

Clerk Files Motion to Dismiss Nickel Tax Lawsuit

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School Board

WEBSTER COUNTY, KY (12/21/11) – After a review of the minutes for the Nov. 3 special called Webster County Board of Education meeting at which school district officials reported the board directed a lawsuit be filed against Webster County Clerk Valerie Franklin Newell regarding her handling of a petition filed to recall a so-called “nickel tax,” Webster County Attorney Clint Prow, who represents Newell on the county’s behalf, has filed a motion to have the case dismissed.

The motion filed on Dec. 14 contends that the filing of the lawsuit “is not properly before this court for the action to proceed. First, the petitioner (the Webster County Board of Education) as a public agency did not legally authorize the initiation of this legal action. Secondly, service of process upon the respondent (Newell) was not proper.”

The motion claims the school board didn’t comply with the open meetings law due to the fact that the minutes don’t reflect a motion authorizing the lawsuit to be filed. A copy of the minutes from the board’s special meeting is included with the motion to dismiss. The minutes state that upon returning to open session, “the board made a report,” followed by the statement: “The Webster County School Board directed legal counsel to pursue a challenge to the petition to recall the nickel tax.”

The minutes don’t reflect the recording of a vote or who made or seconded such a motion.

Additionally, the motion alleges that because Webster County Board of Education Attorney Amy Zachary issued the notice to Newell that her office was being named in the lawsuit, the process was illegal.

“Counsel for the petitioner is not a ‘person authorized’ under KRS 454.140 nor KRS 454.145 for service of process under the Civil Rules. Therefore, service has not been completed and the petitioner has failed to bring the respondent properly before this court,” the motion stated.

The motion requests a hearing on the matter be held on Wednesday, "or as soon as thereafter counsel may be heard."

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