

STATE OF WEST VIRGINIA

RANDOLPH COUNTY COMMISSION SS:

At a regular session of the County Commission in and for the aforesaid County and State, at the James F. Cain Court House Annex, on the 7th day of July, 2022 at 1:30 p.m.

Present: Randolph County Commission President Chris See and Commissioners Chris Sifer and David Kesling

Meeting called to order by Commissioner See

PUBLIC COMMENT: None

MINUTES:

Commissioner Kesling moved to approve the minutes from the regular meeting that was held on June 14, 2022, as submitted. All yes – Motion passed unanimously

Commissioner Kesling moved to approve the minutes from the special meeting that was held on June 22, 2022 with an amendment of the bid amount for the pool/splash pad to \$2,163,000.00 instead of 2.1 million dollars. All yes – Motion passed unanimously

REPORTS:

Sheriff Elbon reported that his department has one vehicle down at this time. He said he thinks it is a timing chain issue and the vehicle has 97,000 miles on it.

CORRESPONDENCE: None

ANNOUNCEMENTS:

Commissioner See announced that the next regular meeting will be held on July 21, 2022 at 1:30 p.m.

Commissioner Kesling announced that there will be a ground breaking ceremony at the pool tomorrow morning at 10:00 a.m.

Commissioner See announced that there is a box in the courthouse annex lobby for personal care items for students and this is being done by the United Way.

ITEMS FOR DISCUSSION/ ACTION:

CONSIDER APPROVAL OF NEW HIRE FOR 911 CENTER

Robert Daman appeared before the Commission. He said they would like to move Bradley Workman from part time status to full time status at the 911 Center. He said they would like this to be effective from July 4, 2022 and he will receive the same pay but will now be able to get the County benefits. His salary is already covered in the budget. Commissioner Kesling moved to approve this request, as presented. All yes – Motion passed unanimously

Mr. Daman said they would also like to re-hire Eric Swecker back as a Telecommunicator Trainee full time with benefits. This would be effective July 8, 2022 with a starting pay of \$12.25 per hour and he will be placed on a 6 month probation period and this is covered in the current budget. Commissioner Kesling moved to approve this request, as presented. All yes – Motion passed unanimously

CONSIDER APPROVAL OF QUOTE FROM DIGITAL SOUP

Commissioner Kesling said this is a quote from Digital Soup for camera work behind the Wees Annex. The quote is in the amount of \$986.00. Commissioner Kesling moved to approve the quote from Digital Soup in the amount of \$986.00 and that is to be taken out of other buildings equipment line. All yes – Motion passed unanimously

CONSIDERATION OF AMENDED COVID LEAVE POLICY

Commissioner Kesling said the Commission extended the 80 hours of paid COVID leave until July 1st. He said now since things have settled down some and the quarantine time has changed they would like to amend that policy to 40 hours of paid COVID leave until December 2022. He said they will re-evaluate it after that. He said this time off will not be counted against employees sick or annual leave, but they must have a doctor's slip to use COVID leave. Commissioner Kesling moved to approve the amended COVID leave policy as discussed. All yes – Motion passed unanimously

CONSIDER APPROVAL OF CLAYTOR ENTERPRISES, LLC TO PREPARE ANNUAL FINANCIAL STATEMENT FOR FISCAL YEAR ENDING JUNE 30, 2022 (See copy attached)

County Clerk, Brenda Wiseman presented a proposal from Claytor Enterprises, LLC to the Commission. She said Mr. Fred Hess that has been doing the financial statement for the last couple of years sent an email that said he couldn't do it this time. Ms. Claytor has done the financial statement for Randolph County in the past and did a good job. She was unable to do it for a while as she was running for office and was too busy. The fee for her services is \$5,000.00. Commissioner Kesling moved to approve Claytor Enterprises, LLC to prepare the annual financial statement for fiscal year ending June 30, 2022, as submitted. All yes – Motion passed unanimously

CONSIDER APPROVAL OF FIDUCIARY COMMISSIONER'S RECOMMENDATION ON THE ESTATE OF DORIS JEAN POLING (See copy attached)

County Clerk, Brenda Wiseman presented the recommendation to the Commission. She said Jennifer Morgan was appointed as Fiduciary Commissioner to hold a hearing on this estate regarding a claim that was submitted regarding a tractor. The Commissioners read and reviewed the recommendation. Commissioner Siler moved to approve the recommendation of the Fiduciary Commissioner on the estate of Doris Jean Poling, as submitted. All yes – Motion passed unanimously

CONSIDER APPROVAL OF INCREASED MILEAGE REIMBURSEMENT RATE

Commissioner Kesling said the Commission usually goes along with the standard mileage rate set by the State. He said that rate has went up to 62.5 cents per mile so they need to approve that increase today. Commissioner Kesling moved to increase the mileage reimbursement rate to 62.5 cents per mile, effective today. All yes – Motion passed unanimously

CONSIDER RENEWAL OF SUPPORT CONTRACT WITH GST

Commissioner Kesling moved to renew the support contract with Global Science and Technology in the amount of \$2,030.00 per month, as submitted. All yes – Motion passed unanimously

CONSIDER APPROVAL OF VEHICLE PURCHASE FOR SHERIFF'S OFFICE

Sheriff Eibon said they have had vehicles ordered since last February through Ford. They still have not received them and there is no date when they will be coming. He said they are not even responding to his emails anymore. He said he started looking elsewhere and has found 3 vehicles that will work for them. He said one is for the task force and two will be used as patrol cruisers. He said the two cruisers are white so they will need to be wrapped in black and the one for the task force will need a bed cover. Commissioner Kesling said they previously budgeted \$200,000.00 for the new vehicles. Commissioner Kesling moved to approve the request for the three new vehicles in the amount of \$121,548.58 and that is to be taken out of the Courthouse Equipment line. All yes – Motion passed unanimously

Commissioner Kesling moved to approve a quote in the amount of \$8,000.00 to wrap the two white cruisers in black and that is to be taken out of the Courthouse Equipment line. All yes – Motion passed unanimously

Commissioner Kesling moved to approve a quote in the amount of \$2,771.00 for a bed cover with drawers for the task force vehicle and that is to be taken out of Courthouse Equipment line. All yes – Motion passed unanimously

CONSIDER REAPPOINTMENT TO THE RUSSELL MEMORIAL PUBLIC LIBRARY BOARD

Commissioner Siler moved to reappoint Linda Peterson to the Russell Memorial Public Library Board for a term to begin immediately and end on June 30, 2027. All yes – Motion passed unanimously

CONSIDER REAPPOINTMENT TO LEADSVILLE PSD

Commissioner Kesling moved to reappoint Greg Morgan to the Leadville Public Service District Board for a term to begin immediately and end on June 30, 2028. All yes – Motion passed unanimously

CONSIDER APPROVAL OF RESIGNATION AND APPOINTMENT TO PIONEER MEMORIAL LIBRARY BOARD

Commissioner Kesling moved to accept the resignation of Mike Atkins from the Pioneer Memorial Library Board, as submitted. All yes – Motion passed unanimously

Commissioner Kesling moved to appoint Sandra Parrish to the Pioneer Memorial Library Board for a term beginning immediately and ending June 30, 2027. All yes – Motion passed unanimously

CONSIDER APPROVAL OF REAPPOINTMENT TO AIRPORT AUTHORITY

Commissioner Siler moved to reappoint Mark DeMotto to the Airport Authority Board for a term to begin immediately and end on June 30, 2025. All yes – Motion passed unanimously

CONSIDER APPROVAL OF APPOINTMENTS TO VALLEY HEAD PUBLIC LIBRARY

Commissioner Kesling moved to appoint Amber Saltsman to the Valley Head Public Library Board for a term to begin immediately and end on June 30, 2024. All yes – Motion passed unanimously

Commissioner Kesling moved to appoint Catherine Powell to the Valley Head Public Library Board for a term to begin immediately and end on June 30, 2025. All yes – Motion passed unanimously

CONSIDER APPROVAL OF REAPPOINTMENTS TO AMBULANCE AUTHORITY

Commissioner Siler moved to reappoint Ernest Flores, Thomas Pritt and James Sayres, Jr. to the Ambulance Authority Board and those terms will begin immediately and end on June 30, 2025. All yes – Motion passed unanimously

FINAL SETTLEMENTS/ANNUAL ACCOUNTINGS:

Commissioner Siler moved to approve the final settlements/annual accountings on the following (3) estates, as submitted.

Jeanne Yvonne Hart

Diane Lynn Morgan

Paul Edgar Swecker

All yes – Motion passed unanimously

BUDGET REVISIONS: None

DIVISION OF PROPERTY/ERRONEOUS ASSESSMENTS:

Commissioner Siler moved to approve the divisions of property/ erroneous assessments, as submitted. All yes – Motion passed unanimously

DISTRESSED PROPERTIES:

Commissioner Kesling moved to approve the Commission President's signature on 3 liens for tear downs of unsafe buildings. All yes – Motion passed unanimously

FIRE FEE ADJUSTMENTS:

Commissioner Kesling moved to approve nine (9) fire fee adjustments, as submitted. All yes – Motion passed unanimously

PAYMENT OF BILLS:

Commissioner Siler moved to pay the bills, as submitted. All yes – Motion passed unanimously

ADJOURN THE MEETING:

Commissioner Kesling moved to adjourn the meeting. All yes – Motion passed unanimously

Attest: _____

Claytor Enterprises, LLC Claytor Enterprises, LLC

June 8, 2022

The Honorable Brenda Wiseman
Randolph County Clerk
4 Randolph Avenue, Suite 102
Elkins, WV 26241

Dear County Clerk:

Management Services

You have requested that I assist in the preparation of the annual financial statement for the fiscal year ended June 30, 2022. I am pleased to confirm our acceptance and our understanding of this engagement to prepare the financial statements of Randolph County, West Virginia by means of this letter.

Our Responsibilities

The objective of our engagement is to prepare financial statements in accordance with accounting principles generally accepted in the United States of America based on information provided by you. We will conduct our engagement in accordance with Statements on Standards for Accounting and Review Services (SSARs) promulgated by the Accounting and Review Services Committee of the AICPA and comply with the AICPA's Code of Professional Conduct, including the ethical principles of integrity, objectivity, professional competence, and due care.

We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion. Accordingly, we will not express an opinion or a conclusion or provide any assurance on the financial statements.

Our engagement cannot be relied upon to identify or disclose any financial statement misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity or noncompliance with laws and regulations.

Your Responsibilities

The engagement to be performed is conducted on the basis that you acknowledge and understand that our role is the preparation of the financial statements in accordance with accounting principles

TELEPHONE: 304-993-1939 | FAX: 304-721-9093 | EMAIL: MARY.CLAYTOR@claytorenterprisesllc.com

ADDRESS: 224 Oliver Street | St. Albans, WV 25177

Claytor Enterprises, LLC Claytor Enterprises, LLC

generally accepted in the United States of America. You have the following overall responsibilities that are fundamental to our undertaking, in accordance with SSARs, the engagement to prepare your financial statements:

- a. The prevention and detection of fraud
- b. To ensure that the entity complies with the laws and regulations applicable to its activities
- c. To make all financial records and related information available to us
- d. The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement to prepare financial statements

You agree that the financial statement will clearly indicate that the financial statements have not been audited and no CPA provides any assurance on them.

Other relevant information

We will perform these services for a flat fee of \$5,000 to prepare the financial statements. If onsite visits are necessary, per your request, the additional fee will be negotiated before the commencement of further services. We will be in touch with you to arrange a mutually agreeable time in which the services can be performed.

Thank you for the opportunity to provide this service to your office. If you agree with the terms of the engagement, please sign below and email the original to Mary.Claytor@claytorenterprisesllc.com or mail to 224 Oliver Street, St. Albans, WV 25177.

Sincerely,

Mary Ann Clayton

Mary Ann Clayton
Claytor Enterprises, LLC

RESPONSE:

This letter correctly sets forth the understanding of the Randolph County Clerk.

By: Brenda Wiseman

Date: 7-7-2022

Title: Randolph County Clerk

TELEPHONE: 304-993-1939 | FAX: 304-721-9093 | EMAIL: MARY.CLAYTOR@claytorenterprisesllc.com

ADDRESS: 224 Oliver Street | St. Albans, WV 25177

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www.bztlaw.com

Sender's email address: jmorgan@bztlaw.com

June 14, 2022

Brenda Wiseman, Clerk
Randolph County Commission
Randolph County Courthouse
Elkins, WV 26241

Re: Estate of Doris Jean Poling

Dear Clerk Wiseman,

On March 30, 2022, Frank D. Edmond filed a claim against the Estate of Doris Jean Poling. By letter dated May 3, 2022, I set the matter for hearing on June 8, 2022, at my office. Below is my report of said hearing and recommendation to the Randolph County Commission in regard to the issues raised at said hearing.

Present at said hearing were Executrix, Rebecca A. Surface and her attorney, R. Mike Mullens; Petitioner, Frank D. Edmond and his attorney, Daya M. Wright. Both Counsels prepared statements and called witnesses. Petitioner called the following to testify: Karry Nagle, Valda Nagle, Frank D. Edmond, Frank Edmond, Jr., Virginia Newsome, Craig Newsom and Virginia Pudder. Executrix called Jefferson Triplett, Rebecca Surface, Marshall Coontz and Wesley Elmore.

Primary complaint of Petitioner is the disposition of a Kubota tractor pursuant to the Last Will and Testament of Doris Jean Poling in the Third Section of said Will, to Dave Abel. Petitioner contends that the deceased, Doris Jean Poling, gifted said tractor to himself prior to her death and therefore, the tractor was not available for distribution to Mr. Abel.

Executrix counters that the tractor was never given to Petitioner but loaned to Petitioner and should be returned to Executrix to be distributed pursuant to the Last Will and Testament of Doris Jean Poling.

**** Approved by the Randolph County Commission on July 7, 2022****

From the testimony presented by Petitioner, the following information was submitted:

1. In March of 2020, Frank Edmond hosted a birthday party for himself. Present at this party were Frank Edmond, Karry Nagle, Valda M. Nagle, F Frank Edmond, Jr., Virginia Newsome, Craig Newsom, Virginia Pudder and the deceased, Doris Jean Poling.
2. At said party, witnesses testified that they overheard the deceased, Doris Jean Poling, say that the tractor was a gift to Frank Edmond for his help to her and for his birthday.
3. Frank D. Edmond is a nephew of Doris Jean Poling.
4. Frank D. Edmond had possession of said tractor since 2021.
5. Frank D. Edmond visited deceased four to five times a week and used the tractor to do chores at deceased's house and at his house.
6. Frank D. Edmond at all times considered the tractor his following his birthday party in 2020.
7. There is no paperwork transferring the tractor from deceased to Petitioner.
8. Following the birthday party, witnesses testified that on separate occasions following the birthday party they overheard the deceased refer to the tractor as Petitioner's.

From the testimony presented by the Executrix, the following information was submitted:

1. Executrix is the deceased's niece.
2. Executrix and Petitioner are not brother and sister.
3. Last Will and Testament was prepared by Jefferson Triplett after conversations with Rebecca Surface in late November 2021. Doris Jean Poling was in intensive care at Davis Medical Center suffering from COVID-19. Doctor Chua certified that Mrs. Poling was of sound mind and competent to make and sign a Will. Mr. Triplett met with Mrs. Poling at the hospital, reviewed the Will he had prepared from the notes presented to him by Mrs. Surface, and witnessed Mrs. Poling sign said Will. Other than reviewing the disbursement of assets, there was no discussion of the tractor or the tractor's ownership. Mrs. Poling signed her Last Will and Testament, in ICU at Davis Medical Center on December 14, 2021, and subsequently died the next day.
4. Mrs. Surface testified that it was Mrs. Poling's wish that Dave Abel have possession of the tractor since Mr. Abel would need the tractor to take care of the real estate he was inheriting. Mrs. Surface also testified that there was no mention of a gift of the tractor to Petitioner.
5. Mrs. Surface had no knowledge that the tractor was presently stored at Petitioner's house.
6. Marshall Coontz and Wesley Elmore testified that neither knew of any gift of the tractor to Petitioner from deceased. Both understood that the tractor was at Petitioner's house for use to mow Petitioner's lawn and for use at Petitioner's house. Both testified that Mrs. Poling intended to fix up a shed at her house to house the tractor once it was returned.

Kubota Tractor

Under Section THIRD a(iii) of the Last Will and Testament of Doris Jean Poling, the testator specifically devises her Kubota tractor to her nephew, Dave Abel. Furthermore, at no point during her conversations with Mrs. Surface or Mr. Triplett, did Mrs. Poling bring up the ownership of her Kubota tractor or a gift of it to Frank D. Edmond. There is no evidence of any document or other writing transferring the ownership from Mrs. Poling to Mr. Edmond.

However, Petitioner presented multiple witnesses who overheard the deceased gifting the Kubota tractor to Petitioner at a birthday party in 2020. Furthermore, five of those witnesses overheard Mrs. Poling state on other separate occasions that the Kubota tractor belonged to Petitioner. Petitioner moved the Kubota tractor to his property sometime in 2021 and from the date of the 2020 birthday party, acted as though the tractor belonged to him.

A Kubota tractor does not have a title similar to that of a vehicle which could be presented to change ownership. Absent any written agreement, there would not be any other written documentation to transfer ownership of the tractor.

A specific legacy is a gift of a particular specified thing, or of the proceeds of the sale of such thing, or of a specified fund, or of a designated portion of such fund [*Cuppett v. Neilly*, 143 W. Va. 845 (1958)]. A specific legacy cannot be satisfied except by the identical thing bequeathed. If that identical thing is not in existence, or has been disposed of, so that it does not form a part of the testator's estate at the time of his death, the legacy is extinguished and the legatee's rights are gone. The technical term for this is "ademption". A specific legacy is adeemed if the thing bequeathed was not part of the estate of the testator at the time of his/her death because it was previously sold, exchanged or converted into some other thing.

Trailer:

Testimony was provided that a trailer, not mentioned in the Last Will and Testament, also exists and said trailer was meant to go with the Kubota tractor. The Executrix is requesting that said trailer be given to Mr. Abel since he was devised the Kubota in the Will. Petitioner is contending that it would follow the Kubota to him as part of the gift of the tractor. The sole purpose of the trailer is for transporting the tractor.

Appraisement:

Testimony was also provided that all of the specific bequests, including the Kubota tractor, were omitted from the Appraisal of the Estate of Doris Jean Poling. Executrix testified that she was given incorrect advice and left off those items pursuant to that advice.

Recommendations to Randolph County Commission for the Estate of Doris Jean Poling:

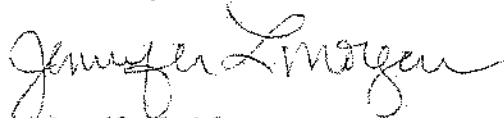
It is my recommendation that the following be approved by the Randolph County Commission in regard to the issues raised by that hearing held on June 8, 2022:

1. Appraisement. Executrix must amend the appraisement to include all assets of the Estate of Doris Jean Poling. Specifically, all items bequeathed and devised pursuant to Section THIRD must be identified and valued on the Appraisement. This shall be done in a reasonable timeframe and pursuant to the recommendations below.

2. Kubota tractor. Although the Last Will and Testament spells out a specific bequest to Dave Abel, said bequest fails by extinction. There is enough supporting evidence to suggest that prior to her death, Doris Jean Poling gifted the Kubota tractor to her nephew. As such, at the time of her death, Doris Jean Poling no longer owned the tractor to devise to anyone else. This ademption by extinction occurs because the property specifically described in the will is not in the estate at the testator's death. When the Appraisement is amended, the Executrix is not to include the tractor as an asset of the deceased.

3. Trailer: Doris Jean Poling's Will does not mention or devise the trailer used to move the Kubota tractor. The title for the trailer is still in her deceased husband's name. Although it can be argued that the trailer should follow the ownership of the tractor, there is no evidence to suggest that this trailer was part of the gift given to Mr. Edmond. Therefore, the trailer shall be returned to the Executrix in a timely manner, listed and valued on the Appraisal and follow disbursement according to Section FOURTH in the Last Will and Testament of Doris Jean Poling, whereby the trailer shall be sold and the proceeds allocated pursuant to Section Fourth (a) and (b).

Sincerely,


Jennifer L. Morgan

WEST VIRGINIA, RANDOLPH COUNTY CLERK'S OFFICE
This instrument was this day presented to me in my office, and
thereupon, together with the Certificate thereto annexed, is
admitted to record.

07/07/22

Teste
Clerk



Randolph County
Brenda Wiseman, Clerk
Instrument 202208470
07/07/2022 @ 03:00:47 PM
FIDUCIARY ORDERS NO FEE
Book 32 @ Page 694
Pages Recorded 4