

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

HARRISON COUNTY COMMISSION,
Roger Diaz, President,

Petitioner,

v.

Civil Action No. 05-C-493-3

HARRISON COUNTY ASSESSOR,
Cheryl L. Romano, Assessor,

Respondent.

MEMORANDUM, OPINION AND ORDER

On the 15th day of June, 2006, came the petitioner, Harrison County Commission, by counsel, Robert J. Andre, III, and the respondent, Cheryl L. Romano, Harrison County Assessor, in person and by counsel, Gregory H. Schillace, pursuant to previous notice scheduling the above-styled action for hearing. Thereupon, the Court heard argument of counsel with respect to the petition for writ of mandamus filed by the petitioner and the counter-petition for writ of mandamus filed by the respondent.

Following argument of counsel and the review of the petition, counter-petition and the briefs filed herein, the Court makes the following findings of fact and conclusions of law.

Findings of Fact and Conclusions of Law

1. A writ of mandamus pursuant to West Virginia Code § 53-1-2 is the proper and appropriate remedy for the parties with respect to the above-styled matter.
2. West Virginia Code § 11-1C-8 expressly provides in pertinent part as follows:

Notwithstanding any other provision of this code to the contrary, Assessors may employ citizens of any West Virginia County for the purposes of performing assessing and appraising duties under this chapter upon approval of the employment by the Valuation Commission.

The Court finds that this statutory section is clear, unambiguous and provides that the advice and consent of the County Commission is unnecessary for the employment of individuals hired under the Assessor's Valuation Fund. W.Va. Code § 11-1C-8.

2. The West Virginia Legislature passed West Virginia Code § 11-1C-1 et seq. in 1990. This statutory section is entitled "Fair and Equitable Property Valuation". In various sections of the legislative findings the Legislature determined that the purpose of this article was to "create a method to establish and maintain fair and equitable values for all properties".

3. West Virginia Code § 11-1C-8 provides that in order to finance the extra costs associated with the Valuation Training mandated by Article 1C, the Legislature created a revolving Valuation Fund in each of West Virginia's fifty-five counties to be used exclusively to fund each County's Assessor's Office.

4. West Virginia Code § 11-1C-8(a) provides as follows:

In order to finance the extra costs associated with the Valuation and Training mandated by this article, there is 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 the section without the approval of the Valuation Commission, the hiring 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 6-B of this code, including, but not limited to, the conflict of interest provision under Chapter 6-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.

5. West Virginia Code § 11-1C-8(d) provides that:

Monies due the Valuation Fund shall be deposited by the Sheriff 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.

6. The Court **FINDS** that the statutory subsections (a) and (d) of West Virginia Code § 11-1C-8 expressly exclude the County Commission from any involvement in the County Assessor's Valuation Fund, including, but not limited to, the employment of individuals pursuant to the Valuation Fund.

7. The Court **FINDS** that the petitioner's reliance upon West Virginia Code § 7-7-7 is misplaced and expressly **FINDS** that the general provisions of West Virginia Code § 7-7-7 must be controlled by the more specific provisions of West Virginia Code § 11-1C-8.

8. In reaching this conclusion, the Court applies the general rule of statutory construction which requires that a

specific statute be given precedence over a general statute relating to the same subject matter when the two (2) cannot be reconciled. UMWA by Trumpka v. Kingdon, 174 W.Va. 330, 325 S.E.2d 120 (1984); Carvey v. West Virginia State Board of Education, 206 W.Va. 720, 527 S.E.2d 831 (1999); Bowers v. Wurzburg, 205 W.Va. 450, 519 S.E.2d 148 (1999); Newark Insurance Company v. Brown, 218 W.Va. 346, 624 S.E.2d 783 (2005).

8. West Virginia Code § 11-1C-8 must control and take precedence over the provisions of West Virginia Code § 7-7-7 with respect to the Valuation Fund and employees hired pursuant to the authority granted to County Assessor's by the Valuation Fund Statute. The Valuation Fund Statute contained in West Virginia Code § 11-1C-8 specifically deals with the Valuation Fund while West Virginia Code § 7-7-7 deals generally with the hiring of assistants, deputies and employees by county elected officials.

9. The West Virginia Legislature is presumed to be aware of the provisions of West Virginia Code § 7-7-7 when West Virginia Code § 11-1C-8 was enacted, therefore, this Court **FINDS** that the exclusion of the County Commission from the hiring process of Valuation Fund employees by the West Virginia Legislature was intentional. Hall v. Baylous, 109 W.Va. 1, 153 S.E. 293 (1930); Butler v. Rutledge, 174 W.Va. 752, 329 S.E.2d 118 (1985).

10. Similarly, the other general statutory provisions cited by the petitioner do not specifically address the Valuation Fund

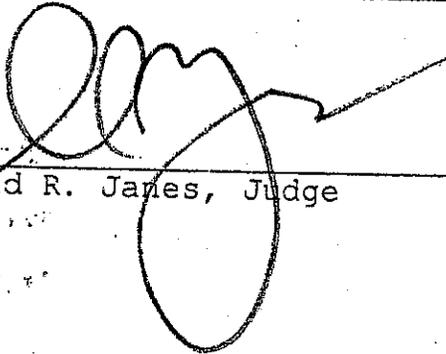
and are controlled by the provisions of West Virginia Code § 11-1C-8.

Accordingly, the Court **DENIES** the Petitioner's Amended Petition for Writ of Mandamus and **GRANTS** the Counter-Petition for Writ of Mandamus of the Respondent.

The objections and exceptions of the petitioner are hereby preserved for the record.

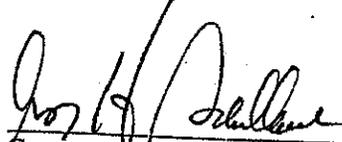
The Clerk is directed to send a certified copy of this Order to all counsel of record.

ENTER: 9/18/06



David R. James, Judge

Submitted by:



Gregory H. Schillace
State Bar No. 5597

Counsel for Respondent

Schillace Law Office
Post Office Box 1526
Clarksburg, West Virginia 26302-1526
Telephone: (304) 624-1000
Facsimile: (304) 624-9100