

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**HARRISON COUNTY COMMISSION,
ROGER DIAZ, PRESIDENT**

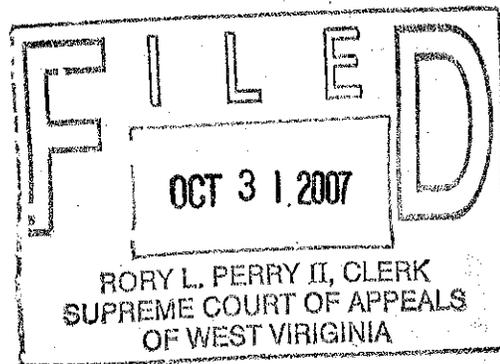
**Petitioners below,
Appellant,**

vs.

No. 33381

**HARRISON COUNTY ASSESSOR,
CHERYL L. ROMANO, ASSESSOR,**

**Respondent below,
Appellee**



**BRIEF, *AMICUS CURIAE*, OF THE
WEST VIRGINIA ASSESSORS' ASSOCIATION**

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I. Kind of Proceeding and Nature of the Ruling in the Lower Tribunal

As the Court is aware, this is a dispute between a county commission and an assessor over which has the power to hire certain assessor employees who are paid, not out of general county funds, but instead out of a special "property evaluation fund." In most assessors' offices in West Virginia, most employees are paid out of general county funds, but others, those involved directly in the process of updating property values, are paid out of the "valuation fund" created by W. Va. Code § 11-1C-8. Ordinarily, all county officers must obtain the advice and consent of the county commission before hiring an employee, assistant or deputy, but no such requirement exists when employees are paid out of the valuation fund.

In the instant case, the Harrison County Assessor moved an existing employee from one job to another job in her office, changing the source of pay for that employee from the general county budget to the valuation fund. The Assessor did not seek the prior approval of the County Commission to make this change, and the Harrison County Commission filed, in the lower court, a petition for a writ of mandamus to compel the Assessor to remove the employee, and to seek Commission approval before hiring any employees who would be paid out of the valuation fund.

The Assessor filed a counter petition, and the lower court ruled against the Commission and in favor of the Assessor, finding that changes made by the Legislature in W. Va. Code § 11-1C-1 *et seq.* allow an assessor to hire employees who will be paid out of the valuation fund without any oversight by a county commission. The Harrison County Commission appealed.

The West Virginia Assessors' Association submits this brief, *amicus curiae*, to explain that it was clearly the Legislature's intent to grant this measure of independence to the State's Assessors so that they can effectively discharge their sworn duties - that is - fairly and accurately

valuing the tangible property in their counties to ensure funding for government services, education for our children, and police protection for our citizens. The Assessors' Association urges the Court to affirm the decision below, and to make clear that Assessors do not have to seek Commission approval with regard to employees whose salaries are paid out of the valuation fund.

II. Statement of the Facts of the Case

The facts are not in dispute. In May 2005 Harrison County Assessor Cheryl L. Romano moved an existing employee, who had been paid out of general county funds, to new job duties related to property valuation. The new job had been advertised, and several people had applied. The employee in question met all the criteria of that position. Assessor Romano sought, and received, the approval of the "Property Valuation Training and Procedures Commission," but did not seek the approval of the Harrison County Commission.¹ To effectuate this change, Assessor Romano submitted the "payroll change" to the County Clerk.

The Harrison County Commission refused to approve or validate the hiring of this employee on several occasions. Assessor Romano refused to fire the employee or move the employee back to old duties paid for out of the general budget. To resolve the impasse, the Harrison County Commission filed its "Petition for a Writ of Mandamus" with the Circuit Court of Harrison County on September 29, 2005. The lower court ruled in favor of the Harrison

¹The "Property Valuation Training and Procedures Commission" was established by W. Va. Code § 11-1C-4 and is made up of citizens, assessors, and county commissioners, to provide training and oversight for the process of valuing property in West Virginia. This brief will discuss it in greater detail, *infra*.

County Assessor and this appeal followed.

III. Assignments of Error

The Assessors' Association does not believe that the lower court erred.

IV. Points and Authorities Relied Upon

W. Va. Const. Art. X, § 1b.....	passim
W. Va. Code § 11-1A-1 <i>et seq.</i>	passim
W. Va. Code § 11-1B-1 <i>et seq.</i>	passim
W. Va. Code § 11-1C-1 <i>et seq.</i>	passim
<i>American Tower Corp. v. City of Beckley</i> , 210 W. Va. 345, 557 S.E.2d 752 (2001).....	6
<i>Appalachian Power Co. v. State Tax Dep't of W. Va.</i> , 195 W. Va. 573, 466 S.E.2d 424 (1995)....	6
<i>Chrystal R.M. v. Charlie A.L.</i> , 194 W. Va. 138, 459 S.E.2d 415 (1995).....	6
<i>Coord. Council for Indep. Living, Inc. v. Palmer</i> , 209 W. Va. 274, 546 S.E.2d 454 (2001).....	6
<i>In re Maple Meadow Mining</i> , 191 W. Va. 519, 521, 446 S.E.2d 912, 914 (1994).....	6, 11
<i>Killen v. Logan County Comm'n</i> , 170 W. Va. 602, 295 S.E.2d 689 (1982).....	8, 9
<i>Kline v. McCloud</i> , 174 W. Va. 369, 326 S.E.2d 715 (1985).....	6, 9, 10
<i>Pauley v. Bailey</i> , 171 W. Va. 651, 301 S.E.2d 608 (1983).....	7
<i>Pauley v. Kelly</i> , 162 W. Va. 672, 255 S.E.2d 859 (1979).....	7
<i>State ex rel. Daye v. McBride</i> , ___ W. Va. ___, ___ S.E. 2d ___ (May 2007).....	18, 19
<i>UMWA by Trumka v. Kingdon</i> , 174 W. Va. 330, 325 S.E.2d 120 (1984).....	19
<i>Webster County Comm'n v. Clayton</i> , 206 W. Va. 107, 522 S.E.2d 201 (1999).....	18

V. Discussion of the Law

A. Standard of Review

Because this case concerns the application or interpretation of a statute, the Court's review is *de novo*. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995); syl. pt. 2, *Coordinating Council for Indep. Living, Inc. v. Palmer*, 209 W. Va. 274, 546 S.E.2d 454 (2001); accord syl. pt. 1, *Appalachian Power Co. v. State Tax Dep't of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995); accord, syl. pt. 1, *American Tower Corp. v. City of Beckley*, 210 W. Va. 345, 557 S.E.2d 752 (2001).

B. Argument

The instant dispute is not really over the hiring or classification of one employee in Harrison County. This dispute is really a struggle for power at the county level - and it is a struggle that can have a deleterious effect on the proper valuation of property in West Virginia. As the Court is aware, from its own opinions on this topic,² the State has struggled to provide a fair and equitable way to value and tax property.

Tax collection, like all of government, has historically been subject to varying degrees of political and economic influence. The result of this is often lower, or inequitable, tax assessment and collection. Thus the overall purpose behind court and legislative tinkering with the

²At the outset, the Assessors' Association points out this Court's opinions in *Kline v. McCloud*, 174 W. VA. 369, 326 S.E.2d 715 (1985) and *In re Maple Meadow Mining*, 191 W. VA. 519, 446 S.E.2d 912 (1994), which both set forth the history of changes to our tax law far more succinctly and eloquently than could this author.

assessment process has been to assess property (and thus collect taxes) more evenly, equitably, and effectively.

As discussed below, the way the Legislature has attempted to achieve this is by (1) establishing standard methods for assessing property, (2) training and certifying the people involved in the assessment process (to get best people and results), and (3) providing guaranteed funding for the assessment process, and the salaries of those involved., which helps to protect the process and the people from outside influence.³

At issue in this case is the third enactment the Legislature has made in this area in recent years, the "Fair and Equitable Property Valuation Act," W. Va. Code § 11-1C-1 *et seq.* The focus of the Act was to establish a state-wide, systematic and uniform approach to property evaluation, with proper training, and with an emphasis on protecting the valuation process from local political influence. Uniformity was a key point in the school funding cases that led up to the Constitution amendment. The disparity in assessments meant disparity in funding resulting in different educational opportunities for the children of this state. *See, Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979), and *Pauley v. Bailey*, 171 W. Va. 651, 301 S.E.2d 608 (1983).

This is why the Act provides guaranteed, independent funding to Assessors so that they can use it to appraise and reappraise property, and this is why the Act created an independent commission to govern this process. To allow the County Commission control of the hiring of employees paid under the Act erodes the protections established by the Legislature, and could invite a return to the "bad old days" of unequal, unjust appraisals that threaten the government's

³See W. Va. Code § 11-1C-1 and -4, with regard to standards, W. Va. Code § 11-1C-4 and -6, with regard to certification and training, and W. Va. Code § 11-1C-8, with regard to funding.

ability to provide services to all.

A Brief History

Prior to the enactment of the Fair and Equitable Property Valuation Act, property assessments varied from county to county, and among various types of property. The judicial and legislative branches each weighed in on this problem, which resulted in a series of moves and counter moves, leading up to the present state of the law. A brief review of this progression is helpful to the Court's consideration of the instant case.

One leading case in this area is *Killen v. Logan County Comm'n*, 170 W. Va. 602, 295 S.E.2d 689 (1982), in which citizens of Logan County filed suit to change the way that property was assessed. The Court summarized this argument:

Article 10, section 1 of the West Virginia Constitution declares that "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its *value* to be ascertained as directed by law." (Emphasis added.) The respondents, the Logan County Board of Education and its president, argue that assessment of property at a fraction of its appraised value is unconstitutional because the 50-100 percent provision results in unequal and non-uniform assessment, and thus unequal and non-uniform taxation.

Killen v. Logan County Comm'n, 170 W. Va. 602, 605, 295 S.E.2d 689, 693 (1982). The Court made sweeping changes in its opinion with thirteen new syllabus points, holding, *inter alia*, that:

5. The present system of equating assessments which are 50 percent of property's appraised value with "true and actual value" does not achieve the constitutional requirement of equal and uniform taxation.

6. The percentage ratio scheme found in W. Va. Code § 18-9A-11 results in fractional assessment in violation of the West Virginia Constitution.

10. It is the tax commissioner's duty to ensure that assessment occurs at market value. The tax commissioner must see that

county officials are complying with the constitutional and statutory requirements of full value assessment. W. Va. Const. art. 10, § 1; W. Va. Code §§ 11-3-1; 18-9A-11.

11. It is the duty of the tax commissioner to proceed with all deliberate speed to develop an up-to-date appraisal for each assessment year for all the 55 counties. The tax commissioner has a duty to appoint the necessary special assessors and appraisers to accomplish this end. W. Va. Code § 18-9A-11.

Syl. pts 5, 6, 10, 11, *Killen v. Logan County Comm'n*, 170 W. Va. 602, 295 S.E.2d 689 (1982).

Prompted by this decision, the Legislature set out to correct these inequalities, resulting in a constitutional amendment and significant changes to the tax process.

The "Property Tax Limitation and Homestead Exemption Amendment of 1982" established, *inter alia*, that all property would be assessed at 60% of its "value," that the Legislature would provide a system for periodic statewide reappraisals of all property, and the first required statewide reappraisal was to be completed by March 31, 1985. *See, W. Va. Const. art. X, § 1b.*⁴

This Court's opinion in *Kline v. McCloud*, 174 W. VA. 369, 326 S.E.2d 715 (1985), commented on the changes to the Constitution. In *Kline*, the lower court had affirmed the use of a nearly twenty year old assessed value for timber land of \$13 per acre, when the land had recently been purchased for at least 15 times that much per acre. The Court explained the history of tax law changes that lead up to that case:

In *Killen*, we were confronted for the first time with the question of whether our constitutional mandate that "all property, both real and

⁴The amendment also provided a rough framework for the way in which property should be reappraised, and provided a "homestead exemption," which essentially eliminated property tax on the first \$20,000 of assessed value on homes occupied by an owner age 65 or older. *W. VA. Const. art. X, § 1b.*

personal, shall be taxed in proportion to its value to be ascertained as directed by law," W. Va. Const. art. X, § 1, prohibited assessments at less than true and actual value. We held that it did and, as a consequence, W. Va. Code, 18-9A-11, was held unconstitutional to the extent that it permitted fractional assessments.

Following the *Killen* decision, Section 1b of Article X of our Constitution was adopted to authorize the assessment of property at 60 percent of its value, subject to the right of the legislature to establish a higher percentage by a two-thirds vote.

Kline v. McCloud, 174 W. VA. 369, 375, 377, 326 S.E.2d 715, 723 (1985) (footnotes omitted).

The Legislature responded to the Court's opinions and to the Amendment of Article 10 by making sweeping changes to the way real property was assessed, enacting W. Va. Code § 11-1A-1 *et seq.* in 1983. This legislation requirement that all property be reported on a return each year, and contained more specific direction as to how the required reappraisal should be conducted.⁵

However, the reappraisal met only limited success. In 1986, the Legislature changed the law on property valuation again, enacting W. Va. Code § 11-1B-1 *et seq.*, entitled "Additional Review of Property Appraisals; Implementation." In the legislative findings, the statute reads:

(a) The Legislature hereby finds that many citizens and taxpayers of this state have the belief that an unacceptable number of errors and misinformation are included within the results of the statewide appraisement of property subject to ad valorem taxes pursuant to the amendment of Article X, Section 1b of the Constitution of West Virginia, adopted in the year one thousand nine hundred eighty-two, which belief is sufficient to cast doubt over the results of such reappraisal in the minds of the general public.

W. Va. Code § 11-1B-1 (1986). Accordingly, the rest of 1B makes additional notice and

⁵W. Va. Code § 11-1A-1 *et seq.* made so many changes that a quotation of each new section would unnecessarily lengthen this brief. The Assessors' Association humbly suggests that a review of all three sections, 1A, 1B, and 1C is helpful to an understanding of this case.

advertising requirements, makes changes to the review process for those who disagree with an assessment, and allows the tax commissioner to hire outside consultants. However, in time the Legislature determined that the changes made in 1B also fell short, and that another change to the law was needed.

The changes in the law were successful in raising the assessments on a great deal of coal and timber property, which of course produced more litigation. The case of *In re Maple Meadow Mining*, 191 W. VA. 519, 446 S.E.2d 912, (1994), involved a coal company challenge to the local assessors new valuation of its property. As the Court explained:

Maple Meadow's natural resources property, as attested to by Maple Meadow, was assessed at \$763,350 for the 1991 tax year. The assessment increased for the 1992 tax year to \$7,112,647.20, sixty percent of \$11,854,412, the reappraised value of the property as determined by the tax commissioner.

In re Maple Meadow Mining, 191 W. VA. 519, 521-22, 446 S.E.2d 912, 914-15 (1994).

A review of *Maple Meadow Mining* provides a good overview of W. Va. Code § 11-1C-1, *et seq.*, and the opinions of this Court that preceded its enactment. As the court notes in that opinion:

Prior to 1990, property in the State of West Virginia was sometimes valued at less than the current market value or assessed at a percentage lower than sixty percent of the market value. The legislature saw the need to ensure equality among property valuation and assessments. Thus, in 1990, the Fair and Equitable Property Valuation Act (hereinafter "the Act") was enacted by the legislature to require reappraisal of property in West Virginia for tax purposes.

In re Maple Meadow Mining, 191 W. VA. 519, 521, 446 S.E.2d 912, 914 (1994). A examination of the Act in some detail is helpful in the consideration of this case.

A Review of the Fair and Equitable Property Valuation Act

It is this Act, established by W. Va. Code § 11-1C-1 *et seq.* that accomplishes the goals described above - i.e. ensuring fair and effective assessments through regularized procedures, certification and training of relevant employees, and guaranteed funding of the assessment process. The Legislature explained its motivation for the new Act:

(a) The Legislature hereby finds and declares that all property in this state should be fairly and equitably valued wherever it is situated so that all citizens will be treated fairly and no individual species or class of property will be overvalued or undervalued in relation to all other similar property within each county and throughout the state.

(b) The Legislature by this article seeks to create a method to establish and maintain fair and equitable values for all property. The Legislature does not intend by this article to implement the reappraisal as conducted under articles one-a and one-b of this chapter nor does it intend to affect tax revenue in any manner.

(c) The Legislature finds that requiring the valuation of property to occur in three-year cycles with an annual adjustment of assessments as to those properties for which a change in value is discovered shall not violate the equal and uniform provision of section one, article ten of the West Virginia Constitution, the Legislature further finding that such three-year cycle and annual adjustment are an integral and indispensable part of a systematic review of all properties in order to achieve equality of assessed valuation within and among the counties of this state. . . .

W. Va. Code § 11-1C-1.⁶ This shows that the Legislature was of the view that prior assessment

⁶The findings go on to say

(1) The voters of this state, in the general election held in the year one thousand nine hundred eighty-four, ratified amendment five to the constitution of West Virginia which essentially provides that once the first statewide reappraisal of property pursuant to section one-b, article ten of the constitution is implemented and first employed to fix values for ad valorem property tax purposes, no intangible personal property shall be subject to ad valorem property

efforts were lacking, and that it was still necessary "to create a method to establish and maintain fair and equitable values for all property." The rest of the Act provides that "method" and the measure of independence granted the Assessors by the Act is a vital component of the process - and one that should not be overturned by this Court.

One of the most important actions taken by the Legislature was the creation of a neutral, balanced, oversight body, protected from local political influence - the "Property Valuation Training and Procedures Commission" (hereinafter "the Commission"):

(a) There is hereby created, under the department of tax and revenue, a property valuation training and procedures commission which consists of the state tax commissioner, or a designee, who shall serve as chairperson of the commission, three county assessors, five citizens of the state, one of which shall be a certified appraiser, and two county commissioners. The assessors, five citizen members and two county commissioners shall be appointed by the governor with the advice and consent of the Senate. For each assessor to be appointed, the West Virginia assessors

taxation except as provided by general law enacted after ratification of amendment five;

(3) Due to numerous problems, actual or perceived, with the results of the first statewide reappraisal under section one-b, article ten of the constitution, and the public's lack of confidence in those results, the first statewide reappraisal was never implemented and results were never employed to fix values for ad valorem property tax purposes;

(4) The Legislature responded to these problems, actual or perceived, by enacting this article which, as its primary purpose, resulted in the making of the second statewide reappraisal of property for ad valorem property tax purposes, which now results in all property being assessed and taxed at sixty percent of its market value, except as otherwise provided by general law;

association shall nominate three assessors, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. For each of the two county commissioners to be appointed, the county commissioner's association of West Virginia shall nominate three commissioners, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. Except for the tax commissioner, there may not be more than one member from any one county. No more than seven members of the commission shall belong to the same political party: . . .

(d) The commission shall be funded by an appropriation by the Legislature through a separate line item appropriated to the state tax commissioner.

W. Va. Code § 11-1C-3. The careful balancing between political parties, and among assessors, county commissioners, and citizens demonstrates that the Legislature took great pains to protect the Commission from local influences or political pressures. In addition to this protection, the Legislature gave the Commission broad power and authority to shape the assessment process.

The Commission shall:

(1) Devise training and certification criteria for county assessors and their employees and members of county commissions, which shall include a definition of "appropriate staff member" as the term is used in section six of this article relating to required training, which definition shall include deputy assessors as provided for in section three, article two of this chapter;

(2) Establish uniform, statewide procedures and methodologies for the mapping, visitation, identification and collection of information on the different species of property, which procedures and methodologies shall include reasonable requirements for visitation of property, including a requirement that a good faith effort be made to contact any owner of owner-occupied residential property: Provided, That the commission is not authorized to establish the methods to value real and personal property, but shall have the authority to approve such methods;

(3) Develop an outline of items to be included in the county property valuation plan required in section seven of this article, which shall include information to assist the property valuation training and procedures commission in its determination of the distribution of state funds provided pursuant to section eight of this article.

(b) On or before the first day of July, one thousand nine hundred ninety-one, the commission shall establish objective criteria for the evaluation of the performance of the duties of county assessors and the tax commissioner.

W. Va. Code § 11-1C-4.⁷

Another important change made by the Legislature was to require training for all involved in the assessment process - again, in an effort to make it more uniform, and to shield it from obvious political influence by standardizing procedures and methods. The statute provides in part:

(a) All county assessors and their appropriate staff members are required to participate in a training program which meets the basic criteria set by the property valuation training and procedures commission. The tax commissioner shall provide the training programs . . . The tax commissioner shall determine which persons have met the basic criteria established by the property valuation training and procedures commission for certification in their respective positions. Those persons who have met the basic criteria shall be issued appropriate certificates so signifying. . .

W. Va. Code § 11-1C-6.⁸ This emphasis on training satisfies the Legislature's (and the

⁷Indeed, that power extends to actually replacing an assessor who is not doing his or her job. "The commission shall be required, in the event that the tax commissioner has failed to do so, to appoint one or more special assessors if it is the determination of the commission that an assessor has substantially failed to perform the duties required by sections seven and eight of this article." W. Va. Code § 11-1C(g).

⁸This training requirement even extends to members of the County Commission:

people's) overarching goal of effective and equitable assessment, because once procedures are standardized, and then understood by those charged with their enforcement, it becomes much more difficult to "do a favor" for a particular taxpayer. The statute further requires employees to become, and remain, certified, or risk losing their jobs. It reads, in part:

Any staff person employed after the effective date of this section shall become certified within six months of his or her first training, and otherwise shall be placed on probationary status for six months and, unless becoming certified, shall be dismissed of any duties related to the actual valuation of property. The tax commissioner shall conduct periodic training sessions of a continuing education nature for all assessors and appropriate staff members whether certified or not. These sessions shall be held at least once a year. All newly elected or newly appointed assessors shall participate in a basic training program prior to taking office. Newly appointed appropriate staff members are required to participate in the next available basic training program. The commission shall further establish requirements for minimum continuing education for each appropriate staff member in order to maintain a certification.

W. Va. Code § 11-1C-6.

The Funding Guarantee - The Central Dispute in the Instant Appeal

The argument in this case has a great deal to do with money, and who controls it.

Because the Assessors could not discharge the duties required by the Act without adequate funds

(b) All county commissioners are required to participate in a training program which meets the criteria set by the property valuation training and procedures commission. The tax commissioner shall conduct such programs to educate county commissioners in their duties as a board of equalization and review and to make them generally familiar with appraisal techniques.

W. Va. Code § 11-1C-6. The Legislature's deliberate inclusion of County Commissioners in this section adds weight to the assertion that the Legislature knew exactly what it was doing when it gave Assessors the power to hire employees paid by the Fund without the oversight of the County Commission.

to hire employees, and because a County Commission might have other funding priorities, the Act established a mechanism to guarantee funds for the assessment process:

(a) In order to finance the extra costs associated with the valuation and training mandated by this article, there is hereby created a revolving valuation fund in each county which shall be used exclusively to fund the assessor's office. No persons whose salary is payable from the valuation fund shall be hired under this section without the approval of the valuation commission, the hirings shall be without regard to political favor or affiliation, and the persons hired under this section are subject to the provisions of the ethics act in chapter six-b of this code, including, but not limited to, the conflict of interest provisions under chapter six-b of this code. Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing and appraising duties under this chapter upon approval of the employment by the valuation commission.

(c)(1) To finance the ongoing extra costs associated with the valuation and training mandated by this article, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-one, and for a period of at least three consecutive years, an amount equal to two percent of the previous year's projected tax collections, or whatever percent is approved by the valuation commission, from the regular levy set by, or for, the county commission, the county school board and any municipality in the county . . . These additional funds are intended to enable assessors to maintain current valuations and to perform the periodic reevaluation required under section nine of this article.

(d) Moneys due the valuation fund shall be deposited by the sheriff of the county on a monthly basis as directed by the chief inspector's office for the benefit of the assessor and shall be available to and may be spent by the assessor without prior approval of the county commission, which may not exercise any control over the fund. Clerical functions related to the fund shall be performed in the same manner as done with other normal funding provided to the assessor.

W. Va. Code § 11-1C-8 (in part). Since this code section is the cynosure of the instant dispute,

this language bears repeating:

Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing and appraising duties under this chapter upon approval of the employment by the valuation commission.

Moneys due the valuation fund shall be deposited by the sheriff of the county on a monthly basis as directed by the chief inspector's office for the benefit of the assessor and shall be available to and ***may be spent by the assessor without prior approval of the county commission, which may not exercise any control over the fund.***

Id. (emphasis added). As the Court is aware, the Harrison County Commission argues that W. Va. Code § 7-7-7, which gives a County Commission oversight of the hiring of county employees, should trump the plain language of W. Va. Code § 11-1C-8.

The Association has little to add to the articulate arguments advanced by the Assessor and her able counsel. The Association agrees with counsel that there is really no need to interpret the words of section of W. Va. Code § 11-1C-8. “Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” Syl. pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384, (1970); syl pt. 2, *State ex rel. Daye v. McBride*, _____ W. Va. _____, _____ S.E. 2d _____ (2007). Or, as Justice Davis noted in another county Commission case:

“ ‘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.’ Syllabus point 5, *State of West Virginia v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W. VA. 137, 107 S.E.2d 353 (1959).” Syllabus point 1, *VanKirk v. Young*, 180 W. VA. 18, 375 S.E.2d 196 (1988).

Syl pt. 3, *Webster County Comm'n v. Clayton*, 206 W. Va. 107, 522 S.E.2d 201 (1999).

Moreover, even if the Court feels it necessary to harmonize the two statutes, the rules of statutory construction are clear:

The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled.

Syl. pt. 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984; syl pt. 4, *State ex rel. Daye v. McBride*, _____ W. Va. _____, _____ S.E. 2d _____ (2007). As counsel for Assessor Romano points out, the Legislature's intent was to protect the assessment process from interference, and to protect the Fund from other county officers, including the County Commission.

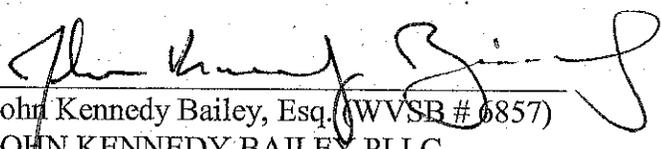
The Assessors' Association does not mean to suggest that the members of the Harrison County Commission, or for that matter, any County Commission, have any nefarious agenda, or wish to harm the citizens of West Virginia in any way. Like the Assessors, the Commissioners are dedicated public servants, seeking only to discharge their sworn duties as they understand them to be. Nonetheless, the Association believes that the Legislature had an express purpose for granting the Assessors the rights discussed in this brief, and that it did not intend for W. Va. Code § 7-7-7 to interfere with the right of an Assessor to control the funds provided by virtue of W. Va. § 11-1C-1 *et seq.*

VI. Relief Prayed For

The West Virginia Assessors' Association prays that this Honorable Court affirm the decision of the lower court, and make clear in its Opinion that West Virginia Assessors may appoint, employ, hire or transfer employees under the Fund without the oversight of the County Commission.

Respectfully Submitted,

**The West Virginia Assessors' Association,
By counsel**



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

HARRISON COUNTY COMMISSION,
ROGER DIAZ, PRESIDENT

Petitioners below,
Appellant,

vs.

No. 33381

HARRISON COUNTY ASSESSOR,
CHERYL L. ROMANO, ASSESSOR,

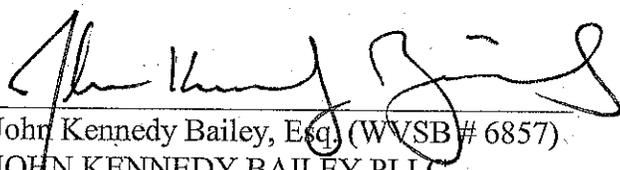
Respondent below,
Appellee

CERTIFICATE OF SERVICE

I, John Kennedy Bailey, counsel for the West Virginia Assessors' Association, hereby certify that the foregoing "Brief, *Amicus Curiae*, of the West Virginia Assessors Association" was served upon counsel of record, on this the 31st day of October, 2007, by depositing a true and correct copy in the United States mail, postage prepaid, in an envelope addressed as follows:

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