

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 23rd day of September, 2003, the following order was made and entered:

State of West Virginia ex rel. Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia, Petitioners

vs.) No. 31540

West Virginia Economic Development Authority, a public corporation,
Respondent

AND

State of West Virginia ex rel. Rev. Jim Lewis and John Cooney, Petitioners

vs.) No. 31541

West Virginia Economic Development Grant Committee; West Virginia Economic Development Authority; City of Charleston; Kanawha County Commission; City of Huntington; and Ohio County Commission, Respondents

AND

Greenbrier County Coalition Against Gambling Expansion and Cabell County Coalition Against Gambling Expansion, unincorporated associations, Petitioners

vs.) 31564

West Virginia Lottery Commission and John Musgrave, its Director, Respondents

West Virginia Racing Association, Intervenor

On a former day, to-wit, September 16, 2003, came the petitioners, Greenbrier County Coalition Against Gambling Expansion and Cabell County Coalition Against Gambling Expansion, by Larry Harless, their attorney, and the petitioners, Rev. Jim Lewis and John Cooney, by Larry Harless, their attorney, presented to the Court their motions for taking evidence, in the above-captioned matters, for the reasons stated therein.

Thereafter, on the 22nd day of September, 2003, came the respondents, the West Virginia Lottery Commission and John C. Musgrave, by Thomas R. Goodwin and Johnny M. Knisely II, Goodwin & Goodwin, their attorneys, and presented to the Court their written response in opposition thereto.

On the same day, came the respondents, West Virginia Economic Development Grant Committee, by Katherine A. Schultz, Senior Deputy Attorney General, and presented to the Court its written response in opposition thereto.

On the same day, came the petitioners, City of Charleston, Kanawha County Commission, City of Huntington and Ohio County Commission, by Stephen B. Farmer, Farmer, Cline & Arnold, their attorney, and presented to the Court their written response in opposition thereto.

Finally, on the same day, came the respondent, West Virginia Economic Development Authority, by Silas B. Taylor, Senior Deputy Attorney General, and presented to the Court its written response in opposition thereto.

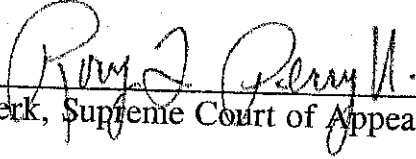
Upon consideration whereof, the Court is of opinion that the above-captioned matter be granted in part and refused in part as set forth below.

It is therefore ordered that all parties may file simultaneous affidavits on or before the 26th day of September, 2003; with counter affidavits filed on or before the 30th day of September, 2003.

Justice Davis would deny the filing of affidavits by any party as the pleadings fail to raise a genuine issue of material fact, the issues before this Court are purely issues of law as they are constitutional questions and such a procedure is violative of Rule 14(e) and Rule 14(f) of the Rules of Appellate Procedure.

A True Copy

Attest:


Clerk, Supreme Court of Appeals