

# Joint Legislative Oversight Commission on Department of Transportation Accountability

December 27, 2016

Honorable Paul A. Mattox, Jr.  
Department of Transportation  
Bldg. 5  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

**RE: Retention of Private Outside Counsel**  
***WV DOT, et al v. West Virginia Paving, et al. (16-C-1561)***

Dear Sec. Mattox:

During the last interim meeting, inquiry was made by the members about the propriety of the Department of Transportation and Division of Highways retention of the Bailey & Glasser law firm in the pending antitrust lawsuit against West Virginia Paving and others in the Kanawha County Circuit Court (16-C-1561). Among the many questions asked during the meeting included why the Department and Division retained the private law firm instead of the West Virginia Attorney General's office. No substantive answer was given to that question, nor others that were posed. At the conclusion of the meeting, I stated that the oversight commission desired more information and documentation relating to the retention of private counsel in the above-captioned West Virginia Paving lawsuit.

Accordingly, to facilitate the committee's oversight of this matter, please provide answers and documentation to the following questions on or before **THURSDAY, JANUARY 5, 2017**:

1. Does the West Virginia Attorney General's office represent the Department of Transportation and Division of Highways in the above-captioned West Virginia Paving lawsuit? If so, please provide the date of such representation and copy of any agreement or letter of representation.
2. When was the law firm Bailey & Glasser retained by the Department of Transportation and Division of Highways to represent them in the above-captioned West Virginia Paving lawsuit?

3. Please identify the individual(s) who formally approved the retention of Bailey & Glasser in the above-captioned West Virginia Paving lawsuit to represent the Department of Transportation and the Division of Highways.
4. Was a written agreement entered into with Bailey & Glasser? If so, please provide a copy of the agreement and fee arrangement.
5. Please state with specificity the process utilized by the Department of Transportation and Division of Highways to select Bailey & Glasser as legal counsel in the above-captioned West Virginia Paving lawsuit. In answering this question, please include all steps of the process, including the following:
  - a. Who contacted whom first (e.g. did employees/officials with the Department of Transportation/ Division of Highways contact Bailey & Glasser first about this retention matter or did Bailey & Glasser contact DOT/DOH first about this matter);
  - b. The date of such initial interaction/contact, the parties involved, and manner of contact;
  - c. Whether other private counsel was contacted by the Department of Transportation/Division of Highways to represent it in the WV Paving matter;
  - d. Summary and Timeline of subsequent meetings/communications after the initial interaction until the date of ultimate retention of Bailey and Glasser as legal counsel;
  - e. Whether a bid process or proposal for legal services was used;
  - f. How the fee arrangement for legal services was determined; and
  - g. Whether the Governor's office was consulted and approved of the retention of the Bailey & Glasser law firm.
6. Does the Department of Transportation and Division of Highways maintain it has the ability to retain private counsel without Attorney General approval? If so, please provide a copy of the statutory authority that the Department of Transportation and Division of Highways maintain grants the Department of Transportation and the Division of Highways the ability to retain private counsel.
7. Did the Department of Transportation and Division of Highways obtain approval from the WV Attorney General's office prior to retaining Bailey & Glasser in the above-captioned WV Paving lawsuit? If so, please provide a copy of any written correspondence or communications reflecting knowledge and approval by the Attorney General's office of the private counsel retention.

8. If the WV Attorney General office did not approve the retention of outside private counsel, did the Department of Transportation and the Division of Highways first seek counsel/representation from the Attorney General's office prior to retaining Bailey & Glasser? If so, please provide copies of any and all documents, communications, correspondence, etc. between the Attorney General's office and the Department of Transportation and Division of Highways relating to the same.
9. Please describe and provide documentation reflecting your compliance with W.Va. Code § 5-3-3a.

Your responses and documentation may be directed to staff counsel John Reed. Should you have any additional information relating to this retention of counsel issue that would provide further understanding and background, please feel free to share such information with your submission. If you have any questions, you may contact myself or staff counsel.

Thank you for your prompt attention and responses to these questions.

Sincerely,

DEL. MARTY GEARHEART  
Co-Chairman

cc: Attorney General Patrick Morrisey