

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2007 Term

---

No. 33454

---

**FILED**  
**October 26, 2007**  
released at 10:00 a.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL. CITY OF CHARLES TOWN,  
Petitioner

v.

THE COUNTY COMMISSION OF JEFFERSON COUNTY,  
A PUBLIC BODY CORPORATE OF THE STATE OF WEST VIRGINIA;  
AND FRANCES B. MORGAN, PRESIDENT AND MEMBER;  
ARCHIBALD M.S. MORGAN, III, MEMBER;  
C. DALE MANUEL, MEMBER;  
JAMES T. SUTKAMP, MEMBER; AND  
GREGORY A. CORLISS, MEMBER; AND  
JENNIFER MAGHAN, CLERK, COUNTY COMMISSION  
OF JEFFERSON COUNTY,  
Respondents

---

Petition for Writ of Mandamus

WRIT GRANTED

---

**AND**

---

No. 33455

---

STATE OF WEST VIRGINIA EX REL. CITY OF CHARLES TOWN,

Petitioner

v.

THE COUNTY COMMISSION OF JEFFERSON COUNTY,  
A PUBLIC BODY CORPORATE OF THE STATE OF WEST VIRGINIA;  
AND FRANCES B. MORGAN, PRESIDENT AND MEMBER;  
ARCHIBALD M.S. MORGAN, III, MEMBER;  
C. DALE MANUEL, MEMBER;  
JAMES T. SUTKAMP, MEMBER; AND  
GREGORY A. CORLISS, MEMBER; AND  
JENNIFER MAGHAN, CLERK, COUNTY COMMISSION  
OF JEFFERSON COUNTY,  
Respondents

---

Petition for Writ of Mandamus

WRIT GRANTED

---

**AND**

---

No. 33456

---

STATE OF WEST VIRGINIA EX REL. FIRST CHARLES TOWN GROUP, INC.,  
A WEST VIRGINIA CORPORATION;  
CHARLES TOWN LIMITED, PARTNERSHIP VI,  
A WEST VIRGINIA LIMITED PARTNERSHIP;  
HARRY M. KABLE AND CAROL F. KABLE, HUSBAND AND WIFE;  
LARRY R. FRITTS, SR.; AND  
RICHARD W. WEESE AND MARIA V. WEESE, HUSBAND AND WIFE,  
Petitioners

v.

THE COUNTY COMMISSION OF JEFFERSON COUNTY,  
A PUBLIC BODY CORPORATE OF THE STATE OF WEST VIRGINIA;

AND FRANCES B. MORGAN, PRESIDENT AND MEMBER;  
ARCHIBALD M.S. MORGAN, III, MEMBER;  
C. DALE MANUEL, MEMBER;  
JAMES T. SUTKAMP, MEMBER; AND  
GREGORY A. CORLISS, MEMBER; AND  
JENNIFER MAGHAN, CLERK, COUNTY COMMISSION  
OF JEFFERSON COUNTY,  
Respondents

---

Petition for Writ of Mandamus

WRIT GRANTED

---

**AND**

\_\_\_\_\_  
No. 33457  
\_\_\_\_\_

STATE OF WEST VIRGINIA EX REL. NEW VISION PROPERTIES II, INC.,  
A WEST VIRGINIA CORPORATION;  
MICHAEL C. GOODE, SR., AND SYLVIA D. GOODE, HUSBAND AND WIFE;  
AND JOHN J. GERVASI AND LINDA S. GERVASI, HUSBAND AND WIFE,  
Petitioners

v.

THE COUNTY COMMISSION OF JEFFERSON COUNTY,  
A PUBLIC BODY CORPORATE OF THE STATE OF WEST VIRGINIA;  
AND FRANCES B. MORGAN, PRESIDENT AND MEMBER;  
ARCHIBALD M.S. MORGAN, III, MEMBER;  
C. DALE MANUEL, MEMBER;  
JAMES T. SUTKAMP, MEMBER; AND  
GREGORY A. CORLISS, MEMBER; AND

JENNIFER MAGHAN, CLERK, COUNTY COMMISSION  
OF JEFFERSON COUNTY,  
Respondents

---

Petition for Writ of Mandamus

WRIT GRANTED

---

Submitted: September 19, 2007

Filed: October 26, 2007

Ellen S. Cappellanti, Esquire  
William J. Powell, Esquire  
Jackson Kelly PLLC  
Charleston, West Virginia  
and  
James B. Crawford, III, Esquire  
Crawford & Keller PLLC  
Charles Town, West Virginia  
Attorneys for City of Charles Town

Peter L. Chakmakian, Esquire  
Alice Anne Chakmakian, Esquire  
Charles Town, West Virginia  
Attorneys for First Charles Town Group, Inc.;  
Charles Town Limited Partnership VI; Harry and  
Carol Kable; Larry Fritts, Sr.; Richard and Maria  
Weese; New Vision Properties II, Inc.; Michael and  
Sylvia Goode; and John and Linda Gervasi

Michael D. Thompson, Esquire  
Prosecuting Attorney  
Stephanie F. Grove, Esquire  
Assistant Prosecuting Attorney  
James Casimiro, III

Assistant Prosecuting Attorney  
Office of Prosecuting Attorney of Jefferson County  
Charles Town, West Virginia  
Attorneys for County Commission of Jefferson County;  
Frances B. Morgan; Archibald M.S. Morgan, III;  
C. Dale Manuel; James T. Sutkamp; Gregory A.  
Corliss; and Jennifer Maghan

Andrew P. Blake, Esquire  
Ranson, West Virginia  
Attorney for Amicus Curiae,  
City of Ranson

Dennis R. Vaughan, Jr., Esquire  
Charleston, West Virginia  
Attorney for Amicus Curiae,  
West Virginia Municipal League, Inc.

Richard G. Gay, Esquire  
Nathan P. Cochran, Esquire  
Law Office of Richard Gay, LC  
Berkeley Springs, West Virginia  
Attorney for Amicus Curiae,  
Contract Purchasers of Lots in the Windmill  
Crossing Subdivision Owned by New Vision  
Properties, Inc.

The Opinion of the Court was delivered PER CURIAM.  
JUSTICE STARCHER dissents, in part, and concurs, in part, and reserves the right to file  
a separate opinion.  
JUSTICES ALBRIGHT and BENJAMIN concur and reserve the right to file concurring  
opinions.

## SYLLABUS BY THE COURT

1. ““Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.” Syllabus Point 1, *State ex rel. Allstate Insurance Co. v. Union Public Service District*, 151 W.Va. 207, 151 S.E.2d 102 (1966).’ Syl. Pt. 4, *State ex rel. Affiliated Constr. Trades Found. v. Vieweg*, 205 W.Va. 687, 520 S.E.2d 854 (1999).” Syllabus Point 2, *State ex rel. Public Service Comm’n of West Virginia v. Town of Fayetteville, Municipal Water Works*, 212 W.Va. 427, 573 S.E.2d 338 (2002).

2. ““A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.’ Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969).” Syllabus Point 2, *Stapleton v. Board of Educ. of County of Lincoln*, 204 W.Va. 368, 512 S.E.2d 881 (1998).

3. ““The powers exercised by a county commission with regard to municipal annexation are wholly statutory and it can exercise no other powers except those implicit in the specific grant.” Syllabus Point 2, *Matter of City of Morgantown*, 159 W.Va. 788, 226 S.E.2d 900 (1976).

4. “Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” Syllabus Point 2, *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968).

5. “The word “shall” in the absence of language in the statute showing a contrary intent on the part of the legislature, should be afforded a mandatory connotation.’ Syl. pt. 2, *Terry v. Sencindiver*, 153 W.Va. 651, 171 S.E.2d 480 (1969).” Syllabus Point 5, *Rogers v. Hechler*, 176 W.Va. 713, 348 S.E.2d 299 (1986).

6. “A county commission . . . has no interest, personal or official, in the municipal annexation matters which come before it other than to administer the law[.]” Syllabus Point 5, in part, *Matter of City of Morgantown*, 159 W.Va. 788, 226 S.E.2d 900 (1976).

Per Curiam:

These four consolidated cases are before this Court upon petitions for a writ of mandamus filed by the City of Charles Town; First Charles Town Group, Inc.; Charles Town Limited Partnership VI; Harry and Carol Kable; Larry Fritts, Sr.; Richard and Maria Weese; New Vision Properties, II, Inc.; Michael and Sylvia Goode; and John and Linda Gervasi (hereinafter collectively referred to as “petitioners”) against the County Commission of Jefferson County; its members, Frances B. Morgan, Archibald M.S. Morgan, III, C. Dale Manuel, James T. Sutkamp, and Gregory A. Corliss; and Jennifer Maghan, Clerk of the County Commission of Jefferson County (hereinafter collectively referred to as “respondents”). The petitioners seek to compel the respondents to enter two Annexation Orders incorporating certain parcels of land into the corporate limits of the City of Charles Town. Having carefully considered the petitions for a writ of mandamus, the responses thereto, and the parties’ arguments,<sup>1</sup> this Court grants the requested writ of mandamus.

## I.

---

<sup>1</sup>At this juncture, we wish to acknowledge the participation and contribution of amici curiae, the City of Ranson, the West Virginia Municipal League, and the Contract Purchasers of Lots in the Windmill Crossing Subdivision Owned by New Vision Properties, Inc., which filed briefs in support of the petitioners.

## FACTS

Pursuant to W.Va. Code § 8-6-4 (2001),<sup>2</sup> the owners of certain parcels of land located in Jefferson County, West Virginia, sought to have their property annexed by the City of Charles Town. Accordingly, two ordinances were proposed in January 2007. One of the proposed ordinances pertained to the annexation of six parcels of land which are owned by Charles Town Limited Partnership VI, First Charles Town Group, Inc., Richard and Maria Weese, Harry and Carol Kable, and Larry Fritts, Sr. The other proposed ordinance concerned the annexation of seventeen parcels of land which are owned by New Vision Properties II, Inc., Michael and Sylvia Goode, and John and Linda Gervasi.

Both ordinances were first read at a meeting of the City Council of Charles Town on January 16, 2007. The second reading of the ordinance concerning the seventeen parcels of land occurred on February 5, 2007, at a meeting of the City Council, and at that time, passage of the ordinance was certified because it was determined that the petition was

---

<sup>2</sup>W.Va. Code § 8-6-4 provides, in pertinent part:

(a) The governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question if: (1) A majority of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed.

made by a majority of freeholders and a majority of qualified voters within the additional territory to be annexed in accordance with the requirements of W.Va. Code § 8-6-4(a).<sup>3</sup> Accordingly, the ordinance was entered into the City's journal as required by W.Va. Code § 8-6-4(g).<sup>4</sup> The second reading of the ordinance pertaining to the six parcels of land occurred on February 20, 2007, at a meeting of the City Council, and at that time, passage of the ordinance was certified because it was again determined that the petition was made by a majority of freeholders and a majority of qualified voters within the additional territory to be annexed. The ordinance was also entered into the City's journal.

On March 8, 2007, a proposed order was provided to the County Commission of Jefferson County approving and confirming the annexation of the seventeen parcels of land. On April 12, 2007, a proposed order was provided to the County Commission of Jefferson County approving and confirming the annexation of the six parcels of land. Both orders were provided to the County Commission for entry in accordance with the provisions of W.Va. Code §§ 8-6-3 and 8-6-4.<sup>5</sup> Thereafter, the County Commission refused to enter the

---

<sup>3</sup>*See* note 2, *supra*.

<sup>4</sup>W.Va. Code § 8-6-4(g) states, in pertinent part:

If satisfied that the petition is sufficient in every respect,  
the governing body shall enter that fact upon its journal . . . .

<sup>5</sup>The relevant language of these statutes is set forth in the discussion section of this opinion.

orders. On May 1 and 2, 2007, these petitions for a writ of mandamus were filed with this Court.

## II.

### STANDARD FOR ISSUING A WRIT OF MANDAMUS

As set forth above, the petitioners seek a writ of mandamus directing the County Commission of Jefferson County to enter the Annexation Orders at issue. This Court has long held that, ““Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.” Syllabus Point 1, *State ex rel. Allstate Insurance Co. v. Union Public Service District*, 151 W.Va. 207, 151 S.E.2d 102 (1966).’ Syl. Pt. 4, *State ex rel. Affiliated Constr. Trades Found. v. Vieweg*, 205 W.Va. 687, 520 S.E.2d 854 (1999).” Syllabus Point 2, *State ex rel. Public Service Comm’n of West Virginia v. Town of Fayetteville, Municipal Water Works*, 212 W.Va. 427, 573 S.E.2d 338 (2002). It is well-established, however, that:

“A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.” Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969).

Syllabus Point 2, *Stapleton v. Board of Educ. of County of Lincoln*, 204 W.Va. 368, 512 S.E.2d 881 (1998).

The respondents have asserted that the petitioners should have first sought relief in the circuit court. We find no merit to this argument because “[u]nder *W.Va. Const.*, art. VIII, §§ 3, 4 this Court and all circuit courts of the State have concurrent original jurisdiction in mandamus.” *State v. Coleman*, 167 W.Va. 536, 538, 281 S.E.2d 489, 489 (1981). *See also State ex rel. Silver v. Wilkes*, 213 W.Va. 692, 697, 584 S.E.2d 548, 553 (2003). Thus, having set forth the standard for the issuance of a writ of mandamus, we now consider the parties’ arguments.

### **III.**

#### **DISCUSSION**

The issue presented in this case is whether a county commission has authority to refuse to enter an annexation order presented to it by a municipality pursuant to W.Va. Code § 8-6-4. The petitioners contend that the plain language of the statute as well as this Court’s prior case law clearly establish that the Commission’s role with regard to annexation of property under W.Va. Code § 8-6-4 is purely ministerial. In other words, the petitioners assert that once the municipality determines that the annexation petition is sufficient and forwards it to the Commission, the Commission must enter the annexation order.

By contrast, the respondents argue that the County Commission must certify that the annexation was made “in the manner required by law,” and when the municipality

fails to comply with the annexation statutes, the County Commission has no duty to enter the annexation order. In support of their argument, the respondents rely upon the language in W.Va. Code § 8-6-3 which must be used in the annexation order.<sup>6</sup> The respondents contend that the proposed annexation is not reasonable, that it does not comply with the contiguity requirement set forth in W.Va. Code § 8-6-1(a) (2001),<sup>7</sup> and that the City failed to verify the total number of eligible freeholders in accordance with W.Va. Code § 8-6-4(e).<sup>8</sup>

This Court first considered the role of county commissions with regard to annexation under Article 6 of Chapter 8 of the West Virginia Code in *Matter of City of*

---

<sup>6</sup>The language to be used in an annexation order entered by a county commission is set forth in W.Va. Code § 8-6-3 (1969) as follows,

“A certificate of the governing body of the municipality of .....was this day filed showing that an annexation has been made, in the manner required by law, to the corporate limits thereof, and that by such annexation the said corporate limits are as follows:

“Beginning at (here recite the boundaries as changed). It is, therefore, ordered that such annexation to said corporate limits be, and the same is hereby approved and confirmed, and the clerk of this court is directed to deliver to the said governing body a certified copy of this order as soon as practicable after the rising of this court.”

<sup>7</sup>W.Va. Code § 8-6-1(a) provides that, “Unincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article.”

<sup>8</sup>W.Va. Code § 8-6-4(e) states, in relevant part, that, “It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory.”

*Morgantown*, 159 W.Va. 788, 226 S.E.2d 900 (1976). In that case, the County Commission of Monongalia County rejected the City of Morgantown’s annexation of property by minor boundary adjustment pursuant to W.Va. Code § 8-6-5 (1969). The City petitioned the circuit court for a writ of error which was granted. The Commission then filed a writ with this Court. In discussing the Commission’s function and the nature of its powers in an annexation proceeding, this Court explained that,

[The] annexation statutes, now contained in article six of chapter eight of the Code of West Virginia, provide three methods for properly altering municipal boundaries by annexation of additional territory. Section 2 provides for annexation upon an election initiated by a petition. Section 4 provides for annexation without an election upon petition of sixty percent of the voters and freeholders of the additional territory.<sup>[9]</sup> Section 5 authorizes annexation “by minor boundary adjustment.”

Through the enactment of these general laws, the Legislature delegated certain functions and responsibilities to the county commission of each county. A county commission is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures of Sections 2 or 4. The powers delegated to a county commission under Section 5, however, are broader in scope and encompass more than the performance of a ministerial duty.

*Id.*, 159 W.Va. at 792, 226 S.E.2d at 903 (footnote omitted). While it was determined that a county commission has additional functions when a municipality seeks to annex by minor

---

<sup>9</sup>W.Va. Code § 8-6-4 has since been amended to require the petition to be made by a majority of the qualified voters and a majority of all freeholders of the additional territory. *See* note 2, *supra*.

boundary adjustment, this Court held in Syllabus Point 2 of *Matter of Morgantown* that, “The powers exercised by a county commission with regard to municipal annexation are wholly statutory and it can exercise no other powers except those implicit in the specific grant.”

As set forth above, the petitioners sought to annex property in this case pursuant to W.Va. Code § 8-6-4. The statute provides, in pertinent part:

If satisfied that the petition is sufficient in every respect, the governing body shall enter that fact upon its journal and forward a certificate to that effect to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the additional territory, is located. *The county commission shall thereupon enter an order as described in the immediately preceding section [§ 8-6-3] of this article.* After the date of the order, the corporate limits of the municipality shall be as set forth therein.

W.Va. Code § 8-6-4(g) (emphasis added). This Court has held that, “Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” Syllabus Point 2, *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968). In addition, this Court has held that, “‘The word “shall” in the absence of language in the statute showing a contrary intent on the part of the legislature, should be afforded a mandatory connotation.’ Syl. pt. 2, *Terry v. Sencindiver*, 153 W.Va. 651, 171 S.E.2d 480 (1969).” Syllabus Point 5, *Rogers v. Hechler*, 176 W.Va. 713, 348 S.E.2d 299 (1986). The language of W.Va. Code § 8-6-4(g) is clear and unambiguous. The county commission is required to enter the annexation order when the municipality certifies that the annexation petition is sufficient.

We reject the Commission’s argument that it has a duty to determine whether or not the annexation complies with the applicable statutes. As we explained in *City of Morgantown*, “Article six sufficiently identifies those who have an interest in annexations as including the governing body of the municipality and the qualified voters and freeholders of the municipality and of the territory to be annexed.” 159 W.Va. at 794, 226 S.E.2d at 904. “A county commission . . . has no interest, personal or official, in the municipal annexation matters which come before it other than to administer the law[.]” Syllabus Point 5, in part, *City of Morgantown*. Thus, the County Commission of Jefferson County should have entered the Annexation Orders presented to it by the City of Charles Town.

#### IV.

#### CONCLUSION

Accordingly, for the reasons set forth above, the writ of mandamus requested by the petitioners is granted, and the respondents are hereby directed to enter the Annexation Orders.

Writ granted.