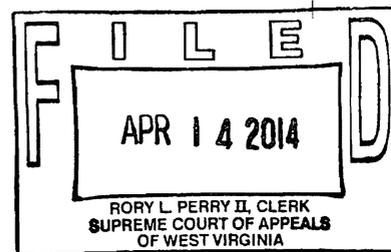

DOCKET NO. 14-0233



STATE OF WEST VIRGINIA, ex. rel.
WEST VIRGINIA REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD,

Petitioner,

v.

THE HONORABLE CHRIS CHILES
Judge, Sixth Judicial Circuit,

and

DAVID E. BUNCH,

Respondents.

SUMMARY RESPONSE OF DAVID E. BUNCH

DAVID E. BUNCH
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304-634-8575

Respondent

ARGUMENT SUMMARY

The Circuit Court was correct in denying the motion to dismiss the Real Estate Licensing Board (Board) because the Board did not provide evidence or law that it is a state agency under the factors established in *Blower v. West Virginia Educational Broadcasting Authority*, 182 W.Va. 528, 389 S.E.2d 739 (1990) and *Mayo v. West Virginia Secondary School Activities Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2008). The Board did not offer proof to the Circuit Court that it was “dependent on public funds” as required by *Blower* and *Mayo*.

ARGUMENT

The Appraiser Board’s improper venue argument is based on *West Virginia Code* § 14-2-2(a)(1), which states that any suit in which the governor, any other state officer, or a state agency is made a party defendant, must be heard in the Circuit Court of Kanawha County. The Appraiser Board argues that it is a “state agency” as defined by *West Virginia Code* § 14-2-3, and that this matter must therefore be heard in the Circuit Court of Kanawha County.

The Appraiser Board is not a “state agency” because it receives no funding from the state. In Syllabus Point 1 of *Blower v. West Virginia Educational Broadcasting Authority*, 182 W.Va. 528, 389 S.E.2d 739 (1990), the West Virginia Supreme Court of Appeals sets forth factors that are to be considered when determining whether a particular organization is a state agency.

Syllabus Point 1 of *Blower* holds:

In determining whether a particular organization is a state agency we will examine its legislative framework. In particular, we look to see if its powers are substantially created by the legislature and whether its governing board’s composition is prescribed by the legislature. Other significant factors are whether the organization can operate on a statewide basis, whether it is financially dependent on public funds, and whether it is required to deposit its funds in the state treasury.

In *Mayo v. West Virginia Secondary School Activities Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2008), the West Virginia Supreme Court of Appeals determined that the Secondary Schools Activities Commission (SSAC) is not a “state agency” in large part because the organization did not receive state funds. The SSAC, like the Appraiser Board, is financed by membership dues it collects from its members. The Court in *Mayo* noted that the Legislature set forth the powers and duties of the SSAC in *West Virginia Code § 18-2-25*.

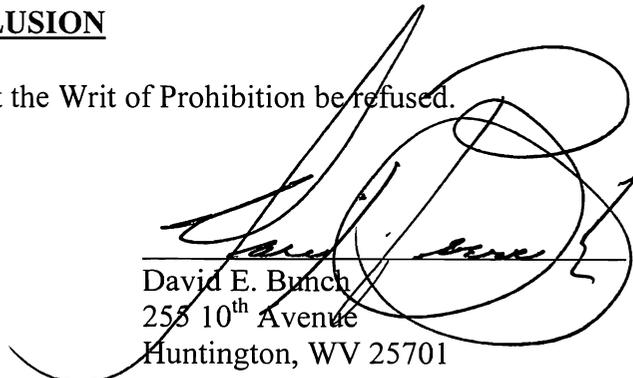
Despite the Legislature setting forth these SSAC powers and duties, the Court concluded that this was not sufficient to consider it a “state agency”, in large part because the SSAC does not receive public funds. Similarly, the Appraisal Board argues that it should be considered a “state agency” because its powers are set forth by the Legislature. However, the Board ignores the crucial fact that it presented no evidence of state funding.

More importantly, the Board does not dispute that ALL of its funding comes from self-generating revenue, mainly fees it imposes on appraisers. It is a self-funded entity. The State does not fund the Board. Conversely, the State cannot withhold any funding from the Appraiser Board since it is entirely self-funded.

The Circuit Court correctly denied the Board’s motion to dismiss and set the matter for the taking of evidence.

CONCLUSION

David E. Bunch respectfully requests that the Writ of Prohibition be refused.



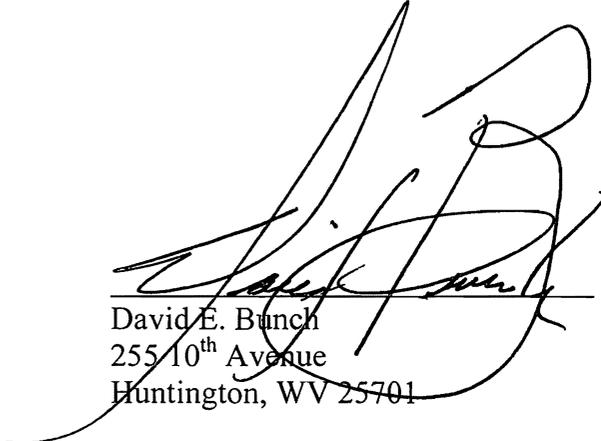
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CERTIFICATE OF SERVICE

I, David E. Bunch, do hereby certify that a true and exact copy of the foregoing Summary Response was served by depositing the same in the United States Mail, this 11 day of April, 2014, addressed as follows:

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The Honorable Chris Chiles
Sixth Judicial Circuit
Cabell County Courthouse
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