

No. 22549 -- State of West Virginia ex rel. West Virginia Board of Education, a public corporation v. Glen V. Gainer, III, State Auditor, and Larrie Bailey, State Treasurer, in their official capacities

Neely, J., dissenting:

I agree with the general reasoning of the majority. Although I believe that W. Va. Code 6-7-2a, which sets the salary of the State Superintendent of Schools, is constitutional, I also believe that under the facts of this case it is unconstitutionally applied.

Education is a major American industry as the ingress of students from all over the world to study in our schools, colleges and universities amply demonstrates. Like all major industries, education can be highly competitive, and this is particularly true at the level of senior executives where stress, political pressures and burnout are ever present dangers.

Accordingly, I would grant the writ of mandamus on the grounds that the Legislature has set the salary of the state superintendent so low as to confound the proper functioning of the State Board of Education and thus place in jeopardy our thorough and efficient system of free schools. State ex rel. Brotherton v.

Blankenship, 157 W. Va. 100, 207 S.E.2d 421 (1973). Although I do not necessarily believe that the state superintendent must be paid exactly \$85,000 a year or more, I would order such salary to be placed into effect until such time as the Legislature takes appropriate action to restore an appropriately competitive salary to this important office. Thus, as moulded, I would award the writ.