

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

# Longwell v. Board of Education of the County of Marshall, 213 W. Va. 486

583 S.E.2d 109 (2003) · No. No. 30987 · Decided July 9, 2003

### SUMMARY

The Supreme Court of Appeals of West Virginia held that a county board of education may exercise its discretion to hire private legal counsel under West Virginia Code § 18-5-13(l), despite the prosecuting attorney's statutory duty to represent the board under § 7-4-1. The court concluded that the statute does not require the board to establish necessity before hiring outside counsel and affirmed dismissal of the taxpayers' declaratory judgment and mandamus action. A dissent and a separate concurrence addressed limits and practical implications of the board's authority.

### CASE DETAILS

|                       |                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                         |
| WRITING FOR THE COURT | Justice Davis; Chief Justice Starcher; Justice McGraw                                                                                                                                             |
| JURISDICTION          | West Virginia                                                                                                                                                                                     |
| DECIDED               | July 9, 2003                                                                                                                                                                                      |
| DOCKET                | No. 30987                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Appeal from an order granting the Board of Education's West Virginia Rule of Civil Procedure 12(b)(6) motion to dismiss an action seeking declaratory judgment and a writ of mandamus.            |
| STANDARD OF REVIEW    | De novo review applies to a circuit court order granting a Rule 12(b)(6) motion to dismiss.                                                                                                       |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Appeals of West Virginia                                                                                                                   |
| PARTIES               | Frank Longwell, Larry Ferrara, William Kern, in their capacity as citizens, voters, residents and taxpayers of Marshall County, West Virginia v. The Board of Education of the County of Marshall |

### TOPICS

[municipal law](#)[statutory interpretation](#)[plain meaning rule](#)[motions to dismiss](#)[appellate procedure](#)

## PRACTICE AREAS

education law

municipal law

statutory interpretation

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether a county board of education must use the county prosecuting attorney for legal services unless necessity is established before hiring private counsel.
2. Whether West Virginia Code §§ 7-4-1 and 18-5-13(l) must be read together to impose a necessity limitation on a county board of education's authority to hire legal counsel.
3. Whether the Board's duty to conserve quasi-public funds limits its statutory authority to hire legal counsel.

## HOLDINGS

1. When a county board of education is in need of legal services, it may exercise its own discretion to use the county prosecuting attorney or hire its own legal counsel under West Virginia Code § 18-5-13(l), without first establishing that private counsel is necessary.
2. The Board's statutory duty to conserve quasi-public funds does not foreclose its authority to hire legal counsel; it provides guidance for the Board's discretionary choice between the prosecuting attorney and independent counsel.

## KEY QUOTATIONS

*“In accordance with the foregoing analysis, we hold that when a county board of education is in need of legal services, it may exercise its own discretion in determining whether to utilize the services of the county prosecuting attorney, who has a duty to represent it under W. Va.Code § 7-4-1 (1971) (Repl.Vol.2000), or to hire its own legal counsel pursuant to West Virginia Code § 18-5-13(l) (2002) (Supp. 2002).” (213 W. Va. 492)*

*“Because the Legislature chose to omit the requirement for necessity, it may not be imposed upon the statute by this Court.” (213 W. Va. 491)*

*“This duty does not foreclose the authority of boards of education to hire legal counsel, it merely provides guidance for the board in exercising its discretion to determine whether independent counsel is required.” (213 W. Va. 493)*

## FACTUAL BACKGROUND

Marshall County taxpayers challenged the Marshall County Board of Education's use of public funds to hire private legal counsel. They argued that West Virginia Code § 7-4-1 required the Board to rely on the county prosecuting attorney unless necessity justified outside counsel. The Board maintained that West Virginia Code § 18-5-13(l) independently authorized it to employ legal counsel.

## PROCEDURAL HISTORY

The citizen taxpayers filed a complaint in the Circuit Court of Marshall County challenging the Board's expenditure of public funds for private legal counsel and seeking declaratory and mandamus relief. The circuit court dismissed the complaint under Rule 12(b)(6), concluding that the Board had authority to hire outside counsel. The Supreme Court of Appeals of West Virginia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Flowers v. City of Morgantown, 166 W. Va. 92, 272 S.E.2d 663 (1980)
- Sticklen v. Kittle, 168 W. Va. 147, 287 S.E.2d 148 (1981)
- Fass v. Newsco Well Service, Ltd., 177 W. Va. 50, 350 S.E.2d 562 (1986)
- West Virginia Canine College, Inc. v. Rexroad, 191 W. Va. 209, 444 S.E.2d 566 (1994)
- Mollohan v. Cavender, 75 W. Va. 36, 83 S.E. 78 (1914)
- Lively v. Board of Education, 115 W. Va. 314, 175 S.E. 784 (1934)
- State ex rel. Hall v. Schlaegel, 202 W. Va. 93, 502 S.E.2d 190 (1998)
- Rice v. Underwood, 205 W. Va. 274, 517 S.E.2d 751 (1998)
- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)
- Bullman v. D & R Lumber Co., 195 W. Va. 129, 464 S.E.2d 771 (1995)
- Donley v. Bracken, 192 W. Va. 383, 452 S.E.2d 699 (1994)
- State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994)
- Consumer Advocate Division v. Public Service Commission, 182 W. Va. 152, 386 S.E.2d 650 (1989)
- Sowa v. Huffman, 191 W. Va. 105, 443 S.E.2d 262 (1994)
- Williamson v. Greene, 200 W. Va. 421, 490 S.E.2d 23 (1997)
- Butler v. Rutledge, 174 W. Va. 752, 329 S.E.2d 118 (1985)
- Hall v. Baylous, 109 W. Va. 1, 153 S.E. 293 (1930)
- Fruehauf Corp. v. Huntington Moving & Storage Co., 159 W. Va. 14, 217 S.E.2d 907 (1975)
- Berkeley County Public Service Sewer District v. West Virginia Public Service Commission, 204 W. Va. 279, 512 S.E.2d 201 (1998)
- Leary v. McDowell County National Bank, 210 W. Va. 44, 552 S.E.2d 420 (2001)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- Manchin v. Dunfee, 174 W. Va. 532, 327 S.E.2d 710 (1984)
- Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 (1970)
- Syncor International Corp. v. Palmer, 208 W. Va. 658, 542 S.E.2d 479 (2001)
- Charter Communications VI, PLLC v. Community Antenna Service, Inc., 211 W. Va. 71, 561 S.E.2d 793 (2002)

- Smith v. State Workmen's Compensation Commissioner, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- Anderson v. Wood, 204 W. Va. 558, 514 S.E.2d 408 (1999)
- Expedited Transportation Systems, Inc. v. Vieweg, 207 W. Va. 90, 529 S.E.2d 110 (2000)
- Rhodes v. Workers' Compensation Division, 209 W. Va. 8, 543 S.E.2d 289 (2000)
- Mowery v. Hitt, 155 W. Va. 103, 181 S.E.2d 334 (1971)
- Shackleford v. Catlett, 161 W. Va. 568, 244 S.E.2d 327 (1978)
- Voelker v. Frederick Business Properties Co., 195 W. Va. 246, 465 S.E.2d 246 (1995)
- In re Michael Ray T., 206 W. Va. 434, 525 S.E.2d 315 (1999)
- State ex rel. McGraw v. Burton, 212 W. Va. 23, 569 S.E.2d 99 (2002)
- State ex rel. Preissler v. Dostert, 163 W. Va. 719, 260 S.E.2d 279 (1979)

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