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## Statehouse Beat: Prevailing wage claims still don't hold up

Evidence continues to grow that the claim, “without prevailing wage, you could build five schools for the price of three” is hokum on the level of “you’ll never find a better deal anywhere.”

The latest evidence is the bid opening for Ceredo-Kenova Elementary in Kenova, which drew bids from six contractors, including union shops still abiding by prevailing wage rates even while West Virginia’s prevailing wage is in hiatus, and by open shops, free at the moment to set wages however they wish.

Despite that, all the base bids came in pretty closely aligned, ranging from \$8.25 million to \$8.96 million, and the apparent low bid of \$8.251 million is from Neighborgall Construction of Huntington, a union shop.

It’s worth noting that at least two non-union contractors that had current or former staff testify in the Legislature last session for repealing prevailing wage put in higher bids on the project: Swope Construction of Bluefield at \$8.614 million and Jarrett Construction of Charleston at \$8.699 million.

Ironically, while he may not have coined the phrase, as I recall, John Jarrett was the first to use the “five schools for the price of three” claim before the Legislature last session, in a public hearing in House chambers in February.

If that claim were true, the hiatus in prevailing wage rates should have brought in bids for this school project in the \$5 million range. Obviously, that didn’t happen.

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Meanwhile, Workforce West Virginia is soldiering along in its efforts to survey some 5,200 contractors and subcontractors in the state and is now up to a 55 percent response rate, according to Chelsea Ruby, communications and marketing director for the Department of Commerce.

That’s roughly 2,860 completed surveys, or about 2,460 more surveys than the federal Bureau of Labor Statistics relies on to set its wage data for the state, which some legislators have insisted should be gospel for setting prevailing wage rates.

WorkForce has extended the deadline to accept survey submissions to this Friday, with the new wage rates to be calculated and submitted to the Secretary of State’s office by no later than Sept. 30, Ruby said.

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Meanwhile on Thursday, the state Ethics Commission is scheduled to take up Kanawha County Commission President Kent Carper’s request for an advisory opinion after the August decision that imposed severe limitations on the ability of public officials to promote themselves using state funds, including restricting the number of photos public officials may have on official websites.

Carper’s request, in part, asks whether the restrictions on “name and likeness” also apply to public officials’ social media accounts, including Facebook and Twitter.

If the Ethics Commission rules that public officials may not promote themselves on social media, Katy bar the door.

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Sticking with trinkets, Beth Walker's Supreme Court campaign committed a faux pas with an item it included in gift bags given away at the recent Girls Night Out event at the Culture Center.

Walker was a \$1,000 bronze-level sponsor, which among other things, allowed her to place a promotional item in the gift bags given to each attendee.

Originally, the items — colorful wristbands — were attached to cards stating, "Women 'band' together for Beth Walker — Supreme Court — Nonpartisan judicial election, May 10, 2016."

However, the event was put on by the Charleston YWCA to benefit its Resolve Family Abuse program, and as a 501(c)(3) nonprofit organization, the YWCA is prohibited from directly or indirectly participating in any political campaigns.

Once that was brought to the attention of the Walker campaign, the cards were replaced with a generic "Compliments of Beth Walker" card.

However, the card included a QR code — one of those little boxes full of squiggles which, when scanned with one's smartphone or tablet, linked to Walker's Facebook campaign site, which raises issues as to whether the card still constituted campaign material.

In a statement, Walker said, "I was aware that candidates in the past had submitted materials for the gift bags mentioning their campaigns, and thus submitted an insert that referenced our nonpartisan campaign for justice of the Supreme Court. The Girls Night Out organizers immediately informed me that the rules had recently changed and that campaign materials were not permitted. We worked closely with them to submit a new item for the gift bags that complied with their requirements."

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Finally, speaking of trinkets, a lawyer friend raises an issue, noting that the Ethics Commission's advisory opinion on the new trinkets law went so far as to say public officials could be held liable for violating the new law's prohibition on excessive self-promotion, even for educational materials prepared by third parties using private funds.

The question being, if an independent expenditure committee or a PAC puts out materials during the 2016 campaign promoting certain public officials, with what could be construed as an excessive use of the officials' likeness and name, could those officials be subject to Ethics Act violations, even though election law prohibits any coordination or communication with the operators of those committees?

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