

**West Virginia Board of Public Works
November 13, 2013 – 2:00 p.m.
Governor's Cabinet and Conference Room
Minutes**

Attendees:

Members

Governor Earl Ray Tomblin
State Auditor Glen B. Gainer
State Treasurer John D. Perdue
Agriculture Commissioner Walt Helmick
Attorney General Patrick Morrissey
State Superintendent of Schools Dr. James Phares
E. Ashley Summitt, General Counsel for Secretary of State Natalie Tennant

Guests:

Mark Matkovich, Commissioner, State Tax Department
Wade Thompson, State Tax Department
Eric Hudnall, Division of Highways
Kathy Schultz, Attorney General's Office
Tracy Webb, Attorney General's Office
Russ Rollyson, Auditor's Office
Peter Markham, Governor's Office
Joe Garcia, Governor's Office
Stephen Krzyzak, Marathon Petroleum
Judy Cooper, Secretary of State's Office
Sheryl Webb, Secretary of State's Office
Curt Zickefoose, Secretary of State's Office
Bradley Harris, Secretary of State's Office
David Gutman, WV Gazette

The West Virginia Board of Public Works met on Wednesday, November 13, 2013 at 2:00 p.m. in the Governor's Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. The meeting was called to order and chaired by Governor Earl Ray Tomblin. A quorum of elected officials was established.

(Attached is a transcript of the meeting.)



Natalie E. Tennant,
Secretary of State
And Ex-Officio Secretary of the
Board of Public Works

STATE OF WEST VIRGINIA

BOARD OF PUBLIC WORKS

MEMBERS OF THE BOARD:

GOVERNOR EARL RAY TOMBLIN

GLENN GAINER, AUDITOR

WALT HELMICK, COMMISSIONER OF AGRICULTURE

JOHN D. PERDUE, STATE TREASURER

DR. JAMES PHARES, STATE SUPERINTENDENT OF SCHOOLS

PATRICK MORRISEY, ATTORNEY GENERAL

ASHLEY SUMMITT, PROXY FOR SECRETARY OF STATE

November 13, 2013

2:05 PM

WEST VIRGINIA CAPITOL COMPLEX

Building 1, Governor's Conference Room

Charleston, West Virginia

PENNY L. KERNS

Certified Court Reporter
and Notary Public

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P R O C E E D I N G S

GOVERNOR TOMBLIN: The Board will come to order. Do I hear a motion for approval of the September 30th minutes?

COMMISSIONER HELMICK: I make the motion.

TREASURER PERDUE: Second.

GOVERNOR TOMBLIN: The Agriculture Commissioner has moved and the Treasurer has seconded. All those in favor of the motion say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. Second on the agenda is receive of comments from the public utility companies concerning notices of tentative assessed values for the tax year 2014. Do we have anyone from the utility companies?

(No response.)

GOVERNOR TOMBLIN: If not, we'll move on to item number three, distribution of information regarding the Tax Department peer review of the processes used in assessing public utility companies. Mark, we have that, yes?

1 MR. MATKOVICH: We have that, yes.

2 GOVERNOR TOMBLIN: Okay.

3 MR. MATKOVICH: Good afternoon. I'm
4 Mark Matkovich. I'm the acting Tax Commissioner for the
5 State of West Virginia. It's good to be here. The
6 International Association of Assessing Officers has
7 prepared a final report evaluating the West Virginia
8 state public utilities evaluation practices. They've
9 reviewed the practices of the State Tax Department, the
10 Property Tax Division in particular. There was, as with
11 any type of report, a substantial review of
12 investigation regarding our practices. We're handing
13 this out to you for you to read and our goal is at the
14 next meeting in December that you will be able to have a
15 substantive discussion about it and answer any questions
16 you might have.

17 I will point out the highlights now and
18 the conclusions. It says basically that the practices
19 of the Tax Division are in good shape. And so I don't
20 feel that there are any findings in regard to any
21 suggestions for improvements. We'll have the
22 opportunity to discuss those with you at the next
23 meeting. So I'll pass these out for review, and we'll
24 take questions at the next meeting.

1 GOVERNOR TOMBLIN: All right.
2 Commissioner Helmick.

3 COMMISSIONER HELMICK: Thank you, Mr.
4 Chairman. How do you arrive at the assessment, for
5 instance, of an electric generating utility? Do you do
6 that by how many megawatts, kilowatt hours, how do you
7 do that?

8 MR. MATKOVICH: Are you talking about
9 property tax purposes?

10 COMMISSIONER HELMICK: Yeah, how do you
11 arrive at how much property tax that entity has to pay?

12 MR. MATKOVICH: You know what, with
13 leave of this Board, I would like to refer that question
14 to Wade Thompson, our Property Tax Director for many,
15 many years and he's the one who taught Jeff Amburgey
16 everything he knows. And I know Jeff is doubly booked.
17 That is why he cannot be here, but we thought there
18 might be a technical question. I think it's better to
19 leave it to our in-house expert in that regard.

20 COMMISSIONER HELMICK: With leave of the
21 committee.

22 GOVERNOR TOMBLIN: Without objection.

23 MR. THOMPSON: I don't know if I
24 taught him everything I knew. I don't want to be

1 accused of that. Basically, it's done looking at two
2 different factors and that's one of the things that's
3 covered in the study that's looked at. Cost factor as
4 to what they paid for the equipment as well as the
5 income that's generated because the income basically is
6 looked at. So it's a look at those two factors and
7 they're weighted to come to value, a total value for the
8 property for the system in that.

9 COMMISSIONER HELMICK: What do you mean for
10 the system? Is that the plant or is that all the
11 furnaces connected to --

12 MR. THOMPSON: It is all of it.

13 COMMISSIONER HELMICK: Do you base it on
14 gross or net revenue?

15 MR. THOMPSON: It's based on net
16 revenues in that there are certain expenses that are
17 allowed. There's a legislative rule that governs, that
18 the Tax Department follows that governs how utilities,
19 all public utilities, are valued. But I think when
20 you're looking at reading the report, I think Jeff next
21 week will give you a better answer than I will in that.

22 COMMISSIONER HELMICK: Well, it's probably
23 in this handout.

24 MR. THOMPSON: Yes, it covers that.

1 It covered that as well, but he can go into more
2 specifics with you.

3 COMMISSIONER HELMICK: We were just
4 discussing prior to the meeting beginning that certain
5 counties have a significant local share in property
6 taxes attached to education. Pocahontas County is
7 number one, because you have a small school population
8 and a significant tax base up here on the mountain
9 called Snowshoe. And so it makes it the number one
10 county with a local share and it has been for a few
11 years. The number two over the years is Grant County,
12 and that's because of the utility on the mountain.

13 MR. THOMPSON: The power plant.

14 COMMISSIONER HELMICK: The power plant. So
15 that's why I was wondering how you arrived, whether it
16 was for the generation of it or it was on the simply --
17 it certainly just couldn't be on the value of the plant
18 itself.

19 MR. THOMPSON: Plus the income that
20 --

21 COMMISSIONER HELMICK: That's generated from
22 the plant.

23 MR. THOMPSON: Yes.

24 COMMISSIONER HELMICK: In other words, if

1 it's a fifteen hundred megawatt plant, which that one is
2 about seventeen hundred up there, but anyway, you factor
3 it in. Same thing over in Pleasants County?

4 MR. THOMPSON: Yes.

5 COMMISSIONER HELMICK: Thank you.

6 GOVERNOR TOMBLIN: Mr. Superintendent.

7 DR. PHARES: Many of our counties
8 have these air wind, the propeller farms. They don't
9 sell the electricity directly. They store it in
10 batteries and do it on call. Is that still pro-rated
11 and calculated?

12 MR. THOMPSON: Yes. Those are appraised
13 at what we call an industrial by the State Tax
14 Department. A certain amount of it is then attributable
15 to pollution abatement control equipment. There's
16 others that is personal property and also real estate,
17 should be under real estate as well, but it's treated
18 like other businesses because it's not rate based as
19 much as a utility is.

20 DR. PHARES: But it contributes to
21 the local share in the county as well?

22 MR. THOMPSON: Oh, yes, yes.

23 COMMISSIONER HELMICK: You have the two
24 types of grant. You have the wind generation plus the

1 coal generation.

2 MR. THOMPSON: Right. You have a
3 comp there.

4 COMMISSIONER HELMICK: Thank you, Mr.
5 Chairman. I am not fully informed, but I am satisfied.
6 I'm not happy, but I'm satisfied.

7 GOVERNOR TOMBLIN: All right. The next
8 item before us is the presentation pursuant to approve
9 the following deeds. There are five of those. Yes,
10 sir.

11 MR. HUDNALL: Eric Hudnall from the
12 Division of Highways. I'm here today, may it please the
13 Board, we have, let me just go right down through them.
14 The first deed is from the Logan County Board of
15 Education to the Department of Transportation. This is
16 a total of about 10.4 acres. This was a total amount of
17 consideration paid by the Division of Highways to the
18 Logan County Board of Education of a hundred and sixty-
19 four thousand dollars. And this involves the Route 10,
20 a section of Route 10.

21 GOVERNOR TOMBLIN: All right. On the
22 first one, the Logan County Board of Education, do I
23 hear a motion to approve the following deed or
24 transactions?

1 AUDITOR GAINER: So moved.

2 TREASURER PERDUE: Second.

3 GOVERNOR TOMBLIN: Auditor moves,

4 Treasurer seconds. Discussion?

5 (No response.)

6 GOVERNOR TOMBLIN: If not, all those in

7 favor will say aye.

8 (Ayes responded.)

9 GOVERNOR TOMBLIN: Opposed no.

10 (No response.)

11 GOVERNOR TOMBLIN: The ayes have it. I

12 declare the motion adopted. Next deed.

13 MR. HUDNALL: Thank you, Governor.

14 This deed is from the County Commission of Hancock

15 County to the Department of Transportation. This

16 involves the Pennsylvania Avenue project in Weirton.

17 It's a very small acquisition of sixteen square feet and

18 a total amount of consideration paid by the Department

19 of Transportation was fifteen hundred dollars.

20 GOVERNOR TOMBLIN: Are there questions?

21 (No response.)

22 GOVERNOR TOMBLIN: Hear a motion?

23 TREASURER PERDUE: So moved.

24 GOVERNOR TOMBLIN: Treasurer moves.

1 AUDITOR GAINER: Second.

2 GOVERNOR TOMBLIN: Auditor seconds. All

3 those in favor -- well, discussion?

4 (No response.)

5 GOVERNOR TOMBLIN: All those in favor

6 will say aye.

7 (Ayes responded.)

8 GOVERNOR TOMBLIN: Opposed No.

9 (No response.)

10 GOVERNOR TOMBLIN: The ayes have it.

11 Third transaction.

12 MR. HUDNALL: This one is between

13 the Board of Park Commissioners for the City of

14 Clarksburg and the Department of Transportation. This

15 involves an acquisition of property needed for the

16 Veteran's Memorial Bridge. I think at the last meeting

17 there was another transaction that the Board also

18 approved on this project. A total of nineteen hundred

19 forty square feet taken permanently and temporary

20 construction easement of about nineteen thousand square

21 feet.

22 GOVERNOR TOMBLIN: Are there questions?

23 (No response.)

24 GOVERNOR TOMBLIN: Hear a motion to

1 approve?

2 AUDITOR GAINER: So move.

3 ATTY. GENERAL MORRISEY: Second.

4 GOVERNOR TOMBLIN: Auditor moves, the
5 Attorney General seconds. Discussion?

6 (No response.)

7 GOVERNOR TOMBLIN: If not, all those in
8 favor will say aye.

9 (Ayes responded.)

10 GOVERNOR TOMBLIN: Opposed no.

11 (No response.)

12 GOVERNOR TOMBLIN: The ayes have it. I
13 declare the motion adopted. Next transaction.

14 MR. HUDNALL: The fourth one is
15 also from the Park Commissioners for Clarksburg for the
16 Department of Transportation. This is a separate
17 parcel. It is identified under Division of Highways
18 plans. This one is for thirty-five square feet and a
19 temporary construction easement of four hundred fifty-
20 two square feet.

21 GOVERNOR TOMBLIN: Are there questions?

22 (No response.)

23 GOVERNOR TOMBLIN: Do I hear a motion?

24 AUDITOR GAINER: So moved.

1 TREASURER PERDUE: Second.

2 GOVERNOR TOMBLIN: The Auditor moves,

3 Treasurer seconds. All those in favor will say aye.

4 (Ayes responded.)

5 GOVERNOR TOMBLIN: Opposed no.

6 (No response.)

7 GOVERNOR TOMBLIN: The ayes have it. I

8 declare the motion adopted. Fifth.

9 MR. HUDNALL: Thank you, Governor.

10 The fifth transaction is a deed from the Department of

11 Transportation to the City of Mount Hope. This is for a

12 sewage pump station for the City of Mount Hope. We are

13 conveying a parcel of nineteen hundred sixty-four square

14 feet and this deed is for a dollar. So there is a

15 diversionary clause in this deed if it's not used for

16 public purposes.

17 GOVERNOR TOMBLIN: Are there questions?

18 (No response.)

19 TREASURER PERDUE: So moved, Mr.

20 Chairman.

21 AUDITOR GAINER: Second.

22 GOVERNOR TOMBLIN: The Treasurer moves,

23 Auditor seconds. Discussion?

24 (No response.)

1 GOVERNOR TOMBLIN: All those in favor
2 will say aye.

3 (Ayes responded.)

4 GOVERNOR TOMBLIN: Opposed, no.

5 (No response.)

6 GOVERNOR TOMBLIN: The ayes have it. I
7 declare the motion adopted. Transition number six.

8 MR. HUDNALL: This is also a deed
9 from the Department of Transportation, this time for the
10 City of Oak Hill. This is for the expansion of a
11 facility at the White Oak Rail Trail in Oak Hill. DOH
12 is conveying 1.05 acres to the City of Oak Hill and the
13 total consideration on this deed is also a dollar and it
14 also contains a reversionary clause in the event that
15 it's no longer used for public purposes.

16 GOVERNOR TOMBLIN: Are there questions?

17 (No response.)

18 GOVERNOR TOMBLIN: Do I hear a motion?

19 TREASURER PERDUE: So moved.

20 AUDITOR GAINER: Second.

21 GOVERNOR TOMBLIN: Treasurer moves,
22 Auditor seconds. Discussion?

23 (No response.)

24 GOVERNOR TOMBLIN: If not, all those in

1 favor will say aye.

2 (Ayes responded.)

3 GOVERNOR TOMBLIN: Opposed, no.

4 (No response.)

5 GOVERNOR TOMBLIN: The ayes have it. I
6 declare the motion adopted. Thank you. Item number
7 five, status update from the AG regarding collections
8 from taxpayers.

9 ATTY. GENERAL MORRISEY: So, I'm pleased to
10 report that since we last discussed this, our office has
11 collected a little more than three hundred and seventeen
12 thousand dollars in outstanding property taxes. And I
13 want to take the opportunity to thank the Auditor's
14 Office and the Property Tax Division for the
15 collaborative efforts we had in obtaining those monies.
16 So if anyone has any questions, I'm happy to walk
17 through any of the particulars with the companies. Our
18 staff is here. We can discuss that.

19 GOVERNOR TOMBLIN: Where is that money?

20 ATTY. GENERAL MORRISEY: Where is that money?

21 I really don't know. Hey, we just collect it, you know.
22 We don't hand it out anymore.

23 GOVERNOR TOMBLIN: Are there any
24 questions of the AG?

1 (No response.)

2 GOVERNOR TOMBLIN: If not, thank you,
3 sir.

4 ATTY. GENERAL MORRISEY: Absolutely.

5 GOVERNOR TOMBLIN: Number six under
6 Unfinished Business, recommendations from the Attorney
7 General regarding procedural rule including the issue of
8 proxy voting.

9 ATTY. GENERAL MORRISEY: Governor, we have a
10 number of recommendations for the procedural rule that
11 we had reported to the Board of Public Works. But to be
12 sure that we're proceeding accordingly and appropriately
13 in order for us to provide counsel to the Board, I'd
14 like to say that I would need to have a waiver of the
15 attorney/client privilege in order to fully discuss our
16 thoughts. For the record, I don't see any downside with
17 this because I'm sharing information that we discussed
18 publicly, but I do always want to protect the
19 attorney/client privilege.

20 TREASURER PERDUE: Do we need to go into
21 executive session? Is that what you're asking?

22 ATTY. GENERAL MORRISEY: I'm not asking to go
23 into executive session in this particular instance, but
24 I want to make sure that the privilege is protected or

1 waived. And as I said, I don't see any downside in this
2 particular issue, but I serve as the attorney to the
3 Board and you're the client, and I don't feel like I'm
4 authorized to discuss issues unless ultimately the
5 privilege is waived.

6 GOVERNOR TOMBLIN: I guess the concern I
7 have is that these were delivered to my office on
8 Friday, late Friday afternoon, and really have not had
9 the opportunity to go through this. And I would
10 respectfully ask that we delay action on this until the
11 next meeting to give me and my legal staff the
12 opportunity to go through and be able to respond.

13 AUDITOR GAINER: I don't have a
14 problem with that. The other thing I would ask, too, is
15 perhaps that we also send these proposed changes over to
16 the Commission and let them review them also and get
17 their feedback and make sure we're in line with that as
18 well.

19 GOVERNOR TOMBLIN: I guess we will need
20 a motion first of all for somebody to make it that we
21 delay action on the proposals until the next meeting and
22 then as a second part of that, Mr. Auditor.

23 DR. PHARES: So moved.

24 GOVERNOR TOMBLIN: Superintendent moves.

1 AUDITOR GAINER: I'll second.

2 GOVERNOR TOMBLIN: Auditor seconds that

3 we delay action on the Attorney General's procedural

4 rule recommendations until the next meeting.

5 AUDITOR GAINER: Which is December the

6 11th.

7 TREASURER PERDUE: The question I have

8 is, I want the same thing you asked for. If we read

9 these, and then, I mean we've got to make some

10 suggestions and we want to go ahead and send them over

11 there?

12 GOVERNOR TOMBLIN: Well --

13 TREASURER PERDUE: Your lawyer, after

14 discussion may have some suggestions.

15 GOVERNOR TOMBLIN: I don't have a

16 problem with sending the whole thing with either

17 objections or suggestions over to the Ethics Commission.

18 I understand the Secretary also has made proposals.

19 MS. SUMMITT: Yes.

20 AUDITOR GAINER: Actually, this is

21 meeting is a resumption, we agreed at the last meeting

22 we recessed and we technically, I think, can still

23 recess this meeting until we come back on December the

24 11th and take final action on the public utilities. So

1 do we need to even take -- I mean it will still be on
2 the agenda that we could consider that at the December
3 11th meeting.

4 GOVERNOR TOMBLIN: I think just for some
5 clarification since we've got two proposals from two
6 different members of this Board and then myself and the
7 Treasurer and others want to make comments or
8 suggestions, how do we pull this together if we want to
9 send it, Mr. Auditor, to the Ethics Commission? Do we
10 need to --

11 AUDITOR GAINER: I think we need,
12 probably need to wait until after we have the final
13 approval and then we would submit it to the Ethics after
14 that just to make sure we're staying in alignment with
15 those folks.

16 MS. SUMMITT: After we have a final
17 product.

18 AUDITOR GAINER: After we have a final
19 product, is all I would ask.

20 GOVERNOR TOMBLIN: Okay. So between now
21 and the next meeting on the 11th, I guess any member who
22 wants their attorneys or their legal staff to look at
23 what the AG has proposed, to get those to us by the next
24 meeting and we'll have those discussions at that time.

1 Is that agreeable with everyone?

2 ATTY. GENERAL MORRISEY: That's perfectly
3 fine. We're obviously happy to explain any of the
4 proposals, because the whole purpose is to try to ensure
5 that when the procedural rule is finalized, it's
6 consistent with the law. So we noted that there were a
7 number of things that were inconsistent so we're just
8 trying to conform it with all current case law, et
9 cetera. So we'd be happy to answer any questions. I
10 have some of my staff, Tracey Webb and Cathy Schultz,
11 who've been working on these issues. So the object here
12 is to ensure that everything we're doing is consistent
13 with the law.

14 GOVERNOR TOMBLIN: Okay. Then I guess
15 through our legal staffs, then we'll be able to, if
16 there's questions of something, the staff would reach
17 out to each other. It's rather an unorthodox way of
18 doing it, but there's several proposals. I'm dealing
19 with the same issue. And I think in order to get it
20 resolved, this would probably be the easiest way to have
21 those discussions over the next month before we take any
22 final actions as a Board.

23 So the Superintendent has moved and the
24 Auditor has seconded the motion to delay further

1 consideration of this matter until the December 11th
2 meeting. Discussion?

3 (No response.)

4 GOVERNOR TOMBLIN: If not, all those in
5 favor say aye.

6 (Ayes responded.)

7 GOVERNOR TOMBLIN: Opposed, no.

8 (No response.)

9 GOVERNOR TOMBLIN: The ayes have it. I
10 declare the motion adopted for further consideration of
11 the Attorney General's recommendation on December 11th.
12 The next part is recommendation for the Board members
13 regarding the draft. Is that the same?

14 ATTY. GENERAL MORRISEY: I think that's the
15 same.

16 GOVERNOR TOMBLIN: Then I'll consider
17 the motion as to be everything under unfinished
18 business. We'll hold it till next time. All right. Is
19 there anything else to come before the Board?

20 TREASURER PERDUE: Move we adjourn.

21 AUDITOR GAINER: Recess.

22 GOVERNOR TOMBLIN: Recess until December
23 11th at 2:00 PM. All those in favor of the motion we
24 recess, say aye.

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(Ayes responded.)

GOVERNOR TOMBLIN: Opposed, no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it and

I declare the motion adopted.


(WHEREUPON, the hearing was
recessed at 2:24 PM.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF PUTNAM, To-wit:

I, Penny L. Kerns, Certified Court Reporter, do hereby certify that the foregoing is a correct verbatim record of the proceedings had at the time and place set forth herein.

Given under my hand this 4th day of December, 2013.


Penny L. Kerns, CCR
Notary Public

My commission expires May 13, 2018.

