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Does transparency really matter in W.Va.?

July 17, 2015 by Ken Ward Jr.



It seems unlikely that most West Virginians understand much about prevailing wage — what it is, why we have it, or how it's calculated. About the only clear explanation that the media has provided came not from a statehouse reporter or business journalist, but from my friend, [op-ed writer Rick Wilson](#):

Beginning in the 1930s, state and federal legislators, many of whom were Republicans, took steps to ensure that the wages paid on these projects didn't undermine the local standard of living by granting contracts to fly-by-night low-wage contractors who often performed shoddy work under unsafe conditions.

This involved surveying the local labor market to determine what typical compensation was for given types of skilled labor. The wages that "prevailed" in a given area for nonresidential construction work became the basis for prevailing wage laws.

In his piece the other day, Rick also explained something that may be lost in all the [recent back-and-forth about subpoenas and documents and whether the folks at Workforce West Virginia for some reason didn't provide every single record](#) they had in response to a legislative inquiry about how they came up with new prevailing wage figures:

The latest development is pretty unprecedented. Republican legislative leaders have subpoenaed Workforce WV to search for emails revealing the influence of "outside interest." I'm pretty sure that these "outside interests," if there are any, are actually West Virginians who may have communicated with a public agency. Sometimes you'll have that in a democracy.

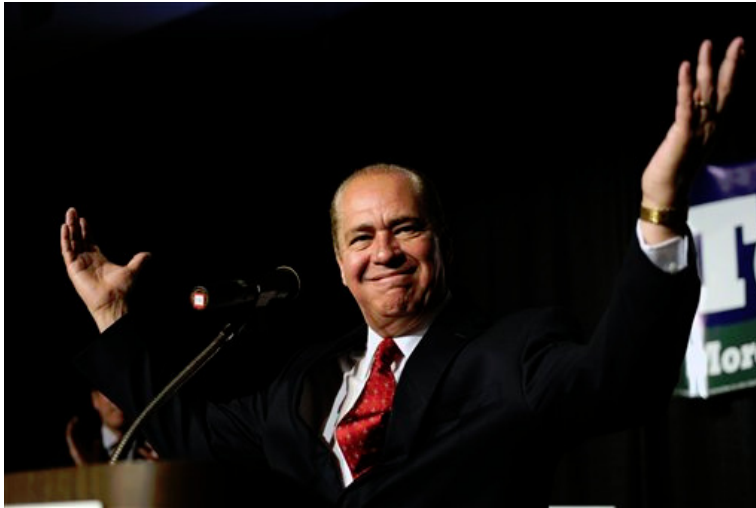
By contrast, model legislation to gut the prevailing wage came straight from the playbook of the ultimate outsider group, i.e. ALEC (American Legislative Exchange Council), a corporate-funded national effort to influence state policies in the interest of the very wealthy.

Now one thing that I think is clear, though not admitted, is that if there was some hint that a conservative group's emails to a state agency or legislative office were being withheld from some investigation, the other side would think it was a pretty important issue. I don't say that to suggest there's any proof that anyone at Workforce West Virginia was trying to hide anything — and certainly not to suggest that the folks at the Affiliated Construction Trades Foundation were doing anything but exercising their rights when they emailed the state about prevailing wage issues.

My point is that both sides of the political debate here seem to care less about transparency as an actual important value in our system than about allegations about the lack of transparency as an effective tool to score points on a separate political issue.

How do we know this is true?

Well, consider what happened a little more than a year ago, when Gov. Earl Ray Tomblin and his staff thought that it was just fine to have a "stakeholder meeting" about leaking chemical storage tank legislation [that included only representatives of the companies that own the chemical storage tanks](#). I don't recall a lot of complaints from Republicans or Democrats in the Legislature about that, though it's certainly true that the incident played a role in some Democratic legislative leaders insisting on long public discussions in committee meetings, and passage of a very strong bill. Of course, we all know [what happened after that, when the heat died down](#) and there was less public focus on the issue.



Or, consider what happened when lawmakers were considering a mine safety bill two years after the Upper Big Branch Mine Disaster, when private, closed-door negotiations between the coal industry and labor representatives [seriously weakened the legislation](#). I don't remember anybody at all complaining about that, and most of the statehouse media consider such backdoor legislating such a common thing that it seldom gets mentioned in their stories.

My favorite example, though is what happened with The Charleston Gazette requested copies of correspondence between Gov. Tomblin's office about [the weakened executive order](#) on environmental protection standards for natural gas drilling. The governor's staff refused that Freedom of Information Act request. In doing so, they made a [remarkable argument](#): Oil and gas lobbyists were acting as consultants to the state on what the executive order should say, a designation that exempted their correspondence from FOIA under [an earlier state Supreme Court ruling](#).

Let that sink in for a second. If a regulated industry tries to influence how the government is going to regulate it, then its acting as a consultant — and none of us can find out what was said or how closely the eventual regulations followed the industry's recommendations. It's worth noting that, in [that particular situation](#), the governor's office did release copies of letters from dozens of citizens and environmental groups who also hoped to influence what the executive order might say. And not for nothing, but Tomblin's lawyer at the time — Kurt Dettinger — later went to work for an industry law firm and [was among those given input on what the governor's chemical tank safety bill should say](#).

Certainly, I don't remember members of the legislative leadership from either party complaining about the way Gov. Tomblin and his staff handled this.

So ... if oil and gas lobbyists have a secret say on how their industry is regulated, then that's just the way things are done. But if a researcher for a labor organization provides some information about how that group thinks prevailing wage for construction workers should be calculated — and we get story after story and much commentary about whether the state properly provided lawmakers with every single piece of that correspondence?

And let's not pretend that Republicans are the only ones with only a passing interest in open government. It wasn't so long ago that House Speaker Tim Armstead was just the minority leader, and [was watching the Democratic majority refuse](#) to allow him to add some strong amendments to a piece of FOIA legislation. This year, his first as speaker, Armstead [helped the West Virginia Press Association get a strong FOIA reform bill](#) through the Legislature and to the governor's desk.

Neither party seems to have a strong and prolonged interest in open government that they apply to all issues and situations equally, whether having the records in question open would help or hurt them on that particular skirmish.

That's all too clear in the prevailing wage battle. You have one party, the Republicans, who think so little of open government that they object to a member of the public emailing a state official. And, you have another party that is so unaccustomed to opening up its records that its response to a subpoena left it open to allegations it was withholding something — and to allowing the other side to totally divert attention from what amounts to an effort to reduce wages for working West Virginians.

Leaders of both parties (and frankly, a lot of folks in the media) might do with re-reading one of the more eloquent passages in the West Virginia Code, the legislative intent to the [state's Open Governmental Proceedings Act](#):

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decisionmaking through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decisionmaking and the decision makers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order to allow government to function and the public to participate in a meaningful manner in public agency decisionmaking.

This entry was posted on Friday, July 17, 2015 at 9:54 am and is filed under [Open government](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. You can [leave a response](#), or [trackback](#) from your own site.

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1.



transparancy for all says:

[July 20, 2015 at 4:46 pm](#)

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