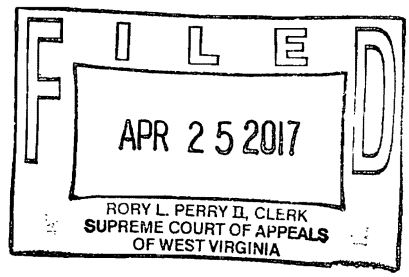
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 17-0120



SWVA, INC.,

Petitioner Below, Petitioner,

v.

HUNTINGTON SANITARY BOARD and CITY COUNCIL OF THE CITY OF HUNTINGTON,

Respondents Below, Respondents.

REPLY BRIEF OF PETITIONER

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I. INTRODUCTION

The instant proceeding stems the from Respondents' efforts to circumvent West Virginia law by failing to provide the public with adequate notice of its proposed projects. The Respondents' attempts to justify these actions, and to explain the Circuit Court's holdings are a study in contradiction. According to the Huntington Sanitary Board's ("HSB"), the Public Service Commission ("PSC") has jurisdiction to hear this dispute, but may not adjudicate the crux of the dispute—Respondents' compliance with W.Va. Code § 24-2-11(l)—because the Council has plenary authority to define the statutory term "ordinary course of business." In so arguing, the HSB would have the Court ignore the plaint text of W.Va. Code §§ 24-2-1(b) and 24-2-11(l), which neither confer jurisdiction on the PSC to hear this dispute, nor confer on Respondents the authority to determine their own compliance with West Virginia law. Accordingly, because the December 27, 2017 Ordinance would fund construction projects outside the ordinary course of business, and because it was passed without the requisite statutory notice, the Ordinance cannot satisfy judicial scrutiny. In the HSB's view, years of administrative decisions defining the term "ordinary course of business" have suddenly become inapplicable. Applying the plain text of the statutes at issue, buoyed by multiple West Virginia administrative decisions, it is evident that Respondents have failed to abide by their statutory duties and so a writ of mandamus should issue to invalidate the unlawful Ordinance.

II. ARGUMENT

A. The Plain Language of W.Va. Code § 24-2-1 Does Not Give the PSC Jurisdiction over This Dispute and SWVA Lacks Another Remedy to Enforce Its Rights or Contest the Ordinance.

The thrust of the HSB's response brief is a creative decoupling of fact and law designed to confuse the statutory terms at issue here and deprive Petitioner SWVA, INC. ("SWVA") of

the ability to challenge Respondents' improper actions in promulgating and enacting the Ordinance. The HSB's assertion that the PSC has the power to review the Ordinance as a "rate dispute" is simply wrong. W.Va. Code § 24-2-1(b) defines the exclusive instances in which the PSC may exercise jurisdiction over large municipal utilities like the HSB. The issue in this appeal—Respondents' compliance with the notice provisions of § 24-2-11(l)—is not included in the PSC's limited jurisdiction under that statute. Therefore, SWVA lacks any other adequate remedy to challenge the Ordinance, and thus its mandamus petition was properly before the trial court and now before this Court.

As an initial matter, whether SWVA had actual notice of the Ordinance is irrelevant to the PSC's jurisdiction under § 24-2-1(b) or Respondents' compliance with § 24-2-11(l). The only relevant issue is Respondents' failure to give the required public notice under § 24-2-11, thereby depriving SWVA and all other ratepayers of their rights to fully acquaint themselves with the projects and the Ordinance. This is the injury for which SWVA seeks relief, and the injury is a significant one—not a mere technicality.

While SWVA may have had some knowledge of the Ordinance or its potential effects, many questions remained about the projects and the Ordinance when the measure was finally passed. In addition, the Council almost certainly would have received greater public input—much of it potentially constructive to the public policy-making process—had it followed the more robust notice requirements of § 24-2-11(l). As a result, SWVA and other ratepayers were deprived of that input, not to mention their ability to join their voices with like-minded constituents that could have altered the outcome of the Council's vote. Thus, SWVA's awareness of the Ordinance does not somehow excuse Respondents' non-compliance with the strictures of the law.

Second, the HSB again mischaracterizes—as the Circuit Court did—SWVA's challenge to the Ordinance as purely about increased utility rates under the Ordinance. Indeed, this is the only way the HSB can reframe SWVA's petition and appeal in order to forestall mandamus relief here. But, in decoupling the Ordinance's rates from the projects those rates fund, the HSB is trying to muddy the waters. SWVA's challenge actually flows exclusively from the Council's interpretation of W.Va. Code § 24-2-11(l) and the Council's failure to comply with its mandatory, non-discretionary duty under the statute to give proper public notice of the Ordinance and its associated projects. Indeed, the statute under which SWVA challenges the Ordinance, Section 24-2-11(l), deals with the notice required by large municipal utilities "desiring to pursue *construction projects* that are not in the ordinary course of business." (Emphasis added). The statute does not address mere utility rate increases, but rather recognizes the integrated relationship between the rates and the projects and thereby imposes notice requirements with respect to both. *See* W.Va. Code § 24-2-11(l)(3) (requiring that the notice be printed in the paper, inserted in billing statements, and kept on file within the political subdivision including a description of the construction and the new rates). Thus, while the Ordinance's immediate effect is to increase utility rates to fund a variety of largescale construction projects, SWVA challenges the adequacy of Respondents' *notice* of the projects funded by the Ordinance—not just the Ordinance's rates.

Third, regardless of the characterization of SWVA's challenge to the Ordinance, the PSC lacks jurisdiction to hear this dispute. SWVA thus lacks another remedy at law, and so mandamus relief is appropriate. *Hicks v. Mani*, 230 W.Va. 9, 13-14, 736 S.E.2d 9, 13-14 (quoting Syl. Pt. 2, *Daurelle v. Traders Fed. Sav. & Loan Ass'n*, 143 W.Va. 674, 104 S.E.2d 320)) ("'The rule which requires the exhaustion of administrative remedies is inapplicable where

no administrative remedy is provided by law.'"). The PSC's jurisdiction over large municipal utilities such as Respondents begins and ends with the plain language of W.Va. Code § 24-2-1(b)(b). *See* W.Va. Code § 24-2-4b(j) (limiting powers of the PSC over large municipal utilities to "those powers enumerated in subsection (b), section one of this article."). This subsection does not empower the PSC to hear SWVA's petition regarding Respondents' non-compliance with § 24-2-11(l)'s notice requirements, nor does the statute give the PSC the power to decide general rate disputes with large municipal utilities. Faced with this unambiguous directive, the HSB resorts to a tortured reading of subdivision (6), subsection (b) of Section 24-2-1, which grants the PSC jurisdiction only with respect to:

> Investigation and resolution of disputes involving political subdivisions of the state regarding inter-utility agreements, rates, fees and charges, service areas and contested utility combinations.

W.Va. Code § 24-2-1(b)(6). In a misguided attempt to foreclose SWVA's procedural right to mandamus relief, the HSB creatively and selectively dissects this provision, subjecting it to wholly incomprehensible readings.

Specifically, the HSB focuses solely on the phrase "rates, fees and charges" from § 24-2-1(b)(6), declaring that this wording empowers the PSC to hear *any* challenge to *any* large municipal utility's rates, fees, or charges. (Respondent's Br. at 12). This is simply wrong. The HSB ignores the initial words in the subsection: "disputes involving political subdivisions of the state" and "regarding inter-utility . . . ." Placed in context, both these phrases modify the words "rates, fees and charges." Employing the plural "political subdivisions," the statute also contemplates that a dispute under subsection (b)(6) will involve two or more large municipal utilities, not just *a* political subdivision and one of its customers. Further, the adjective "inter-utility" modifies all subsequent nouns in the subsection (agreements, rates, fees, charges, service

areas, and combinations). Thus, reading the entire statute, it is evident that the PSC has jurisdiction over large municipal utilities like Respondents to resolve disputes over their rates, fees, and charges only insofar as those disputes relate to inter-utility activities, i.e., relationships with other utilities. Applying "inter-utility" exclusively to the word "agreements," as the HSB wishes to do, would grant the PSC jurisdiction over any aspect of a political subdivision's "rates" or even its "service areas" in contravention of W.Va. Code § 24-2-4b(j)'s limitation on the PSC's jurisdiction.[1] Even the HSB acknowledges the PSC's limited jurisdiction over large municipal utilities after the passage of SB 234 and under § 24-2-4b(j). (Respondent's Br. at 25). Accordingly, the HSB's attempt to read a few words of the statute in isolation does not confer jurisdiction on the PSC to hear the instant dispute over Respondents' compliance with § 24-2-11(l).

Further, the HSB's attempts to confuse the PSC's instructive decisions and other filings on the issue of its jurisdiction warrant clarification. (Respondent's Br. at 13-16). First, although *Hardy County PSD v. Town of Moorefield* did involve smaller municipal utilities still subject to the more expansive jurisdiction of the PSC, in that case the PSC nonetheless took the opportunity to note that SB 234 did not "impact the Commission's jurisdiction to adjudicate contract disputes with or between utilities," and denied the Town's motion to dismiss on that jurisdictional basis.[2] *Hardy Cty. Pub. Serv. Dist. v. Town of Moorefield*, W.Va. Pub. Serv. Com'n No. 15-1957-W-C,

[1] That section dictates: "Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state and having at least four thousand five hundred customers and annual gross combined revenues of $3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article," i.e., § 24-2-1(b). W.Va. Code § 24-2-4b(j).

[2] Notably, in the Town of Moorefield's Response to a Final Joint Staff Memorandum, current counsel for the HSB then argued that "it should by now be obvious that the intent of the Legislature [with SB 234] was to reduce the Commission's exercise of jurisdiction over publicly-owned utilities, such as municipalities and public service districts. The effect of SB 234 was to do just that by amending provisions of the West Virginia Code that had previously provided the bases for Commission jurisdiction in certain areas, so as to eliminate some of those bases, and thus remove the Commission's jurisdiction . . . ." *Hardy Cty. Pub. Serv. Dist. v. Town of Moorefield*, W.Va. Pub. Serv. Com'n No. 15-1957-W-C, Response of the Town of Moorefield to Final Joint Staff Memorandum, March 28, 2016.

Commission Order May 17, 2016 at 5 and 7. Furthermore, as SWVA noted in its brief and the HSB ignored, the PSC specifically cited, § 24-2-1(b)(6) for the proposition that it has jurisdiction to resolve disputes between utilities. *See id.* Accordingly, *Hardy County* demonstrates that the PSC has agreed with the interpretation of W.Va. Code § 24-2-1(b) set forth above.

The HSB also disingenuously implies that the PSC has already decided the jurisdictional issues of § 24-2-1(b) adversely to SWVA in the *Cooper* and *Robb* cases. (Respondent's Br. at 14). Yet, the PSC has done no such thing. As an initial matter, the Commission has never explicitly rejected its Staff's recommendation that the PSC lacks jurisdiction to hear customer rate disputes with large municipal utilities under § 24-2-1(b). *Cooper v. S. Charleston Sanitary Bd.*, W.Va. Pub. Serv. Com'n No. 16-0261-S-C, Initial and Final Joint Staff Memorandum, March 22, 2016 (A.R. 000238). Further, to the extent the defendant in *Cooper* and *Robb* raised a jurisdictional issue after the Staff issued its memorandum in support of limited jurisdiction, the defendant raised that issue under § 24-2-1(b)(4), not (b)(6). *Robb v. S. Charleston Sanitary Bd.*, W.Va. Pub. Serv. Com'n No. 16-0196-S-C, Reply in Opposition to Complainant's Response, March 28, 2016. Moreover, in *Robb*, the PSC has never explicitly asserted jurisdiction under § 24-2-1(b) or denied dismissal of the case on that basis. *Robb v. S. Charleston Sanitary Bd.*, W.Va. Pub. Serv. Com'n No. 16-0196-S-C, Commission Order November 10, 2016. Thus, for the HSB to insinuate that the PSC has somehow implicitly decided the issues presented by this appeal adversely to SWVA is nothing short of farcical.

Finally, the HSB's erroneous argument in favor of the PSC's jurisdiction over the instant dispute contradicts the HSB's later argument that SB 234 gave local governing bodies, such as the Council, plenary authority to determine whether a construction project is in the "ordinary course of business." On one hand, the HSB claims that the PSC has jurisdiction to hear this

dispute, which necessarily involves a determination of Respondents' obligations under § 24-2-11(l). (Respondent's Br. at 12). Yet, on the other hand, the HSB claims that the Council is vested with discretionary and unreviewable authority to determine whether a construction project is in the "ordinary course of business" under § 24-2-11(l). (*Id.* at 17-18). In this context, the HSB's arguments in favor of the PSC's jurisdiction collapse under the weight of their own contradictions.

Accordingly, because the PSC lacks jurisdiction under W.Va. Code § 24-2-1(b) to review Respondents' compliance with § 24-2-11(l) or any other aspect of the Ordinance challenged in this appeal, review of the Ordinance in mandamus was proper in the trial court and now in this Court.

B. Respondents Are Not Empowered to Determine Their Own Compliance with W.Va. Code § 24-2-11(l).

The HSB repeatedly and summarily asserts that SB 234 and the Legislature's limitations on the PSC's jurisdiction conferred plenary authority on municipal governing bodies such as the Council to determine for themselves whether a construction project is in the "ordinary course of business" and does not require the enhanced notice mandated by W.Va. Code § 24-2-11(l). (Respondent's Br. at 16-19). However, the HSB's repetition of this proposition does not make it true.

First, the HSB again fails to see the contradictions in its positions. If, as the HSB posits, the Council had plenary authority to determine whether the projects funded by the Ordinance are in the ordinary course of business, then the PSC cannot also have jurisdiction to review the Ordinance and Council's determination of this issue. But the HSB asserts that the PSC *does* have jurisdiction over this dispute. (Respondent's Br. at 12). Similarly, if the PSC has jurisdiction to review the Ordinance under § 24-2-1(b), as the HSB erroneously contends it does,

then the HSB cannot be correct that local governing bodies like the Council have been entrusted with autonomous determinations of their compliance with W.Va. Code § 24-2-11. The internal inconsistency of the HSB's arguments thus demonstrate their absurdity. In fact, the most logical and internally coherent solution, as advanced by SWVA in its initial brief, is that the PSC lacks jurisdiction to hear this dispute, that interpretation of the phrase "ordinary course of business" thus falls to West Virginia's courts, and that this Court can find guidance in interpreting this statutory term of art in the PSC's prior consistent decisions.

Indeed, both the HSB and the Circuit Court gloss over the nature of "ordinary course of business" as an undefined statutory term that must receive an objective meaning. For its part, the HSB's answer appears to be that municipal governments get to interpret this statutory term for themselves on an ad hoc basis across the state. (Respondent's Br. at 19). In fact, the HSB asserts—without any basis in the statutory text or even its legislative history—that the lack of an explicit definition for the term "ordinary course of business" in § 24-2-11(l) "demonstrated confidence" in municipal governments to define the term for themselves. (Respondent's Br. at 19). But the courts, and this Court in particular, are the final arbiters of the West Virginia Code. *Dale v. Knopp*, 231 W.Va. 88, 94, 743 S.E.2d 899, 905 (2013). Thus, the idea that the Legislature intended not just to remove the PSC's jurisdiction over large utilities but also to erase the PSC's past interpretations of the phrase "ordinary course of business" and to preclude any review of the Council's interpretation of this phrase is simply illogical and contrary to West Virginia law.

The HSB furthers this misguided attempt to expunge the PSC's decisions by highlighting a similar phrase in the same statutory section—"ordinary extensions of existing systems in the usual course of business." W.Va. Code § 24-2-11(a). In so doing, the HSB isolates the various

subsections of § 24-2-11 and declares that the Legislature's use of a comparable phrase in subsection (l)—"in the ordinary course of business"—demonstrates the Legislature's desire to "entrust[] governing bodies, like the Council, with sole discretion to determine what projects are 'in the ordinary course of business.'" (Respondent's Br. at 19). But this conclusion is unwarranted. "Ordinary extensions in the usual course of business" and "ordinary course of business" are not so drastically different as to evidence an intent that they be interpreted differently. Rather, they demonstrate internal consistency. *See* Syl. Pt. 3, *Barr v. NCB Mgt. Services, Inc.*, 227 W.Va. 507, 711 S.E.2d 577 (2011) ("[T]he meaning of a word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated."). Indeed, that is why the PSC has repeatedly used the two terms interchangeably. *See* Petitioner's Br. at 16, fn. 3.

Accordingly, the PSC's prior interpretations of a similar term of art are instructive in interpreting "ordinary course of business" now. Simply put, the PSC's interpretation of the language in § 24-2-11(a) ("ordinary extensions of existing systems in the usual course of business") is appropriate for interpreting § 24-2-11(l) ("in the ordinary course of business"). Indeed, as noted, the PSC has used the phrase "ordinary course of business" when applying the phrase "ordinary extensions of existing systems," thus strengthening the applicability of the PSC's decisions on this issue. *See City of Huntington Sanitary Board*, W.Va. Pub. Serv. Com'n No. 09-0880-S-SCN, Commission Order August 31, 2009, at 4 and 10 (Conclusions of Law ¶ 3) (A.R. 000158 and 164). Accordingly, the HSB's argument that the Council has plenary authority to define "ordinary course of business" under W.Va. Code § 24-2-11(l) is erroneous and the PSC's prior interpretations of this term of art provide useful guidance for this Court in interpreting and applying the statute now.

Finally, under the HSB's theory of "autonomous interpretation" of § 24-2-11(l), any municipality's governing body is entitled to use its discretion to determine what projects are in the "ordinary course of business." But municipal utilities and city councils are not judicial bodies empowered to interpret statutes; indeed, they are presumed to have limited powers. Syl. Pt. 2, *State ex rel. City of Charleston v. Hutchinson*, 154 W.Va. 585, 176 S.E.2d 691 (1970). As such, they are not entitled to determine for themselves whether the projects they promulgate comply with the *Code*'s requirements. But taking the HSB's argument to its natural conclusion, if municipal utilities were permitted to employ discretionary authority to determine the nature of their own projects, they simply could find every project they undertake to be in the "ordinary course of business," and thus effectively exempt themselves from the notice requirements of W.Va. Code § 24-2-11(l). Respondents' unfettered discretion in this regard would thus render meaningless the enhanced notice provisions of that statute.

Thus, despite HSB's specious and circular arguments, Respondents are not empowered by W.Va. Code § 24-2-11(l) to determine for themselves whether a project is in the "ordinary course of business," and in interpreting that statutory term of art, this Court may look to the PSC's instructive decisions on the issue.

C. The Projects Funded by the Ordinance Are Not in the Ordinary Course of Business and Respondents Did Not Comply with the Notice Requirements of § 24-2-11(l).

The HSB's attempt to isolate § 24-2-11(l) from the rest of the statute and to empower itself to interpret that statute is understandable: application of the PSC's precedent interpreting the phrase "ordinary course of business" plainly demonstrates that the projects funded by the Ordinance are *not* in the ordinary course of business and in fact required enhanced notice under

the statute. Indeed, the HSB has utterly failed to refute application of the PSC's case law or to explain how the construction projects funded by the Ordinance are anything but extraordinary.

First, the HSB admits that the construction projects "include new equipment and construction." (Respondent's Br. at 21). The HSB contends that "necessity" makes these projects "ordinary." (*Id.*) However, this is simply a reiteration of the HSB's erroneous argument that municipal governing bodies should define "necessary" and "ordinary" for themselves without any oversight. Moreover, because "in-kind replacement of existing facilities" is the touchstone of a project in the ordinary course of business, this "new construction" is *not* in the ordinary course of business. *See Town of West Hamlin*, W.Va. Pub. Serv. Com'n No. 05-0282-W-PW, Commission Order April 25, 2005, at 3.

Second, the only factors of the "ordinary course of business" test that the HSB truly attempts to address are the reasons for and funding behind the projects. But these arguments do not withstand even basic scrutiny. As to the projects' motivation, the HSB claims that the failure to undertake the projects will eventually lead to an emergency. (Respondent's Br. at 22). But vague assertions of an emergency "at some point" cannot alone make a project "ordinary" for purposes of W.Va. Code § 24-2-11(l).[3] (*Id.*) Similarly, the HSB claims that the failure to pursue the projects now will require more debt to finance them later. (*Id.*) But again, the HSB's prognostications about future indebtedness simply have no bearing on whether projects requiring a 58% increase in utility rates are "ordinary." Thus, the two factors proffered by the HSB cannot overcome the cost increase, complexity, need for outside engineers, and debt financing the construction projects require, all of which demonstrate that the projects are not in the ordinary course of business.

[3] Moreover, as a practical matter, it is unclear how the HSB's compliance with the requirements of W.Va. Code § 24-2-11(l)—requiring 30 days' notice of the projects to ratepayers via their billing statements—would have led to an emergency at the HSB.

Indeed, that dramatic rate increase alone demonstrates that the projects are not in the ordinary course of business. Members of the Council repeatedly noted Huntington's comparably low utility in rates in passing the Ordinance. (*See, e.g.*, A.R. 00068-69). Thus, projects requiring a 58% increase in those historically low rates are anything but "ordinary." Likewise, the 61% increase in the HSB's revenues under the Ordinance is the precise character of a project previously determined by the PSC to be outside the ordinary course of business. *Town of West Hamlin* at 2.

The HSB's attempt to dispense with Respondents' initial $75 million proposal is also telling. The HSB claims this predecessor of the current Ordinance was never passed, so it is irrelevant. (Respondent's Br. at 22-23). However, this prior proposal is instructive because counsel for the HSB has admitted that the proposal was not in the ordinary course of business, but two-thirds of that proposal's original items—nine of fifteen—comprise the projects funded by the Ordinance. (A.R. 000213). The HSB posits that a reduction in the number of projects that it acknowledged were not in the ordinary course of business somehow makes those projects ordinary. But this self-contradictory reasoning does not bring these nine extensive and expensive projects within the HSB's ordinary course of business.

Likewise, the HSB's confusion of terminology to describe the Ordinance and construction projects belies the projects' true nature as outside the ordinary course of business. During the Council's Finance Committee meeting regarding the revised project proposal and Ordinance, the HSB sought to characterize the projects as "capital improvements" involving routine repairs, in contrast to the extensive "capital projects" on the original list, which would have required compliance with the notice requirements of W.Va. Code § 24-2-11(l). (A.R. 000050-53). To that end, counsel for the HSB explained that "capital improvements" require

"borrow[ing] funds," but that "capital projects" require "raisi[ing] rates for a major project . . . ." (A.R. 000051). Then, at the Council meeting on December 27, 2016, counsel for the HSB again attempted to explain why the revised list of projects did not trigger the heightened notice requirements of W.Va. Code § 24-2-11(l). However, rather than distinguish the revised projects in the Ordinance as routine "capital improvements," counsel for the HSB offered that "[t]he term 'capital project' or 'capital improvement' is basically interchangeable. It is an item of capital expense that an entity has to undertake on occasion." He added that capital improvements could be "in the ordinary course of business," or they could be "not in the ordinary course of business." (A.R. 000213). Accordingly, and notwithstanding its attempt to ignore this history, the HSB's contradictory descriptions of the construction projects demonstrate that the Ordinance was designed to approve and fund nine projects that the HSB had already acknowledged are *not* in the ordinary course of business.

Also telling is the HSB's failure to address at all the two projects in this case that are similar, if not identical, to two projects the PSC and the HSB previously recognized to be "not in the ordinary course of business." *See* Petitioner's Br. At 18-19.

Finally, the HSB's invocation of W.Va. Code §§ 8-11-4 and 16-13-16 at the end of its brief is a red herring. The HSB postulates that these statutes demonstrate that it has complied with all statutory requirements for notice about the Ordinance's projects. However, these statutes have no bearing on whether the HSB was required to or did in fact comply with W.Va. Code § 24-2-11(l). Essentially, the HSB seeks to distract from § 24-2-11(l)'s clear requirements for enhanced notice about the extensive and extraordinary construction projects in the Ordinance by demonstrating what it did pursuant to other statutes. But compliance with these other statuary sections is utterly irrelevant. Because the construction projects funded by the Ordinance are not

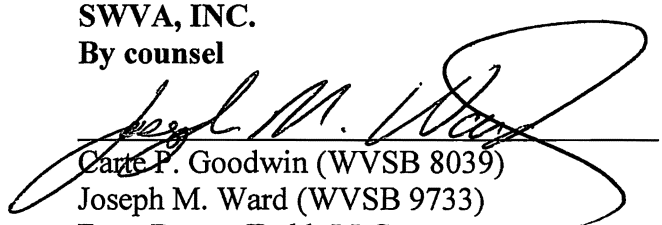
in the "ordinary course of business," as that phrase has been consistently interpreted, Respondents were required to provide additional notice of the construction projects under § 24-2-11(l). Because Respondents failed to provide that additional notice—a point Respondents attempt to justify but do not contest—the Ordinance was passed in violation of the West Virginia Code and so should be invalidated through a writ of mandamus from this Court. (A.R. 000333 and Respondent's Br. at 23); Syl. Pt. 1, *Robinson v. City of Bluefield*, 234 W.Va. 209, 764 S.E.2d 740 (2014) ("When a provision of a municipal ordinance is inconsistent with or in conflict with a statute enacted by the Legislature the statute prevails and the municipal ordiance is of no force and effect.")(citation omitted).

III. CONCLUSION

For all the foregoing reasons, and for those stated in its initial brief, Petitioner SWVA, INC. respectfully requests that this Court reverse the order of the Circuit Court, uphold SWVA's right to challenge the Ordinance in mandamus, declare the Ordinance void *ab initio*, and enjoin any further actions pursuant to the Ordinance.

Respectfully submitted,

SWVA, INC.
By counsel



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2017, I caused the foregoing "Brief of Petitioner" to be served on counsel of record via email and U.S. Mail in a postage-paid envelope addressed to:

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