

Presentation by the Committee to Reform Hampshire County Government
to the Hampshire County Commission

July 24, 2007

In Reference to the Commission's April 2007 Resolution Concerning
The Petition to Change the Form of Hampshire County Government

Gentlemen,

In late 2002 and early 2003 a number of citizens of Hampshire County came together to discuss our county government. With growing support they formed the Committee to Reform Hampshire County Government which was tasked with following the provisions offered by our State Constitution (Article IX, § 13) in order to place a Petition on the ballot to form a County Tribunal.

Much to the Committee's surprise the first step of gaining the signatures of over 10% of the registered voters of the county was quickly accomplished. The second step was fulfilled on March 21, 2003 when the Committee presented the Petition to the Hampshire County Commission and it certified the signatures and forwarded the Petition to the West Virginia Legislature. The third step of securing an enabling bill from the State Legislature has, in reality, turned out to be more complex than anyone expected.

Although the proposed form of government falls well within the requirements of the State Constitution, the Legislature questioned the provision that would have the Commissioners elected from and only by each voting district of the county. This model, based on our United States Congress and our State Legislature and numerous other county governments around the nation, appears to have caused concern in the minds of some politicians. So instead of the rapid process of passing the Petition back to the County to be placed on the ballot, the people's right to self-determination has been thwarted by the Legislature's failure to pass enabling legislation in the last four legislative session.

Fortunately, both our United States Constitution and our West Virginia Constitution have a proven way of insuring the rights of citizens to have the law carried out. Our tried and true system of government is set up with three independent branches: Executive, Legislative and Judicial. Several Hampshire County Citizens, at the urging of the Committee and for the good of the County, availed themselves of their Constitutional right to redress and petitioned the Judicial branch to force the Legislature to meet its Constitutional responsibilities.

In response to this suit by Hampshire County citizens Honorable Paul Zakaib, Jr. Judge of the Kanawha Circuit Court wrote a declaratory judgment stating:

"A. The defendants [the State Legislature] have a constitutional duty to process enabling legislation permitting Hampshire County voters to vote on the proposed reform of the government of Hampshire County;

"B. The proposed reform of the government of Hampshire County, including the creation of a tribunal of members elected from and by each of the County's election districts, would be constitutionally valid if and when it is approved by the voters of Hampshire County. "

There will be a hearing in Kanawha Circuit Court in August concerning objections to this ruling.

That brings us to the present problem. On April 24, 2007 this Hampshire County Commission passed a Resolution advising the West Virginia Legislature that they believed "said petition no longer represents the will of ten percent (10%) of the registered voters of Hampshire County."

As we read the Constitution we see no provision for reconsideration of the validity of the Petition by the County Commission. We asked the County's Prosecuting Attorney if he had advised the Commission of any such right or duty. He said he not been asked for any advise on this matter and he did not know of any precedent for this action. Next we reviewed our counsel's memorandum addressing this issue.

Mr. Robert Bastress, a noted West Virginia constitutional law expert, has written to the Circuit Court of Kanawha County:

"The resolution has no legal effect. Nothing in Article IX, § 13 confers the authority on a county commission to retain jurisdiction over a petition, once it is submitted to the Legislature. What § 13 does require is that the will of the voters of Hampshire County must be determined by a county wide referendum and not by either the county commission or the Legislature. Sound reasoning also dictates that county commissions should not have the discretion or power to nullify or withdraw previously submitted, valid petitions. By definition, a § 13 proposal to alter county government necessarily seeks to change the form of the county commission, thus threatening the nature and perhaps even the existence of commissioners' positions...."

"Similarly irrelevant are the data adduced by the defendants, which also underlay the county commission's action, that show that the number of signatures on the petition has, because of increased population, dropped below ten percent of the total of registered voters. The critical moment for making the determination on the sufficiency of the number of signatures has to be the point at which the county commission makes the initial determination as to the petition's validity. Otherwise, there would be no finality to a petition because the ten percent would always be a moving target that could leave a petition open to challenge right up to the day of the referendum.¹ Undoubtedly, such common sense rationales explain why the defendants can cite to no authority for the proposition that a petition's validity can lapse because of developments that occur after its proper validation and that are not expressly delineated by the underlying constitutional or statutory provision. ²"

In laymen's terms, this means one can not change the rules of the game while the ball is in

play. Therefore, we respectfully ask our Commissioners to explain their legal precedent for the action of April 24th which directly contravenes the rights of the people of Hampshire County to see this matter finally placed on the ballot. We would also like to know if the Commissioners have had any communications with state legislators or with the West Virginia Association of Counties on this matter. We are concerned that outside influences are being exerted upon Hampshire County.

Next, there is the definitive statement in the Commission's Resolution that *"said petition no longer represents the will of ten percent (10%) of the registered voters of Hampshire County."* We have reviewed the Commission's discussion of the Resolution in the April meeting and find no indication that this statement is supported by facts. The Committee had originally gathered signatures well over 10% of the registered voters. We believe that the Petition still represents the will of at least 10% of the population which would include newly registered voters some of whom have come from counties with the same kind of government we are seeking.

Therefore, we respectfully ask this Commission to give us the number and names of:

1. the signatories who have died,
2. the signatories who have moved out of the county and
3. the newly registered voters who have been asked if they support the Petition.

Failure to have the answers to all of these questions makes the Resolution's statement merely someone's conjecture instead of a statement of fact.

In summary, we believe that the April 24th action of the Hampshire County Commission in passing the Resolution on the Petition was without statutory authority or legal precedent and that its assertion concerning the will of the people is unsupportable without a referendum or a polling of all registered voters. Therefore, the Committee to Reform Hampshire County Government respectfully asks this Commission to

1. rescind the Resolution of April 24, 2007 respecting the Petition and
2. ask the State Legislature to speed the process of passing enabling legislation so that the Petition can be placed on the next election ballot.

Gentlemen, that concludes our prepared statement. We would request that you now answer the questions we have posed and take the action we have requested. Thank you.