

TRANSCRIPT OF COUNTY COMMISSION MEETING HELD SEPTEMBER 13, 2001 AT  
11:00 P.M. IN ROOM 203 OF THE WOOD COUNTY COURTHOUSE

THOSE IN ATTENDANCE:        ROBERT K. TEBAY, PRESIDENT  
                                     RICK MODESITT, COMMISSIONER  
                                     K.D. MERRITT, COMMISSIONER  
                                     ROBERT GOLDENBERG, ATTORNEY  
                                     JANE RICHARDS  
                                     CAROLE MORRISON  
                                     FRANK KESTERSON  
                                     JULIA HOFFMAN  
                                     MARY RADER, COUNTY ADMINISTRATOR  
                                     JAY DAY, ADMIN. ASSISTANT, COUNTY CLERK

Tebay – We will now re-convene the hearing (inaudible)

Goldenberg – May I speak.

Tebay – Sure Bob.

Goldenberg - You asked about naming Commissioner of accounts. I talked with the members of the family and we don't think that our position is clear (inaudible) The position is that the mother of these folks died under circumstances which raise they feel something went wrong. They think (inaudible). They are not saying that they will file a suit (inaudible) They wouldn't do that, they are not that kind of people. You've known these people for years and years and years. They are not (inaudible) people, they are good citizens and they would not do anything of that nature without first going into great study, having medical investigation of what they're talking about. If there's something that was drastically wrong, grossly wrong that happened to their mother, then they would want to consult counsel and make sure everything was absolutely in favor of

their proceeding to seek legal action. But, they're not going to go out and file (inaudible) without good cause. But they have that right. If their mother was killed because of someone's wrongdoing, they have the right to see that justice is done. And they shouldn't be deprived of that right. We don't think that a Commissioner of accounts should be appointed because number one he's going to be so cautious that he wouldn't want to investigate. You don't know what they're going to do. But the big thing is it is going to cost a lot of money unnecessarily because there may not be anything to this, there's no money in this estate at this time. And so this is (inaudible) and what we propose today is this, I don't come here very often you know that and ask you something, but I feel something should be done right, I'm going to come here and talk to good people that you and I have known for years and years and years. What we sincerely think should be done is name a couple of family members. When this thing started I could understand (inaudible) that two people one on this side that I'm representing, Julia, who's from Pittsburgh but she owns property here, she is a degreed person, WVU, just as Jane (inaudible) talk here unnecessarily about her bankruptcy, she knew that she was behind it she wants to explain (inaudible). No one ever questions administrator (inaudible) appointed (inaudible), who has a business degree or who is qualified in business. That's ridiculous in our practice. (Inaudible) not known. So we propose this, that Julia and Jane on the other side of this fiasco be co-administrators. Require a bond and have them if you want, hire a lawyer through the one of the Commissioners, Jerry Townsend or any of those folks to see that they're guided correctly. Not me, not Mr. Hayhurst, someone who is objective (inaudible) to guide them and to keep this in the family as it were, keep this in Wood County as far as possible and that's what we suggest now that we appoint Julia and Jane co-administrator. That's (inaudible)

Hayhurst – With all due respect this is a red herring. The question of whether a malpractice claim should be filed or not has nothing to do with who should be the administrator. It is the administrator, whether he be coincidentally a commissioner of accounts or family member, a third party, a lawyer still has a fiduciary duty to investigate to see whether there's a claim and that's a fiduciary duty, the highest duty imposed by law. He owes that duty to each of the eight children, he or she, whoever the fiduciary is. So, the fact that some may want, some may not want to file a malpractice claim is relevant only to show the degree of discord among the family

that this Commission recognized last Monday and upon which it concluded that somebody independent should be appointed. Mr. Goldenberg's suggestion that a fiduciary commissioner, someone who is a fiduciary commissioner who happened to be appointed as administrator would not do his duty, would not discharge his fiduciary responsibilities to the heirs if he were appointed is absurd and wrong, particularly knowing who the four fiduciary commissioners are in this county. So, the Commission, in our opinion, should adhere to its previous determination to appoint somebody independent, either of the two fiduciary commissioners that was suggested are fine to Ms. Sharp.

Goldenberg – Your honor, please Jane has asked for the opportunity to speak and I'm asking you to give her that courtesy.

Tebay – That's fine.

Goldenberg - Jane

Richards – I teach, I stand on my feet all day so I'm fine standing up. I would like a moment of privilege before this court concerning two important points I failed to mention on Monday, because I was so shocked by Mr. Hayhurst's tactics and saddened that my sister Francis Sharp had approved and directed Mr. Hayhurst to attempt to discredit me as a potential executor to my mother's estate. My husband and I explored all avenues prior to filing bankruptcy. The bankruptcy was filed prior to my mother's death and all debts were discharged on August 16, 2001. We have no debts at this time. The attorney who handled this for us assured us it would not disqualify me as an administrator. For Mr. Hayhurst to suggest that my brother or I would take any money from the estate is absolutely ridiculous and Francis Sharp knows that as well. My mother said she always depended on Frank and I to help her in whatever she needed done, so it made perfect sense for Frank and I to be considered as co-administrators since we were in daily contact with her. This should have been a simple probate process and I am asking that Mr. Hayhurst and Francis Sharp stop causing dissention among the family members and allow the probate process to proceed as quickly as possible. Thank you.

Hayhurst – Her statement causes me to want to ask a number of questions, but in the interest of efficiency I will decline at this time.

Tebay – Your client then would not, would object to Julia and Jane to serve. Is that correct.

Hayhurst – Well, we are not abandoning our position that someone independent ought to be appointed; however, if the Commission is determined to appoint some family members, Mrs. Hoffman and Mrs. McCauley's husband Lynn would be acceptable as joint fiduciaries so long as an adequate bond be posted. And we have received an email from Mr. McCauley. Mr. Goldenberg told us on Monday that he was unwilling to serve, that is not so. He has sent us an email that says he's not seeking it, that Mrs. Carole Morrison called her on the ninth and asked him to submit a letter saying he declined nomination as administrator and he told her he wouldn't respond in either way, but whatever happened, was fine with him. That is to say he would serve if appointed.

Goldenberg – (inaudible) is not a member, my goodness, there are a number of people in this family, children without going outside (inaudible) causing trouble (inaudible). That's not acceptable.

Hayhurst - The consent of the clients representative Mr. Goldenberg to the appointment of independent fiduciary is immaterial, is not necessary in this case because thirty days have elapsed and under the statute the County Commission can appoint anyone as fiduciary after thirty days have elapsed.

Goldenberg – That goes both ways your honor.

Female – Can I add something here, a personal note here. Mr. McCauley's mother was ill last winter and passed away at the first of February. I have an email on my computer from Janet saying how, what a stressful time he had had and he was administrator of his mother's estate and

it had been very cumbersome process for him and he had so much distress, we don't want to cause him anymore distress at this time. Handling one estate here was enough for him to have to do.

Hayhurst – He did that estate, he did it fine. He insured the confidence of the family members by the way he handled that estate. He's indicated willingness to serve if appointed. He's not seeking (inaudible)

Tebay – That's not acceptable to your side.

Goldenberg – That's correct.

Tebay – There's no amiable representation from two of you, a joint co-administrators.

Goldenberg – Yeah, Janet and Julia.

Tebay – But that's not acceptable from this side. Is that correct.

Goldenberg – Well, I don't know (inaudible – female talking over him)

Hoffman – Can I say something, I believe.

Goldenberg – This is Julia.

Hoffman - I'm sorry. I'm Julia Hoffman.

Goldenberg – Tell them who you are and what you do.

Hoffman – Well, I'm a medical technologist. I have run a physician's office laboratory in (inaudible) Pennsylvania for the last nine years. I'm a graduate of West Virginia University.

Tebay – Julia, since you are going to testify, do you want to raise your hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God.

Hoffman – I do. I would like for, if we could check, with Mrs. Sharp because I talked myself with her lengthy last night, she indicated to me that she would be open to any suggestion, if I had a suggestion and I think maybe if we could contact her and ask her if Janet would be suitable I think that she would agree to that.

Hayhurst – She's already told me no.

Hoffman – When did she (inaudible another lady talked at the same time). Can I ask you

Hayhurst – This morning.

Hoffman – this morning and she said Janet would not be

Hayhurst – That's my understanding. We can call her and see.

Hoffman - Because I spoke with her myself last night and she said that she would be agreeable to a solution. I would like to call her and see.

Goldenberg – We would like to call her Mr. Hayhurst.

Hayhurst – I believe you'll not be contacting her.

Goldenberg – Could Julia talk to her.

Hoffman – Can I talk to her. May I please speak to her.

Goldenberg - She's not restricted, I don't think.

Male - Have a member of the Commission talk to her.

Hoffman - Right, someone else.

Goldenberg - Let's find out the truth.

Hayhurst - I resent the implication of that comment Mr. Goldenberg.

Goldenberg - I didn't say anything about you. I just said let's find out the truth from her directly.

Hayhurst - And I will report it.

Goldenberg - That's up to the Commission

Background talking.

Hoffman - I spoke with her last night for about an hour and a half or so and she mentioned to me several times that she

Background talking.

Female - Our biggest concern is having someone else handle this outside of the family because of fees involved. Quite frankly with the five percent of the estate that would be taken, the five percent or more taken up in fees, we would probably have to end up selling some of the farm in order to pay those fees and we don't feel we should have to do that when this can be handled by family.

Tebay – I can understand that but if there's going to be a squabble between the family, somebody's going to have to hire an attorney. If we name the Sheriff, he's going to have to hire an attorney and then (inaudible – someone coughing) five percent.

Female – And then we still pay.

Tebay – You still pay. If there can't be some agreement in the family then I think we're looking at somebody, an outsider that's going to charge a fee, but that's just the way it works.

Goldenberg – You don't have to have an agreement you can name any one of these people without an agreement. (inaudible) You don't have to agree on what they say or what we say, you're the boss.

Tebay- I understand.

Goldenberg – (inaudible)

Day – If you name any member of the family or co that comes from the family there will probably be so much conflict, I don't know how this (inaudible)

Goldenberg – Well then there's going to be conflict in any event and that's why Julia is a fair (inaudible)

Female - Earlier in the summer it was acceptable for Janet and Julia to do (inaudible)

Hayhurst – I have accurately represented my client's position to the Commission.

Tebay – So, there is no agreement, is that what we're saying.

Hayhurst – There is no agreement.



Tebay – Family members (inaudible)

Hayhurst – Perfectly agreeable to Mrs. Hoffman and Mr. McCauley. Now if they want to save fiduciary commissions now is the time to come forward and agree.

Tebay – McCauley and Hoffman

Hayhurst – Mr. McCauley and Mrs. Hoffman, correct.

Background talking.

Hoffman - I just spoke with my sister Francis and she said you may call her now she will agree to myself and my sister Janet McCauley to handle this and she said you may call her.

(Inaudible - Several people talking at one time.)

Hoffman - The Commissioners

Hayhurst - (inaudible) my client, thank you.

Hoffman – Excuse me. I told her the Commissioners would call her.

Hayhurst – Well, that doesn't prevent me from calling.

Hoffman – No it does not.

Tebay – I think we got it worked out.

Kesterson – Hopefully.

Hayhurst (on the phone) Do I understand that you have now (inaudible due to Mr. Kesterson speaking)

Kesterson - I'd like to go on with my life. Mother's been (inaudible) the hospital (inaudible) eighteenth and I haven't got, I haven't had a moments rest. She was in there four months in the hospital (inaudible) and the bills and everything, the farm that I had to try to take care of (inaudible) I'm just literally wore out.

Merritt - About every time I came out (inaudible) doing something on the farm.

Kesterson - (inaudible) he wouldn't (inaudible)

Modesitt - opportunity (inaudible)

Background talking

Tebay - Thanks. I need a motion to approve Janet McCauley and Julia Hoffman as co-administrators in the Alma Kesterson estate to serve with bond (inaudible due to people talking at one time)

Goldenberg - Hey Jay, if there's no personal property there's no bond. It has to be a hundred dollars or something like that.

Day - So there's no money accounts, this is the value as of the day she died.

Goldenberg - We're talking about what kind of, what would it be.

Day - All personal property. Money accounts, personal property, household items, jewelry.

Male - She does have personal property. No insurance. No, the accounts are now in the hole.

Day - This is a snapshot as of the day (inaudible)

Male - That's not an easy thing (inaudible)

Female – No stocks, bonds, because that's all she had was a checking account.

Day – Checking, savings, stocks, bonds.

Female – They both own property in West Virginia. She owns property in West Virginia, Janet McCauley owns property in Jackson County, West Virginia. They both own property.

Day – You would need a justification of surety from the County Clerk's Office where it shows the value. As long as that amount exceeds the amount of bond.

Male – Thank you.

Morrison – I'm really sorry.

Tebay – It's all forgotten.

Morrison - If it wasn't for my sister, Francis, this wouldn't have happened at all. She's a greedy, greedy person.

Merritt – Don't you worry about it.

Tebay – It's all worked out.

Morrison – Well, it makes me so sad.

Merritt – I understand.

Morrison – 'Cause you know how our parents were.

Merritt – I know.

Morrison – They were wonderful people and they would absolutely be ashamed of the way that she is acting. But you know, I think, some day she is going to have to stand in front of our father, and you know how my father was, he'd put her in her place.

Merritt – Real quick.

Morrison – You better believe it.