

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel. CITIES
OF CHARLESTON AND HUNTINGTON AND
COUNTY COMMISSIONS OF KANAWHA
AND OHIO COUNTIES,

Petitioners,

v.

WEST VIRGINIA ECONOMIC DEVELOPMENT
AUTHORITY, A PUBLIC CORPORATION,

Respondent.

AND

STATE OF WEST VIRGINIA ex rel. REV. JIM
LEWIS AND JOHN COONEY,

Petitioners,

vs.

WEST VIRGINIA ECONOMIC DEVELOPMENT
GRANT COMMITTEE, et al.,

Respondents.

AND

GREENBRIER COUNTY COALITION AGAINST
GAMBLING EXPANSION; AND CABELL COUNTY
COALITION AGAINST GAMBLING EXPANSION,
UNINCORPORATED ASSOCIATIONS,

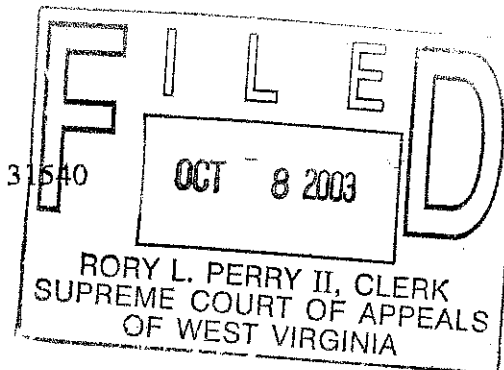
Petitioners,

vs.

WEST VIRGINIA LOTTERY COMMISSION;
AND ITS DIRECTOR, JOHN MUSGRAVE,

Respondents.

No. 31540



No. 31541

No. 31564

**MOTION FOR SUBMISSION OF OFFICIAL
PROJECT "CERTIFICATIONS"**

The Petitioners, Rev. Jim Lewis, et al., and Greenbrier Coalition Against Gambling Expansion, et al., hereby move as follows:

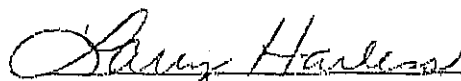
1. The Grant Committee "Minutes" of this August 15th and 20th public meetings where these 48 projects were certified were only approved by the Committee last Friday, October 3, 2003.

2. The submission of these respective 2-page "certifications" is essential fully and fairly to adjudicate this matter, and to effectuate and protect petitioners' rights to due process of law under the *U. S. Const.*, Amend. 14, and the *W. Va. Const.*, Art. III, § 10. See attached Exhibits 1 & 2.

WHEREFORE, petitioners respectfully request that this Court order the respondents Grant Committee to submit no later than October 9 copies of these respective "certifications" or to grant leave to the petitioners to do so.

**STATE OF WEST VIRGINIA ex rel. REV. JIM
LEWIS AND JOHN COONEY AND
GREENBRIER COUNTY COALITION
AGAINST GAMBLING EXPANSION;
AND CABELL COUNTY COALITION
AGAINST GAMBLING EXPANSION,
UNINCORPORATED ASSOCIATIONS
PETITIONERS**

BY COUNSEL:



Larry Harless (WVSB #1528)
Route #2, Box 186C
Cottageville, West Virginia 25239
Telephone: (304) 372-6878

EXHIBIT

WEST VIRGINIA ECONOMIC DEVELOPMENT GRANT COMMITTEE

Bob Wise
Governor

William H. Baker, Vice-Chairman

Mallie J. Combs

David G. Hofstetler

Alex Macia (Governor's Designee)

Post Office Box 963
Charleston, West Virginia 25324-0963
(304) 558-0211

Brian M. Kastick
Chairman

Mark Prince

F. Scott Rotruck

David G. Satterfield

Bernard P. Twigg

August 27, 2003

Mr. David Molgaard
City Manager
City of Charleston
Post Office Box 2749
Charleston, WV 25330

Re: Notice of Project Certification

Dear Mr. Molgaard:

Please take notice that on the 20th day of August, 2003, the West Virginia Economic Development Grant Committee (hereinafter "Grant Committee") met in Charleston, West Virginia, and, pursuant to authority vested in the Committee by W. Va. Code §29-22-18a, as amended by Enrolled Senate Bill No. 2007, which passed July 1, 2003, and was effective upon passage, certified Project No. 1, the City of Charleston - Charleston Ballpark project and awarded funding, in the form of a grant, in the amount of \$12,000,000 payable to the City of Charleston (hereinafter "Grantee") solely from net proceeds from the sale of lottery revenue bonds issued as provided in subsection 29-22-18a(d), on the terms and conditions set forth described in a memorandum of understanding to be entered into by and between the Grant Committee, the West Virginia Economic Development Authority (hereinafter "WVEDA") and the Grantee and with the protections and benefits to the State set forth therein. More specifically:

1. That the WVEDA and the Grantee shall enter into a separate term sheet with the WVEDA. The terms shall be set forth in a memorandum of understanding signed by the Grantee, the Executive Director of the WVEDA and the Chairman of this Committee. The specific uses of the grant funds and the terms and conditions of their use shall be listed in detail within the MOU. A copy of the memorandum will be sent to each member of this Committee;

2. That in the event the MOU specifies terms and conditions that the Project applicant(s) must meet by a specified date, those terms and conditions shall be met by the specified date, whether or not grant proceeds are available for disbursement on that date, except that a binding written commitment of a third party executed on or before the specified date shall not be in violation of this paragraph if actual performance by the third party is made contingent on distribution of grant proceeds to the grantee. For example, a bank may commit to making a commercial loan to the grantee but make actual payment of the loan proceeds to the grantee contingent on the grantee's receipt of the grant proceeds;

WEST VIRGINIA ECONOMIC DEVELOPMENT GRANT COMMITTEE

Letter to City of Charleston
RE: Notice of Project Certification

August 27, 2003
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3. That the Grantee shall work, as needed, with the WVEDA's bond counsel, Jackson Kelly PLLC, and the investment banking team of Citigroup Global Markets, Inc., Ferris Baker Watts, Inc., and Crews and Associates and any other advisors to the WVEDA, to structure the financing to protect the State of West Virginia and to maximize issuance of tax-exempt bonds to fund the grant;

4. That the Grantee shall work with the designee(s) of the WVEDA to ensure that the Project is completed in accordance with all agreements and terms entered into with the Grant Committee or the WVEDA and with applicable Federal and State laws and regulations;

5. That this grant may not be assigned, sold or transferred and that any grant money not advanced to the Grantee for the Charleston Ballpark project remain the funds of the State of West Virginia;

6. That the Grantee shall strictly and fully comply with the terms of this grant award and any MOU executed pursuant to this letter;

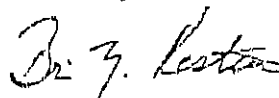
7. That no funds shall be advanced by the WVEDA based upon a claim of partial compliance or a claim of detrimental reliance;

8. In the event a court of competent jurisdiction, in a decision that becomes final, holds that video lottery is unconstitutional or that video lottery proceeds may not be used to pay debt service on bonds issued pursuant to W. Va. Code § 29-22-18a(d), the State of West Virginia shall have no legal or moral obligation to find another source of revenue from which to pay debt service on the bonds or from which to pay the grants for projects certified by the Grant Committee on August 20, 2003; and

9. That while the Grant Committee determined that this project is for a public purpose and is in the public interest, it is the sole responsibility of the Grantee to ensure that the grant awarded is expended consistent with (a) the public purpose doctrine of this State, (b) all terms and conditions specified in this project certification letter, (c) the terms of any memorandum of understanding (MOU) executed pursuant to this letter, and (d) all applicable Federal and State laws and regulations.

On behalf of the Committee, we look forward to successful completion of your project.

Sincerely,



Brian M. Kastick
Chairman

BMK/cgm

cc: Grant Committee Members

EXHIBIT

2

WEST VIRGINIA
ECONOMIC DEVELOPMENT GRANT COMMITTEEBob Wise
GovernorWilliam H. Baker
Vice-Chairman

Mallie I. Combs

David G. Hofstetter

Alex Macia (Governor's Designee)

Post Office Box 963
Charleston, West Virginia 25324-0963
(304) 558-0211Brian M. Kastick
ChairmanDavid G. Satterfield
Secretary

Daniel R. Moore

Mark Prince

Bernard P. Twigg

December 9, 2002

Sherry Risk, City Manager
City of Charleston
P.O. Box 2749
Charleston, WV 25530

Re: Notice of Project Certification

Dear Ms. Risk:

Please take notice that on the 17th day of October, 2002, the West Virginia Economic Development Grant Committee met in Charleston, West Virginia, and, pursuant to authority vested in the Committee by W. Va. Code § 29-22-18a, as amended by Enrolled Committee Substitute for H. B. 4005, which passed March 9, 2002, and was effective upon passage, certified The City of Charleston Baseball Project and awarded funding, in the form of a grant, in the amount of \$12,000,000 payable to the City of Charleston (hereinafter "Grantee") solely from net proceeds from the sale of lottery revenue bonds issued as provided in subsection 29-22-18a(d), on the terms and conditions set forth below, and with the protections and benefits to the State set forth herein, all of which shall be more formally and completely described in a memorandum of understanding to be entered into by and between the West Virginia Development Office (hereinafter "WVDO") and the Grantee:

1. That twelve million dollars shall be allocated to the Grantee on the following terms and conditions:

- a) The baseball park must be built at the East End location bounded by Smith Street, Morris Street and Brooks Street.
- b) The City of Charleston must contribute a minimum of \$5 million dollars to the construction of the project from the sale of Watt Powell Park or other sources. Such other sources may include loans and/or grants made or obtained by the City of Charleston.
- c) The City of Charleston must contribute a minimum of \$3 million dollars to the construction of the project from some debt instrument to be backed by the annual revenue stream.
- d) The Kanawha County Commission must contribute a minimum of at least \$1.5 million to the construction of the project.
- e) The Charleston Professional Baseball Club Limited Liability Corporation must contribute a minimum of \$1.5 million dollars towards the construction of the

West Virginia Economic Development Grant Committee

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- project. Additionally, the Charleston Professional Baseball Club Limited Liability Corporation must make annual lease payments for twenty years. Lease payments will be \$350,000 for years one to fifteen, \$250,000 for years sixteen to twenty. (See attached lease agreement.)
- f) The State must participate on a pro rata basis in any savings generated by value engineering the project to stay within or below the \$23 million budget.
- g) No grant proceeds will be made available until the City of Charleston has furnished the West Virginia Development Office and the Chairman of the Committee with written evidence of financings/contributions described in (b) through (e) or written commitments satisfactory to the WVDO and the Chairman of the Committee with respect thereto.
2. The WVDO will conduct an analysis of the financial statements and financial standing of the Charleston Professional Baseball Club LLC and report back to the Economic Development Grant Committee prior to the issuance of bonds by the West Virginia EDA.
3. The WVDO and the Grantee shall enter into a separate term sheet with WVDO. The terms shall be set forth in a memorandum of understanding signed by the Grantee, the Director of the WVDO, and the Chairman of this Committee. The grant amount may be reduced in the memorandum of understanding if soft costs, such as administrative fees or contingency costs, were included in the grant amount and are deemed to be excessive. The specific uses of the grant funds are to be listed in detail within the MOU. A copy of the memorandum will be sent to each member of this Committee.
4. That the Grantee shall work, as needed, with the West Virginia Economic Development Authority's bond counsel, Jackson & Kelly PLLC, and the investment banking team of SalomonSmithBarney, Ferris Baker Watts, Inc., and Crews and Associates and any other advisors to the Authority, to structure the financing to protect the State of West Virginia and to maximize issuance of tax-exempt bonds to fund the grant;
5. That the Grantee shall work with the designee(s) of the West Virginia Economic Development Authority to ensure that the Project is completed in accordance with all agreements and terms entered into with the Economic Development Grant Committee or the WVDO and with applicable laws of the State of West Virginia;
6. That this grant may not be assigned, sold or transferred and any grant money not advanced to the Grantee for the City of Charleston Ballpark Project remain the funds of the State of West Virginia;
7. Notwithstanding the above paragraph, the City of Charleston Ballpark Project may be transferred in fee or leasehold to the West Virginia Economic Development Authority in furtherance of the public bond issues contemplated herein; and
8. That the Grantee shall strictly and fully comply with the terms of this grant award. No grant money shall be advanced by the West Virginia Economic Development Authority based upon a claim of partial compliance or a claim of detrimental reliance.

West Virginia Economic Development Grant Committee

Letter to Ms. Risk
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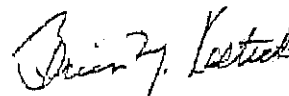
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Also, enclosed is a memo regarding the compliance with state and federal laws for the use of public funds.

We will be in contact with you in the near future to construct a memorandum of understanding.

On behalf of the Committee, we look forward to the grand opening of the new Charleston Ballpark.

Sincerely,



Brian M. Kastick
Chairman

BMK/kk

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that this **Motion for Submission of Official Project "Certifications"**
was served by facsimile transmission on October 8, 2003, upon the following:


Stephen Farmer
2nd Floor, 7 Players Drive
Post Office Box 3842
Charleston, West Virginia 25338
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Kathleen Shultz
Deputy Attorney General
State Capitol, West Wing
Charleston, West Virginia 25311
Fax: 558-2525

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Thomas R. Goodwin, Esquire
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Rudolph L. DiTrapano, Esquire
DiTrapano, Barrell & DiPiero
604 Virginia Street, East
Charleston, West Virginia 25301
Fax: 342-4605



Larry Harless (WVSB #1528)