IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 24-105

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Stafford Glenn Poff,
Sheria Maynard,
Travis Williamson,
Chris Booton,
Sean Johnson,
Chester Maynard,
James Ward,
Paul Baker,
Aaron Farley,
Wade R. Wellman, and
Nathan Triplett,

Plaintiffs Below, Petitioners,

vs.

Wayne County Commission,

Defendant Below, Respondent.

Lower Court: Circuit Court of Wayne County West Virginia
Case Nos. 19-C-31, 19-C-56, 19-C-57, 19-C-60, and 19-C-61

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

CERTIFIED QUESTION PRESENTED 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

SUMMARY OF ARGUMENT 4

STATEMENT REGARDING ORAL ARGUMENT AND DECISION 6

ARGUMENT 6

I The Circuit Court correctly answered the first Certified Question in the negative; the Wayne County Commission's former written policy and practice of subsidizing retiree health insurance premiums did not create a vested right to or a property interest in retiree health insurance benefits for Petitioners. 6

A. The Commission's former policy regarding the payment of retiree health insurance premiums is unquestionably a discretionary policy. 9

B. No contractual obligation requires the Commission to subsidize retiree health insurance premiums. 11

C. Petitioners have no contract rights to pay retiree health insurance premiums under article III, section 4 of the West Virginia Constitution by virtue of the Commission's discretionary policy. 13

D. Petitioners have no property interest in paid retiree health insurance premiums stemming from the Commission's discretionary policy. 16

II As a matter of law, Petitioners may not proceed with their claims for detrimental reliance, false and misleading statements, unjust enrichment, quantum meruit and breach of contract to enforce the Commission's former written policy and practice of paying a percentage of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50 20

A. West Virginia Code § 7-5-20 requires retirees to pay their own health insurance premiums, and the Commission has no authority to act contrary to the statute. 20

B. West Virginia Code § 11-8-26 prohibits the Commission from incurring financial obligations extending beyond one fiscal year, and any policy providing

for the payment of health insurance premiums throughout Petitioners' retirement was void as a matter of law. 23

CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Berkeley County Commission v. Shiley, 170 W. Va. 684, (1982) 20
Board of Regents v. Roth, 408 U.S. 564 (1972) 17, 18, 20
Boggess v. City of Charleston, 234 W. Va. 366 (2014) ..... passim
Booth v. Sims, 193 W. Va. 323 (1994) 4, 5, 14
Citynet, LLC v. Toney, 235 W. Va. 79, (2015) 11, 12
Collins v. City of Bridgeport, 206 W. Va. 467 (1999) ..... passim
Dadisman v. Moore, 181 W. Va. 779 (1988) 14
Darlington v. Mangum, 192 W. Va. 112 (1994) 21, 22
Ireland v. BOE of Kanawha County, 115 W. Va. 614, 616 (1934) 24
Marshall v. City of Huntington, No. 19-0973, 2020 W. Va. LEXIS 819 (W. Va. Dec. 7, 2020) 15, 16
Meador v. County Court of McDowell County, 141 W. Va. 96 (1955) 24
Minor v. City of Stonewood, 2014 W. Va. LEXIS 473, *8-9 (2014) (Memorandum Decision) .. 24
State ex rel. State Line Sparkler v. Teach, 187 W. Va. 271 (1992) 20
State v. General Daniel Morgan Post, V.F.W., 144 W. Va. 137 (1957) 23
Summers v. West Virginia Consolidated Public Retirement Board, 217 W. Va. 399 (2005) 14
Thompson v. Stuckey, 171 W. Va. 483 (1983) 13
Waite v. Civil Service Comm'n, 161 W. Va. 154 (1977) 16, 17

Statutes

W. Va. Code § 11-8-26 ..... passim
W. Va. Code § 21-5A-1 3
W. Va. Code § 55-1-1(f) 13
W. Va. Code § 7-14-17(a) 21
W. Va. Code § 7-5-20 ..... passim

Other Authorities

2 Corbin on Contracts § 6.2 12

Rules

Rule 20, W. Va. R.A.P 6

CERTIFIED QUESTION PRESENTED

The Circuit Court of Wayne County, West Virginia (hereinafter "circuit court") certified the following questions for consideration by the Supreme Court of Appeals of West Virginia:

> 1. Whether [the Wayne County Commission's] former written policy and practice of paying ninety percent (90%) of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50 created a vested right to retiree health insurance benefits for [Petitioners].
>
> ____ Yes
>
> __X__ No
>
> 2. Whether [Petitioners] may proceed with claims sounding in detrimental reliance, false and misleading statements, unjust enrichment, quantum meruit and breach of contract to enforce [the Wayne County Commission's] former written policy and practice of paying a percentage of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50.
>
> __X__ Yes
>
> ____ No

See February 13, 2024, Order Granting Joint Motion to Certify, JA-000189.

The circuit court answered the first question in the negative and the second question in the positive. The circuit court also found "that these issues present a matter of first impression in West Virginia and that there is no clear controlling West Virginia precedent to guide its decision." *Id*., JA-000191.

The circuit court properly answered the first Certified Question, and this Court should affirm that ruling. But, as Respondent Wayne County Commission ("Commission") explains below, the circuit court erred in answering the second Certified Question.

STATEMENT OF THE CASE

This case concerns five separate causes of actions pending against the Wayne County Commission in which Petitioners claim an alleged right to subsidized retiree health insurance premiums for their lifetimes.[1] Petitioner Stafford Glen Poff sued the Commission in Civil Action Number 19-C-31 alleging, among other things, claims of unjust enrichment, quantum meruit, and breach of contract. JA-000007-14. Petitioners Travis Williamson, Chris Booton, Sean Johnson, Chester Maynard, James Ward, Paul Baker, and Aaron Farley filed an identical complaint against the Commission in Civil Action Number 19-C-57, and Petitioners Wade Wellman and Nathan Triplett each filed the same complaint against the Commission in Civil Action Nos. 60 and 61, respectively. JA-001029-1036, JA-001104-1110, JA-001255-1261. Petitioner Sheria Maynard likewise filed a complaint against the Commission in Civil Action No. 19-C-56. JA-000204-217. Relevant to Certified Questions before this Court, her complaint contained the additional counts of detrimental reliance and false and misleading statements. *Id.*

On July 8, 2019, the Commission filed Partial Motions to Dismiss in the Maynard, Wellman, and Triplett matters which the Circuit Court denied in an Order dated September 25, 2020. JA-00235-259, JA-000325-328, JA-001125-1146, JA-001276-1297. The Commission filed a Motion for Summary Judgment in the Maynard case on April 7, 2022. Petitioners Williamson, Booton, Johnson, Maynard, Ward, Baker, and Farley moved to intervene in the Maynard case on April 26, 2022. JA-000863-864. The circuit court granted that Motion and heard argument on the Commission's Motion for Summary Judgment in Maynard on August 3, 2022. JA-000888-890.

[1] All five cases were filed in the Circuit Court of Wayne County and were ultimately reassigned to Judge Gregory Howard with the Circuit Court of Cabell County.

On August 1, 2022, the Commission filed a Motion for Summary Judgment in the Poff case. JA-000036-124. The circuit court heard argument on that Motion on October 17, 2022. JA-000137. In an Order dated January 19, 2023, the circuit court consolidated Wayne County Civil Action Nos. 19-C-31, 19-C-56, 19-C-57, 19-C-60, and 19-C-61 for trial, and scheduled trial for June 27, 2023. JA-000159-162. On May 2, 2023, the circuit court issued an Amended Scheduling Order resetting the trial for October 17, 2023. JA-000164-165.

The parties filed a Joint Motion to Stay Proceedings on September 14, 2023 and informed the circuit court of their intent to file a Joint Motion to Certify Questions.[2] JA-000167-170. On September 18, 2023, the circuit court granted the Joint Motion and entered an Order staying the proceedings. JA-000172-174. The parties filed their Joint Motion to Certify Questions on October 26, 2023. JA-000176-186. On February 13, 2023, the circuit court entered the Order Granting Joint Motion to Certify. JA-000172-174.

STATEMENT OF FACTS

The Commission adopts the statement of facts set forth in the circuit court's Order Granting Joint Motion to Certify. JA-000188-193. The Commission also provides additional information from the record.

In 2011, the Commission implemented a retiree health insurance policy applicable to employees hired before July 1, 2011. JA-000388-392, ¶¶ 7-9. The Commission discussed the program at regular meetings on July 25, 2011, August 22, 2011, and September 26, 2011. JA-000388-392, ¶¶ 5-7; JA-000395-403. Neither Ms. Maynard nor any other deputy sheriff attended the Commission meetings. JA-000395-403. The meeting minutes show that the rationale for the

[2] When the parties filed their Joint Motion to Stay, they also advised the circuit court of their intent to settle the other part of the Petitioners' claims filed under the West Virginia Wage Payment and Collection Act, W. Va. Code § 21-5A-1, *et seq*. *See* JA-000167-170.

new retiree program was to help pay health insurance premiums for county employees who would not be covered by PEIA retiree health insurance – evidence that a prior policy providing for retiree health insurance, if any, was a PEIA benefit not a benefit provided by the Commission. JA-000388-392, ¶ 5; JA-000395-397.

The 2011 policy provided for the Commission to pay differing portions of the health insurance premiums for retirees based on their years of service. JA-000404-406. For employees who retired at age 50 with 20-24 years' service, the policy provided that the Commission would pay 90% of the health insurance premiums. *Id.*

In 2017, the Commission was forced to reassess this policy due to financial constraints. JA-000377; JA-000427-428. At a March 27, 2017 meeting, the County Commissioners unanimously voted to raise the age for retirement with paid health insurance premiums from 50 to 60 years and to end eligibility once retirees became eligible for Medicare. JA000390, ¶ 10; JA-000409-415. All employees including Plaintiff, Sheria Maynard, were provided notice of the new policy in a memorandum dated April 10, 2017. JA-000391, ¶ 11; JA-000412-415. The policy changes went into effect on May 1, 2017. JA-000413. These policy changes affected all Commission employees equally and were not unique to Petitioners. JA 000385-386.

SUMMARY OF ARGUMENT

Petitioners claim that they have a vested right to the lifetime payment of retiree health insurance premiums at the expense of the Commission. They premise this claim on the Commission's 2011 written policy providing that Wayne County deputy sheriffs could retire at age 50, after working 20 to 24 years, and receive health insurance with 90% of the premium cost paid by the Commission. Relying on *Booth v. Sims*, 193 W. Va. 323 (1994), Petitioners erroneously characterize subsidized retiree health insurance premiums as "deferred compensation" and argue that health insurance premiums must be treated the same as public employee pensions.

But Petitioners ignore key differences between pensions and health insurance benefits, *e.g.*, money is expected to be put away to fund pension systems and "*all* employees who contribute to a state pension fund and who have substantially relied to their detriment on specific contribution and benefits schedules have immediate legitimate expectations that rise to the level of constitutionally protected contract property rights." *See Booth, supra*, at Syl. Pts. 1, 18 (emphasis in the original). In contrast, the Commission is not required to provide health insurance benefits for regular employee or retirees, and by law, retirees may continue to participate in a commission's group health insurance program only if they pay "***the entire premium*** for the coverage involved." *See* W. Va. Code § 7-5-20 (emphasis added). In the absence of a contract, such as a collective bargaining agreement, obligating the Commission to pay Petitioners' retiree health insurance premiums, paid premiums are not earned and vested benefits. The former Commission policies that called for the payment of retiree health insurance premiums were merely discretionary personnel policies and with notice, could be modified for any reason so long as the Commission provided notice to Petitioners.

Further, as noted above, in W. Va. Code § 7-5-20, the Legislature prohibited the Commission from offering a program that subsidizes any portion of its retirees' health insurance premiums: "When a participating officer or employee shall retire from his office or employment, he may, if he so elects and the insurance carrier or carriers agree, remain a member of the group plan ***by paying the entire premium for coverage involved***. *Id.* (Emphasis added). And, under W. Va. Code § 11-8-26, it is unlawful for the Commission to commit to expenditures "in excess of the funds available for current expenditures." Assuming, *arguendo*, that the Commission and Petitioners contracted for the payment of retiree health insurance premiums, any such contracts violated both W. Va. Code §§ 7-5-20 and 11-8-26 and were void as a matter of law.

The circuit court correctly answered the first Certified Question, determining that Petitioners have no vested right to the payment of retiree health insurance premiums based on the Commission's former written policy. But under West Virginia law, any alleged contracts for the payment of Petitioners' retiree health insurance premiums were void as a matter of law. It necessarily follows that where no breach of contract claim could possibly lie, quasi contractual theories of relief do not lie. As such, this Court should hold that the circuit court erred in answering the second Certified Question in the affirmative and likewise hold that Petitioners may not pursue their claims for breach of contract, detrimental reliance, false and misleading statements, unjust enrichment, and quantum meruit against the Commission.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Commission requests an oral argument under Rule 20, W. Va. R.A.P. because this case involves questions of first impression under West Virginia common law and statutory law, and, therefore, oral argument would significantly aid the decisional process for this Court.

ARGUMENT

I. The Circuit Court correctly answered the first Certified Question in the negative; the Wayne County Commission's former written policy and practice of subsidizing retiree health insurance premiums did not create a vested right to or a property interest in retiree health insurance benefits for Petitioners.

As the Order Granting Joint Motion to Certify sets out, the Commission created a written policy in 2011 providing that deputy sheriffs could retire at age 50 and receive health insurance, with 90% of the health insurance premium cost paid by the Commission after they worked for the Commission for 20 to 24 years and 100% of the health insurance premium cost for deputies who retired at the age of 50 after working 25 years. JA-000189. The Commission's March 20, 2017, meeting minutes reflect that the Commission voted to make changes to the county's health insurance coverage for active employees and for retirees:

> Motion by Commissioner Pennington seconded by Commissioner Adkins that effective May 1, 2017 the Retirement Benefits' healthcare coverage will change. These changes include: 1). Retirement age with benefits for employees raised to age 60; 2). Commission will pay 100% of health benefits for retirees and 50% of benefits for spouses; and 3). Commission will only provide health benefits until the age of 65 at which time retirees must switch to Medicare. The Commission will continue to pay Supplement Plan F. Unanimous vote.
>
> Motion by Commissioner Pennington seconded by Commissioner Adkins to change the health insurance plan coverage for employees. These changes include: 1). Pay 100% of coverage for individual employees and require employees with a family plan to pay $200.00 per month; 2). Choose option 4, as presented by Bob Crabtree, Benefit Design Group, which will raise the current individual/family deductible to $1,500.00/$3,000.00 and individual/family co-insurance limits to $3,000.00/$6,000.00; and 3). Adopt changes in the prescription drug coverage which includes a new category to address specialty dugs as well as make provisions for mail order drugs. Unanimous vote.

JA-000410-411. These changes included the issue at the heart of Petitioners' case – raising the age at which the Commission would pay any portion of retiree health insurance premiums from age 50 to 60. On April 10, 2017, the Commission included with employee paystubs a memorandum advising all county employees of the policy changes. JA-000391, ¶ 11; JA-000413-414. The new retiree health insurance premium policy went into effect on May 1, 2017. JA-000410-411.

Petitioners erroneously equate the payment of retiree health insurance premiums to a public employee's right to retirement benefits. But this case involves the Commission's previous policy and practice to pay retiree health insurance premiums, not a state law and not pension benefits, and this Court has never held that public employees can acquire a Constitutional contract right or property interest in health insurance benefits or health insurance premiums. The applicable

authorities are *Collins v. City of Bridgeport*, 206 W. Va. 467 (1999) and *Boggess v. City of Charleston*, 234 W. Va. 366 (2014).

Collins, *supra*, stands for the proposition that a public employer may modify or revoke long-held policies that created express or implied contract rights, provided it notifies its employees of the change. *Id.* at Syl. Pt. 2. In *Collins*, Bridgeport police officers challenged the city's decision to alter its long-held policy of including vacation pay, compensation time, and sick pay in the calculation of overtime. This practice had been ongoing for over 20 years, and due to budget constraints, the city decided to delete the hours for these items from any overtime calculation. The officers argued that they had a contract right to continued payment of the overtime as it had been previously calculated. The Court flatly rejected the officers' theories reasoning:

> The appellants challenge the modification in the policy regarding the calculation of overtime pay on three grounds. First, the appellants assert that an employment contract by a government employer is protected by the contract clause of article III, section 4 of the West Virginia Constitution, so that a government employer cannot alter employees' contractual rights without providing just compensation to the employees. . . . [T]he contract clause prohibits the passage of a statute or law which impairs the obligation of an existing contract. . . . ***We simply do not believe a government employer's unilateral modification of a discretionary personnel policy constitutes the impairment of a contract under article III, section 4 of our Constitution.***
>
> Second, the appellants assert that Bridgeport's past practice of the calculation of overtime pay and the police officers' reliance on this practice create a contract between the city and its police officers that cannot be unilaterally modified by Bridgeport without the payment of just compensation to the police officers. . . . We have . . . said, however, that, an employer may modify or revoke prior personnel manuals or policies that have created express or implied contract rights as to job security and establish in a subsequent personnel manual or policy that the employment is one at-will. When such a change is made, the employer must give reasonable notice of the change to the employees.
>
> . . .

> ***Bridgeport, like a private employer, is free to promulgate a policy and subsequently modify that policy as long as employees are given reasonable notice of the modification.***
>
> Third, the appellants contend that the long-held past practice at issue is a property right which may not be taken by a government employer without due process.
>
> . . .
>
> [W]e are aware of no statute or local law which grants to Bridgeport police officers a property interest in having time compensated but not actually worked included in the calculation of overtime pay. ***Rather, this method of calculating overtime pay was a personnel policy of Bridgeport which was practiced over a period of time at the City's discretion***. . . .We find, therefore, that Bridgeport's modification of its long-held policy regarding the calculation of overtime pay of municipal police officers was permissible.

Id. at 475-77 (emphasis added) (internal citations and footnotes omitted).

Boggess, *supra*, expanded upon *Collins* to hold:

> In the absence of a contractual obligation providing otherwise, a public employer is permitted to unilaterally modify a longstanding policy affecting the rights of employees where notice is provided to such employees and where the modification of policy does not retroactively impair previously earned and vested rights, such as pension benefits.

Id. at Syl. Pt. 4. Analyzing the first Certified Question under *Collins* and *Boggess,* it is clear that the Commission was free to modify its policy, and Petitioners have no vested rights to retiree health insurance benefits or premiums based upon the Commission's former policy.

A. The Commission's former policy regarding the payment of retiree health insurance premiums is unquestionably a discretionary policy.

The Commission's authority to provide health insurance benefits for its employees is governed by statute. W. Va. Code § 7-5-20 provides:

> Every county through its county court [county commission] shall have **plenary power** and authority to negotiate for, secure and adopt for the officers and **regular employees** thereof . . . a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this

> State and covering life; health; hospital care; surgical or medical diagnosis, care and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the county court bear a reasonable relationship to the foregoing coverages. . . .

Id. (Emphasis added.) The statue permits, but does not require, county commissions to pay all or any portion of health insurance premiums for its regular employees:

> The county court [county commission] is hereby authorized and empowered to pay the entire premium cost, or any portion thereof of said group policy or policies. . . .

As for retirees, W. Va. Code § 7-5-20 states:

> **When a participating officer or employee shall retire** from his office or employment, **he may**, if he so elects and the insurance carrier or carriers agree, **remain a member of the group plan by paying *the entire premium* for coverage involved**.

Id. (Emphasis added.) As the Commission has plenary power to create health insurance programs under W. Va. Code § 7-5-20, the Commission likewise has the authority to change the terms of those programs as it sees fit. *Id.* The Commission is not required to offer group insurance programs at all, and it offers health insurance benefits to its employees at its sole discretion. *Id.*

Petitioners argue that the Commission was not permitted to change the policy as applied to them because:

- The policy was a unilateral contract that Petitioners' continued service was the consideration;
- the payment of retiree health insurance premiums is protected by the contract clause of article III, section 4 of the West Virginia Constitution; and
- they have a property interest/legitimate claim of entitlement in the Commission's paying their retiree health insurance premiums.

Brief of Petitioners, pp. 20-22, 24. The Commission addresses these arguments in turn.

B. No contractual obligation requires the Commission to subsidize retiree health insurance premiums.

Petitioners here claim that a contractual obligation exists between themselves and the Commission which requires the Commission pay 90% of Petitioners' health insurance premiums after they work 20 to 24 years and reach the age of 50 years.[3] Petitioners have never alleged that they have written contracts with the Commission, and there is no union or collective bargaining agreement. Instead, Petitioners claim that a binding unilateral contract for the payment retiree health insurance premiums was created by sheer fact of their working for the Commission. Brief of Petitioners, pp. 20-22. They cite to *Citynet, LLC v. Toney*, 235 W. Va. 79, 84 (2015) for this proposition. Petitioners are wrong, and *Citynet* is inapposite.

Citynet, *supra*, concerned the employer's promise to pay a bonus to an employee under the terms of a written employee incentive plan with the stated purpose of "creat[ing] incentives which are designed to motivate Participants . . . and to enable the Company to attract and retain experienced individuals who . . . make important contributions to the Company's success." *Id.* at 82. Citynet advised Mr. Toney in writing that he was 100% vested in the incentive plan and that his balance in the Plan was $42,933.73. *Id.* In the written plan, Citynet "expressly stated that '[w]hen an employee leaves Citynet, the employee is entitled to 'cash out' his or her entire vested balance[.]'" *Id.* Citynet later advised Mr. Toney that his vested balance was $87,000.48. When Mr. Toney resigned, Citynet denied him 80% of his vested balance. *Id.* Mr. Toney sued Citynet,

[3] Petitioners assert that in proceedings below, the Commission "agreed" that Petitioner Sheria Maynard worked for the Commission under an implied contract of employment. Brief of Petitioner, p. 23. The Commission addressed the notion of an implied contract of employment only in the context of arguing the applicable statute of limitations of Petitioners' now-settled and dismissed claims under the salary increment statute, W. Va. Code § 7-14-17c. *See* JA-000516-517. (Petitioners' cite is incorrect.) The Commission does not now agree, nor has it ever agreed, that it had an express or implied contractual obligation to pay Petitioners' future retiree health insurance premiums.

and the case made its way to this Court after the circuit court granted Mr. Toney's motion for partial summary judgment and concluded that Mr. Toney was entitled to payment of his entire vested balance.

This Court recognized the incentive plan as a unilateral contract observing that "Citynet benefitted by attracting and retaining employees who desired to participate in the Plan, which is Citynet's expressed purpose for establishing the plan." *Id.* at 86. As Petitioners pointed out, this Court was influenced by a *Corbin on Contracts'* explanation of unilateral contracts:

> The . . . unilateral contracts analysis is applicable to the employer's promise to pay a bonus . . . to an employe in case the latter continues to serve for a stated period. . . . There is no mutuality of obligation, but there is consideration in the form of services rendered. The employee's one consideration, rendition of services, supports all of the employer's promises, to pay . . . the bonus.

Id. (citing 2 Joseph M. Perillo & Helen Hadjiyannakis Bender, *Corbin on Contract* § 6.2, at 214 (rev. ed. 1995) (footnotes omitted)).

The full passage in *Corbin* addresses "the employer's promise to pay a bonus *or pension* to an employee in case the latter continues to serve for a stated period. It is now recognized that these are not pure gratuities but compensation for services rendered." 2 Corbin on Contracts § 6.2 (2024) (footnotes omitted) (emphasis added). The same cannot be said for health insurance benefits, the cost of which bears no relation to the value of services rendered to the employer by the employee. And, Petitioners' attempt to characterize the Commission's payment of their future retiree health insurance as "deferred compensation" is unsuccessful.

County Administrator James E. Boggs averred in his affidavit below that the Commission's group health insurance costs change each year, and each year the Commission must determine whether it can afford the cost of the group plan proposed by the carrier. JA-000388-392, ¶¶ 13-14. Health insurance premiums are simply not the same as a bonus based on an established formula.

Petitioners' continued employment as deputy sheriffs was not consideration that created a unilateral contract requiring the Commission to pay Petitioners' retiree health insurance premiums in perpetuity.

To the extent that Petitioners' brief may be construed as arguing an oral contract for the payment of retiree health insurance premiums, this argument fails as well. *See* Brief of Petitioners, pp. 8-9, 16-17. An agreement that is "not to be performed within a year" must be "in writing and signed by the party to be charged thereby or his agent." W. Va. Code § 55-1-1(f). A contract is outside of the statute of frauds only if "under the terms of which the whole performance is possible within a year from the date the contract was entered into." Syl. Pt. 1, *Thompson v. Stuckey*, 171 W. Va. 483 (1983) (citing *Jones v. Shipley*, 122 W. Va. 65 (1940)).

Here, the alleged contracts Petitioners assert could not possibly be performed within one year because they were purportedly for health insurance premiums after Petitioners retired. Petitioners claimed that the Commission breached the supposed contracts after "almost two (2) decades." Brief of Petitioners, p. 12. Thus, there is no possibility that the alleged contracts could have been performed within one year's time and any such alleged contracts must have been in writing. Because Petitioners have no such contracts in writing, Petitioners' breach of contract claims fail as a matter of law for this reason as well.

C. Petitioners have no contract rights to pay retiree health insurance premiums under article III, section 4 of the West Virginia Constitution by virtue of the Commission's discretionary policy.

In *Collins*, *supra* at 475, this Court recognized that there are no cases "in which the contract clause is held to be implicated when a government employer modifies an employment policy which was originally promulgated by the government employer at its own discretion." The Court went on to hold definitively, "We simply do not believe a government employer's unilateral

modification of a discretionary personnel policy constitutes an impairment of a contract under article III, section 4 of our Constitution." *Id.* Petitioners point to no precedent since *Collins* to hold otherwise. Instead, devoid of support, they declare the payment of health insurance premiums to be "deferred compensation" akin to pension benefits. *See* Brief of Petitioners, p. 25 (citing *Booth*, *supra* at 340).[4]

Petitioners' reliance upon *Booth* is completely misplaced. In *Booth*, the Court stated:

> [W]e held in *Dadisman* [*v. Moore*, 181 W. Va. 779 (1988)], that "retired and *active* PERS plan participants have contractually vested property rights ***created by the pension statute***, and such property rights are enforceable and cannot be impaired or diminished by the State." Syl. Pt. 16, *Dadisman* [Emphasis added].

193 W. Va. at 335 (emphasis added). As *Collins* highlighted, "the contract clause prohibits the passage of a statute or law which impairs the obligation of an existing contract." *Collins*, *supra* at 475. Further, in *Summers v. West Virginia Consolidated Public Retirement Board*, 217 W. Va. 399 (2005), this Court rejected retired teachers' *Booth*-based argument that they had contract rights in the county school board's inclusion of accrued vacation pay in their final year salary calculations to increase the amount of their pension benefits:

> *Booth*[, *supra*,] concerned substantive amendments to existing provisions governing the state troopers' pension system[.] . . . In contrast . . . the Teacher Retirement System pension plan never contained a provision permitting the inclusion of lump-sum vacation pay in employees' final year salary calculations for the purpose of determining retirement benefits.

[4] In their discussion, Petitioners generally muddle the concepts of Constitutional contract rights and property interests as though they are interchangeable. They are not, and so the Commission discusses each concept separately.

Summers, *supra* at 405. Plainly, there is a crucial difference between the pension benefits addressed in *Booth* and *Dadisman* and claimed contract right here, *i.e.*, there is no law or statute requiring the Commission to pay retiree health insurance premiums.

In fact, the only applicable statute provides the opposite of what Petitioners seek. Under W. Va. Code § 7-5-20, ***the retiree must pay the entire premium*** to remain a member of the group health insurance plan. Petitioners cannot identify any other provision of the West Virginia Code that supports their claim of entitlement to the payment retiree health insurance premiums by a county commission. This Court should reject Petitioners' argument that they have constitutionally protected contract rights to paid retiree health insurance premiums by virtue of the Commission's previous discretionary policy.

This Court's recent *per curiam* opinion in *Marshall v. City of Huntington*, No. 19-0973, 2020 W. Va. LEXIS 819 (W. Va. Dec. 7, 2020), supports this result. There, the Court decided issues similar to those presented in the first Certified Question: (1) whether health insurance benefits were vested under a contract; and (2) whether the petitioner had earned and vested rights to a lifetime of unchanged retiree health insurance benefits under a public employer's policy. With respect to the "vesting" aspect, this Court affirmed the circuit court's order which, in line with a number of out of state cases, held that retired Huntington firefighters have no vested rights to unchanged health insurance benefits:

> Citing a litany of out of state authority, respondents assert that other courts have held that retired firefighters, police officers, and other public employees have no vested rights to unchanged healthcare benefits, which is what the circuit court found below. For many of the same reasons addressed in petitioner's first assignment of error, we find that the circuit court did not err in finding that the City was "permitted to unilaterally modify a longstanding policy affecting the rights of employees where notice is provided to such employees and where the modification of policy does not retroactively impair

> previously earned and vested rights, such as pension benefits." Syl. Pt. 4, in part, *Boggess* at 368, 765 S.E.2d at 257.

Marshall, *supra* at *21-22. Accordingly, under this Court's precedent, in the absence of a statute or law providing for the payment of retiree health insurance premiums, Petitioners have no contract right to Commission-paid retiree health insurance premiums.

D. Petitioners have no property interest in paid retiree health insurance premiums stemming from the Commission's discretionary policy.

As discussed above, there is nothing to distinguish the question before the Court from the type of discretionary policy modification approved in *Collins* but for Petitioners' bald claim that they have "earned and vested rights" in the Commission's former policy to pay retiree health insurance premiums. *See Boggess* at Syl Pt. 4. Petitioners say they have a legitimate claim of entitlement to paid retiree health insurance premiums under the former policy because: (1) the Commission had a written policy; (2) they worked for the Commission for 15-19 years expecting to retire after 20 years with their health insurance premiums paid; (3) the Commission modified the policy; and (4) now they have to pay their own health insurance premiums if they retire before the age of 60. Brief of Petitioners, pp. 15, 24. Citing no on-point authority, Petitioners argue that "[a] written policy to provide retiree health benefits can be a vested right." *Id.*, p. 24. Petitioners try to rely on this Court's decision in *Waite v. Civil Service Comm'n*, 161 W. Va. 154 (1977) (overruled, in part, on other grounds by *W. Va. Dep't of Educ. v. McGraw*, 239 W. Va. 192 (2017)), but the syllabus point they quote is taken completely out of context. In *Waite*, the Court held:

> A "property interest" includes not only the traditional notions of real and personal property, but also extends to those benefits to which an individual may be deemed to have a legitimate claim of entitlement under existing rules or understandings.

Id. at Syl. Pt. 3.

Waite was a due process case wherein this Court addressed whether a civil service employee had a property interest in uninterrupted employment that entitled her to a hearing after she was suspended without pay. In considering whether the employee had a property interest, the Court cited from *Board of Regents v. Roth*, 408 U.S. 564 (1972):

> It is clear from the Supreme Court decision in *Roth*, *supra*, that the Constitution protects property interests beyond the traditional concept of real or personal property. The Court indicated that a benefit which merits protection as a property interest must be one to which there is more than a "unilateral expectation." 408 U.S. at 577, 33 L. Ed. 2d at 561, 92 S. Ct. at 2709. Rather, there must exist rules or understandings which allow the claimant's expectations to be characterized as "a legitimate claim of entitlement to [the benefit]." *Ibid.*

Waite, supra at 160-61. *Waite's* Syllabus Point 3 was derived from this discussion of *Roth*.

The cited portions of *Roth* provide context to the types of "rules and understandings which allow [the Petitioners'] expectations to be characterized as 'a legitimate claim of entitlement to [the payment of health insurance premiums].'" *Id.* In *Roth*, the Supreme Court of the United States found:

> The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests -- property interests -- may take many forms.
>
> Thus, the Court has held that a person receiving welfare benefits under statutory and administrative standards defining eligibility for them has an interest in continued receipt of those benefits that is safeguarded by procedural due process. *Goldberg v. Kelly*, 397 U.S. 254. *See Flemming v. Nestor*, 363 U.S. 603, 611. Similarly, in the area of public employment, the Court has held that a public college professor dismissed from an office held under tenure provisions, *Slochower v. Board of Education*, 350 U.S. 551, and college professors and staff members dismissed during the terms of their contracts, *Wieman v. Updegraff*, 344 U.S. 183, have interests in continued employment that are safeguarded by due process. Only last year, the Court held that this principle "proscribing summary dismissal from public employment without hearing or inquiry

> required by due process" also applied to a teacher recently hired without tenure or a formal contract, but nonetheless with a clearly implied promise of continued employment. *Connell v. Higginbotham*, 403 U.S. 207, 208.
>
> Certain attributes of "property" interests protected by procedural due process emerge from these decisions. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.
>
> Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Roth, *supra* at 577.

This Court has held similarly. "[A]lthough the Constitution protects property interests, it does not create them. To decide whether plaintiff has a property interest at stake, we look to see whether some independent source such as federal, state, or local law, has created an enforceable expectation." *Collins*, *supra* at 476 (citing *Hutchison v. City of Huntington*, 198 W. Va. 139, 154 (1996) (footnote omitted)). A party claiming a protected property interest must have a *reasonable* expectation of entitlement. *Id.* (citing Syl. Pt. 6, *State ex rel. Anstey v. Davis*, 203 W. Va. 538 (1998)).

Petitioners' claims to paid health insurance premiums do not stem from any federal state, or local law. They likewise are not comparable to "welfare benefits under statutory and administrative standards defining eligibility;" a tenured professorship; employment under a contract; or public employment. *See Roth*, *supra* at 577. Nor are they comparable to public

employee retirement benefits created by pension statutes. *See Boggess*, *supra*; *Dadisman*, *supra*. Their interests in paid retiree health insurance premiums, and the dimensions of those interests, are not "defined by existing rules that stem from an independent source such as state law." *Id.* Petitioners' interests in paid retiree health insurance premiums simply do not stem from any "rules or understandings that secure certain benefits." Thus, it clear that Petitioners have no legitimate claim of entitlement to paid health insurance premiums under any federal, state, or local law.

First, the state law governing health insurance for county commissions' employees is crystal clear with respect to retirees' "entitlement to benefits." *See* discussion of W. Va. Code § 7-5-20, *supra*. They may remain members of the group plan by paying the entire premium for coverage. Simply put, Petitioners have not identified any basis to support a "legitimate claim of entitlement under existing rules or understandings."

Second, there are no "existing rules or understandings that stem from an independent source such as state law" that define the "dimensions" of Petitioners' alleged entitlement to paid retiree health insurance benefits. The Commission funds health insurance benefits on a year-to-year basis. JA-000391, ¶ 12. Each year the Commission receives a renewal acceptance agreement from its group insurance carrier which sets forth any changes to the plan for the coming year including changes in cost of benefits. *Id.*, ¶ 13. The Commission does not know from one year to the next whether it will be able to afford the same level of health insurance benefits from the previous year. *Id.*, ¶ 13-16. As the Commission has plenary power to create health insurance programs under W. Va. Code § 7-5-20, the Commission likewise has the authority to change the terms of those programs as it sees fit. *Id.* The Commission is not required to offer group health insurance programs at all. *See id.* Nothing in W. Va. Code § 7-5-20 defines the dimensions of retiree health insurance benefits to the extent Petitioners assert.

Petitioners' "unilateral expectations" and "abstract need or desire" for Commission-paid retiree health insurance premiums based on the Commission's prior discretionary policy do not translate into a reasonable or legitimate claim of entitlement. *See Roth*, *supra* at 577; *Collins*, *supra* at 476. This Court should find that Petitioners have no property interest in paid retiree health insurance premiums and hold that the circuit court correctly answered the first Certified Questions.

II. As a matter of law, Petitioners may not proceed with their claims for detrimental reliance, false and misleading statements, unjust enrichment, quantum meruit and breach of contract to enforce the Commission's former written policy and practice of paying a percentage of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50.

The Commission challenges the circuit court's answer to the second Certified Question determining that Petitioners may proceed with their claims for breach of contract, detrimental reliance, false and misleading statements, unjust enrichment, and quantum meruit. These claims have no footing in the law as the Commission is: (1) prohibited from paying retiree health insurance premiums; and (2) not permitted to incur financial obligations or indebtedness extending beyond one fiscal year. *See* W. Va. Code §§ 7-5-20 and 11-8-26, respectively.

A. West Virginia Code § 7-5-20 requires retirees to pay their own health insurance premiums, and the Commission has no authority to act contrary to the statute.

County commissions possess only those powers expressly conferred upon them by law. Thus, in *Berkeley County Commission v. Shiley*, 170 W. Va. 684, (1982), this Court held that:

> [a] county commission only has powers expressly conferred by the West Virginia Constitution and our State Legislature, or powers reasonably and necessarily implied for exercise of those expressed powers. Syllabus Point 1, *State ex rel. County Court of Cabell County v. Arthur,* 150 W.Va. 293, 145 S.E.2d 34 (1965). It can only do those things that are authorized and only in the manner or mode prescribed by law.

Id. at 685-686. *See also State ex rel. State Line Sparkler v. Teach*, 187 W. Va. 271 (1992). Because W. Va. Code § 7-5-20 requires each retiree to pay the entire health insurance premium if they

desire to extend health insurance coverage into their retirement, any contrary policy established by the Commission was an *ultra vires* act and void *ab initio.*

In a very similar case, *Darlington v. Mangum*, 192 W. Va. 112 (1994), the Raleigh County Commission issued a personnel handbook that indicated that the County would pay 100% of employee health insurance premiums after one year of service. *Id.* at 115. After a budget review, the county commission decided that it would begin charging the deputies a portion of the cost for the health insurance premiums. *Id.* at 113. Several deputies sued the county commission alleging that it had effectively reduced their pay without cause in violation of W. Va. Code § 7-14-17(a).[5] *Id.*

This Court recognized that under W. Va. Code § 7-5-20, county commissions have discretion regarding the provision of health insurance benefits to county employees and have no obligation to provide any health insurance coverage. *Darlington*, *supra* at 114. This Court rejected the deputies' claims and held that the personnel handbook was in violation of state statute to the extent that it purported to make payment of health insurance premiums after one year of service mandatory. *Id.* The Court specifically held that any act or promise by the county commission in contravention of state statute is not binding after reasoning:

> [p]laintiffs also contend that the Commission's Personnel Handbook provides that it will pay 100% of the employee's health insurance cost after the first twelve months of employment. Both Sheriff Mangum and his predecessor, Sheriff England, admitted that they made statements to this effect to deputy sheriffs. Such statements are contrary to the language of W. Va. Code § 7-5-20, which permits the Commission to pay either all or part of its group health insurance premiums. In *Freeman v. Poling*, 175 W. Va. 814, 338 S.E.2d 415 (1985), we discussed at some length the question of whether promises, which were contrary to law, made by public officials when functioning in their governmental capacity were binding. We

[5] This statute provides that a deputy sheriff may not ". . . be removed, discharged, suspended or reduced in rank or pay except for just cause . . . ." *Id.*

> concluded that they were not, as otherwise such promises could override statutory law.

Id at 115. The *Darlington* Court further reasoned that:

> [a] state or one of its political subdivisions is not bound by the legally unauthorized acts of its officers and all persons must take note of the legal limitations upon their power and authority.

Id. (citing Syl. Pt. 3, *Freeman v. Poling*, 175 W. Va. 814 (1985); *Cunningham v. County Court of Wood County*, 148 W. Va. 303, 310, (1964); and Syl. Pt. 2, *West Virginia Public Employees Ins. Bd. v. Blue Cross Hosp. Serv., Inc.*, 174 W. Va. 605 (1985)). Finally, this Court noted that:

> [i]t is unfortunately all too common for government manuals, handbooks, and in-house publications to contain statements that were not meant or are not wholly reliable. *If they go counter to governing statutes . . . . they do not bind the government, and persons relying on them do so at their peril*.

Id. at 812 (emphasis in original).

Applying these cases to the second Certified Question, it is clear that the Commission may only implement policies that are consistent with enactments of the Legislature. West Virginia Code § 7-5-20 is such an enactment, and because the Legislature declared in that section that all retirees must pay the entire premium for health insurance, county commissions have no authority to alter this requirement. Any policy or practice in contravention of W. Va. Code § 7-5-20 is void as a matter of law, and Petitioners' claims that they relied upon the policy to their detriment are unavailing. As this Court observed in *Darlington*, "[a] state or one of its political subdivisions is not bound by the legally unauthorized acts of its officers and all persons must take note of the legal limitations upon their power and authority." *Id.* at Syl. Pt. 3.

Further, there is no ambiguity in W. Va. Code § 7-5-20 as it applies to retirees:

> **When a participating officer or employee shall retire** from his office or employment, **he may**, if he so elects and the insurance carrier or carriers agree, **remain a member of the group plan by paying *the entire premium* for coverage involved**.

Id. (Emphasis added.) Thus, this Court may decline Petitioners' invitation to read into this provision some allowance for the Commission to provide "deferred compensation in the form of an individual health policy at retirement" where the Commission pays some portion of retiree health insurance premiums. Brief of Petitioners, p. 32. "When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute." Syl. Pt. 5, *State v. General Daniel Morgan Post, V.F.W.*, 144 W. Va. 137 (1957). There simply is no statute which "authorizes" counties to provide "individual" health insurance to retirees, and, therefore, the Commission may not take such actions.

In short, W. Va. Code § 7-5-20 is explicit that deputy sheriffs, like all other county employees, are required by law to pay the entire premium for health insurance upon retirement if they wish to participate in a county commission's group health insurance program. The Commission lacks authority to provide any other policy for the payment of retiree health insurance premiums, and all deputy sheriffs including Petitioners are held to know the limitations of the Commission's authority. As a matter of law, no contrary policy, practice, or promise can bind the Commission regardless of what may have been represented to Petitioners. The circuit court erred in answering the second Certified Question in the affirmative.

B. West Virginia Code § 11-8-26 prohibits the Commission from incurring financial obligations extending beyond one fiscal year, and any policy providing for the payment of health insurance premiums throughout Petitioners' retirement was void as a matter of law.

The Commission's prior policy to pay Petitioners' retiree health insurance premiums is void as a matter of law for a second reason because it violates W. Va. Code § 11-8-26. That code section provides as follows:

> **Unlawful expenditures by local fiscal body**. . . . a local fiscal body shall not expend money or incur obligations:
>
> (1) In an unauthorized manner;
> (2) For an unauthorized purpose;
> (3) In excess of the amount allocated to the fund in the levy order; or
> (4) **In excess of the funds available for current expenses**.

Id. (emphasis added).

The Court has repeatedly refused to enforce multi-year employment contracts entered into by cities or counties based upon W. Va. Code § 11-8-26. *See, e.g., Minor v. City of Stonewood,* 2014 W. Va. LEXIS 473, *8-9 (2014) (Memorandum Decision) (*citing Dunbar Fraternal Order of Police v. The City of Dunbar*, 218 W. Va. 239, 243 n.1 (2005)); *See also*, *Ireland v. BOE of Kanawha County*, 115 W. Va. 614, 616 (1934); and *Meador v. County Court of McDowell County*, 141 W. Va. 96 (1955).

In *Meador*, *supra* at 118-19, this Court noted that West Virginia law reflects the:

> unqualified statutory inhibition against the [fiscal body] incurring any 'obligation or indebtedness which such fiscal body is not expressly authorized by law to expend or incur', ***and the general legislative policy limiting all obligations of the [fiscal body] to the levy for the current fiscal year***.

(Emphasis added). The *Meador* Court further noted that W. Va. Code § 11-8-26 requires:

> [t]hat a fiscal body (county court, board of education, council of a municipality) shall not 'make any contract, express or implied, the performance of which, in whole or in part, would involve the expenditure of money in excess of funds legally at the disposal of such fiscal body… for the current fiscal year[.]'

Id. at 119.

This limitation is founded upon public policy. As noted by the Court in *Boggess*, *supra*:

> One of the most important characteristics of our democratic form of government is the authority of our elected officials to make changes mandated by the electorate. The ability of incoming officials to

> change policies, procedures, and even key personnel of their predecessors, allows the incoming officials to implement their own policies, those policies desired by the majority of the public who elected them. To allow a prior government or official to bind his successors by creating contracts or other commitments which extend beyond his term would be contrary to this critical facet of democracy. To be certain, it would be neither practical nor desirable for all government contracts to terminate upon the completion of the term of the officials which made them. Nevertheless, the need for newly elected officials to effectuate change is an important public policy which cannot be ignored by courts interpreting government contracts.

Id. at 375 (citing *Figuly v. City of Douglas* 83 F. Supp. 381, 384 (D. Wyo. 1984)) (footnote omitted).

West Virginia Code § 11-8-26 places limitations on the Commission's ability to commit county funds beyond one fiscal year, and the Commission's former policy cannot create a multi-year obligation for it to fund retiree health insurance premiums in future years and beyond the current administration. For this reason too, the circuit court answered the second Certified Question improperly. Petitioners may not proceed to trial to enforce the Commission's former written policy and practice of paying retiree health insurance premiums by way of their claims of breach of contract, detrimental reliance, false and misleading statements, unjust enrichment, and quantum meruit. The Commission's former policy was contrary to W. Va. § 11-8-26 and void as a matter of law.

CONCLUSION

The Circuit Court correctly answered the first Certified Question in the negative. Under this Court's opinions in *Collins* and *Boggess*, the Commission was free to modify its policy to pay retiree health insurance premiums. The Commission was under no contractual obligation to pay retiree health insurance premiums for Petitioners, and modifying the policy did not retroactively impair Petitioners' previously earned and vested rights. However, the Circuit Court erred in

answering the second Certified Question in the affirmative. Any alleged contracts for the payment of Petitioners' retiree health insurance premiums were void as a matter of law. It necessarily follows that where no breach of contract claim could possibly lie, Petitioners may not pursue claims for quasi contractual theories for relief. The Commission respectfully requests that this Court answer the second Certified Question in the negative by holding that contracts or policies that go counter to governing statutes are void as a matter of law, and Petitioners may not proceed with their breach of contract, detrimental reliance, false and misleading statements, unjust enrichment, and quantum meruit claims against the Commission.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 24-105

Stafford Glen Poff,
Sheria Maynard,
Travis Williamson,
Chris Booton,
Sean Johnson,
Chester Maynard,
James Ward,
Paul Baker,
Aaron Farley,
Wade R. Wellman, and
Nathan Triplett,

Petitioners, Plaintiffs below,

v.

Wayne County Commission,

Respondent, Defendant below.

Lower Court: Circuit Court of Wayne County West Virginia
Case Nos. 19-C-31, 19-C-56, 19-C-57, 19-C-60, and 19-C-61

CERTIFICATE OF SERVICE

I, Sandra Henson Kinney, do hereby certify that the foregoing Respondent's Brief was served this the 29th day of May 2024, on counsel of record for all parties using the File and Xpress system.

/s/ Sandra Henson Kinney
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