

No. 30987 *Frank Longwell, Larry Ferrara, and William Kern, in Their Capacities as Citizens, Voters, Residents and Taxpayers of Marshall County, West Virginia v. The Board of Education of the County of Marshall, a Corporation*

FILED

July 3, 2003

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, J., dissenting:

Despite the majority's conclusion to the contrary, I do not believe *W.Va. Code* §18-5-13(l) can be read and applied in a vacuum so as to afford county boards of education the unfettered discretion to expend precious public funds for the purpose of hiring legal counsel to represent them in the most general and routine matters. Rather, *W.Va. Code* §7-4-1 states "[i]t shall . . . be the duty of the prosecuting attorney. . . to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which . . . any county board of education is interested." *Id.*, in relevant part. As a constitutional officer, a prosecuting attorney "subjects himself to all constitutional and legislative provisions relating to the office, and undertakes to perform all the duties imposed on its occupant; and while he remains in such office he must perform all such duties." *State ex rel. Preissler v. Dostert*, 163 W.Va. 719, 730, 260 S.E.2d 279, 286 (1979). Included among the prosecuting attorney's duties is the duty to represent the county board of education, pursuant to *W.Va. Code* §7-4-1. In my view, boards should look elsewhere for legal counsel only upon necessity or when special circumstances so warrant.

For the record, the appellant citizen taxpayers disclosed to this Court the once poorly-kept secret that literally millions of dollars in public funds have been and continue to be spent on the hiring of lawyers who have no statutory or constitutional duty to act for the public good. *See Dostert, supra*. Because, in my view, a county board of education's hiring of outside counsel should be the exception rather than the rule, I respectfully dissent from the majority's opinion.