

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Ron King, Fire Marshal/Code Official for the City of Nitro, et al. v. Richard J. Nease and Lorinda J. Nease

King v. Nease · No. No. 13-0603 · Decided April 10, 2014

SUMMARY

This document is a dissenting opinion in a West Virginia Supreme Court of Appeals case concerning whether the State Freedom of Information Act authorizes a public body to impose retrieval or search fees. Justice Benjamin argues that the statute permits fees only for the actual cost of reproducing records and that the majority's contrary interpretation conflicts with the statute's plain language and policy favoring government transparency.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Benjamin, Justice
JURISDICTION	West Virginia
DECIDED	April 10, 2014
DOCKET	No. 13-0603
DISPOSITION	other
PROCEDURAL POSTURE	A dissenting opinion in an appeal concerning whether the West Virginia Freedom of Information Act authorizes a public body to charge retrieval or search fees for requested records.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	Ron King, Fire Marshal/Code Official for the City of Nitro, David A. Casebolt, Mayor for the City of Nitro, City of Nitro v. Richard J. Nease, Lorinda J. Nease

TOPICS

statutory interpretation

plain meaning rule

expressio unius

administrative law

municipal law

PRACTICE AREAS

administrative law

municipal law

freedom of information

QUESTIONS PRESENTED

1. Whether West Virginia Code § 29B-1-3(5) authorizes a public body to charge retrieval or search fees, rather than only fees reasonably calculated to reimburse the actual cost of reproducing requested records.
2. Whether the Freedom of Information Act's liberal-construction mandate and the *expressio unius canon* preclude charging retrieval or search fees not expressly authorized by the statute.

KEY QUOTATIONS

“The majority’s legal analysis of the statutory language at issue amounts to nothing more than judicial embroidery and has no support in our law.” (at 1)

“A reasonable person would understand these words to mean that a public body may charge a fee for the cost of copying records requested by a person under the Freedom of Information Act.” (at 1)

“Therefore, contrary to the assertion in the majority opinion, the statutory language provides that the term “fees” covers only duplication-related costs.” (at 2)

“When this rule is applied to the statutory language at issue, I must conclude that because the Legislature expressly authorized public bodies to charge a fee only for the cost of reproducing requested records, it did not authorize public bodies to charge any other kinds of fees including retrieval and search fees.” (at 3)

“This is due to the fact that the amount charged for the production of records is inversely related to how many people will file requests for the production of records and, therefore, how many records ultimately will be disclosed.” (at 4)

FACTUAL BACKGROUND

The case concerns a Freedom of Information Act request for government records from the City of Nitro. The dispute involved whether the City could impose a retrieval or search fee in addition to fees for the actual cost of reproducing requested records. The dissent states that, before the majority opinion, a person could view records at the government office without paying a retrieval fee.

PROCEDURAL HISTORY

The dissent refers to a circuit court ruling concerning retrieval fees and criticizes the majority for reaching a contrary interpretation of the Freedom of Information Act. The source text does not identify the circuit court, its case number, or the majority's precise disposition.

DISPOSITION

other

CASES CITED

- State v. Elder, 152 W. Va. 571, 165 S.E.2d 108 (1968)
- HCCRA v. Boone Memorial Hosp., 196 W. Va. 326, 338, 472 S.E.2d 411, 423 (1996)
- State ex rel. Battle v. Hereford, 148 W. Va. 97, 133 S.E.2d 86 (1963)

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