

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on December 7, 2010, the following order was made and entered in vacation:

State of West Virginia ex rel. West Virginia Parkways Authority, Erica M. Mani, in her official capacity as Chairman Designee of the West Virginia Parkways Authority, and Cameron Lewis, in his official capacity as Vice Chairman of the West Virginia Parkways Authority, Petitioners

vs.) No. 35757

Gregory C. Barr, in his official capacity as General Manager of the West Virginia Parkways Authority; County Commission of Mason County, West Virginia; Miles S. Epling, in his official capacity as President of Mason County Commission; Robert C. Baird, in his official capacity as Commissioner of the Mason County Commission; and Rick L. Handley, in his official capacity as Commissioner of the Mason County Commission, Respondents

On a former day, to-wit, November 18, 2010, came the petitioners, West Virginia Parkways Authority, et al., by James S. Crockett, Jr., Roger D. Hunter and Timothy D. Houston, Spilman Thomas & Battle, PLLC, their attorneys, and presented to the Court their petition praying for a writ of mandamus to be directed against the respondents, Gregory C. Barr, Miles S. Epling, Robert C. Baird and Rick L. Handley, as therein set forth.

On November 22, 2010, the Court issued a rule to show cause in this matter.

Thereafter, on December 3, 2010, pursuant to this Court's November 22, 2010 order, came the respondent, Mason County Commission, by Damon B. Morgan Jr., Prosecuting Attorney, and presented to the Court its written response to the rule to show cause.

Thereafter, on December 6, 2010, pursuant to this Court's November 22, 2010 order, came the respondent, Gregory C. Barr, by Herschel H. Rose III, Rose Law Office, and presented to the Court his written response to the rule to show cause.

On November 24, 2010, came the West Virginia State Building and Construction Trades Council, AFL-CIO, by Vincent Trivelli, The Law Office of Vincent Trivelli, PLLC, its attorney, and presented to the Court its motion in writing for leave to file an amicus curiae brief. Upon consideration whereof, the Court is of the opinion that the motion filed by the West Virginia State Building and Construction Trades Council, AFL-CIO should be, and it hereby is granted.

On December 6, 2010, came the West Virginia State Building and Construction Trades Council, AFL-CIO, by counsel, and filed said amicus curiae brief.

On the same day, came C. Eugene Zopp, PhD, pro se, and presented to the Court his motion in writing for leave to file an amicus curiae brief, and attached the same thereto. Upon consideration whereof, the Court is of the opinion that said motion should be, and it hereby is granted, and said brief is hereby ordered filed.

The Court has thoroughly reviewed the written arguments and exhibits filed in this matter. Upon consideration whereof, the Court is of the opinion that the writ prayed for by the petitioners should be, and it hereby is GRANTED.

It is hereby ordered that a writ of mandamus shall issue compelling Respondent Gregory C. Barr, in his Official Capacity as General Manager of the West Virginia

Parkways Authority, to fulfill his statutory duties under the Parkways Authority Act, West Virginia Code § 17-16A-1 to -30, with respect to the U.S. Route 35 Parkway Project.

The Court wishes to be clear, however, that it is only considering the issue of whether Respondent County Commission of Mason County was authorized to rescind its September 30, 2010, resolution approving the U.S. Route 35 Parkway Project, and whether Respondent Barr should be compelled to move forward with the Parkway Project by, among other things, proceeding with his statutory duties pursuant to West Virginia Code § 17-16A-13a. The Court takes no position as to the merits of the Parkway Project, despite having received briefing and exhibits to that effect.

Rather, upon review, the Court concludes that the County Commission of Mason County had no legal authority to rescind its September 30, 2010, resolution approving the Parkway Project and, therefore, the County Commission of Mason County's vote to rescind that approval is, itself, void. After applying the established principles of statutory construction to the relevant sections of the Parkways Authority Act, the Court finds that the construction given to that statute by Petitioner West Virginia Parkways Authority is accurate. Accordingly, Respondent Barr must proceed, pursuant to his statutory duties, to move forward with the Parkway Project, by, among other things, noticing and holding public hearings on fixing tolls and issuing bonds, as required by West Virginia Code § 17-16A-13a.

Given the Petitioners' need for timely consideration and resolution of the issues in the underlying matter, we issue our decision through this order with an opinion to follow in due course.

Justice Benjamin disqualified. Judge Moats sitting by temporary assignment.

The Clerk of this Court is hereby directed to issue the mandate forthwith.

Service of a copy of this order upon the respondents aforesaid shall have the same effect as the service of a formal writ.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

