

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**MATTHEW L. HARVEY,**  
**Prosecuting Attorney of Jefferson Co., WV**  
**Petitioner,**

v.

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**CIVIL ACTION NO. CC-2023-P-174**

**TRICIA JACKSON and**  
**JENNIFER KROUSE,**  
**Respondents.**

**ORDER**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING  
PETITION FOR REMOVAL FROM OFFICE OF COUNTY COMMISSIONERS  
TRICIA JACKSON AND JENNIFER KROUSE**

On March 26 and 27, 2024, came the Petitioner, the Prosecuting Attorney of Jefferson County, West Virginia, Matthew L. Harvey, Esq., and came the Respondents, Tricia Jackson and Jennifer Krouse, Commissioners of Jefferson County, West Virginia, by Counsel, Traci Wiley, Esq., to hear the Petitioner's evidence regarding the allegations presented in the Petition for Removal in this case. Whereupon, after the Court's consideration of the evidence presented by both Petitioner and Respondents, the testimony of witnesses, the Court's review of the documents and exhibits in evidence, and the whole record, the Court makes the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

1. The Jefferson County Commission consists of five members.
2. Respondent Tricia Jackson took office as a Jefferson County Commissioner on January 1, 2021 and swore an oath to "... faithfully discharge and perform the duties of the

County Commissioner of the Harpers Ferry District to the best of my skill and judgment, and according to law. So help me God.”<sup>1</sup>

3. Respondent Jennifer Krouse took office as a Jefferson County Commissioner on January 1, 2023 and swore an oath to “... faithfully discharge and perform the duties of the County Commissioner of the Shepherdstown District to the best of my skill and judgment, and according to law. So help me God.”<sup>2</sup>
4. The five Commissioners as of January 1, 2023 were Steve Stolipher (Commission President), Jane Tabb, Tricia Jackson, Clare Ath, and Jennifer Krouse.
5. On May 26, 2023 Claire Ath tendered her resignation from the County Commission with an effective date of June 16, 2023<sup>3</sup> [Transcript Page 32 Lines 11-18]. The County Commission then had four members.
6. **Selection of a Replacement Commissioner:** During the June 1, 2023 Commission meeting the County Commission reviewed the Commissioner appointment procedures/requirements in W. Va. Code § 3-10-7 with Counsel. The Commission determined that resumes for interested candidates should be submitted to Deputy County Administrator Cindy Rezmer and County Administrator Makayla Zonfrilli by 5:00 p.m. Friday June 16, 2023. Each Commissioner agreed to independently identify their proposed candidates and ordered a special meeting to be held on Friday, June 23, 2023 to discuss the candidates.

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<sup>1</sup> Petitioner's Exhibit 1

<sup>2</sup> Petitioner's Exhibit 2

<sup>3</sup> Petitioner's Exhibit 3

7. On June 23, 2023<sup>4</sup> the Commission interviewed the following applicants: Keith Lowry, Matthew McKinney, Michael Mood, Isabel Simon and Jack Hefestay. Once the interviews were completed, the following nominations were made:
  - a. Respondent Krouse offered her nomination for Isabel Simon. Mrs. Simon received two votes (Respondents Krouse and Jackson) [Transcript Page 34 Lines 8-10].
  - b. Commissioner Tabb offered her nomination for Matthew McKinney. Mr. McKinney received two votes (Commissioners Tabb and Stolipher) [Transcript Page 34 Lines 8-10].
8. With the vote resulting in a 2-2 tie [Transcript Page 34 Line 2], the matter was referred to the Jefferson County Republican Executive Committee (hereinafter "JCREC") to choose three candidates and present their choices to the Commission pursuant to W. Va. Code § 3-10-7(b) (2022) [Transcript Page 34 Lines 13-15].
9. The names of the three candidates proposed by the JCREC were published in the Agenda Packet for the August 17, 2023 meeting.<sup>5</sup>
10. The four Commissioners appeared at the August 17, 2023 meeting to review the three candidates pursuant to W. Va. Code § 3-10-7 and choose the new fifth Commissioner.<sup>6</sup>
11. During the August 17, 2023 meeting, Respondent Krouse strenuously advocated that Mr. Lowry, one of the three candidates, was an ineligible candidate due to allegedly having a pecuniary interest based on his current position with the Jefferson County Ministries, an organization to which the County Commission contributes money. Respondent Krouse claimed that the three-member list was invalid, because, according to Respondent Krouse, all three members must be valid as of the time they were selected

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<sup>4</sup> Petitioner's Exhibits 5 and 6

<sup>5</sup> Petitioner's Exhibit 9

<sup>6</sup> Petitioner's Exhibits 10 and 11

by the JREC [Transcript Page 38 Lines 16-18, Transcript Page 44 Lines 6-7 and Transcript Page 174 Lines 4-6 and 14-18].

12. Respondent Krouse asserted she had obtained an "ethics opinion" from the Ethics Commission that stated Mr. Lowry was ineligible to serve as Commissioner [Transcript Page 173 Lines 22-23]. Respondent Jackson confirmed that she had seen the opinion.
13. Respondent Krouse did not provide the purported ethics opinion to the other Commissioners [Transcript Page 174 Line 1] or legal counsel prior to the meeting and declined Counsel's request to provide said opinion to the Commission and legal counsel for the County Commission during the meeting. Respondent Krouse insisted that the issue could not be cured and the nomination could not proceed.<sup>7</sup>
14. When Commissioner Stolipher attempted to move forward with the August 17, 2023 meeting, Respondent Krouse stood up and moved to walk out, stating words to the effect that she would not participate in the selection process.
15. Respondent Jackson stated that she concurred with Respondent Krouse's statements and would also leave the meeting if the Commission proceeded to a selection of a new fifth Commissioner. Because two of the four commissioners declared their immediate intent

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<sup>7</sup> See generally (Petitioner's Exhibit 11 - 0:03:13-0:17:45) Legal counsel pointed out in the meeting that ethics opinions are often nuanced and have to be interpreted carefully and in reference to other opinions. Counsel informed the Commission that there were only two criteria for eligibility for the appointment of a new Commissioner, which were (1) that the new Commissioner be of the same political party as the person previously holding the office and that (2) at the time of the appointment has been a member of that political party for at least sixty (60) days prior. The JREC candidates seemed to meet both of the criteria and were therefore eligible. Counsel also suggested alternative solutions.

Respondent Krouse adamantly refused to accept Counsel's advice presenting a possible solution. Respondent Krouse never provided the purported "ethics opinion" to Counsel. When the "ethics opinion" was finally obtained by Counsel from another source, it was proven not to be an actual ethics opinion, but an email from someone employed by the Ethics Commission. The email generally indicated that there may or may not be an issue, and the matter would likely require further review and a formal opinion (Petitioner's Exhibit 7).

to leave the meeting if the selection process continued, the Commission was denied a quorum if it proceeded with the selection process.

16. Commissioner Stolipher proposed to reschedule the vote for the following Thursday, August 24, 2023 to provide the Commissioners and Counsel an opportunity to obtain and review the ethics opinion from Respondent Krouse.
17. The August 17, 2023 meeting thereupon proceeded with its regular business on the August 17, 2023 Agenda.
18. During the Commission meeting on August 17, 2023 at 8:09 p.m. Krouse posted to her "Jennifer Krouse – Jefferson County Commissioner" Facebook page (Petitioner's Exhibit 12):

"Until now I haven't commented on the replacement process for the Charles Town Commission seat. I'd hoped three Republican Commissioners would have little trouble agreeing on a conservative candidate to fill the spot. When that didn't happen I counted on the Republican Executive Committee to select three actual conservatives for the Commission to review. Unfortunately, far too many of the elected "Republicans" in West Virginia seem to be either incompetent, self-interested, closeted liberals, or some combination thereof.

Not only did the JCREC fail to nominate three true conservatives, they failed to even do their basic duty under WV Code § 3-10-7 and nominate "three legally qualified persons". One of the three candidates they sent us is disqualified under WV §61-10-15 due to ethical considerations regarding his employment. As such, the selection process cannot legally proceed until the JCREC nominates another candidate for the position.

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It's a sad commentary that Republican Commissioners and elected representatives of the Republican Party are actively working to deny this seat to a true conservative. ..."

19. Mr. Lowry obtained his own ethics opinion on September 7, 2023 and provided it to the County Commission and legal counsel [Transcript Page 174 Line 16]. This actual ethics opinion provided to Mr. Lowry stated that he is an eligible candidate and does not need

to resign his position. He would of course, need to recuse himself from any voting on appropriations to Jefferson County Community Ministries (Petitioner's Exhibit 18).

Commissioner Tabb testified that the Advisory Opinion removed the impediment to Mr. Lowry's candidacy [Transcript Page 49 Lines 15-24 and Transcript Page 50 Lines 1-12].

Commissioner Stolipher testified regarding the Ethics opinion and that following the "Bright Line" would make it possible for Lowry to serve on the Commission [Transcript Pages 176-178]

20. **Inability to Select a Replacement Commissioner Continues:** The appointment of the County Commissioner was again placed on the September 21, 2023 Agenda.<sup>8</sup> Neither Respondent Krouse nor Respondent Jackson attended, nor provided notice they were not attending. When Commissioner Stolipher directed the County Administrator to call the two Respondents to seek their attendance, they were not reachable by phone<sup>9</sup> [Transcript Page 63 Lines 22-23 and Transcript Page 178 Line 18].

21. Respondent Krouse posted to her "Jennifer Krouse – Jefferson County Commissioner" Facebook page at 6:00 p.m. on September 21, 2023 (the start time of the meeting) that she would not be in attendance and that she and Commissioner Jackson were denying a quorum due to what they termed "abuse of authority" by Commissioner Stolipher (Petitioner's Exhibit 34). Krouse began her post with the words, "As I post this, I should be at the Jefferson County Commission meeting."

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<sup>8</sup> Petitioner's Exhibit 29

<sup>9</sup> Petitioner's Exhibits 31 and 32

22. Commissioner Tabb testified that the post was made at 6 p.m. while the meeting was still in session and that it showed a level of coordination between Jackson and Krouse [Transcript Page 72 Lines 1-10].

23. On September 21, 2023 at 6:01 p.m. Respondent Jackson posted to her "Jackson for WV" Facebook page (Petitioner's Exhibit 33) as follows:

**\*\*Statement regarding protest of September 21<sup>st</sup> Commission Meeting\*\***

"Tonight, my colleague Commissioner Jennifer Krouse and I took the drastic step of not attending the scheduled County Commission meeting which denied the meeting a quorum..."

24. Commissioner Tabb testified that the post was made while the Commission was waiting for the parties [Transcript Page 67 Line 16].

25. Commissioner Tabb later testified that Jackson called their actions a "Protest" and did not mention the JCREC selection process, eligibility issues or the strike process [Transcript Page 69 Lines 11-22].

Q. She calls this a protest?

A. Yes.

Q. And does it mentioned anything about the Jefferson County Republican Executive Committee's selection process?

A. Not -- not in this posting.

Q. Does it have anything to do -- about the eligibility of the candidates?

A. No.

Q. Does it have anything to do with the strike process for selecting a commission?

A. No, it does not.

26. Commissioner Stolipher was forced to adjourn the meeting for lack of quorum and with the agreement of Commissioner Tabb rescheduled the meeting for September 28, 2023 [Transcript Page 65 Lines 6-9].

On September 27, 2023 at 1:58 p.m. Respondent Krouse posted to her "Jennifer Krouse -- Jefferson County Commissioner" Facebook page (Petitioner's Exhibit 35) that there

would be no "Special Meeting" and that the meeting was improper because it was not approved by a majority of the extant Commissioners. Respondent Krouse posted:

**"THERE WILL BE NO "SPECIAL MEETING"**

Last week, Commissioner Jackson and I denied quorum for the scheduled Commission meeting. . . we called for Commissioner Stolipher . . . to step down as president of the County Commission. This is a relatively small ask..."

Commissioner Tabb testified that the post talked about denying a quorum to "highlight the problems within the Jefferson County's Republican establishment..." [Transcript Page 74 Lines 7-11].

27. On September 27, 2023 at 2:00 p.m. Respondent Jackson posted to her "Jackson for WV" Facebook page (Petitioner's Exhibit 36), as stated below, that she would be joining Respondent Krouse in protest by denying a quorum and not attending the September 28, 2023 "Special Meeting."

**\*\*\*Statement regarding JCC 9/28/23 Special Session\*\*\***

"Last week, my Colleague Commissioner Krouse and I denied the Jefferson County Commission a quorum for its regular meeting on Thursday September 21<sup>st</sup>. Our decision to not attend the meeting was done in protest. . .the agenda for this [September 28, 2023] special session is the same as the one from last week. . .I will once again join Commissioner Krouse in protest and therefore not participate in a special session..."

Commissioner Tabb testified that the parties were protesting the meetings for the reasons that they state [Transcript Page 77 Lines 8 and 11]. Commissioner Tabb further testified that the post did not mention the "ambiguous statute," the selection of candidates or the three person list from JCREC [Transcript Page 77 Lines 15 and 19] and that the parties were protesting the meetings for the reasons that they state [Transcript Page 77 Line 11].



28. On September 28, 2023 Commissioner Stolipher sent Krouse W. Va. Code § 7-1-2, that shows that a special session only needs the concurrence of two Commissioners making the special meeting in conformance with state law (Petitioner's Exhibit 37).
29. Respondent Krouse replied to Commissioner Stolipher that the code section he sent to her did not apply to the Jefferson County Commission because the Jefferson County Commission has five Commissioners (Petitioner's Exhibit 38).
30. The appointment of the Fifth County Commissioner was on the agenda for the September 28, 2023 Special Meeting. Both Respondents failed to attend and were not reachable by phone<sup>10</sup> [Transcript Page 78 Lines 6 and 23, Transcript Page 79 Line 2 and Transcript Page 80 Line 1].
31. On September 30, 2023 at 11:58 a.m., Respondent Krouse further posted to her "Jennifer Krouse -Jefferson County Commissioner" Facebook page (Petitioner's Exhibit 44):

"Since Commissioner Jackson and I denied quorum (sic) at the September 21 Commission meeting. . .JCREC violated WV code and their own bylaws to pick a slate of candidates with strong ties to progressive, green-energy. . .the current leadership doesn't represent their Republican voters. . .by ignoring its base in favor of new-green-deal progressivism, the Republican leadership abdicated its right to pick a replacement on the Commission.

I will use my political power to take that right back for the voters of Jefferson County. . .

The Commission is fully capable of functioning until next November (2024) with only 4 members. In fact, doing so will save the taxpayers nearly \$50,000. . . I'm willing to attend [commission] meetings again AS LONG AS THEIR AGENDA DOESN'T INCLUDE FILLING THE VACANCY ON THE COMMISSION. President Stolipher has refused to step down and he's made clear he alone controls the agenda. As such

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<sup>10</sup> Petitioner's Exhibits 39, 40, 41 and 42

it will be entirely his decision whether the Commission meets going forward." [emphasis in the original]

32. On October 2, 2023 at 8:53 a.m. Respondent Jackson posted to her "Jackson for WV"

Facebook page (Petitioner's Exhibit 46):

"...Mr. Steve Pearson, owner of The Observer under the headline County Misses Deadline for \$50,000 Grant" writes that due to the lack of quorum at the special session, the county missed out on the opportunity for a \$50,000 grant. . . County Administrator, Makayla Zonfrilli emailed all the Commissioners early Thursday, September 28<sup>th</sup> requesting email approval to meet the deadline. . .both Commissioner Krouse and I responded with approval to proceed as evident (sic) in the emails provided below. . .Commissioners Tabb and Stolipher were derelict in their duty. They failed to act in a timely manner as Commissioner Krouse and I did...

Commissioner Tabb testified that Jackson was calling the article in the Observer "Fake News" regarding the missed deadline due to lack of quorum [Transcript Page 89 Lines 8-9, 11 and 14-15] and she had attempted to vote via email on the issue [Transcript Page 89 Lines 19 and 21]. Commissioner Tabb further testified that she did not participate in voting to apply for the Grant by email as that is not proper [Transcript Page 89 Lines 23-24 and Transcript Page 90 Line 3] and that the grant application was never approved or submitted [Transcript Page 90 Lines 6-7].

33. On October 19, 2023 the City of Charles Town wrote the Jefferson County Commission a formal letter stating "...we, the Charles Town City Council, urge you to move forward with an appointment through the process laid out in West Virginia Code § 3-10-7 lest further action needs to be taken to compel you to fulfill your official duties." (Petitioner's Exhibit 70). Commissioner Tabb testified that the letter was urging the Commission to move forward with appointing a representative and following the rules that the law requires [Transcript Page 101 Lines 12-14 and 17].

34. On October 31, 2023 at 10:25 a.m. Respondent Krouse posted to her "Jennifer Krouse -Jefferson County Commissioner" Facebook page (Petitioner's Exhibit 74):

"There have been a lot of lies about Commissioner Jackson's and my refusal to attend the last 3 Commission Meetings. The truth is that, political considerations aside, we want to ensure that the Charles Town vacancy is filled LEGALLY.

Unfortunately, the law governing this matter (WV Code §3-10-7) doesn't say how to proceed given that we have two Commissioners with EQUAL tenure. The solution WE want is for the Commission to seek court guidance on how to proceed. Commissioner Stolipher seems to want to plow ahead illegally. We live in a society of laws. When the law is unclear you don't "wing it", you seek clarification from a court.

That's why I have just sent the email below to Prosecutor Matt Harvey asking him to do his part to ensure that The Commission receives court guidance before we proceed. Mr. Harvey is up for re- election next year. As the chief law enforcement officer in Jefferson County, this is his opportunity to show voters that his commitment isn't to any one elected official or political establishment, but to the Rule of Law."

Following that entry was a verbatim copy of the email she sent to Jefferson County Prosecuting Attorney Matt Harvey on October 31, 2023 (Petitioner's Exhibit 75) again asserting Respondents' position that they will both attend the Commission meetings IF there is no agenda item about appointing the Fifth Commissioner.

35. Counsel for the West Virginia Secretary of State has provided several emails detailing the Commission's duty to meet and appoint a new commissioner (Petitioner's Exhibits 55, 64 and 65).

36. Commissioner Stolipher testified that pursuant to said emails, he believed that once a list is submitted it is the Commissions mandatory duty to appoint within 15 days and that was part or most of his reason for putting the item on the agenda [Transcript Page 184 Lines 16, 19 and 22 and Transcript Page 185 Line 1]. Commissioner Stolipher also testified that the email stated that the Commission has no jurisdiction on how the JCREC

came up with the list [Transcript Page 185 Lines 9 and 14-15] and it was the Commission's mandatory duty to fill the vacancy within 30 days and that if it cannot they must select from the list provided by the JCREC within 15 days of receiving said list regardless of the process they use to compile the list [Transcript Page 186 Line 4]. Commissioner Stolipher was aware that two such challenges to the JCREC process were filed and were subsequently dismissed by the Court [Transcript Page 186 Lines 18-19 and 21].

37. Counsel for the West Virginia Secretary of State, Mr. Kersey confirmed that his email (Petitioner's Exhibit 55) was his response pertaining to the issue of the appointment of a Commissioner [Transcript Page 211 Lines 13-18]. Mr. Kersey stated his office has the authority to make effective the provisions of Chapter 3 and to ensure uniformity across the state [Transcript Page 211 Lines 21-23 and Transcript Page 212 Lines 3-6]. Mr. Kersey confirmed that his opinion matured through the process [Transcript Page 212 Lines 11-13]. Mr. Kersey stated that the duty to appoint a new Commissioner is mandatory [Transcript Page 212 Line 23]. Mr. Kersey stated the procedure of utilizing the Executive Committee's list and the 15 day period to decide is a mandatory duty [Transcript Page 213 Lines 10-21]. He stated that the statute does not contemplate whether the list creation is valid and that the process is an intraparty matter and that any issues with the creation is a matter for the Courts, Circuit Court specifically [Transcript Page 214 Lines 1-11]. He then explained the strike procedure [Transcript Page 215 Lines 6-11]:

Summarizing from my memory, the first strike goes to the Commissioner with the most tenure, determined by years of service, I believe. And then

the second most tenured Commissioner would make the second strike. And in a normal situation, you would have the nominee by default being the third name, the one that wasn't stricken.

Finally, he confirmed that the parties (along with others) received the communication from Mr. Cochran on October 6, 2023 [Transcript Page 216 Lines 2-4].

38. Mr. Kersey confirmed that he participated in an email communication (Petitioner's Exhibit 64) with Respondent Jackson [Transcript Page 217 Line 1]. It references a phone conversation they had about the list and the strike process [Transcript Page 218 Lines 1-5]. He indicated that he advised her that even with the JCREC selection the subject of a court case that the Commission still should proceed with selection [Transcript Page 218 Lines 15-24 and Transcript Page 219 Lines 1-7].
39. Mr. Kersey confirmed that in the email (Petitioner's Exhibit 65) he communicated an alternative solution to Respondent Jackson involving cooperation to resolve the issue [Transcript Page 222 Lines 19-22]. Mr. Kersey then reiterated to her that they should attempt to vote outside of the 15 day period [Transcript Page 223 Lines 10-15]. Mr. Kersey testified that he further discussed the strike process and the possibilities of cooperation or coordination to resolve the issue [Transcript Page 224 Lines 6-24 and Transcript Page 225 Lines 1-6].
40. Respondents individually failed to attend each and every scheduled County Commission meeting between September 7, 2023 and November 30, 2023. By so doing, Respondents denied a quorum to the Jefferson County Commission.
41. Although Respondents refused to attend Commission Meetings, they continued to accept their normal paychecks totaling approximately \$8,757.00 per Respondent, plus

benefits. They also continued to attend outside seminars/meetings at the Jefferson County Commission's expense. One such example is the CCAWV meeting attended by both Respondents on October 29 – 30, 2023 (Petitioner's Exhibit 73).

42. Ms. Shadle testified that the contract for the County's Recording software system, Compiled Technology, lapsed on October 5, 2023. However, she was able to contact them directly to obtain an extension [Transcript page 259 Lines 5-23].

43. The Respondents issued a press release on November 7, 2023 (approximately sixty-one (61) days since the Respondents attended a Commission meeting) that made it clear they "... WILL NOT attend a meeting that has the Charles Town seat appointment on the agenda ...." (emphasis in original) until Respondents' made up "legal controversies" have been resolved (see attached Petitioner's Exhibit 84).

44. This statement led County Officials to believe that there was a dire need to prepare for a continued period of inaction by the Jefferson County Commission into the future and without end.

45. Various County Officials and employees testified as to the enormous time and efforts that were spent on preparations to prevent catastrophic harm to Jefferson County due to the Commission's inaction.

a. On November 9, 2023, Russell Burgess, Jefferson County Information Technologies Director, sent the following email to all Commissioners, as well as department heads and elected officials [Petitioner's Exhibit 85], stating that all county data networks are vulnerable to cyber-attacks and all systems may need to be shut down.

b. Nikki Painter, the Chief Deputy Clerk of the County Clerk's Office, testified that at the October 5, 2023 meeting "... we were to go over the waivers of final

settlement to review the estates that had been open since the last quarter, and we had a hearing set for the Hoffman -Accurso estate.” [Transcript Page 279 Lines 13-16]. Painter further testified that those estate matters could not be addressed due to lack of quorum.

c. Angela Banks, County Assessor since 2009, testified that part of her duties is to correct erroneous tax assessments on personal property. She had placed exonerations on the Agenda every meeting that the Respondents did not attend, September 21, 2023 through November 30, 2023. Ms. Banks also testified that she could not get any exonerations approved during that period due to lack of quorum, and that she could not do that part of her duty due to the lack of quorum (Petitioner’s Exhibit 112) [Transcript Pages 248-250].

d. Laura Kuhn, the Director of Fleet and Facilities Management, testified that at the September 21, 2023 meeting she attempted to obtain the Commission’s signature on a grant application (which grant they had previously received and believed they would receive again) with the Courthouse Facilities Authority for \$50,000 seeking to renovate an area in the Saint Margaret’s Judicial Building to add an additional holding cell (Petitioner’s Exhibit 30 Bates Stamp 0836 - 0861) [Transcript Pages 294 – 297]. She testified that she could not proceed with the application because there was no quorum and the deadline passed without application.

e. Mike Sine, Director of the Jefferson County Emergency Services Agency, testified that he was unable to hire two new part-time and one full-time position and then unable to move two part-time personnel to full-time on October fifth and thereafter until November 30, 2023 because of lack of quorum (Petitioner’s Exhibit 50)

[Transcript Pages 303 -304]. He also testified that potential issues in the 911 center resulting from potential lack of internet and radio service would have a devastating effect on all emergency services.

f. Jeff Polczynski, the Director of Communications for the Jefferson County Emergency Communications Center testified that he sought approval of a contract with Motorola Solutions Maintenance and Lifecycle Services on the October 5, 2023 Agenda [Transcript Page 316 Line 14] to renew the contract for maintenance, service, equipment, and support for the public safety radio system. [Transcript Page 316 Lines 19-23]. The contract became due and although Motorola provided a grace period through the end of October they would no longer extend the grace period beyond that [Transcript Page 319 Lines 14-22]. Without a contract, Motorola would not be obligated to respond to equipment issues with the contractual four hour response and it would seriously impact the operations of the 911 center [Transcript Page 320 Lines 1-16]. He was also unable to hire a number of employees throughout the period of inaction. [Transcript Page 326 Lines 12, 14-20, 22 and 24 and Transcript Page 327 Lines 4-6, 9, 14 and 16].

46. Roger Goodwin, the 22 year Director of Jefferson County's Department of Engineering Planning and Zoning (also the Chief County Engineer for Jefferson County) testified that on October 19, 2023, he placed an item on the County Commission Agenda seeking a bond release in the amount of \$1,098,789.00 for Lutman Land Development, LLC – Milton's Landing Subdivision, Lots 1-16, Lots 18-50 & SWM Lot 17 [Transcript Page



289 Lines 14-21] (Petitioner's Exhibit 66), because they had met all the requirements for release.

47. Due to inaction by the County Commission, Lutman Land Development filed a Mandamus action against the Jefferson County Commission to force the County Commission to release the bond. On November 30, 2023 the Judge of the Circuit court held a mandamus hearing regarding the bond. (Petitioner's Exhibits 102, 103, 109, 110 and 111).
48. At the November 30, 2023 hearing on the Mandamus issue, the Jefferson County Circuit Court (Hon. Judge Cohee) ORDERED the County Commission to meet later that day on November 30, 2023 to "... meet and consider release of the Bond as set forth in the agenda and all other properly noticed agenda items...." (Petitioner's Exhibit 103).
49. At the November 30, 2023 hearing on the Mandamus issue, the Respondents Jackson and Krouse were called to testify and asserted their Fifth Amendment Privilege (Petitioner's Exhibit 102).
50. The Court also adjudged that "... President of the County Commission of Jefferson County has properly called a special session of said Commission to be held on November 30, 2023, at 1:30 P.M. in the County Commission Meeting Room in the Old Charles Town Library, located at 200 East Washington Street, Charles Town, West Virginia, has properly set the agenda in compliance with the Commission's agenda policy, and the release of the Bond is on the special meeting agenda ..." (Petitioner's Exhibit 103).
51. Significant to this removal proceeding, the Circuit Court also:

ADJUDGED that two members of the Jefferson County Commission have, by denying the Commission a quorum, deliberately and knowingly

refused to exercise a clear legal duty to attend and conduct meetings of the Jefferson County Commission to consider release of the Bond; and it is further

ORDERED that the issue of appropriateness and amount of attorney's fees should be fully briefed by the parties with the Petitioner's Brief due on December 21, 2023; the Respondent's Brief due on January 4, 2024; and Reply due on January 9, 2024.....

*Lutman Land Development, LLC v. County Commission of Jefferson County, a West Virginia Public Corporation, Order on Petitioner's Verified Writ of Mandamus, Jefferson County Circuit Court, Case No. CC-19-2023-C-220 (Petitioner's Exhibit 103)*

52. Ultimately, the County was Ordered to pay fees from Lutman's counsel in the amount of \$17,937.75 - all of which are directly attributable to the Respondents actions in missing the Commission meetings in protest, and, as the Circuit Court found "... by denying the Commission a quorum, deliberately and knowingly refused to exercise a clear legal duty to attend and conduct meetings of the Jefferson County Commission to consider release of the Bond". *Id.*

53. Respondent Tricia Jackson testified at the Removal Hearing:

COMMISSIONER TRICIA JACKSON WAS SWORN  
DIRECT EXAMINATION BY MR. HARVEY:

Q. State your name?

A. Tricia Elizabeth Jackson.

Q. Are you a current County Commissioner?

A. I am.

Q. When did you take office?

A. January 2021.

Q. Are you employed anywhere else?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

MR. HARVEY: May I have permission to ask leading questions?

THE COURT: You may.

BY MR. HARVEY:

Q. Isn't it true that you're aware of the Commission meeting policy?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true the Commission meets on the first and third Thursday of the month?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true the Commission may call special sessions?

A. On the advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true that you abided by the Commission meeting policy?

A. On the advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true that you're aware of the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true that you're aware of the agenda items for September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true you had a duty to attend the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true you intentionally failed to attend the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 9th [sic], November 2nd, November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true you conspired with Jennifer Krouse to deny a quorum for the Commission meetings on September 21st, September 28th,

October 5th, October 12th, October 19th, November 2nd and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Is it true that you had a duty to attend to all the items on the agendas of September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true you intentionally refused your duty to attend to all the duties on -- that were listed on the -- attend to the duty -- excuse me. To tend to the items on the agenda on September 21st, September 28th, October 5th, October 12th, October 19th, November 6th [sic] and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. And isn't it true that you would not have met on November the 30th outside the order of the Court?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. And isn't it true that you had taken the position that you would not come back as long as the selection of the fifth commissioner was on the agenda?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

MR. HARVEY: One second. No further questions.

JUDGE REEDER: Ms. Wiley, I assume there's no inquiry, but I'll ask you?

MS. WILEY: No, I have no questions, Your Honor.

[Transcript Pages 344-347]

54. Respondent Krouse testified at the Removal Hearing:

COMMISSIONER JENNIFER KROUSE WAS SWORN

JUDGE REEDER: Ms. Wiley, since you had placed your objections on the record with regard to both Ms. Jackson and Ms. Krouse, I don't see the need to repeat that at this point, so.

MS. WILEY: Yes, Your Honor, I'm satisfied.

JUDGE REEDER: All right. Thank you.

Mr. Harvey, you may proceed.

**DIRECT EXAMINATION**

**BY MR. HARVEY:**

Q. Your name?

A. Jennifer Ann Krouse.

Q. Are you a current County Commissioner?

A. I am.

Q. When did you take office?

A. January 2023.

Q. Are you employed anywhere else?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true that you're aware of the Commission meeting policy?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true the Commission meets on the first and third Thursdays of the month?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true the Commission may call special sessions?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. And isn't it true that you abided by the first and third Thursday meeting schedules?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. Isn't it true you're aware of the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

- Q. Isn't it true you're aware of the agenda items for September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true you had a duty to attend the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true you intentionally failed to attend the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true you conspired with Tricia Jackson to deny a quorum for the Commission meetings on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true you had a duty to attend to all the items on the agenda on September 21st, September 28th, October 5th, October 12th, October 19th, November 2nd and November 16th?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true you intentionally refused your duty to attend to all the duties on the agendas of September 21st, September 28th, October 5th, October 19th, November 2nd and November 16th?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true that elected officials do not have the right to use governmental mechanics to convey a message in the form of protests?
- A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.
- Q. Isn't it true that you would not have attended the Commission meeting on November the 30th outside the order of a Court?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

Q. And isn't it true that you had taken the position that you would not come back to a Commission meeting as long as the selection of the fifth commissioner was on the agenda?

A. On advice of counsel, I assert my Fifth Amendment privilege against self-incrimination.

MR. HARVEY: No further questions.

JUDGE REEDER: All right. Ms. Wiley.

MS. WILEY: I have no questions, Your Honor.

JUDGE REEDER: All right, ma'am. You may step down.

[Transcript Pages 344-347]

55. The Court adopts Petitioner's Exhibits 1-124 and 75A and Respondents' Exhibits 1-7 as part of the facts of this case.

## II. CONCLUSIONS OF LAW

### A. The Respondents were Elected and Took an Oath to Perform Their Duties

Respondent Tricia Jackson took office as a Jefferson County Commissioner on January 1, 2021. Respondent Jackson swore an oath to "... faithfully discharge and perform the duties of the County Commissioner of the Harpers Ferry District to the best of my skill and judgment, and according to law. So help me God."

Respondent Jennifer Krouse took office as a Jefferson County Commissioner on January 1, 2023. Respondent Krouse swore an oath to "... faithfully discharge and perform the duties of the County Commissioner of the Shepherdstown District to the best of my skill and judgment, and according to law. So help me God."

The West Virginia Supreme Court of Appeals has held that elected officials "duty to prosecute his responsibilities as an elected officer .... [is] paramount to his other obligations.

The duty of a public officer to fulfill the obligations of his office should take precedence over all other matters." *Kemp v Boyd* 166 W. Va. 471, 275 S.E.2d 297 (W. Va. 1981).

The West Virginia Supreme Court of Appeals has also held that:

"One who accepts a public office . . . assumes the burdens and the obligations of the office as well as its benefits, subjects himself to all constitutional and legislative provisions relating to the office, and undertakes to perform all the duties imposed on its occupant; and while he remains in office he must perform all such duties. . . . Simply said, if the [official] gets the check, he must do the job."

*State ex rel. Skinner v. Dostert*, 166 W. Va. 743, 751-52, 278 S.E.2d 624, 631 (1981)  
(portions omitted, bracket emphasis inserted)

#### **B. Legal Basis for Removal**

West Virginia law provides in relevant part that a County officer ".....may be removed from such office in the manner provided in this section for official misconduct, neglect of duty, incompetence or for any of the causes or on any of the grounds provided by any other statute."

W. Va. Code § 6-6-7.

West Virginia Code § 6-6-1 states, in relevant part:

(a) The term "official misconduct", as used in this article, means conviction of a felony during the officer's present term of office or any willful unlawful behavior by a public officer in the course of his or her performance of the duties of the public office.

(b) The term "neglect of duty", as used in this article, means the knowing refusal or willful failure of a public officer to perform an essential act or duty of the office required by law.

(c) The term "incompetence", as used in this article, may include the following acts or adjudications committed or arising during the challenged officer's term of office: The waste or misappropriation of public funds by any officer when the officer knew, or should have known, that such use of funds was inappropriate or inconsistent with the lawful duties of the office; .....

W. Va. Code § 6-6-1 (portions omitted)



The West Virginia Supreme Court of Appeals further stated the underpinnings of removal law in *Kesling v. Moore*:

"By official misconduct is meant any unlawful behavior in relation to the duties of his office, willful in its character, by any officer entrusted in any manner with the administration of justice or the execution of the laws." 23 Am. & Eng. Enc. Law, (2nd ed.), 442. "Any unlawful behavior by a public officer in relation to the duties of his office, willful in character." Black's Law Dictionary, (2nd ed.), 849. "Misconduct in office means any unlawful misbehavior in regard to the duties of an office, willful in its character." 3 Words & Phrases, (2nd Ser.), 405, citing *State v. Blair*, 71 Ohio St. 410 [73 N.E. 514]. See also, 40 C.J. 1221, and cases cited. "The official doing of a wrongful act, or the official neglect to do an act which ought to have been done, will constitute the offense, although there was no corrupt or malicious motive." Mechem on Public Offices and Officers, § 458. "There is a manifest distinction between a case of misconduct, resulting in loss of office only, and the charge of a legal crime, which requires proof of criminal intent before conviction, and punishment of the person or fine or imprisonment after conviction. In the latter there must be a direct charge of the criminal intent and criminal act. 'Misconduct' does not necessarily imply corruption or criminal intent. We think the legislature used the word in its more extended and liberal sense. This statute is not, strictly speaking, a penal statute, but rather remedial and protective." *State v. Leach*, 60 Me. 58, 11 Am.Rep. 172

*Kesling v. Moore*, 102 W. Va. 251, 257-58, 135 S.E. 246, 248-49 (1926)

"[o]fficial misconduct warranting removal from public office need not arise from or involve the precise duties enjoined upon the office held; it is, rather, any unlawful behavior relevant to the duties of the office." *Wysong v. Walden*, 120 W. Va. 122, 125, 52 S.E.2d 392, 395 (1938); Syl. Pt. 4, *Evans v. Hutchinson*, 158 W. Va. 359, 214 S.E.2d 453 (1975)

*George v. Godby*, 174 W. Va. 313, 319, 325 S.E.2d 102, 108 (1984)

"[M]alfesance is the doing of an act which an officer had no legal right to do at all and that when an officer, through ignorance, inattention, or malice, does that which he has no legal right to do at all, or acts without any authority whatsoever, or exceeds, ignores, or abuses his powers, he is guilty of malfesance." Citing *Daugherty v. Ellis*, 142 W. Va. 340, 358, 97 S.E.2d 33, 43 (1956)

The Court also said in *Daugherty v. Ellis* that "[t]o establish malfesance in office it is not necessary to show a specific intent to defraud, or that the act is criminal or corrupt in character."

*George v. Godby*, 174 W. Va. 313, 319, 325 S.E.2d 102, 108-09 (1984)

**C. Adverse Inferences**

In a civil trial, a court may draw adverse inferences from a witness's assertion of their Fifth Amendment privilege against self-incrimination. *State ex rel. Myers v. Sanders*, 206 W. Va. 544, 550, 526 S.E.2d 320, 326 (1999).

Furthermore, as the United States Supreme Court stated in *Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), "the prevailing rule [is] that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the Amendment 'does not preclude the inference where the privilege is claimed by a party to a civil cause.'" 24 *Id.* at 318, 96 S.Ct. at 1558 (quoting 8 J. Wigmore, *Evidence* 439 (McNaughton rev. 1961); see 1 Franklin D. Cleckley, *Handbook on Evidence for West Virginia Lawyers* § 5-2(B)(1) (3rd ed.1994). Moreover, "aside from the privilege against compelled self-incrimination, the Court has consistently recognized that in proper circumstances silence in the face of accusation is a relevant fact not barred by the Due Process Clause." 425 U.S. at 319, 96 S.Ct. at 1558. " 'Silence is often evidence of the most persuasive character.' " *Id.* (quoting *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54, 44 S.Ct. 54, 56, 68 L.Ed. 221 (1923)).

*W. Virginia Dep't of Health & Hum. Res. ex rel. Wright v. Doris S.*, 197 W. Va. 489, 498, 475 S.E.2d 865, 874 (1996)

In this case, Respondent Jackson asserted her Fifth Amendment Privilege against Self Incrimination on numerous questions as stated herein in the Findings of Fact.

In this case, Respondent Krouse asserted her Fifth Amendment Privilege on several questions as stated herein in the Findings of Fact.

The Court FINDS that it will draw an adverse inference as a result of the Fifth Amendment assertion in response to all relevant questions propounded to Respondents Jackson and Krouse.

**D. Duties of the Jefferson County Commission and the Individual Respondent Commissioners**

**1. Duty to Meet**

The Constitution of the State of West Virginia states in relevant part:

... there shall be in each county of the state a county commission, composed of three commissioners, and two of said commissioners shall be a quorum for the transaction of business. It shall hold four regular sessions in each year, and at such times as may be fixed and entered of record by the said Commission..

W. Va. Const. art. IX, § 9

West Virginia law also provides that the Commission meet in regular sessions and that

Commissions may also determine to hold special sessions:

The county court of each county shall hold four regular sessions in each year at the courthouse thereof, at such times as may be fixed upon and entered of record by the court. It may also hold special sessions, whenever the public interests may require it, to be called by the president with the concurrence of at least one other commissioner; and the commissioner, if any, not concurring therein, must have at least twenty-four hours' notice of the time appointed for such special session. A notice of the time of such special session, and of the purpose for which it will be held, shall be posted by the clerk of the court, at the front door of the courthouse of the county, at least two days before such session is to be held. If such commissioner, after due notice thereof, shall willfully fail to attend such special session, he shall forfeit not less than five nor more than twenty dollars.

W. Va. Code § 7-1-2

The West Virginia Supreme Court of Appeals has addressed this issue:

Whether, under the constitution, the court can appoint more than four regular terms has never been judicially determined, but as there is no limitation upon the number of special terms that may be held, we do not see upon what reason more than four regular terms may not be advisable and proper, unless prohibited or limited by the organic law. Section 1 of chapter 28A, Barnes' Code 1923, providing for a regular term of the county court on the second Tuesday in August, and section 2 of the same chapter, providing for the adjournment thereof until the fourth Monday in August, it seems to us, amount to legislative construction, that the court is not limited to four regular terms. Besides, we find by reference

to the West Virginia Legislative Handbook, published under authority of the legislature, that a number of the county courts have appointed regular terms to be held monthly. In Ohio county regular terms are fixed for every week day at 10:30 a. m. Provisions of the constitution and statutes concerning the times and places of holding courts should be construed liberally. Wells on the Jurisdiction of Courts, § 302. But limiting county courts to four regular terms, where regular terms have been provided for monthly, and held as provided, which four of the twelve are to be regarded as regular terms? Are all to be regarded unlawful? If not, which are to be treated as unlawful, and which are the lawful ones?

The record certified here shows that the action of the court appointing relator was taken at a regular term, and this, prima facie at least, ought to suffice. The presumption is in favor of the jurisdiction of the court and the regularity of its proceedings. The rule applicable to courts of general jurisdiction, that their judgments will be presumed to be in accordance with their jurisdiction and can not be collaterally attacked unless the record shows want of jurisdiction, applies to courts of limited or special jurisdiction.

*State ex rel. Conley v. Thompson*, 100 W. Va. 253, 130 S.E. 456, 460 (1925)

The excerpt from *The County Commissioner's Handbook* (Petitioner's Exhibit 82), which is incorporated herein by reference, also details the requirements for Commission meetings.

The Attorney General analyzed this issue in 45 W. Va. Op. Atty. Gen. 63 (W. Va. A. G.), 1952 WL 47120:

“Based on the above, it is our conclusion that there is nothing in the constitution or statutes which prevents a county court from legally being in session every day in the year, if necessary, except Sundays and holidays,” (analyzing *State v. Thompson*, 100 W. Va. 253, 130 S.E. 456 (1925) and *Brawley v. County Court*, 117 W. Va. 697, 188 S.E. 139(1936)).

In accord with the Article IX, § 9 Constitutional provision, and the West Virginia Code, the Jefferson County Commission, in public session, with a quorum, voted on January 21, 2021 to schedule regular meetings on the first and third Thursdays of each month. This decision by

the County Commission remains in effect. It is therefore the Commissioners' clear and undeniable duty to attend the regular meetings on the first and third Thursdays of each month.

The Commission's decision to meet two times a month is binding on the Respondents. Respondent Jackson was present at the January 2021 meeting, voted in favor of the two meeting per month schedule, and has followed the two meetings per month schedule since that meeting. Respondent Krouse also followed the two meeting per month schedule since her installment in January of 2023 - until they both decided to conspire to stop attending Commission meetings beginning on September 21, 2023.

In this case, the failure of the Respondents to attend meetings for approximately 10 weeks (71 days) created numerous issues and injuries to the County and its citizens, as further detailed herein.

## **2. Requirement for Quorum and Vote**

As a result of the Respondents' willful and intentional refusal to attend meetings in "Protest," there could be no quorum. Without a quorum the Commission was unable to act and failed to address, at a minimum, the public business necessary to the operation of County Government, as stated in the evidence presented in the Petition and the Removal hearing and detailed in the statement of facts. "A county court can exercise its powers only as a court, while in legal session with quorum present, and must follow procedure and enter its proceedings of record, to make its action valid and binding." *Daugherty v. Ellis*, 142 W. Va. 340, 97 S.E.2d 33 (1956).

Also, the Supreme Court of Appeals has held that "Members of county court cannot separately and individually give their consent to or enter into contract to obligate court as a corporate entity." *Daugherty v. Ellis*, 142 W. Va. 340, 97 S.E.2d 33 (1956). Additionally, the

Respondents have a duty to vote on issues at Commission meetings which they attend unless they have a direct personal or pecuniary interest (*See* W. Va. Code § 7-1-5a).

**E. The Respondents' Actions amount to a Willful and Intentional Failure to Perform Essential Duties of their Office as Required by Law**

**1. Failure of their Duty to Attend Meetings as a "Protest"**

The Respondents do not have a right to protest in violation of their duties because their duties are absolute. Their personal disagreements must yield to their duty as elected officials. The Respondents have no right to use their office and their official acts to form a personal protest. The United States Supreme Court, in looking at an issue involving legislators who used their office to form a protest, found:

..... a legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it.

*Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 125–26, 131 S. Ct. 2343, 2350, 180 L. Ed. 2d 150 (2011)

This Court has rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message. .... In like manner, a legislator has no right to use official powers for expressive purposes.

*Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 127, 131 S. Ct. 2343, 2351, 180 L. Ed. 2d 150 (2011) (*dealing with recusal issue*) (*portions and citations omitted*)

The "...duty of a public officer to fulfill the obligations of his office should take precedence over all other matters" *Kemp, supra*.

As noted above, "The term "neglect of duty", as used in this article, means the "... knowing refusal or willful failure of a public officer to perform an essential act or duty of the office required by law." W. Va. Code § 6-6-7

Respondents neglected and disregarded their duty in numerous ways, including the following:

Respondents failed to attend meetings for more than ten weeks. However, this failure was more than casual disregard, but a knowing refusal – and, more important, a weaponization of the Respondents’ ability to deny a quorum to the Commission in an attempt to obtain acquiesce in the Commission’s affairs, especially with regards to the appointment of a fifth Commissioner.

As early as the September 21 meeting, Respondents characterized their refusal to come to meetings as a “Protest” and this theme continued on and off through their absence.

The two Respondents’ own statements prove that the failure to attend meetings was part of their coordinated plan to deprive the Commission of a quorum - which was apparently designed to wrongfully increase Respondents’ power and affected the appointment of a new commissioner. The only acceptable action the Respondents could have taken was to appear at a Commission meeting, voice their concerns, and vote according to their conscience. That is their duty.

Respondent Jackson, titling her Facebook post as “STATEMENT REGARDING PROTEST OF SEPTEMBER 21ST COMMISSION MEETING” [PETITIONER’S EXHIBIT 33 Respondent Jackson Facebook Post September 21st, 6:01 p.m.] “.... Commissioner Krouse and I *decided* to deny a quorum for tonight’s commission meeting in protest of Commissioner Stolipher’s actions ...” (emphasis added)

Respondent Krouse voiced what seems to be her basis for not attending meetings in her September 30, 2023 Facebook post, which states in relevant part:

It’s become abundantly clear that Jefferson County’s Republican leadership has no regard for elected conservatives or their voters.

....

I, for one, will take a stand against this; starting with their plan to fill commissioner Ath’s vacant seat with one of their own.

....

....the Republican leadership abdicated its right to pick a replacement on the Commission.

....  
I will use my political power to take that right back for the voters of Jefferson County. . .

I'm willing to attend meetings again AS LONG AS THEIR AGENDA DOESN'T INCLUDE FILLING THE VACANCY ON THE COMMISSION

(Petitioner's Exhibit 44 [portions omitted])

Respondent Jackson and Krouse released a Joint statement saying in part that "Commissioner Jackson and I WILL NOT attend a meeting that has the Charles Town seat appointment on the Agenda....." Respondent Jackson November 7, 2023 Facebook Post (portions omitted) (Petitioner's Exhibit 84).

It appears to this Court that, by insisting the agenda item be removed as a condition of their attendance, that Respondents were attempting to create their own approval process, and attempting to seek an outcome certain in a County Commission meeting without actually attending a meeting and voting – which raises troubling questions concerning the Open Governmental Proceedings Act. There are no "conditions of attendance" that are lawful. Attendance is a duty.

Commissioner Stolipher explained in the removal hearing that he felt compelled to keep the appointment on the agenda in that the process was required by law. The Respondents blatantly asserted they would not attend any meeting where filling the vacancy on the Commission is on the agenda. The Respondents openly posted on social media that they would conspire to use their political power of failing to grant a quorum to the Commission to prevent the Commission from fulfilling its mandatory statutory duty to appoint a new Commissioner (Petitioner's Exhibit 44).



Had the Respondents fulfilled their duty to attend meetings, even appeared at the Commission meetings and made their objections known, there would have been little issue for this Court. But the Respondents did far more than object. The Respondents weaponized their failure to attend meetings to block the appointment of the Fifth Commissioner.

The rationale espoused for this "Protest" evolved and changed over time with regarding to meeting and appointing a Fifth Commissioner.

Respondents' first reason was the email Respondents had obtained and claimed was an "ethics opinion" stating that Lowry was not qualified to be a Commissioner. Respondents threatened to walk out of the August 17, 2023 Commission meeting to prevent Lowry's appointment, even though the Commission's counsel advised the Commission that Lowry met all legal qualifications (Petitioner's Exhibits 10 and 11). During the pendency of this "Protest" the Respondent's suggest they needed to obtain a legal opinion. In fact, they obtained legal opinions from the beginning – the Assistant Prosecuting Attorney in attendance at the August 17 the meeting and the Jefferson County Prosecuting Attorney offered their opinions. The Respondents simply did not like the legal opinions provided.

Mr. Lowry requested and obtained an actual, formal, ethics opinion from the Ethics Commission on September 7, 2023 that proved that he was qualified and Respondents were incorrect. The opinion stated that "The Ethics Commission holds that the County Commission's past contributions, even if they had been seven percent or more of the Nonprofit's revenues, will not be considered for purposes of W.Va. Code § 61-10-15 if the Requester now becomes a County Commissioner and remains employed by the Nonprofit because they predate his appointment to public office. The Requester, nominating body, and County Commission must weigh the uncertainty of whether the County Commission will make

a future contribution of at least seven percent to the Nonprofit in deciding whether the Requester should fill the vacancy." *A.O. 2023-12 (Page 5 of 6)*. The appointment was then once again placed on the Commission Agenda for September 21, 2023.

The formal ethics opinion negated the Respondents' objection as to Lowry's qualification. When it became obvious that their email "ethics opinion" was an inadequate basis to stop the appointment of the Fifth Commissioner, and that the appointment of a Fifth Commissioner was on the September 21<sup>st</sup> Agenda, Respondents stopped attending Commission meetings altogether and declared a "Protest,"<sup>11</sup> Respondents did not return to a Commission meeting until ordered to do so by a Court on November 30, 2023.

Respondents then chose to accuse Commissioner Stolipher of abusing his authority, to set items on the Agenda and called for Stolipher's resignation as Commission president, a new condition of attendance (Petitioner's Exhibit 33).

Later, the tactic became asserting that the County Commission could not hold a special session to deal with the County's business because they claimed that a County Commission web page required a quorum to set a special meeting, that W. Va. Code § 7-1-2 did not apply

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<sup>11</sup> It is significant that the Respondents initial complaints and justification for missing meetings do not focus on their later theme that the JREC selection process was flawed. Their initial justifications were therefore not based on the reason that later became the main justification for their refusal to attend meetings.

Commissioner Tabb testified with regard to Petitioner's Exhibit 36:

Q. She calls this a protest?

A. Yes.

Q. And does it mentioned anything about the Jefferson County Republican Executive Committee's selection process?

A. Not -- not in this posting.

Q. Does it have anything to do -- about the eligibility of the candidates?

A. No.

Q. Does it have anything to do with the strike process for selecting a commission?

A. No, it does not.

Testimony of Commissioner Jane Tabb [Transcript Page 69 Lines 11-22]

to five member Commissions, and that Commissioner Stolipher and Commissioner Tabb could not call a special meeting without a quorum.

This Court will not address the issue of the process utilized to schedule the special sessions during the Respondents' absence from meetings. The issue is not relevant with the knowledge that the Respondent's did not attend regular sessions, properly scheduled and noticed.

The Respondents also began to claim that the JREC wrongfully selected the three names of the potential commission candidates. When the Secretary of State's office told the Respondent that the JREC's decision making process was none of their concern (Petitioner's Exhibit 64), Respondents again modified their objection, this time claiming that the code section governing the appointment of the new Commissioner (W. Va. Code § 3-10-7) could not be lawfully followed under the circumstances of this case - which is directly contrary to the opinion given to Respondent Jackson by the Secretary of State's office (Petitioner's Exhibit 65).

The Respondents' own statements clearly show that they disagreed with the political posture of the JREC and some of the candidates proposed by the JREC. That philosophical disagreement appears to be a significant reason why the Respondents refused to participate in the selection (Petitioner's Exhibit 12).

Whatever the reason, the statute does not give the commissioners the option to reject the three proffered candidates and seek others. Instead, the statute narrows the selection to the three candidates that are sent to them by their own party, in this case the Republican executive committee. W. Va. Code § 3-10-7 (2022) essentially states that the Commissioners have a duty to appoint a new commissioner, and, if they cannot agree, then the Jefferson County Republican

Executive Committee provides the Commission with a list of three names, and the Commission selects one of the three names through a process of elimination. It is telling that the Commission's statutory role is not to provide oversight to JCREC but only to pick from the three-candidate list provided. The Court finds that any reference to JCREC's obligations is only a futile attempt to obfuscate the real issues of this removal process.<sup>12</sup>

The acts of the Republican executive committee are beyond the jurisdiction and scope of consideration for these commissioners. The Commission's limited role in the selection process was explained to the commissioners by the Secretary of State's office, but the Respondents ignored the guidance of the Secretary of State's office regarding the legal requirement to proceed with the appointment process.<sup>13</sup>

Donald M. Kersey, III, Esq., (at the time General Counsel for the Secretary of State's office) sent an email on October 4, 2023 to the County Commission's counsel, Assistant Prosecutor Nathan Cochran, to assist the Commission with the issues that were being questioned by the Respondents. Cochran passed the email along to the Commissioners.

It is important to note that the Secretary of State's office has the legal authority to provide guidance over Chapter 3 of the West Virginia Code, in order to give uniform interpretation of the law across the state [Transcript Pages 211-212].

In the October 4, 2023 email, Kersey opined that the Duty of the County Commission to appoint a Fifth Commissioner is mandatory:

..... the county executive committee of the vacating member's political party is granted authority to nominate three individuals for the

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<sup>12</sup> Curiously, when Attorney Cochran attempted to obtain the Ethics Opinion from Respondent Krouse after the August 17, 2023 meeting, Krouse told Cochran that whether Lowry was a legally qualified person was a "matter for the JCREC" (Petitioner's Exhibit 13).

<sup>13</sup> See attached as Petitioner's Exhibit 55 an email dated October 6, 2023 from Assistant Prosecuting Attorney, Nathan Cochran to the Commissioners, forwarding to the Commissioners specific advice from the legal counsel of the Secretary of State, urging the Commission to appoint the Fifth Commissioner, and clearly informing that the Commission has a duty to appoint the Fifth Commissioner (see also Petitioner's Exhibit 64, 65 and 71).

appointment. While there is no timeframe for the executive committee to make such nomination, once a list of individuals is submitted, the law provides, “[w]ithin 15 days from the date on which the list is received, the county commission shall appoint a candidate from the list to fill the vacancy.”

That duty, too, is mandatory. Failure to appoint within the statutory timeframe could subject the county to litigation to compel performance of the mandatory duty, and potentially its officers for removal proceedings pursuant to W. Va. Code 6-6-7.

Kersey also opined in the October 4, 2023 email that the procedure that the individual political party used to appoint the three candidates is not within the Commission’s purview to consider:

W. Va. Code § 3-10-7(b) provides, simply, that the executive committee “shall submit a list of three legally qualified persons to fill the vacancy.” The law provides no statutory procedure for the selection of those nominees, nor does it contemplate any authority of the county commission to reject or ignore such list. Plainly, once a list is submitted by the executive committee, however it was created, the county commission’s mandatory duty to appoint within fifteen days is triggered.

Additionally, the procedure through which political parties conduct their business, such as nominating persons for filling a vacancy, is wholly a political party matter, over which a county commission has not jurisdiction. Put differently, W. Va. Code § 3-1-11 provides, “[t]he state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party.”

If any actions, such as the selection process for county commission nominees, are questioned, W. Va. Code § 3-1-11 continues, “[a]ll acts of such state or other committees may be reviewable by the courts.”<sup>14</sup>

Kersey re-stated this opinion in his testimony at the removal hearing:

The statute doesn’t contemplate whether the list creation is valid. The procedures that executive committees or political parties in general

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<sup>14</sup> There were two separate lawsuits in Jefferson County Circuit Court filed by citizens opposing the selection process. Both lawsuits were dismissed and were not appealed (Petitioner’s Exhibits 104 and 105).

follow to do things like submit lists of nominees, whether it be for County Commission or House of Delegates, those are intraparty matters. And those are litigated through a different section of Code. But once a list is received, the creation of the list is not something that the statute puts before a County Commission to consider [Transcript Page 214 Lines 1-9].

An October 20, 2023 email from the Secretary of State's counsel (Petitioner's Exhibit 71) explains exactly how the process can be accomplished under existing law. Kersey states:

For practical purposes, this will not ultimately require a compromise between all four commissioners; it will require cooperation only between the two second-most tenured commissioners to pick which of the remaining two nominees should be stricken, which avoids any need to bridge the gap in law that does not contemplate equally tenured commissioners.

Here's that scenario:

1. Public meeting scheduled, at least 3 commissioners attend to constitute a quorum;
2. Most tenured commissioner strikes a name from the list of nominees;
3. Together, the two second-most tenured commissioners consider the remaining two names and determine one of the two remaining names to strike; and
4. The remaining name on the list becomes the appointee.

The October 20, 2023 email removes any attempted excuse the Respondents' have made that they could not follow the legal process. Respondents advance the notion that portions of the appointment and meeting statute do not apply to a five member commission. This is belied by the Secretary of State's detailed guidance.

The Secretary of State, while acknowledging the potential difficulties with the statute, encouraged the commissioners to meet and attempt to agree about the appointment. The Secretary of State's Office clearly advised the Respondents that the law requires them to participate in the selection of a new commissioner. Unfortunately, the respondents willfully disregarded the Secretary of State's advice and refused to meet at all until ordered to do so by

the Circuit Court on November 30, 2023. This refusal to meet until ordered to do so removes all doubt that Respondents' actions are a willful and deliberate disregard of the law. Ironically, when forced to attend by the circuit court as their very first act during the November 30, 2023 meeting, the commissioners were able to agree on the appointment of the Fifth Commissioner, just as the Secretary of State had encouraged them to do in the October 20, 2023 email from the Secretary of State's counsel (Petitioner's Exhibit 100 – 0:01:00-0:10:00 and Petitioner's Exhibit 101).

Additionally, Kersey sent several other emails to Commissioner Jackson explaining the issues, and answering her questions (Petitioner's Exhibits 64, 65 and 71). Kersey also offered to participate in a conference call with Respondents and Petitioner Harvey (prior to the filing of the Petition) to help answer any questions, but his offer was not accepted by the Respondents.

The Respondents removed all doubt as to their position – if any doubt existed – by their November 7, 2023 press release wherein they flatly state that “Commissioner Jackson and I WILL NOT attend a meeting that has the Charles Town seat appointment on the agenda ....” This statement was a final, flat refusal to attend any more meetings that have the appointment of the Fifth Commissioner on the Agenda.

Respondents claim that they simply didn't understand their responsibilities and that no one would help them. The evidence presented to the Court shows that offers to help were extended but ignored by Respondents. For example, Attorney Kersey offered to meet with them via conference call and assist them with questions:

Would a conference call benefit the commissioners on this issue? I'm happy to host it and involve your county attorneys.

(Petitioner's Exhibit 71)

Respondents did not accept this offer. Also, as Commissioner Stolipher testified, the Prosecuting Attorney could not have filed a Declaratory Judgement Action on behalf of the Commission without a quorum directing him to do so [Transcript Page 193 Lines 12-16].

This Court therefore FINDS the Respondents willfully ignored this duty, prioritized their own agendas over the needs of the citizens of Jefferson County, and weaponized their deliberate and intentional refusal to attend meetings and appoint a Fifth Commissioner in order for the Respondents to advance their own agenda.

This Court therefore FINDS by the clear and convincing evidence presented to this Court that Respondents engaged in a pattern of conduct that amounted to the deliberate, willful and intentional refusal to perform their duties as Commissioners. This includes, but is not limited to, the requirement to attend meetings and appoint a fifth commissioner. As this conduct is neglect of duty or official misconduct it is sufficient, standing alone, to remove Respondents from office.

## **2. Failure to Attend to County Business**

The effects of Respondents' unlawful refusal to attend meetings had other far-reaching effects.

As a result of the Respondents' willful and intentional refusal to attend meetings for 71 days, from September 21 through November 30, 2023, there could be no quorum. Without a quorum the Commission was unable to act and failed to address, at a minimum, the public business necessary to the operation of County Government, as stated in the evidence presented in the Removal hearing and detailed in the findings of facts. "A county court can exercise its powers only as a court, while in legal session with quorum present, and must follow procedure



and enter its proceedings of record, to make its action valid and binding.” *Daugherty v. Ellis*, 142 W. Va. 340, 97 S.E.2d 33 (1956).

The Court FINDS, by clear and convincing evidence, that Respondents have neglected their duty or engaged in misconduct by willfully failing or refusing to perform their duties in at least the following ways:

1. The failure to release development and construction bonds causing or threatening financial loss for citizens, and resulting in a lawsuit against the County was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings, and is more specifically listed as follows:<sup>15</sup>

Roger Goodwin, Director of Jefferson County’s Department of Engineering Planning and Zoning, placed an item on the County Commission Agenda seeking a bond release for a development bond in the amount of \$1,098,789.00 for Lutman Land Development, LLC – Milton’s Landing Subdivision, Lots 1-16, Lots 18-50 & SWM Lot 17 [Transcript Page 289 Lines 14-21] (Petitioner’s Exhibit 66). The bond was not released because the Respondents failed in their duty to attend meetings and perform duties required.

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<sup>15</sup> In addition to the Lutman bond, Goodwin also sought releases of the following bonds, which were not released during the protest, but were ultimately released at the November 30, 2023 Commission meeting upon Order of the Circuit Court:

- a. October 5, 2013
  - George and Edna C. Enos – Anglers Ridge Subdivision  
\$7,108.00
  - Twin Oaks Subdivision, LLC – Morgan’s Grove Market Early Grading Permit  
\$100,000.00
  - Beallair Homes, LLC – Beallair Subdivision, Phase 3, Commercial Lot 1 & Residue  
\$260.00
  - Bank of Charles Town – Old Route 340 Business Center  
\$140,199.00
- b. October 19, 2023
  - River Riders, Inc. – River Riders Snow Tubing Hill  
\$631,179.00

Lutman Land Development filed a Mandamus action against the Jefferson County Commission to force the County Commission to release the bond. On November 30, 2023 the Judge of the Circuit Court held a mandamus hearing regarding the bond and ordered the County Commission to meet and release the bond (Petitioner's Exhibits 102, 103, 109, 110 and 111).

Significant to this removal proceeding, the Circuit Court:

ADJUDGED that two members of the Jefferson County Commission have, by denying the Commission a quorum, deliberately and knowingly refused to exercise a clear legal duty to attend and conduct meetings of the Jefferson County Commission to consider release of the Bond; and it is further

ORDERED that the issue of appropriateness and amount of attorney's fees should be fully briefed by the parties with the Petitioner's Brief due on December 21, 2023; the Respondent's Brief due on January 4, 2024; and Reply due on January 9, 2024.....

*Lutman Land Development, LLC v. County Commission of Jefferson County, a West Virginia Public Corporation, Order on Petitioner's Verified Writ of Mandamus, Jefferson County Circuit Court, Case No. CC-19-2023-C-220 (Petitioner's Exhibit 103)*

Ultimately, the County incurred Attorney's fees from Lutman's counsel in the amount of \$17,937.75 - all of which are directly attributable to the Respondents actions in missing the Commission meetings in protest, and, as the Circuit Court found "... by denying the Commission a quorum, deliberately and knowingly refused to exercise a clear legal duty to attend and conduct meetings of the Jefferson County Commission to consider release of the Bond". Id.

The Court FINDS, by clear and convincing evidence, that the lack of quorum and resultant cost to the County was due to the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

2. The failure to resolve serious matters in probate pursuant to their duties under W. Va. Code § 7-1-3 and related statutes, including failure to approve accountings and Waivers of Final Settlement for the Jefferson County Clerk (Petitioner's Exhibits 50, 59 and 66

respectively) was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

3. The failure to approve exonerations, which must be approved by the County Commission, and which "shall have precedence over all other business before the court" W. Va. Code § 11-3-27 and related statutes (referring to the County Court, now the County Commission) was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

The Court FINDS, by clear and convincing evidence, that the exonerations in evidence were not made until December, 2023 due to lack of quorum and are directly attributable to the willful and intentional failure of the Respondents to attend meetings.

4. The causing of financial loss to the county by losing and/or endangering grant money including failure to make a timely approval of the Court House Improvement Grant, as a result of which the County lost the opportunity to apply for a \$50,000 grant (Petitioner's Exhibit 29 and Petitioner's Exhibit 39) was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

The Court FINDS, by clear and convincing evidence, that the grant application for the \$50,000 Courthouse Facilities Grant was not made because of lack of quorum directly attributable to the willful and intentional failure of the Respondents to attend meetings.

5. The creation of numerous and serious issues with the Jefferson County Emergency Services Agency including a delay in hiring or promotion, processing of employee benefits, and a potential disruption of the CAD system, was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

This Court FINDS, by clear and convincing evidence, that employees were delayed in hiring, and that employee morale was injured, because of the lack of quorum directly attributable to the willful and intentional failure of the Respondents to attend meetings.

6. The endangering of public safety by not hiring critical employees and not immediately renewing equipment service contracts with Motorola Solutions for the 911 Emergency Communications System (ECC) was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

7. The failure to approve ongoing contracts for internet security and the creation of an entire emergency response plan for the cyber security of Jefferson County was a direct result of the willful and intentional non-appearance of the Respondents and was a violation of their duty to attend meetings.

The Court FINDS, by clear and convincing evidence, that these willful and intentional failures and refusals to tend to the business before the County Commission justify removal of the Respondents from office.

The Respondents' counsel argued that the two remaining commissioners could have directed that unpaid bills be paid via County Policy 305. However, the Supreme Court of Appeals has held that "Members of county court cannot separately and individually give their consent to or enter into contract to obligate court as a corporate entity." *Daugherty v. Ellis*, 142 W. Va. 340, 97 S.E.2d 33 (1956)

The Attorney General analyzed this issue in 45 W. Va. Op. Atty. Gen. 63 (W.Va.A.G.), 1952 WL 47120 and responded to several questions as follows:

3. Can there be a meeting of the County Court by the members coming to the courthouse and to their respective offices if the President does not call the meeting to order and transact business in the presence of the majority of the members?

We believe the constitutional provision and statutes relating to sessions of the county court quoted above contemplate the court holding a regular meeting with a quorum present, in order to be compensated for attending a session of the court. Note the quotation from the *Goshorn* case in the answer to Question 5 as to the necessity of the court acting as a body with a quorum present.

4. Does the mere signing of the commissioner's name on orders to pay bills constitute an official meeting when such signature is not in the presence of the other members and is not approved by vote of the members in session?

Our answer to Question 3 covers this problem, we believe, and such an action could not constitute an official meeting of the court.

5. Can official business be transacted by the members separately signing their names on the back of orders when there has not been a motion, a second and a vote by the members in session?

In analyzing W. Va. Code § 7-5-3 the Attorney General answered this question as follows:

In *Goshorn v. County Court*, 42 W.Va. 735, 26 S.E. 452, our court has stated that the allowance or disallowance of a claim under this section must be made by the county court acting as a corporate body. It is therein stated:

"\* \* \* This corporation of the county court, created by statute, must depend both for its powers and the mode of exercising them upon the true construction of the statute creating them. The members of a corporation aggregate can not separately and individually give their consent or enter into contract in such manner as to oblige themselves as a collective body or board. *Pennsylvania L. R. Co. v. Board of Education*, 20 W. Va. 360. Therefore the members of the county court, in discharging the duties heretofore devolved upon boards of overseers of the poor, and now devolved on them (see section 2 of chapter 46 of the Code) must act as a corporate body, and at the courthouse--the place fixed by law. Two or more of them, acting as individuals, on the street (as in this case) could make no contract binding on the county court. No such individual authority is given them.

They must act as a court, a quorum being present, and at the courthouse; and must enter of record all their proceedings and their proceedings in relation to the poor should be kept in a separate book, provided for the special purpose. Therefore, unless the court in some way ratified this contract, it could have no binding force."

To the extent that Policy 305 attempts to override this principle, it is not in conformance with law. Also, to the extent that Policy 305 is geared towards responding to an "Emergency," the Court is mindful that the Respondents created the "Emergency" that needed to be addressed and Respondents have unclean hands to now claim that Policy 305 saves them.

Respondents' counsel argued that the allegations of neglect of various duties were only general allegations or statements of the law and not capable of being used to show any lack of duty on the part of the Respondents. However, the Supreme Court of Appeals has held that "...to establish malfeasance in office, it is not necessary to show a specific intent to defraud or that act is criminal or corrupt in character." W.Va. Code, 6-6-5, 6-6-7 *Daugherty v. Ellis*, 142 W. Va. 340, 97 S.E.2d 33 (1956).

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WHEREUPON, based on the facts and law stated herein, the arguments of Counsel, the evidence presented in the hearing and in the whole record, the Court FINDS that the allegations of the Removal Petition of either official misconduct and/or neglect of duty have been proven by clear and convincing evidence and are sufficient to warrant the removal of the Respondent Commissioners from office. Therefore, it is ORDERED pursuant to W. Va. Code § 6-6-7, that Commissioners Jackson and Krouse are hereby removed from office.

It is further ORDERED that the Respondents forthwith place the records, papers and property of their office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily.

This Order shall include but not be limited to providing said person with the login and password for all Respondent's email addresses that were used for County Commission business pursuant to W. Va. Code § 6-6-7.

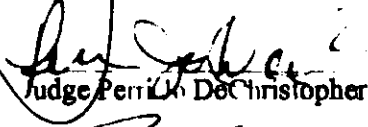
The Court notes the Objections of Record of all parties.

The Court directs that the Clerk enter these Findings of Fact and Conclusion of Law in the Record of this Court and forward a copy of the same to the Petitioner, Respondents' Counsel, and the Supreme Court of Appeals pursuant to W. Va. Code § 6-6-7(g).

**IT IS SO ORDERED, this 1st day of May, 2024.**

Members of the Three Judge Panel

  
Judge Joseph K. Reeder

  
Judge Perrin DeChristopher

  
Judge Jason Wharton