

# Webster County School Board Attorney Files Response in Ongoing ‘Nickel Tax’ Dispute

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WEBSTER COUNTY, KY (12/28/11) – Just days before a scheduled hearing on a motion seeking to dismiss a lawsuit filed by the Webster County Board of Education against Webster County Clerk Valerie Franklin Newell regarding the handling of documents related to a petition aimed at recalling a school district construction tax, the Webster County School District has filed a new motion requesting “an immediate summary ruling.”

The hearing on the motion to dismiss the allegations was originally set for Wednesday, Dec. 21, but was rescheduled for Dec. 28, court officials said. Newell’s motion to dismiss is based on a review of the Webster County Board of Education minutes from a November meeting where the decision to file a lawsuit was reported. The minutes allegedly don’t reflect a vote being taken in open session to file the lawsuit, according to the motion to dismiss filed earlier this month. Newell also asked for the motion to be dismissed because she said she was served notice by Webster County School District Attorney Amelia Zachary.

“Counsel for the petitioner is not a ‘person authorized’ under KRS 454.140 nor KRS 454.145 for service of process under the Civil Rules. Therefore, service has not been completed and the petitioner has failed to bring the respondent properly before this court,” Newell’s motion stated.

Newell said on Thursday that she was served a new notice by the Webster County Sheriff’s office.

Regarding the lawsuit, at issue is whether specific documents pertaining to a petition committee that formed in opposition to a six-cent tax created solely for the use of construction projects within the Webster County School

District were submitted and labeled accurately. The approved tax was recallable, but the board in its lawsuit also alleged that the committee petition wasn't specific enough about which tax was being challenged. The board raised its tax rate in other areas, some of which wasn't recallable. The tax is commonly called the "nickel tax" because only about 95 percent of it is expected to be collected in any given year. The newest motion filed reiterates those points, and states that the most issue most central to the school board's case is the fact that an affidavit was never filed with Newell's office. Without the affidavit, the board alleges that the petition was invalid and is asking the court to reverse the decision regarding the validity of the petition.

In its motion, the school board said the Webster County Board of Education's budget planning hinges on the outcome of the court case.

"The importance of the matter is tremendous," the motion stated. "The Board of Education cannot budget until a decision is made herein. Nonetheless, the decision to be made is a simple one, involving the interpretation of the statute KRS 132.017."

Depending on the outcome of the motion to dismiss, a hearing regarding the court case could follow on Thursday, Jan. 5, at 1 p.m.

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