

Workman, C.J., Concurring Opinion, Case No.23939 West Virginia Trust Fund, Inc. v. Hon. Larrie Bailey & State of West Virginia, ex rel. Hon. Darrell V. McGraw, Jr.

No. 23939 - West Virginia Trust Fund, Inc., a West Virginia Non-Stock, Non-Profit Corporation, as Trustee v. Honorable Larrie Bailey, Treasurer of the State of West Virginia, and State of West Virginia, ex rel. Honorable Darrell V. McGraw, Jr., in his Official Capacity as the Attorney General of West Virginia v. West Virginia Trust Fund, Inc., a West Virginia Corporation; and David Gardner, Chairman, West Virginia Trust Fund, Inc., and Stanley L. Klos v. Honorable Larrie Bailey, Treasurer of West Virginia, and State of West Virginia, ex rel. Stanley L. Klos v. West Virginia Board of Investments, a Body Corporate of the State of West Virginia, and West Virginia Trust Fund, Inc., a West Virginia Corporation

Workman, Chief Justice, concurring:

I write separately to re-emphasize that the opinion of the majority is dictated by the clear, unambiguous language on the face of the West Virginia Constitution. That language patently states: "nor shall the State ever hereafter become a joint owner, or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever." W. Va. Const. art. X, 6 (emphasis supplied).

As we stated in State ex rel. Gainer v. West Virginia Board of Investments, 194 W. Va. 143, 459 S.E.2d 531 (1995), we agree that "the statute authorizing these investments [West Virginia Code 12-6-9(j)] may reflect sound investment strategy" and "that investments in the stock market would likely produce a greater return over the long term for the consolidated fund, if prudently invested, than is currently being realized." 194 W. Va. at 149-50, 459 S.E.2d at 537-38. But the issue before us is not whether investment of state funds is a good idea -- but rather, whether it is constitutional! Judges swear an oath to uphold the Constitution of the United States, and the Constitution of the State of West Virginia. If we keep that oath, we are not free to selectively pick and choose which provisions of that constitution we will uphold. Because all three branches of government seem to agree that wise investment of state funds in corporate stocks would be desirable, the proper remedy is for the Legislature to submit a constitutional amendment to the people of West Virginia that would permit such investments.

We have heard it argued in these cases that the citizens of this State will not pass such a constitutional amendment. If an amendment is worded in a fashion that conveys its purpose (*i.e.*, to permit prudent investment of state funds to ensure the solvency of pension funds) and an effective job of public education is done, I believe strongly enough in the basic good sense and intelligence of the people of West Virginia that such an amendment can pass. Beyond the issue of whether a constitutional amendment can be passed if presented to the people, we cannot ignore a clear provision of the state constitution simply because we don't like it or the result it obtains, or because it's the most politically expedient manner of accomplishing a desired result.

The contention raised by the dissent that the majority opinion ignores the well-settled law of trusts is nonsense. As the majority points out, "by simply declaring that the state has no ownership interest in the funds . . ." does not make it so. One cannot make a prince out of a frog by simply calling it a prince.

The dissent argues further that syllabus point one is "all" that needs to be said. I agree that syllabus point one is a vitally important principle of law, when read in its entirety. The dissent, however, seems not to recognize a vital phrase in syllabus point one. That phrase is "within constitutional limits." I could not in good conscience choose not to uphold the Constitution in light of such a clear, unequivocal prohibition. Let us hope the Legislature will trust the people of West Virginia and seek to amend the constitution in the proper manner, by presenting the amendment to the people.