

FILED

June 21, 2002

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

RELEASED

June 24, 2002

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

No. 30094 - State of West Virginia ex rel. Darrell V. McGraw, Jr., in his capacity as Attorney General for the State of West Virginia, v. Gregory A. Burton, Cabinet Secretary of the Department of Administration; Nichelle Perkins, Director of Personnel and the Department of Administration; Kay Huffman Goodwin, Cabinet Secretary of the Department of Education and the Arts; Mike Callaghan, Cabinet Secretary of the Department of Environmental Protection; Paul Nusbaum, Cabinet Secretary of the Department of Health and Human Resources; Joe Martin, Cabinet Secretary of the Department of Military Affairs and Public Safety; Brian Kastick, Cabinet Secretary of the Department of Tax and Revenue; and Fred VanKirk, Secretary of the Department of Transportation; The Public Service Commission of West Virginia; The West Virginia Board of Education, the West Virginia Department of Education and the Superintendent of Schools; The West Virginia Consolidated Public Retirement Board; and The West Virginia Regional Jail and Correction Facility Authority

Kaufman, sitting by temporary assignment,

I concur with the Court's opinion and recognize the arduous task that was set before the Court with this case. Specifically, I fully concur with the Court's finding that the Attorney General is the chief legal counsel for the state. The Court's opinion strove to balance the everyday workings of governmental entities, the framework of our constitution and current legislation. The Court wanted to strike a balance between all parties and create an atmosphere where the parties could resolve and remaining issues outside the judicial forum.

However, in striking a fair balance, I feel three unresolved issues remain: the constitutionality of governmental entities hiring outside counsel despite the clear Legislative language set forth in West Virginia Code § 5-3-1 (1994); the lack of disclosure and accountability of outside attorneys representing the state's interest; and the erosion of the Attorney General's role as chief legal officer as a result of the cumulative effect of all the statutes that allow executive agencies to independently hire outside counsel.