

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

The Honorable BOB HENRY BABER, Mayor  
City of Richwood, West Virginia,

Petitioner,

vs.

Civil Action No. 17-P-399  
Judge Tabl

CHRIS DRENNEN, ROBIN BROWN, SHERRY  
CHAPMAN, VIRGINIA MCKENZIE, BRITT  
NICHOLAS, ANN SPENCER, CHARLES  
TOUSEING and GLEN WEILER, all presently  
members of the governing body for the City of Richwood,  
West Virginia and the Honorable John B. "JB" McCUSKEY,  
AUDITOR, STATE OF WEST VIRGINIA, an indispensable party,

Respondents.

P E T I T I O N

PARTIES

- 1) Petitioner Bob Henry Baber is the duly elected Mayor of the City of Richwood, West Virginia, a municipality located in Nicholas County.
- 2) Most respondents are elected or appointed members of the governing body of the foregoing municipality, "Richwood Respondents," who have participated in some or all of the various actions that are set forth in this document.
- 3) The sole remaining respondent, the Honorable John B. "JB" McCuskey, Auditor, State of West Virginia, constitutes an indispensable party to this action for reasons also set forth in the this document.

A L L E G A T I O N S

- 4) September 21, 2017 all the Richwood parties to this action, both petitioner and respondent, met at

a regular council meeting in the city hall building of that municipality.

- 5) As the meeting was coming to an end one of the Richwood respondents moved for an executive session.
- 6) Contrary to the common practice for these meetings, no such executive session had been listed on council's agenda for that meeting.
- 7) Also contrary to the common practices for these meetings, no explanation was given of the purpose for this executive session when the motion was made.
- 8) The petitioner, who was the presiding officer of this regular council meeting in his capacity as mayor, was unable to address the authorization for the proposed executive session because he had not been informed it was going to occur or its purpose, although West Virginia Code 6-9A-4(a) requires a presiding officer to state the authorization for any proposed executive session.
- 9) A majority, if not all, the Richwood respondents voted for the executive session.
- 10) During the executive session respondent Robin Brown asked the petitioner to resign from his office as Mayor.
- 11) When the petitioner refused to resign, respondent Charles Touseing proposed he instead be placed on administrative leave with pay, which was approved by the respondents, and they resumed the regular council meetings where they announced this decision.
- 12) The unexpected nature of this executive session also precluded the petitioner from having an opportunity to air these matters publicly in further violation of West Virginia Code 6-9A-4(b)(A & B).

- 13) During the following days the petitioner continued functioning as Mayor no differently than he had prior to the September 21 meeting.
- 14) By letter dated September 25, 2017 respondent Chris Drennen, identified as "Interim Mayor" in that same letter, informed the petitioner he was being "placed on administrative leave with pay until an outcome of any investigation by the state or other agencies is completed."
- 15) Respondent, John B. "JB" McCuskey, is the duly elected Auditor, State of West Virginia, whose office is conducting the foregoing investigation.
- 16) The subject matter of that investigation involves what is commonly known as "P-Card" or purchasing card administered by the State Auditor's office into purchases made or authorized by the petitioner on behalf of the City of Richwood as in his capacity as mayor after severe flooding in 1916.
- 17) These purchases occurred over a period from February through July of the current calendar year and amounted to expenditures of approximately \$6,500.00.
- 18) As of this filing, the petitioner through his own efforts has identified and reported to the State Auditor all but approximately \$200 of these expenditures with no evidence of wrongdoing.
- 19) This same letter from respondent Drennen contained further directives for the petitioner to return any municipal property in his possession, surrender all keys to municipal property, restricting his presence at city hall to designated public areas, and not representing himself in any way as acting in behalf of the City of Richwood.
- 20) The letter contained no statutory or other legal authority for any of these directives, and the petitioner is not aware of any.

- 21) Monday, October 2, 2017 conforming to past practices of the municipal government the petitioner in his capacity as mayor posted an agenda at city hall listing various items for discussion at the upcoming regular city council meeting on Thursday, October 5, 2017, the first Thursday of the month with regular council meetings customarily held the first and third Thursdays of each month.
- 22) Two days later on Wednesday, October 4 an agenda for a special council meeting was also posted at city hall to occur the same day and time as the regular council meeting.
- 23) According to the agenda for the special council meeting the only item for discussion or business was "by the request of a quorum of City of Richwood City Council to discuss and decide upon a proposal to render services from the law offices of Kay, Casto & Chaney 1085 Van Voorhis Road, Suite 100 Morgantown, WV 26505."
- 24) The foregoing agenda or notice for this special meeting was not posted sufficiently in advance of the actual meeting itself as required by West Virginia Code 6-9A-3(e)(2).
- 25) The petitioner was forcibly prevented from conducting the regular council meeting that October 5<sup>th</sup> evening, thus no regular council meeting occurred.
- 26) The petitioner was also forcibly prevented from participating in the special council meeting that same evening.
- 27) At the special meeting the Richwood respondents approved retaining the previously identified law firm and then adjourned without conducting any further business.
- 28) For all intents and purposes the only reason for retaining the subject law firm was to represent the Richwood respondents in defense of these actions they have taken toward the petitioner.

29) At the regular council meeting for the third Thursday of the month on October 19, 2017 the petitioner was once more forcibly prevented from participating either as an elected public official or private citizen.

30) It was announced at that meeting of October 19, 2017 the State Auditor would be auditing the City of Richwood beginning fiscal year 2013 since no audits of the municipality had been conducted by that agency since that year.

31) The petitioner assumed his present office July 1, 2016, or for a single unaudited fiscal year.

#### *CLAIMS FOR RELIEF*

##### *Count One*

32) Arbitrarily placing the petitioner on “administrative leave” and otherwise further restricting him from performing his duties as Mayor of Richwood, all without any apparent or claimed legal authority for doing so, finds these Richwood respondents acting in the capacity of a quasi-judicial entity.

33) Accordingly, the petitioner asks this Honorable Court issue a rule a rule to show cause pursuant to West Virginia Code 53-1-1 et seq. to these Richwood respondents why a writ of prohibition prohibiting them from placing the petitioner on administrative leave and otherwise restricting him from performing his mayoral duties should not be awarded to the petitioner.

34) Seeking this relief, the petitioner asks he be awarded his reasonable attorney fees and costs pursuant to West Virginia Code 53-1-8 noting the Richwood respondents have resorted to public sources for the same thus asking his reimbursement be likewise or from the Richwood respondents personally.

##### *Count Two*

35) The above actions of the Richwood respondents at the executive session of September 21, 2015 and their special council meeting of October 5, 2017 violate the Open Governmental Proceedings

Act, West Virginia Code 6-9a-1, et seq. entitling petitioner under Section 6 of that statute to injunctive relief and annulment of any actions taken at these forums.

36) Accordingly the petitioner asks this Honorable Court to annul those actions the Richwood respondents took at the executive session of September 21, 2017 placing him on administrative leave and otherwise restricting him from performing his mayoral duties.

37) The petitioner also asks under the provisions of the Open Governmental Proceedings Act the action of the Richwood respondents at the special council meeting of October 5, 2017 of retaining outside counsel at the municipality's expense be annulled.

38) The petitioner also asks the Richwood respondents be enjoined from any further placement of him on administrative leave, otherwise restricting him from his duties as Mayor, forcibly restraining him from presiding over or participating Richwood city council meetings and hiring outside counsel at public expense to defend their actions in this matter.

39) The petitioner asks in addition to annulling the respondents' actions at the aforesaid executive session and special council meeting as well as enjoining future similar conduct, he asks to be awarded his costs and reasonable attorney fees pursuant to West Virginia Code 6-9A-7 in having to bring this action once more calling the Court's attention to the Richwood respondents resort to public funds to defend their own actions.

40) Calling this Court's attention to the Richwood respondents willing resort to potential criminal implications for the petitioner's conduct in this matter through the use of law enforcement personnel, he asks the Court to make a determination whether the Richwood respondents' violation of the Open Governmental Proceedings Act as alleged in the foregoing merits criminal sanctions against any of

them under the provisions of West Virginia Code 6-9A-7.

#### Count Three

41) The petitioner restates in their entirety and incorporates by reference all of the preceding paragraphs of this Petition into this third count or claim for relief.

42) The Richwood respondents' unlawful conduct and actions have caused the petitioner irreparable harm to which he has no adequate remedy at law.

43) The petitioner asks the respondents' actions be annulled and they be enjoined without petitioner having to post bond from placing him on administrative leave and from imposing the other unlawful restrictions that prevent from carrying out the mayoral duties to which he was duly elected to perform.

44) Seeking this injunctive relief the petitioner asks he be awarded his reasonable costs and attorney fees whether from public or private sources as this Court deems appropriate.

#### Count Four

45) The petitioner restates in their entirety and incorporates by reference all of the preceding paragraphs into this fourth count or claim for relief.

46) West Virginia Code 12-3-10a authorizes the respondent State Auditor as an administrator of the purchase card (P-Card) program.

47) In this vein the respondent State Auditor has promulgated rules and regulations for the use of these cards, and in this matter has undertaken an investigation of the petitioner's use and/or delegation of the card's use.

48) Notwithstanding the petitioner's "self-reporting" of all but three per cent (3%) of the subject expenditures to the respondent State Auditor, no word has been given to the petitioner or anyone



else for that matter when this investigation will be concluded or if it has even begun.

49) This inexplicable silence and apparent inaction constitutes part, if not all, the rationale for the extralegal actions of the Richwood respondents as described in the first three counts or claims for relief in this Petition to occur and continue.

50) The respondent State Auditor's apparent inaction with respect to this investigation together with the accompanying silence causes the petitioner irreparable harm with no adequate remedy at law.

51) Accordingly he asks this Honorable Court issue a writ of mandamus compelling the respondent State Auditor to complete this investigation and announce any finding regarding the same immediately.

52) Alternatively, as this investigation also constitutes a quasi-judicial function by the respondent State Auditor, the petitioner asks this Court award him a writ of prohibition for a rule to show cause to the respondent State Auditor as why such investigation cannot be immediately conducted, completed and findings publicly announced.

53) The petitioner asks he be awarded his legal costs and reasonable attorney fees for this portion of this action from whatever source(s) the Court deems appropriate.

#### Count Five

54) The petitioner states in their entirety and incorporates by reference all of the preceding paragraphs of this document into this fifth count of his Petition or claim for relief.

55) Under the circumstances of what has already occurred here, the allegations set forth in paragraphs 30 and 31 above referring to pending annual audits of the City of Richwood by the respondent State Auditor for previous fiscal years bear ominously for the petitioner.

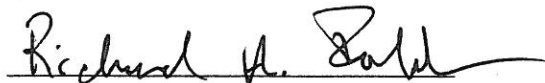


56) Although the allegations of foregoing paragraphs 30 and 31 concern three (3) of four (4) fiscal years when the petitioner was not even Mayor, the implications for using these pending audits to continue depriving him of office as is currently happening exist.

57) Such deprivation causes him irreparable harm without an adequate remedy of law, thus he asks this Honorable Court enjoin the Richwood respondents with the respondent State Auditor from using the dubious grounds for any outcome of these pending annual audits of past fiscal years to deny or continuing to deprive the petitioner from carrying out the duties of his office.

Respectfully submitted;

The Honorable BOB HENRY BABER, Mayor  
City of Richwood, West Virginia  
By Counsel



Richard A. Robb (WVSB #3123)  
P.O. Box 8747  
South Charleston, WV 25303  
(304) 744-8231  
[rrobb@suddenlink.net](mailto:rrobb@suddenlink.net)

#### VERIFICATION

I, BOB HENRY BABER, after having been first duly sworn, state I have read the facts and allegations contained in the foregoing Petition and say they are true except where stated on information, and where so stated, I believe them to be true.

  
BOB HENRY BABER, Mayor

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, to-wit;

Taken, subscribed and sworn to before me, the undersigned authority, by BOB

HENRY BABER this 23rd day of October 2017.

Marie Hoffmann  
Notary Public

(SEAL)



My commission expires: Nov 7, 2023