

No. 33454 *State of West Virginia ex rel. City of Charles Town v. The County Commission of Jefferson County, a public body corporate of the State of West Virginia, et al.*

and

No. 33455 *State of West Virginia ex rel. City of Charles Town v. The County Commission of Jefferson County, a public body corporate of the State of West Virginia, et al.*

and

No. 33456 *State of West Virginia ex rel. First Charles Town Group, Inc., a West Virginia corporation, et al. v. The County Commission of Jefferson County, a public body corporate of the State of West Virginia, et al.*

and

No. 33457 *State of West Virginia ex rel. New Vision Properties II, Inc., a West Virginia corporation, et al. v. The County Commission of Jefferson County, a public body corporate of the State of West Virginia, et al.*

FILED
December 19,
2007

Benjamin, Justice, concurring:

released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I agree with the majority that a county commission does not have the discretion to refuse to enter an annexation order when a municipality has certified that the annexation petition is sufficient. However, I write separately to emphasize that a county commission is not without remedy where it is alleged that a municipality has approved an annexation petition that may not meet statutory requirements regarding the requisite number of

petitioners requesting annexation of the territory. West Virginia Code § 8-6-4(c) (2001), specifically provides:

The determination that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed is located, upon certiorari to the governing body in accordance with the provisions of article three, chapter fifty-three of this code.

Thus, instead of simply refusing to enter the annexation order, the County Commission of Jefferson County should have challenged the City of Charles Town's approval of the annexation petition in circuit court. Under our law, it was for the circuit court, not the county commission, to determine if the City of Charles Town improperly certified or approved the annexation petition.