

No. 32890 T. Weston, Inc. v. Mineral County, West Virginia and County Commission of Mineral County, West Virginia, *et al.*

**FILED**

**July 27, 2006**

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RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Benjamin, Justice, dissenting:

I dissent to the majority's decision to read into W.Va. Code 7-1-3jj(b) (2002) language which simply is not there. While I commend my fellow justices for their restraint in narrowly responding to the certified question herein,<sup>1</sup> I cannot agree that the prohibition which the majority now chooses to imply into W.Va. Code 7-1-3jj(b) was the intent of the Legislature where such prohibition is plainly not present in the statutory language, where there is no hint in the title of the bill which gave rise to this statutory language that there is any restriction on the authorization given to counties to enact ordinances such as at issue in this matter, where such a restriction is not evident from the context of the statute, where the plain wording of the statute is permissive not prohibitive, and, most importantly, where the express statutory language limits its applicability to counties *without* planning commissions, not counties *with* planning commissions as is present in this matter. There is no ambiguity in the statutory language of this statute. By its terms, it is a permissive statute.

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<sup>1</sup> The majority opinion correctly observes that a county's authority to act is not dependent upon W.Va. Code 7-1-3jj(b) (2002) alone, and may exist elsewhere in West Virginia law.

The Legislature chose its words carefully. W.Va. Code 7-1-3jj(b) (2002) reads, “In the event a county has *not* created . . . a planning commission . . ., a county commission *may* . . .”. [Emphasis added.] The majority decision now effectively has rewritten the statute to read, “In the event a county *has* created . . . a planning commission . . ., a county commission *may not* . . .”. In doing so, the majority decision, under the banner of statutory interpretation, has now turned a permissive statute into a prohibitive statute.

I would answer the certified question in the negative. W.Va. Code 7-1-3jj(b) is, in my opinion, only relevant to situations where a county has not created a planning commission. From its plain wording, it is not applicable to situations, as here, where a county has created a planning commission.