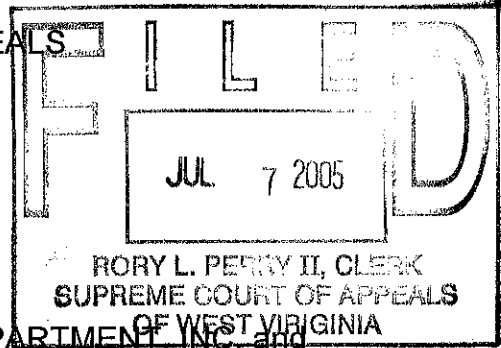


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IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 050289



WEIRTON HEIGHTS VOLUNTEER FIRE DEPARTMENT, INC. and
WEIRTON VOLUNTEER FIRE DEPARTMENT COMPANY NO. 1, INC.,

Appellants,

v.

STATE FIRE COMMISSION,

Appellee.

BRIEF FOR APPELLANTS

Appeal from the Order of Judge Recht entered on September 14, 2004 in the Circuit Court of Hancock County, West Virginia, at Civil Action No. 03-AA-1.

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WEIRTON VOLUNTEER FIRE
DEPARTMENT COMPANY NO. 1,
INC.

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BRIEF FOR APPELLANT

AND NOW, come the appellants, Weirton Heights Volunteer Fire Department, Inc. and Weirton Volunteer Fire Department Company No. 1., Inc., by their counsel, Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., and hereby submit their brief to this Honorable Court, pursuant to W.Va.R.A.P. 10, averring as follows:

I. KIND OF PROCEEDING AND NATURE OF RULING BELOW

The action below was brought by the appellants, Weirton Heights Volunteer Fire Department, Inc. and Weirton Volunteer Fire Department Company No. 1, Inc., appealing the December 13, 2002 decision by the West Virginia State Fire Commission to withdraw recognition¹ of appellants as fire departments in the State of West Virginia to the Circuit Court of Hancock County, pursuant to the State Administrative Procedures Act at W.Va. Code § 29A-5-4. Following a hearing on the merits and a hearing on a motion for clarification, Judge Recht entered an order on September 14, 2004, holding that the State Fire Commission had the authority to withdraw the recognition of the appellant departments. Specifically, Judge Recht held that because the appellants lacked their own fixed territory in which to fight fires, the fire commission had the authority to withdraw recognition of the departments which stripes the departments of the authorities granted to

¹Throughout the record below and the statutes dealing with the issue the terms recognition and certification are used interchangeably. Petitioners will use the term recognition but equally means certification if that be deemed more appropriate.

fire departments under West Virginia Code Section 29-3A-1 et. seq. In addition, the order specifically allows appellants to continue to otherwise function as fire departments and to fight fires. It further requires the State Fire Commission to provide the appellants with all the necessary means to do so. The petition for appeal to this Honorable Court followed and was granted on or about June 7, 2005.

II. STATEMENT OF FACTS

At the request of the City of Weirton,² the fire commission at its' hearings on October 4, 2002 and December 13, 2002, considered withdrawing the recognition of the appellants as fire departments. (Identification of Record, Exhibit 1, Transcript of the meeting of the West Virginia State Fire Commission dated October 4, 2002, page 5). At the first hearing on October 4, 2002, several of the parties involved and other interested parties were heard by the commission. First, Mayor Harris from the City of Weirton³, indicated that he wanted

²The City of Weirton had just been through litigation with the petitioners where Judge Mazzone ruled that they could create a combined (paid and volunteer) department, but that there was no evidence that they could dissolve the petitioner companies under the circumstances presented. Thus, the City was stuck in a situation where the petitioners still existed and they did not have grounds to dissolve them and, therefore, were not entitled to any of their equipment, which these petitioners believe was the motive behind the City's actions in first place. Thus, the City being unable to do what they wanted to do, requested that the fire commission step in and intervene and withdraw the departments' recognition in the hopes that would allow them to order dissolution of the companies and reach their ultimate objective. (See, Brief in Support of Petitioners' Appeal, Exhibit B).

³Mayor Harris was the Mayor under the previous administration and the City of Weirton has since then undergone a complete change in administration. The new administration is working with petitioners to facilitate an agreement by which they can again work together as they had for years in the past. The lack of recognition of Petitioner departments now poses a road block to reaching this agreement.

the two appellant fire departments to be "decertified" so that the City would be allowed to dissolve them in order to obtain their equipment. (*Id.*, pages 5-6). (Emphasis added). Essentially, Mayor Harris argued that because the City of Weirton Fire Department had been reorganized and the appellants did not choose to join the reorganized department, that their recognition should be pulled and they should be dissolved. (*Id.*, page 6). A representative for the appellants also spoke and indicated there was no basis to pull the recognition of the companies for the following reasons. First, evidence was provided by letter to the commission prior to the meeting indicating that both petitioner companies met the 13 requirements for fire commission approval/recognition. (*Id.*, pages 23-24; see also Brief in Support of Petitioners' Appeal, Exhibit A). Additionally, appellants provided information regarding Judge Mazzone's earlier decision which indicated that there was no evidence that the companies should be dissolved.⁴

After hearing from other interested parties, the State Fire Marshall, Sterling Lewis, gave his recommendation to the State Fire Commission. Mr. Lewis specifically stated as follows:

After listening to all parties involved, the issue has come to one (1) fact, Judge Mazzone has ruled that the resolution of 5/13/02, which created a single combination fire department is valid. That is the one (1) issue that this commission can deal with on a legal basis. This will establish that the City has full

⁴On page 15 of Judge's Mazzone's decision and order, he indicated as follows "there is no evidence that has been presented to the court that any of the necessary predicates for the dissolution of the plaintiff fire departments exist. There are very specific criteria that have to be met under the West Virginia Statutes in order for a company to be dissolved." (Brief in Support of Petitioners' Appeal, Exhibit B, p. 15).

authority over the fire service protection for its City and that the volunteer departments are part of that City, to be controlled by the city council and mayor.

One (1) of the three (3) volunteer departments decided to be part of the combination department, the other two (2) decided not to be part of the new department.

To allow these two (2) departments to continue to answer fire calls, they must apply for a new fire department status in another area.

First, the recognition, not dissolving, but recognition of these three (3) fire departments must be renewed by the fire commission. To allow new fire department applications to be submitted, all emergency vehicle permits must be returned to the State Fire Marshall's office and they will not receive state funding until they are relocated in a new and improved area. With that, it is my recommendation of the Fire Marshall's office, that the State Fire Commission withdraw recognition of Weirton Company's one (1) two (2) and three (3).

(Id., pages 87-88). Subsequently, Commissioner Oldaker made a motion that companies number one (1) and three (3), appellants here, be given until the December 13, 2002 fire commission meeting to complete all phases of relocation including, but not limited to, establishment of a new area in which to fight fires. Part of the motion indicated that no further extensions would be granted. (Id., pages 88-89). This motion was passed on a vote of six in favor and four against. (Id., page 89). Finally, a motion was made and a vote taken to withdraw the recognition of Company No. 2 who is the company that joined the City's combination department and is not involved in this matter. (Id., page 90).

Appellants then attempted to comply with the commission's request to find a new running zone.⁵ In that regard, they worked with the Hancock County commissioners who desired to work with the appellants to have them provide service to the citizens of Hancock County. A letter was submitted to the fire commission the week before the December 13, 2002 meeting outlining the agreement with Hancock County including a proposed running zone. (See, Brief in Support of Petitioners' Appeal, Exhibit D).

At the meeting held before the fire commission on December 13, 2002, arguments were presented by all parties involved including the Hancock County Commissioners in support of the new plan proposed by the appellants. However, the State Fire Commission felt that the appellants did not meet the deadline to the extent that the new proposed running zone was not yet approved through the State Fire Marshall's office. (Identification of Record #2, Transcript of the Fire Commission Meeting dated December 13, 2002). It was not disclosed to the appellants that Fire Commission approval was needed prior to the hearing. Finally, a motion was made to withdraw the recognition of the appellants, WHVFD and Company No. 1. The motion was seconded and carried without opposition. (Id.). The commission went on to indicate that the appellants could apply for a new fire department approval, however, indicated that they would not consider a new application until all of the litigation issues had been resolved. (Id.). After the meeting on December 13, 2002, each

⁵It was unclear to appellants why they were required to provide a running zone, particularly in light of the fact that there are no approved maps for any of the departments in this area and because it is not on the fire commission's own list of requirements for fire commission approval or recognition. Nonetheless, appellants had no choice but to attempt to comply with the commission's request at that time.

of the appellants a letter from the chairman of the State Fire Commission indicating as follows:

This is to formally and officially notify you and the respected members of your organization that, as a result of the City of Weirton's decision to reorganize fire protection services in the City of Weirton and your organization's decision not to affiliate with the new combination department, the State Fire Commission in their meeting of December 13, 2002, has withdrawn their recognition of your organization as a fire department for operational purposes within the state of West Virginia effective 12:00 noon, December 13, 2002.

As a result of this action, your department and its respective officers no longer have those authorities as granted in the West Virginia Code, Chapter 29, Article 3A, "authority of local fire departments," as well as duties, authority, responsibilities or privileges that may be found elsewhere in the state code.

Identification of Record, #4 and 6). The letters also required the appellants to return their Emergency Vehicle Permits. (Id.).

The appeal below followed. The Petition for Appeal filed before Judge Recht alleged that the State Fire Commission's decision of December 13, 2002 prejudiced the substantial rights of the appellants and is contrary to law and the substantial evidence in the matter. Following briefing and hearings on the matter, Judge Recht ultimately issued a written order which was entered in the civil docket on September 14, 2004. In the order, Judge Recht held that the State Fire Commission withdrew its recognition of the appellants' respective organizations as fire departments having powers granted in Article

3A, Chapter 29, of the West Virginia Code.⁶ (See Judge Recht's September 14, 2004 order). Judge Recht additionally found that the basis for the fire commission's decision to withdraw this recognition was that the appellants had no fixed territory in which they could exercise the powers and authority provided under Article 3A, Chapter 29 of the West Virginia Code. (Id.). The court did note that the West Virginia Code does not specifically provide and the State Fire Commission has not established by rule that the absence of a fixed territory may be a basis for withdrawal of recognition. (Id.). Nevertheless, the court found that it was "inherent and implicit within the provisions of Article 3A, Chapter 29, that the powers provided therein could only be exercised by one, local authority within the territorial jurisdiction." (Id.). Thus, he found that the lack of a fixed territory in which to exercise the powers in Article 3A, Chapter 29 was a valid and logical basis for withdrawal of recognition of said departments. (Id.) Judge Recht's decision, however, went one step further to find that the withdrawal of recognition on this basis only affects the exercise of those powers in Article 3A, Chapter 29 and does not otherwise prevent such departments from engaging in lawful firefighting activities. (Id.) Judge Recht held that "therefore, this court finds the Petitioner departments to be certified by virtue of judicial fiat for all purposes other than exercise of the powers provided in Article 3A, Chapter 29 of the West Virginia Code." (Id.) Because Judge Recht found the appellants could otherwise fight fires, Judge

⁶Section 29-3A-1 of the West Virginia Code outlines a list of authorities which local fire departments will have to use at the scene of a fire. Without citing the entire section in this footnote, it basically allows such authorized departments to enter structures and buildings, to block traffic on public streets and perform other such activities necessary in order to fight fires. The other sections in this article deal with commands at the fire scene, conducting investigations and hindering or obstructing the firefighters or emergency equipment. See, W.Va. Code 29-3A-1, et seq.

Recht also found it to be arbitrary and capricious for the State Fire Commission to have required appellants to return their emergency vehicle permits. (Id.) Finally, the court ordered that the State Fire Commission provide the appellants with the means to be in a position to fight fires when requested by a certified department. (Id.)

Since Judge Recht's order was issued, the appellants, unfortunately, have been unable to return to their usual firefighting activities, particularly with the City of Weirton, because of the City's concerns that they may be exposed to liability because these departments do not have the authorities granted in Chapter 29, Article 3A. Specifically, one could foresee a situation where one of the appellant departments is called to a fire scene and is the first to arrive but is unable to enter the premises and fight fires. If they have to stand by and watch the fire burn and someone is injured or other damages ensue, it poses an extreme liability situation for both these departments and the department who dispatched them to the scene. For the reasons outlined more fully below, Appellants, therefore, believe that Judge Recht erred in his decision below and is seeking that this Honorable Court reverse Judge Recht's decision and reinstate the recognition of the appellant departments as lawfully recognized and/or certified fire departments.

III. ASSIGNMENTS OF ERROR

A. The circuit court erred in holding that the State Fire Commission had the authority to withdraw recognition of appellant fire departments.

B. Even if the State Fire Commission had the authority to withdraw appellants' recognition, the court below erred in holding that the appellants' lack of a fixed territory in which to fight fires, was an appropriate basis for such withdraw.

IV. POINTS AND AUTHORITIES RELIED UPON

A. THE CIRCUIT COURT ERRED IN HOLDING THAT THE STATE FIRE COMMISSION HAD THE AUTHORITY TO WITHDRAW THE RECOGNITION OF APPELLANT COMPANIES.

The court below erred in holding that the State Fire Commission had the authority to withdraw the recognition of the appellant fire departments.

The State Fire Commission was legislatively created in 1976 when the Fire Prevention and Control Act (hereinafter "the Act") was enacted by the state legislature. See, W.Va. Code §29-3-1, et seq. The Act itself provides insight into the legislature's intent behind the creation of the Act and the Fire Commission. Specifically, section 29-3-2 provides as follows:

The legislature hereby finds and declares that:

(a) A significant part of the population of this state needs improved fire prevention and control;

(b) The establishment and maintenance of a coordination program for fire prevention and control for the entire state is necessary to promulgate the safety and well-being of the citizens and residents of this state;

(c) Adequate fire prevention and control are not likely to become a reality unless certain administrative functions and procedures are enacted by law; and

(d) Fire prevention and control are a public purpose and a responsibility of government for which public money may be spent.

W.Va. Code § 29-3-2. Moreover, the Act provides specific guidance with respect to the powers, duties and authorities granted to the commission. W.Va. Code §29-3-9. Tellingly, nothing in the code provides that the Commission has the authority to randomly remove the recognition of an already recognized department. Indeed, the act, by its own language, seems to have at its center the goal of making the fire departments in the state better equipped to fight fires through a centralized system of training and minimum standards necessary to fight fires.

To this end, the Act gives the State Fire Commission ". . .the power to promulgate, amend and repeal regulations for safeguarding of life and property from the hazards of fire and explosion. . . ." W.Va. Code §29-3-5. The statute also provides that "the formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments." W.Va. Code §29-3-9(e). (Emphasis added). This section specifically provides that only new fire departments must get approval. The statute itself does not delineate any specific criteria for recognition or approval by the State Fire Commission nor does it outline requirements for fire commission certification/recognition. Indeed, it places the burden

upon the Commission to enact regulations in order to develop a standardized method to be used when considering an application for approval of a new fire departments. The hundreds of existing fire departments in the state when the commission was created, including the appellant departments, were essentially grandfathered in and did not need to go through a "approval" process.

Additionally, the State Fire Commission has promulgated regulations as authorized to do under the Fire Prevention and Control Act. See, W.Va. Code ST.R.T. §87-1-1, et seq. Again, the regulations do not provide criteria for certifying or recognizing a volunteer or other fire company. Finally, the State Fire Marshall's office has propounded a list of fire department requirements for State Fire Commission recognition/approval. (See, Brief in Support of Petitioners' Appeal, Exhibit A). The requirements are posted on the State Fire Commission's website, but are not codified anywhere in the statutes or regulations but are apparently used by the fire commission in order to recognize a fire department.⁷

A reading of the Act as a whole, suggests that the Commission was created in order to help organize and unify the training and standards used by fire departments. Noting in the statute or regulations suggests that the Commission would be given power or authority to decide beyond these minimum requirements how any particular municipality should decide to staff or organize its fire departments. Indeed, these powers are clearly granted

⁷The appellants question whether this list has any force or effect at all because it is not codified as a regulation.

to the governing body of each municipality by W.Va. Code 8-15-1 et. seq. The legislature did nothing to disturb or change this plenary power granted to the governing municipality when it created the Act. Therefore, it seems clear that the Commission exceeded its authority in this case by acting to withdraw recognition of these departments without a legitimate basis for doing so.

Additionally, in this case, because the appellant departments existed prior to the enactment of the Fire Prevention and Control Act and the creation of the State Fire Commission, they were in that category of departments which were "grandfathered" into the requirements. Evidence was presented that these departments otherwise met the Fire Commission's thirteen requirements. Therefore, there was simply no authority for the fire commission to withdraw recognition of these departments. Additionally, if the State Fire Commission were given the authority to arbitrarily disband fire companies, it would usurp the plenary powers granted to local municipalities to provide for the prevention and extinguishment of fires. W.Va. Code § 8-15-1. Because the State Fire Commission only has the power to provide training and other criteria and because those criteria have not been developed, it was beyond the Commission's authority to withdraw appellants' recognition. For these reasons, this Honorable Court should reverse Judge Recht's ruling below.

II. EVEN IF THE STATE FIRE COMMISSION HAD THE AUTHORITY TO WITHDRAW APPELLANTS' RECOGNITION, THE COURT BELOW ERRED IN HOLDING THAT THE PETITIONERS' LACK OF A FIXED TERRITORY IN WHICH TO FIGHT FIRES, WAS AN APPROPRIATE BASIS FOR SUCH WITHDRAW.

Judge Recht held that the appellants' lack of a fixed territory was an appropriate basis for the Fire Commission to withdraw their recognition. Appellants believe for the reasons that follow this was in error.

Assuming that this Court finds that the State Fire Commission had the authority to withdraw the recognition of the appellants, the court below still erred in holding that the lack of a fixed territory in which the appellants could fight fires was an appropriate basis for withdrawing their certification. As mentioned above, the State Fire Commission has put together a list of requirements for a fire department to meet their standards for recognition or approval. (See, Brief in Support of Petitioners' Appeal, Exhibit A). Importantly, there is nothing in this list which requires a specific fixed territory in order to have State Fire Commission recognition. Moreover, there is no requirement anywhere in the statutes or regulations, relevant to these matters, which requires a fire department to have its own fixed territory of operation in order to be recognized by the state fire commission. To the contrary, the Fire Prevention and Control Act provides that it is the duty of the State Fire Commission to establish fire protection areas. In that regard, the statute reads as follows "the State Fire Commission shall establish fire protection areas and at such times as funds

are available shall establish field offices for inspection, planning and certification." W.Va. Code §29-3-9(g).

Because it is a statutory obligation for the State Fire Commission to establish fire protection areas for its fire departments, it is unreasonable and arbitrary to allow the lack of such territory to be a criteria for withdrawal of recognition of a department. If it were allowed, it would allow the State Fire Commission at a whim, even though a department otherwise meets all criteria to simply redraw the fire maps to eliminate a fire department. Indeed, it is appellants' belief that many areas in West Virginia are without approved maps, but have not had their departments' recognition withdrawn. The commission should not be allowed to try to delegate its statutorily created duty to an individual fire department only to then use it against it when it is not accomplished.

Additionally, there is absolutely nothing in the statutes that requires a fixed territory. Indeed, fire companies have mutual aid agreements with other fire companies who fight fires together and both have the same authorities and privileges granted under Chapter 29, Article 3A. On many occasions, more than one fire department responds to the same fire and there is no anarchy. Indeed, one would think it a benefit to have multiple departments at least available to back another up or help in a very large fire situation. There is no inherent conflict which would cause "anarchy" as indicated by Judge Recht, if two companies in the same running area have the same authority.

The appellants actually functioned as one of four fire departments located in and serving the City of Weirton for many years. In this regard, another Hancock County Judge has already looked at the issue and held that more than one department can have the same fixed territory. In State ex rel David Cline v. City of Weirton, (May 18, 1989), Judge Wilson was presented with a writ of mandamus attempting to compel the City of Weirton to unify and govern the firefighting agencies in the city. Essentially, the petition requested that the court order the city to disband the volunteer firefighting companies within the city limits, including the appellants, because his reading of the West Virginia State Code at Chapter 8, Article 15, provided that the City was only authorized to have either a paid or a volunteer fire department but not both. (See the City of Weirton's Friend of the Court Brief, Exhibit 4). In denying the petitioner's request in that case, Judge Wilson rejected petitioner's contention that West Virginia cities are prohibited from having both voluntary and paid fire departments. Id.

Therefore, there is some authority within the state to indicate that the same territory may have more than one firefighting department and, therefore, the use of the lack of the same as a criteria for recognition is entirely misplaced. Because the lack of a fixed territory is not an appropriate basis under any of the law relevant to firefighting issues, it was improper for Judge Recht to hold that it was an appropriate basis for the State Fire Commission to withdraw appellants' recognition.

The State Fire Commission, by requiring that the appellants find or make its own territory in which to fight fires, inappropriately attempted to delegate their duty to the

appellants. Moreover, the Commission then used the appellants' alleged failure to do so as a basis for their withdraw. This was clearly improper and the court below should not have used this as a basis for its finding that the Fire Commission had the authority to withdraw appellants' recognition.

V. CONCLUSION - PRAYER FOR RELIEF

Appellants, Weirton Heights Volunteer Fire Department, Inc. and Weirton Volunteer Fire Department Company No. 1, Inc., request this Honorable Court reverse the order of Judge Recht affirming the State Fire Commission's decision to withdraw recognition of petitioner departments, and reinstate the appellants' status as lawfully recognized fire departments.

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

By: 

LEAH L. ROTH, ESQUIRE

Counsel for Petitioners,
WEIRTON HEIGHTS VOLUNTEER FIRE
DEPARTMENT, INC. and WEIRTON
VOLUNTEER FIRE DEPARTMENT
COMPANY NO. 1, INC.

IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA

WEIRTON HEIGHTS VOLUNTEER)
FIRE DEPARTMENT, INC. and)
WEIRTON VOLUNTEER FIRE)
DEPARTMENT COMPANY NO. 1, INC.)

Civil Action No.: 03-AA-1

Petitioners,)

vs.)

STATE FIRE COMMISSION,)

Respondent.)

September 14 2004
Entered In Civil Misc. Book
No. 18 Page 155
Brenda L. Jackson
Clerk of said Court

ORDER

On the 13th day of January, 2004, and the 11th day of June, 2004 came the Petitioners, by their representatives and by their counsel, Leah L. Roth, and came the Respondent by counsel, Doren Burrell, for a hearing upon the petition filed in the above-styled action.

At the outset of the hearing the court noted that, although the underlying administrative action was not conducted as an evidentiary, contested case hearing and the decision at issue was not in the form of an administrative order, this matter has been brought as a petition for judicial review under the provisions of Chapter 29(a), Article 5 of the West Virginia Code and the court would, therefore, proceed with its review under the requirements of these provisions.

The Court, having reviewed the administrative record and the briefs of counsel, then proceeded to make an inquiry of counsel for the parties. Upon consideration of the pleadings, the administrative record, the briefs of the parties and the arguments of counsel, the Court hereby makes the following findings:

1. The West Virginia State Fire Commission issued written decisions on December 13, 2002, in the form of letters from Joseph J. Bostar, III, Chairman of the State Fire Commission, to Michael P. Morin, Fire Chief of Weirton Volunteer Fire Department, Company #1, and to Wayne Bonovich, Fire Chief of Weirton Heights Volunteer Fire Department, Company #3.
2. In both instances, the State Fire Commission withdrew its recognition of the petitioners respective organizations as fire departments having the powers granted in Article 3A, Chapter 29, of the West Virginia Code.
3. The basis for the decision to withdraw this recognition was that the petitioners' companies had no fixed territory in which they could exercise the powers and authority provided under Article 3A, Chapter 29, of the West Virginia Code, §§29-3A-1 et seq.
4. The Court finds that, under the circumstances of this case, the State Fire Commission has the authority to withdraw recognition of fire departments for purposes of controlling the exercise of the powers and authority provided under Article 3A, Chapter 29 only.
5. The West Virginia Code does not specifically provide, and the State Fire Commission has not established by rule, that the absence of a fixed territory may be a basis for withdrawal of recognition, but the Court finds that it is inherent and implicit within the provisions of Article 3A, Chapter 29, that the powers provided therein can only be exercised by one, local authority within a territorial jurisdiction.
6. Therefore, a fire department's lack of a fixed territory for the exclusive exercise of the powers granted in Article 3A, Chapter 29, is a valid and logical basis for the

withdrawal of recognition of that department and the decision of the State Fire Commission on this basis was not arbitrary or capricious.

7. However, the Court finds that withdrawal of recognition on this basis only affects the exercise of those powers provided in Article 3A, Chapter 29, and may not prevent or obstruct other, lawful fire-fighting activities of such a department or organization.

8. Therefore, this court finds the petitioner departments to be certified by virtue of judicial fiat for all for all purposes other than the exercise of the powers provided in Article 3A, Chapter 29 of the West Virginia Code.

9. For this reason, the Court finds that it is arbitrary and capricious for the State Fire Commission to require the Petitioners to collect and return their Emergency Vehicle Permits and to void any outstanding Permits that are not returned.

10. Therefore, the Court hereby orders that the State Fire Commission return or re-issue emergency vehicle permits to the Petitioners.

11. Additionally, the Court hereby orders that the State Fire Commission provide petitioners with the means to be in a position to fight fires when requested by a certified department. It is further ordered that the Petitioners may lawfully respond to a fire scene when requested by another recognized or certified fire department and can under the direction and control of that department participate in the function of fighting fires.

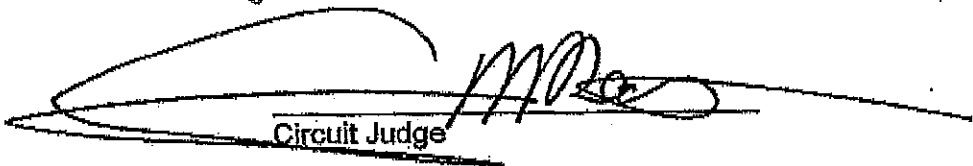
It is therefore ORDERED that the decision of the West Virginia State Fire Commission is hereby.

AFFIRMED as to the withdrawal of recognition of the Petitioners' organizations as fire departments for the purpose of the exercise of the powers and authority granted to local fire departments within Article 3A, Chapter 29, of the West Virginia Code, and


REVERSED as to the revocation and voiding of the Emergency Vehicle Permits in the possession of the Petitioners.

The Court notes and preserved the objections of counsel for the Petitioners and counsel for the Respondent as to the provisions of this Order that may be adverse to the respective interests of each party.

So ORDERED this 13th day of September, 2004.

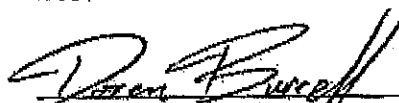

Circuit Judge

PRESENTED BY:


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Counsel for the Respondent

A TRUE COPY

Attests


Brenda L. Jackson
Clerk, Circuit Court, Hancock County

Deputy

CERTIFICATE OF SERVICE

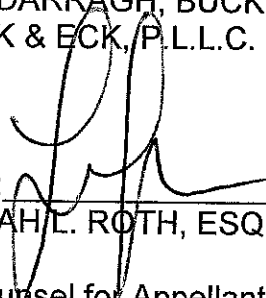
This will certify that a true and correct copy of the foregoing document was served by first class mail on the following:

Doren Burrell, Esquire
West Virginia Attorney General's Office
Charleston, WV 25305

(Counsel for Appellee, State Fire Commission)

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Dated: July 6, 2005

By: 
LEAH L. ROTH, ESQUIRE

Counsel for Appellants,
WEIRTON HEIGHTS VOLUNTEER
FIRE DEPARTMENT, INC. and
WEIRTON VOLUNTEER FIRE
DEPARTMENT COMPANY NO. 1, INC.