters. There simply is no such legal requirement, however, it is clear

that Teets and Keplinger acted knowingly, or in reckless disregard of the statutory law, or incompetently, outside of statutory jurisdiction and in violation of the Open Governmental Proceedings Act. Commissioner Teets learned nothing from the trial or from all of the briefs presented to the Court below as demonstrated by his signing of a Retainer Agreement with Bridget Cohee of Steptoe and Johnson, without presenting the Retainer Agreement to the Hardy County Commission as a body, without informing Commissioner Wade in any manner of the intent of Commissioner Teets to hire Steptoe and Johnson, ostensibly for the benefit of the Hardy County Commission, to paid by the Hardy County Commission, and without any authority of the Hardy County Commission as a body. Teets and Keplinger did the same thing when they tried to have citizens investigated and arrested by going to the Prosecutor in 14-P-39. App. 636-647.

Unfortunately, the County Commission, and specifically, Teets and Keplinger, acted in competition with the Mathias-Baker Volunteer Fire Company while the Mathias-Baker Volunteer Fire Company sought to create its own licensed ambulance service. Jerry Moore, March 18, 2014, transcript, at pages 109-110. Teets and Keplinger refused funding to and “competed” with Mathias-Baker Volunteer Fire Company in the purchase of an unnecessary building at Baker while disparaging the Mathias-Baker Volunteer Fire Company in its obtaining a free building without any cost to residents of Hardy County. Jerry Moore, March 18, 2014, transcript, at pages 101-102. Teets and Keplinger clearly acted outside the scope of their jurisdictional authority and outside their job descriptions in pursuing their own personal interests or by their incompetence against the interests of the County, against the residents of the County, and against other ambulance services existing in the County.

The Circuit Court correctly determined that the Bifurcation Order entered by the

three-judge panel left jurisdiction of all issues to Judge Frye except specifically the removal or refusal to remove Teets and Keplinger from office. The Circuit Court reviewed the transcripts and the evidence presented to the three-judge panel by agreement of both parties, the Petitioners and the Respondents below. The rulings by Judge Frye are based on issues not within the jurisdiction of the three-judge panel and solely within the jurisdiction of Judge Frye. Judge Frye correctly found that the attorney's fees and litigation expenses of the Petitioners below were reasonable and necessary and were mandated by statutory authority under Chapter 6, Article 9A, Section 7, of the West Virginia Code. In fact, the Respondents below, Petitioners herein, made no claim before the Circuit Court that the attorney's fees and litigation expenses were excessive or unwarranted other than a simple general objection, all of which is noted by Judge Frye in the Order of October 10, 2014.

Respondents agree that the nature of this action is mandamus. The legal processes in this action follow what would be a mandamus action. With that said, there is currently no reasonable authority to allow the Hardy County Commission and specifically, Teets and Keplinger to make any further effort to create an ambulance service or to purchase the Baker building by reaffirming or ratifying their previous unlawful votes. Chapter 7, Article 15, no longer applies. The Circuit Court was well within its jurisdictional authority prohibiting Teets and Keplinger from making further efforts to enact an Emergency Ambulance Service Fee Ordinance under Chapter 7, Article 15, Section 1, et seq. The Circuit Court reviewed all evidence and considered all evidence presented to the Court, including all of the testimony and documentary evidence submitted to the three-judge panel during the three (3) day trial in March, 2014. Bifurcation was not ordered until March 17, entered March 19, 2014. During the

hearing of September 29, 2014, the Respondents below attempted to re-litigate issues which had already been considered by the Circuit Court. The Circuit Court tried to redirect the Respondents below to current issues before the Court and to new material, however, the Respondents below continued to make efforts to re-litigate matters which had previously been presented to and considered by Judge Frye. There was no exclusion of evidence.

5. The Circuit Court made no error in refusing the motion of the Respondents below to join the Capon Valley Bank and Jack Walters, as Trustee of the Capon Valley Bank, in the action brought by the Petitioners below against Commissioners Teets and Keplinger and the Hardy County Commission.

As otherwise noted within this Brief, on August 25, 2014, Commissioner Teets signed a Retainer Agreement with Steptoe and Johnson without having taken the Retainer Agreement before the Hardy County Commission, and without having the Retainer Agreement with Steptoe and Johnson approved in any manner by the Hardy County Commission. This action by Commissioner Teets not only violated the Open Governmental Proceedings Act, but was also a direct violation of the rights of the citizens of Hardy County, West Virginia. Commissioner Teets had no authority whatsoever to enter into a contract with Steptoe and Johnson, purportedly to represent the Hardy County Commission and the interests of citizens of Hardy County, West Virginia. The motion filed by Steptoe and Johnson, purportedly on behalf of the Hardy County Commission, to join the Capon Valley Bank and Trustee Jack Walters was filed September 16, 2014, in advance of the hearing scheduled by the Circuit Court on September 29, 2014. The issues scheduled to come before Judge Frye on September 29, 2014, did not include any legal issue in which the Capon Valley Bank or its Trustee,

Jack H. Walters, had any legal interest whatsoever. The original Petition filed against the Hardy County Commission and Commissioners Teets and Keplinger was based upon violations of the Open Governmental Proceedings Act, Chapter 6, Article 9A, Section 1, et seq., of the West Virginia Code, as well as for other violations of law and violations of rules by the Hardy County Commission and specifically Commissioners Teets and Keplinger. There was absolutely no allegation made against any interest of the Capon Valley Bank or it's Trustee, Jack H. Walters. Therefore, Rule 19 of the West Virginia Rules of Civil Procedure does not allow the requested joinder.

Apparently, prior to the hearing scheduled before Judge Frye on September 29, 2014, Commissioners Teets and Keplinger and their attorney, Bridget Cohee, of Steptoe and Johnson, desired to join forces of the legal action with the Capon Valley Bank and with it's Trustee, Jack H. Walters, who is also an attorney in Moorefield, Hardy County, West Virginia. It appeared that the intent of Teets and Keplinger and their attorney was to obtain additional local counsel to fight against the interests of the citizens of Hardy County who are named as Petitioners in the action below. On September 17, 2014, the Petitioners below filed a Response to the motion of the Respondents below to join the Capon Valley Bank and Jack H. Walters, as Trustee of the Capon Valley Bank. Your Respondents refer to that Response made below, and would incorporate same herein by reference. App. 921. Other than owning and selling the Baker building and certain ambulance equipment of the Mathias-Baker Volunteer Emergency Squad, Inc., which had been repossessed under a Deed of Trust, neither the Capon Valley Bank nor it's Trustee, Jack H. Walters, had any interest in the claims of the Petitioners against Commissioners Teets and Keplinger and the Hardy County Commission during the proceedings below. Wrongful acts of the Capon Valley Bank were not in any way a part

of the Petition against Teets and Keplinger and the Hardy County Commission in the proceedings either for removal or to nullify and vacate the Ordinance and the purchase of the building. With that said, your Respondents would note the following which demonstrate the underlying reasons for Commissioners Teets and Keplinger to seek to join the Capon Valley Bank and Jack H. Walters, it's Trustee.

The jurisdictional statutory requirements of the Hardy County Commission and the Open Governmental Proceedings Act were violated by efforts of Teets and Keplinger to create the Special Emergency Ambulance Service Fee through an Ordinance improperly passed and through the purchase of a building which was unnecessary, at an extortionate cost, without notice to the public, and which was strongly opposed by a significant majority of the County. These issues have previously been considered within pleadings filed before the Circuit Court of Hardy County, West Virginia. Respondents would refer to the Petition for Attorney's Fees filed by Certificate dated August 11, 2014, App. 708; the Reply Petition for Attorney's Fee filed by Petitioners below by Certificate dated September 3, 2014, App. 892; the Motion of Petitioners below to Enforce the Final Order of August 8, 2014, and Motion for Injunctive Relief, filed August 26, 2014, App. 856; Petitioners Supplement to Motion to Enforce the Final Order of August 8, 2014, and Supplement Motion for Injunctive Relief, filed August 27, 2014, App. 870; and the Response of Petitioners to Motion of Respondents to Join the Capon Valley Bank and Jack H. Walters, as Trustee of the Capon Valley Bank, filed by Certificate dated September 17, 2014, App. 921.

Respondents would point out that there was a real motivation for Commissioner Teets, and potentially Commissioner Keplinger to act from their own personal interests rather than in the interests of the citizens of Hardy County in the purchase of the Baker

building from the Capon Valley Bank, as well as in the passage of a Special Emergency Ambulance Fee Ordinance to collect fees to maintain that building. Specifically, the Teets family has a long history of involvement with the Capon Valley Bank as does Mr. Keplinger. Mike Teets' father was a director on the bank board and had substantial shares of stock with the Capon Valley Bank. Petitioners' Trial Exhibit 19. Mike Teets has continued to have substantial stock ownership with the Capon Valley Bank, and therefore, he benefitted personally by the purchase of the building which had been repossessed by the Capon Valley Bank from the Mathias-Baker Volunteer Emergency Squad, Inc., which went out of business. Petitioners' Trial Exhibit 31. Mike Teets' sister, Brenda Peer, was the original president of the Mathias-Baker Volunteer Rescue Squad, Inc., which defrauded the government. Petitioners' Trial Exhibit 4 (last page) and 80. Gerald Smith, one of the directors of the Capon Valley Bank and an officer of the fraudulent Rescue Squad, assisted in the formation of the original Mathias-Baker Volunteer Rescue Squad, Inc., which defrauded the State and Federal Government out of approximately one million, six hundred thousand dollars (\$1,600,000.00) as was found by the United States Attorney. Petitioner's Trial Exhibits 4 and 97.

Jack Walters is deeply involved in both, the Capon Valley Bank and other connected private and County government entities, including the Rural Development Authority on which Mike Teets sits as a member, and which is a political subdivision of Hardy County. Petitioners' Trial Exhibits 5,11,12,13,14,15,16,29,68,70,71,72,73,76,77, 91, 92,93 and 94. App. *inter alia* 2447-4224. Jack Walters was, and probably still is, the corporate attorney for E.A. Hawse Health Center, Inc., which bid on the Baker building at the Capon Valley Bank foreclosure sale. Petitioners' Trial Exhibits 59,60,61,62 and 63. App. 3255-3275. Jack Walters is the corporate attorney for Envirco, Inc., owned by

Gerald Smith. Petitioners' Trial Exhibit 6. Jack Walters was the attorney for the Estate of Winston Teets, Mike Teets' father, and all three estate appraisers were Capon Valley Bank executives. Petitioners' Trial Exhibit 19. No wonder the Respondents below wanted Jack Walters to be made a party in this action. Jack Walters is not an indispensable party in this action, nor is the Capon Valley Bank, but they were the pivot point of the unlawful actions by Teets and Keplinger.

Had the Capon Valley Bank not loaned the Mathias-Baker Volunteer Rescue Squad, Inc., approximately one million, one hundred thousand dollars (\$1,100,000.00) to pay the Federal fines, Gerald Smith, a director of the Capon Valley Bank and an officer of the Mathias-Baker Volunteer Rescue Squad, Inc., may well have gone to Federal Prison. Petitioners' Trial Exhibits 4, 5, 78,79 and 97. The Capon Valley Bank kept Gerald Smith and others from potentially going to jail by paying sufficient money through a deficiently secured loan for a settlement to be made to alleviate Federal criminal charges. Petitioners' Trial Exhibit 78. Commissioner Teets, through his personal relationship with the Capon Valley Bank, clearly acted in his own personal interest to assist the Capon Valley Bank and Gerald Smith by having the taxpayers of Hardy County, West Virginia, repay the loans of the Capon Valley Bank which would otherwise have been unrecoverable based on lack of security value. The three hundred thousand dollars (\$300,000.00) given to the now defunct Rescue Squad, Inc., by the County Commission in December, 2011, paid interest and payments in the amount of \$123,500.00 to the Capon Valley Bank for indebtedness on property owned by the Mathias-Baker Rescue Squad, Inc., in Hardy **and Grant Counties**. Petitioners' Trial Exhibits 28, 91, 92 and 93. The September 29, 2011, Deed of Trust of the Rescue Squad paid off two (2) Deeds of Trust for property in Grant County. Petitioners' Trial

Without the competitive bidding caused by Teets and Keplinger on the Baker building, E.A. Hawse would have almost certainly purchased the Baker building for seven hundred fifty thousand dollars (\$750,000.00), the opening bid. Gary Johnson, March 18, 2014, Transcript at pages 134-135, 148-152, and 154-166. The Capon Valley Bank and the Hardy County Commission knew the bid limit of E. A. Hawse Health Center before the auction. Jerry Moore, March 18, 2014, Transcript at page 127. The actions of Teets and Keplinger caused the purchase price to reach one million, one hundred thirty thousand dollars (\$1,130,000.00), paid by the taxpayers of Hardy County, West Virginia, rather than allowing E.A. Hawse Health Center to purchase the building and install a private ambulance service in the wake of Mathias-Baker Volunteer Emergency Squad, Inc., going into foreclosure and closing its doors. Gary Johnson, March 18, 2014, Transcript at pages 151 through 154. App. 1775-1778. Teets and Keplinger not only competed with Mathias-Baker Volunteer Fire Company, but also with E.A. Hawse Health Center, both of which had a vested interest in maintaining ambulance service in the eastern part of Hardy County. Gary Johnson, March 18, 2014, Transcript at pages 134-136, 163-165. There was simply no reasonable cause why Teets and Keplinger were so adamant to spend public money for the Baker building except to benefit the Capon Valley Bank. The great majority of citizens of Hardy County were opposed to the purchase of the building and the passage of the ambulance service fee as demonstrated by the public meetings undertaken by the Hardy County Commission in June and July of 2013. There would have been and still is ambulance service and housing for ambulance services throughout Hardy County without the purported assistance of Teets and Keplinger. The Petitioners below and the citizens of Hardy County could not understand why their tax money was foolishly spent by Teets

and Keplinger, and the question resounds “why did someone not go to jail for stealing money from the government?” No one went to jail from the Mathias-Baker Volunteer Emergency Squad, Inc., and they ran off the honest EMTs when defrauding the government by requiring falsification of records and run sheets. This is a major contributing factor to the current unavailability of volunteer EMTs and paramedics in East Hardy.

The land on which the Baker building sits was donated to the County from the estate of E. A. Hawse. Gary Johnson, March 18, 2014, at Trial Transcript page 159-160. Petitioners’ Exhibit 16 demonstrates that the Hardy County Committee on Aging deeded the property on which the “Baker building” exists to the Mathias-Baker Volunteer Emergency Squad, Inc., on October 20, 2004, without any monetary consideration. Petitioners’ Trial Exhibits 11, 12, 13, and 14, demonstrate a steady progression of the incorporated entity going into debt. The tax returns of the Mathias-Baker Volunteer Emergency Squad, Inc., Petitioners’ Trial Exhibits 80-88, demonstrate a ballooning of income which was too good to be true and which was based upon fraud being committed by the organization. Eleanor Crump is listed as the bookkeeper and/or treasurer of Mathias-Baker Volunteer Emergency Squad, Inc., in 2009 and 2010, while the government was being ripped off. Trial Exhibits 87 and 88. George Crump, her husband, was appointed to the Hardy County Emergency Ambulance Authority by the Hardy County Commission in early 2014. Teets and Keplinger relied upon the statements of George Crump, Eleanor Crump’s husband, at the Commission meeting on August 2, 2013, to pass the Ordinance and purchase the Baker building. The three hundred thousand dollars (\$300,000.00) given to the Mathias-Baker Volunteer Emergency Squad, Inc., in 2011, was given at the request of Lisa Basye, Richard

Hamilton and Gerald Smith, the individuals directly responsible for the fraudulent conduct to the federal government. County Commission minutes of December 20, 2011. \$123,500.00 of the \$300,000.00 went to the Capon Valley Bank. Petitioners' Trial Exhibit 28. Gerald Smith is on the Board of Directors of the Capon Valley Bank. Petitioners' Trial Exhibit 5. Richard Hamilton signed the tax returns for the defunct squad corporation from 2002-2009, while the government was being defrauded. App. 3427-3543. Teets and Keplinger made no inquiry whatsoever and blindly wasted the money of the County without regard to the rights of the citizens of Hardy County, and without any notice to the citizens of Hardy County. The County Commission has made no effort whatsoever to create any opportunity or organization to re-establish or generate new or additional First Responders in Hardy County. Greg Greenwalt, September 29, 2014, Transcript at pages 49-60. Judge Frye was absolutely correct in holding Teets and Keplinger personally responsible for the violations of their jurisdictional and statutory authority and to prohibit further efforts to pass the Ordinance and purchase the Baker building. The Capon Valley Bank and Jack Walters, their Trustee, do not meet the criteria of Rule 19 of the West Virginia Rules of Civil Procedure to be included as parties this action. If the County desires to sue the Capon Valley Bank or Jack Walters in a separate action, they may do so.

6. Petitioners claim that the Circuit Court erred as a matter of law in holding Teets and Keplinger personally liable to the Hardy County Commission for the purchase price of the Baker building, claiming that Teets and Keplinger acted within the scope of their official duties as County Commissioners voting in favor of the challenged purchase of the building and in violation of the OGPA.

Significantly absent from the claimed error is the noted opposition of Commissioner Wade and the residents of Hardy County as well as the “chronic and systemic” violations of the OGPA and the lack of jurisdictional authority of Teets and Keplinger and the Hardy County Commission by failing to properly notice any of the conduct of the County Commission in its processes and efforts to purchase the challenged building at Baker and to pass the Special Emergency Ambulance Service Fee Ordinance. The Circuit Court specifically found at paragraph 41, page 16, of the Order of October 10, 2014, that Teets and Keplinger approved the purchase of the Baker building at a meeting where they lacked jurisdiction based upon lack of statutory notice. At paragraph 42, the Circuit Court based the finding of personal liability of Teets and Keplinger upon unlawful actions which create individual personal liability for Teets and Keplinger under County Court of Tyler County v. Duty, 77 W.Va. 17, 87 S.E. 256 (1915). 7-15-18 in no way “trumps” the requirements of the Open Governmental Proceedings Act, 6-9A-3, et seq.

As noted by Judge Frye, liability does not depend upon criminal intent, but rests upon a lack of jurisdiction or a want of express authority in law. Quoting Judge Frye, “ignorance of the law does not excuse”. Duty, supra, 17 W. Va. at page 78, 87 S.E. at page 257. At paragraph 43 of the Order of October, 10, 2014, Judge Frye noted that the lack of proper notice was not merely a violation of OGPA, but also a violation of West Virginia Code §7-1-2. The jurisdictional defect committed by Teets and Keplinger made the expenditure of funds unlawful. Accordingly, Judge Frye imposed joint and several personal liability upon Teets and Keplinger who voted in the affirmative for an unlawful expenditure of public money. It was upon that ruling that the Circuit Court determined a conflict of interest to exist for Teets and Keplinger and the Hardy County Commission

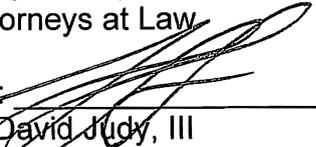
and their counsel at paragraph 45, pages 17-18. Therefore, Teets and Keplinger acted outside the scope of their official duties, in violation of statutory law, in violation of their jurisdictional authority, in violation of the public trust and in violation of interests of the citizens of Hardy County, West Virginia, all of which are within the jurisdiction of Judge Frye in ruling to nullify the votes for passage of the Ordinance and purchase of the Baker building and in imposing personal liability on Teets and Keplinger. The Circuit Court was clearly correct in finding that Teets and Keplinger are personally liable to the County Commission, and therefore to the citizens of Hardy County for the purchase price of the Baker building.

VII. CONCLUSION

WHEREFORE, Respondents respectfully move this Honorable Court to uphold and affirm the Orders of the Circuit Court of Hardy County, West Virginia, the Honorable Andrew N. Frye, Jr., entered August 8, 2014, August 29, 2014, and October 10, 2014, in their entirety based upon the clear and correct findings of fact, conclusions of law and Order stated therein. Respondents also demand full reimbursement of all attorney's fees and expenses of the litigation below and through this appeal.

Wendy J. Miller, John A. Elmore,
B. Wayne Thompson,
Ovid Need and Bonnie L. Haggerty
Respondents - by Counsel

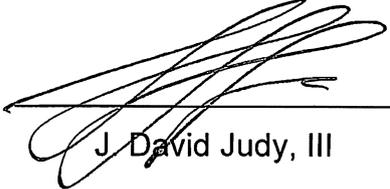
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CERTIFICATE OF SERVICE

I, J. David Judy, III, counsel for Respondents, do hereby certify that I have served the foregoing, *Response of Brief*, upon Ancil G. Ramey, Steptoe and Johnson, PLLC, at his address of P.O. Box 2195, Huntington, West Virginia, 25722-219; John A. Kessler, of Carey, Scott, Douglas & Kessler, PLLC at his address of P.O. Box 913, Charleston, WV 25323 and upon John W. Cooper, his address of P.O. Box 365, Parsons, West Virginia, 26287, by U.S. Mail, by postage prepaid, on this 7th day of July, 2015.



J. David Judy, III