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Case Digests: The Law of Higher Education in West Virginia

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CASE DIGESTS: THE LAW OF HIGHER EDUCATION IN WEST VIRGINIA

Queen v. West Virginia University Hospital, Inc., 365 S.E.2d 375 (W. Va. 1987).

A discharged West Virginia University Hospital (WVUH) employee claimed that his dismissal violated state procedural due process. The Supreme Court of Appeals disagreed. After holding that WVUH's formation as a non-stock, not-for-profit corporation had not violated constitutional mandates that corporations must be created under the state's general corporation laws and that state assets cannot be used as security for WVUH's debts, the court also held that WVUH was a state actor for due process purposes based on its symbiotic relationship with the state. Such symbiosis was principally shown through WVUH's statutory provision of clinical education and research opportunities to the health sciences schools of the university, through the appointment of its Board of Directors by the Governor, and through the public's perception of state involvement with the hospital. Therefore, WVUH's actions were fairly attributable to the state for due process purposes. However, since the employee fully understood the charges and was given a meaningful chance to respond, WVUH had satisfied the due process requirements imposed upon a state actor when dealing with a nontenured, non-civil service employee.

On a related issue, the court held that WVUH was subject to state Freedom of Information Act disclosure provisions. Based upon its creation by the Legislature and its statutory mandate for openness and accountability in its management, WVUH qualified as a public body as defined in the act.

Deborah L. Miller

Mellon-Stuart Co. v. Hall, 359 S.E.2d 124 (W. Va. 1987).

In a construction contract dispute, two contractors sued and prevailed against the West Virginia Board of Regents in the court of

claims. The Board then sued the contractors in circuit court. The Supreme Court of Appeals, in denying a writ of mandamus to force the Board to pay the contractors from its current budget, charged the sophisticated business entities with the knowledge that the doctrine of sovereign immunity limits their sole remedy to an adjudication in the court of claims. The court granted a writ of mandamus to recertify the court of claims award for inclusion in the next budget since the Legislature had not rejected the contractors' award but had simply not funded it.

The court also held that *res judicata* and collateral estoppel apply to matters litigated in the court of claims since that court functions in a judicial capacity. Therefore, the contractors' unsatisfied court of claims judgment could be used as a setoff in the Board's civil action if the judgment did not exceed the amount the Board could recover. The Board could pursue its circuit court action because, under the court of claims' statutory mandate, the Board's action was not a compulsory counterclaim and was not subject to *res judicata*.

Deborah L. Miller

Kerns v. Bucklew, 357 S.E.2d 43, Educ. L. Rep. 438 (W. Va. 1987).

In an employment discrimination case, the Supreme Court of Appeals held that federal constitutional protections override the defense of state constitutional governmental immunity. The court granted a writ of mandamus to compel West Virginia University and the West Virginia Board of Regents to pay back pay and reasonable attorney fees to a woman wrongfully denied employment. In employment discrimination proceedings under the West Virginia Human Rights Act, a defense of sovereign immunity is not available because the statute is part of a federal/state scheme to enforce the fourteenth amendment of the United States Constitution. Back pay was awarded even though the claimant was not hired since one who discriminates against another will not be permitted to deny an employer/employee relationship.

Deborah L. Miller

G. M. McCrossin v. West Virginia Board of Regents, 355 S.E.2d 32, 39 Educ. L. Rep. (W. Va. 1987).

In this case, the Supreme Court of Appeals upheld the state's constitutional protection of immunity from suit in contractual and tort disputes. After losing in the court of claims, McCrossin filed an action in circuit court on breach of contract or, alternatively, reformation of the contract to correct a bid mistake. The circuit court dismissed the claim. The supreme court noted that a "contracting party is entitled only to the procedure for which it has bargained." Since McCrossin was a sophisticated corporate entity chargeable with the knowledge of the rule of sovereign immunity and able to bargain knowingly and at arm's length, its decision to contract with the state constitutes a waiver of any rights to court action and an election to seek recourse only through the court of claims.

Deborah L. Miller

City of Morgantown v. West Virginia Board of Regents, 354 S.E.2d 616, 38 Educ. L. Rep. 827 (W. Va. 1987).

The city sought a declaratory judgment requiring the Board of Regents to collect a 2% municipal amusement tax on ticket sales for West Virginia University sponsored athletic and entertainment events. The Supreme Court of Appeals held that since proceeds from the events were public monies and since no individual person, company, or interest stood to profit from them, the events did not meet the statute's requirement that the event be conducted for private profit or gain. The university exercises a governmental and not private function in sponsoring athletic and entertainment events, proper and integral parts of the education provided by a university.

Deborah L. Miller

Graf v. Frame, 352 S.E.2d 31, 36 Educ. L. Rep. 1259 (W. Va. 1986).

In a writ of mandamus action against an attorney serving on the West Virginia Board of Regents, university faculty members sought

to prevent the attorney from representing litigants with alleged claims against employees of institutions supervised by the Board. The Supreme Court of Appeals granted the writ, holding that a public officer has a nondiscretionary constitutional duty as a fiduciary of the people to avoid a conflict of interest between personal gain and public duty. Therefore, a public officer who is an attorney should not represent claimants against the public agency of which he is a member or the institutions (or employees thereof) supervised by that agency.

Deborah L. Miller

Queen v. Moore, 340 S.E.2d 838, 31 Educ. L. Rep. 263 (W. Va. 1986).

Following an executive order by the Governor which placed a moratorium on the withdrawal of interest from special accounts, college students instituted a mandamus proceeding to release the interest earned on accounts containing student fees. The Legislature had not appropriated the interest from the student fees for any specific use. The Supreme Court of Appeals decided that, unless otherwise mandated by the Legislature, interest belongs to the fund in which it was earned. Thus, interest from a special account must be used for the same purpose as the fund principal and cannot be transferred into general revenue without a legislative mandate.

Deborah L. Miller

North v. West Virginia Board of Regents, 332 S.E.2d 141, 26 Educ. L. Rep. 499 (W. Va. 1985), *cert denied*, 475 U.S. 1020 (1986).

A medical student permanently expelled after it was disclosed that he supplied false information on his admissions application claimed that his punishment was excessive relative to his transgression. The court held that college and university officials have traditionally been given substantial deference with respect to academic dismissals. As long as the conduct of these officials is not arbitrary or capricious, the judiciary will not interfere with their decisions.

The medical student also contended that his expulsion was unfair in that the university failed to act timely in discovering the false

information. The court ruled that the school officials were justified in assuming that the information provided was truthful. The school had no duty to suspect fraud. Also, because there was fraud, the university had sufficient legal grounds to rescind any benefits conferred upon the student through his medical training.

Finally, the student was not deprived of an impartial hearing by virtue of the fact that the members of the hearing tribunal were appointed by university officials.

Paul L. Weber

Hooper v. Jensen, 328 S.E.2d 519, 24 Educ. L. Rep. 565 (W. Va. 1985).

A college or university president, upon learning of a faculty position vacancy, has a duty to extend first refusal to a qualified person previously terminated as a result of a program reduction or discontinuance. This duty also extends to the West Virginia Board of Regents. Program reductions may not be used in a manner which unfairly curtails reasonable reinstatement rights.

A medical school faculty member was terminated following a cutback in faculty positions. After a vacancy occurred, the faculty member sought reinstatement with back pay and attorney fees, both of which the Supreme Court of Appeals granted. Citing the provisions of a Board of Regents' policy bulletin, the court held that a qualified faculty member terminated within two years of a vacancy has a right of first refusal if termination resulted from the reduction or discontinuance of an existing program and the faculty member meets objective job description requirements established prior to the vacancy.

Deborah L. Miller

ACE-AFSCME v. Saunders, No. 85-16719 (W. Va. July 1, 1985).

A labor union petitioned the Supreme Court of Appeals to order a modification of West Virginia University's "no solicitation" policy. The policy prohibited solicitation for union membership or any other non-university program or activity "during declared work time

in working areas of the University." The court held that both constitutional free speech guarantees and the state's goal of maintaining continuous service, order and discipline could be accommodated by limiting the prohibition of solicitation to the time period "while work tasks are being performed." The court also held that the written warnings two employees had received for allegedly violating the former policy must be removed from their personnel files.

Deborah L. Miller

State ex rel. West Virginia Resource Recovery-Solid Waste Disposal Authority v. Gill, 323 S.E.2d 590 (W. Va. 1984).

An agreement by the West Virginia Board of Regents to buy energy from the West Virginia Resource Recovery-Solid Waste Disposal Authority's proposed steam generation plant led to an authority proposal to issue revenue bonds. Since the Authority's revenue to retire the bonds would come from the affected university's annual legislative appropriations, the secretary of the Authority asserted that the agreement violated several constitutional and statutory provisions.

In a decision that overruled an earlier case, the Supreme Court of Appeals held that neither the proposed bonds nor the steam purchase agreement violated proscriptions against pledging the state's credit creating state indebtedness, or unlawfully extending an obligation of a state agency since successive legislatures would not be obligated by the bonds or the contract to make appropriations to pay for the energy.

Deborah L. Miller

State ex rel. Norton v. Stone, 313 S.E.2d 456, 16 Educ. L. Rep. 977 (W. Va. 1984).

After a probationary professor was denied tenure by the president of the college, a hearing examiner appointed by the West Virginia Board of Regents awarded the professor an additional nonterminal year of employment during which the professor would be entitled to a proper evaluation for tenure. The professor sought

a writ of mandamus to require the Board to grant him tenure. Since the faculty member had no clear, nondiscretionary entitlement to tenure, the Supreme Court of Appeals denied the writ and upheld the hearing examiner's action.

The president of the college had denied tenure after considering evidence to which the professor was not given a chance to respond. The hearing examiner found the president's actions to be arbitrary, capricious, or unsupported by the facts, in violation of state law and Board policy.

Deborah L. Miller

Orr v. Crowder, 315 S.E.2d 593, 17 Educ. L. Rep. 679 (W. Va. 1983).

The Supreme Court of Appeals affirmed a college librarian's claim that her discharge violated free speech rights under the United States Constitution. It found that a substantial or motivating factor in the librarian's discharge was her criticism of an administrative proposal. Since the criticism was relevant to a matter of public concern, it was protected speech under the first amendment. A public employee is entitled to protection from adverse employment consequences resulting from the exercise of free speech and other first amendment rights. The state, as an employer, also had an interest in orderly operations that must be balanced with the public employee's right to free speech, which is not absolute.

However, the court found no basis for the librarian's claim of violation of procedural due process. Since neither the West Virginia Board of Regents nor the college had established formal policies or objective standards for granting retroactive faculty status to librarians, she had no legitimate claim of entitlement to job tenure and did not qualify for the procedural protections afforded tenured faculty members.

Deborah L. Miller

Pittsburgh Elevator Co. v. West Virginia Board of Regents, 310 S.E.2d 675 (W. Va. 1983).

Following the filing of a personal injury action in Monongalia County against the West Virginia Board of Regents and others, a codefendant, Pittsburgh Elevator Co., sued the Board in Kanawha County for indemnification. After the indemnification claim was transferred to Monongalia County to consolidate the actions, the circuit court there dismissed the Board without prejudice from the indemnification complaint for lack of venue. On appeal, the Supreme Court of Appeals held the dismissal improper.

No recovery from state funds had been alleged in the indemnification suit. Instead, recovery under and up to the limits of the state's liability insurance coverage was sought. Therefore, the real party in interest was the Board's insurance carrier. While a bona fide state agency is immune from damage suits, the insurance carrier for the agency is statutorily prohibited from relying upon sovereign immunity as a defense. Thus, where a cause of action is, in effect, a suit against a state agency's insurance carrier, there is no justification for the exclusive venue provision, which requires that a proceeding against a state agency must be prosecuted in Kanawha County. Instead, venue can be determined following the general rule that venue lies in the county wherein the cause of action arose or in the county in which the defendant resides. Accordingly, venue was proper in Monongalia County.

Deborah L. Miller

United Mine Workers of America Int'l Union v. Parson, 305 S.E.2d 343, 13 Educ. L. Rep. 1136 (W. Va. 1983).

The labor union sought the right to reply to politically controversial advertisements broadcast by West Virginia University's sports network. The Supreme Court of Appeals held that the university had a constitutional obligation to provide a reasonable opportunity for the presentation of contrasting viewpoints. The fundamental fairness concept inherent in equal protection and the university's role of serving a public forum for the dissemination of ideas required the university's sports network to preserve its governmental neutrality by offering a balanced presentation of opposing views. The court also held that the union would be an appropriate spokesperson

to present a response if the same issue was the subject of future advertisements broadcast during university athletic events.

Deborah L. Miller

Hoffman v. Grove, 301 S.E.2d 810, 10 Educ. L. Rep. 858 (W. Va. 1983).

The appellant was dismissed from a student teaching program subsequent to receiving three separate performance evaluations. The appellant was given an opportunity to appeal this decision to an appeals committee established by his dean. After foregoing this option, the appellant claimed that he was not given prior notice or an opportunity to be heard before his dismissal and, therefore, suffered a violation of his constitutional right to procedural due process.

The court held that the grievance procedure offered to the appellant did in fact afford the appellant sufficient procedural due process. The court also explicitly stated that it was not necessary to address the issue of whether under such circumstances the appellant was actually entitled to due process. The court merely found that the appellant was given adequate due process. Therefore, the court properly denied the appellant's request to be reinstated in his teaching position.

Paul L. Weber

Clarke v. West Virginia Board of Regents, 301 S.E.2d 618, 10 Educ. L. Rep. 429 (W. Va. 1983).

In *Clarke*, the Court decided that the appellant, a tenured college professor, was denied his right to procedural due process after being fired from his teaching position. In an attempt to protect the appellant's property interest, the court ruled that he could not be removed from the payroll until his dismissal process had been completed. The court then remanded the case to (1) determine the amount of back pay to which the appellant was entitled, and (2) give the appellant a revised hearing examiner's report consistent with procedural due process.

The appellant claimed that he was entitled to receive back pay from the time he was originally dismissed until the revised hearing examiner's report, ordered in the first appeal, reaffirmed his dismissal and was again adopted by the college president. The court held that the appellant's dismissal process was complete when the Board of Regents upheld the college president's original decision to fire the appellant. Therefore, the appellant should not be awarded back pay beyond that point. The court reasoned that because the dismissal was ultimately reaffirmed, the procedural due process deprivation incurred by the appellant did not cause him to be injured.

The court also held that because the right to procedural due process is an "absolute" right, one who is deprived of this right is entitled to nominal damages even though he has not incurred actual damages.

Paul L. Weber

Clarke v. West Virginia Board of Regents, 166 W. Va. 702, 279 S.E.2d 169 (1981).

Appellant, a tenured college professor, was dismissed prior to a hearing in contravention of the West Virginia Board of Regent's policies for terminating employment. On appeal to the West Virginia Supreme Court of Appeals, the appellant claimed that he was deprived of due process in that (1) the allegations made against him were vague and, therefore, failed to give him proper notice, and (2) the hearing examiner, upon whom the university relied to make its decision, did not reveal the factual basis for his recommendation or designate the charges which were supported by the evidence, therefore rendering the appellant's right of review illusory.

Reversing the lower court's decision, the court first reiterated its holding from a previous case that tenure, once acquired, is a substantial right and, therefore, a tenured professor may not be dismissed without due process. The court then held that allegations that the professor refused to accept a revised teaching schedule, except under protest, and that he also failed to familiarize himself with course material for a revised teaching schedule, were sufficiently specific to provide the professor with adequate notice. The court

did concede, however, that the hearing examiner's report was conclusory and interfered with the appellant's right to appeal. The court stated that the hearing examiner's report should specify (1) the charges of which the appellant was guilty, and (2) the evidence adduced at the hearing which supported these findings.

The court also stated that, although the university's interest in protecting the education of its students outweighs any temporary deprivation of the appellant's liberty interest which may result from a dismissal before a due process hearing, only the most compelling circumstances may justify the appellant from being denied his property interest (i.e. his salary) without first being afforded due process protection.

Paul L. Weber

Serge v. Matney, 165 W. Va. 801, 273 S.E.2d 818 (1980).

The appellants, former county commissioners of McDowell County, were removed from office because of official misconduct, malfeasance in office and neglect of duty. The appellants voted to approve a county budget which included salary increases for county employees. The court held these acts to be official misconduct in that, because both commissioner's wives were employed by the County of McDowell, such actions were declared unlawful by statute. West Virginia Code section 61-10-15 prohibits public officers from becoming pecuniarily interested, directly or indirectly, in the proceeds of any contract or service in which they may have a voice.

This statute, however, provides an exception when an official's spouse is employed by the county as an auxiliary or service employee in the public schools. The court held that a public school is generally understood to be an elementary or secondary school and does not include colleges or universities. Therefore, the exception to the statute's prohibition did not apply to the appellant whose spouse was employed by West Virginia University.

A dissenting opinion criticized the majority's decision to hold that such conduct warranted removal from office. The dissent noted that very few county level officers are lawyers or even college grad-

uates and, thus, are probably unfamiliar with the intricacies of the law. Therefore, it would be unfair to remove these officials on "technicalities".

Paul L. Weber

Evans v. West Virginia Board of Regents, 165 W. Va. 780, 271 S.E.2d 778 (1980).

The appellant, a medical student who had completed two and one-half years of medical school, was denied readmission following an approved leave of absence. The court held that the admissions committee's refusal to offer any explanation whatsoever for their decision to deny appellant readmission violated his right to procedural due process. The court noted that because the appellant had completed two and one-half years of school, he had a reasonable expectation of being allowed to complete his education unless circumstances had changed at the time of his readmission which would prevent him from being able to successfully complete the remainder of his education. The court also rejected the idea that the appellant had forfeited his property interest by taking a leave of absence. Additionally, the court stated that it would be unfair to treat the appellant as an original applicant. Given his good academic record as a medical student, the appellant was not in the same class as an original applicant.

In holding that the appellant had a sufficient property interest in the completion of his medical education, the court promulgated a series of due process safeguards which were to be used before the appellant could be denied his right to continue his medical education. The appellant should be afforded (1) a formal written notice stating why he should not be able to continue with his medical education, (2) an opportunity to develop and prepare a defense to the charges made against him, (3) an opportunity to have an attorney present at any hearing, (4) a right to confrontation and a right to present evidence in support of his side, (5) an unbiased hearing tribunal, and (6) an adequate record of the hearing or proceeding.

Paul L. Weber

North v. West Virginia Board of Regents, 160 W. Va. 248, 233 S.E.2d 411 (1977).

A medical student in his fourth year at a state supported university was permanently expelled after he admitted making false representations on his medical school admissions application.

The West Virginia Supreme Court of Appeals, citing the rationale espoused in *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975), held that an interest in obtaining a college education was a sufficient property interest so as to require proper procedural due process prior to removal. The court also reasoned that because (1) expulsion from college is likely to damage a student's good name, reputation and integrity, and (2) such attributes are, according to *Goss*, protected personal liberties, and arbitrary state action which damages these attributes is violative of procedural due process.

The student in the instant case was afforded a hearing before a faculty body to determine what actions were to be taken, but he was denied the benefit of having counsel present for the hearing. Because the opportunity to have retained counsel at any hearing on the damages was previously held by the court to be a necessary due process safeguard, the student was clearly deprived of procedural due process.

The court held that this rule also applies to lengthy suspensions which would have the practical effect of preventing the student from completing his academic program. However, for shorter suspensions, all that is required is that the student be given (1) oral or written notice of the charges made against him, (2) an explanation of the evidence supporting these charges and (3) an opportunity to explain his side of the story if he denies the charges.

Finally, the court held that where a student presents a continuing danger to persons or property, or a disruption to the academic process, other due process safeguards, such as prior notice and hearing, need not be given so long as there is a prompt subsequent hearing.

Paul L. Weber

State ex rel. McLèndon v. Morton, 162 W. Va. 431, 249 S.E.2d 919 (1978).

An assistant professor at a community college claimed that she was denied a due process hearing following the college's decision not to grant her tenure. Since she met the college's eligibility criteria for tenure, the Supreme Court of Appeals held that the assistant professor had a sufficient entitlement to a property interest. Therefore, she could not be denied tenure on the issue of her competency without some procedural due process. Minimal procedural due process required that the faculty member be given notice of the basis for the refusal of tenure and a hearing during which evidence relevant to the issues specified in the notice could be presented.

Deborah L. Miller

Woodford v. Glenville State College Housing Corp., 159 W. Va. 442, 225 S.E.2d 671 (1976).

Glenville State College Housing Corporation, a non-profit corporation, was chartered for the purpose of constructing housing on the campus of Glenville State College. The issue in this case was whether the corporation was an instrumentality of the state and, therefore, immune from legal actions by virtue of the state constitution.

The court conceded that it had never established a definitive set of rules for determining precisely when the doctrine of sovereign immunity applies. Rather than using the instant case as an opportunity to do so, the court instead restated the general criteria used in past decisions and applied them to the Housing Corporation. In doing so, the court held that the organization was not an instrumentality of the state and, therefore, was not immune from suit.

The court used the following criteria in making its determination: (1) the Legislature had not given the Housing Corporation the authority to do anything for or on behalf of the state, (2) the Housing Corporation was not funded by the state, (3) the Housing Corporation was not obligated to deposit any of its revenues into the state treasury, and (4) the state was not liable for any debt created by the Housing Corporation.

Paul L. Weber

State ex rel. Kondos v. West Virginia Board of Regents, 154 W. Va. 276, 175 S.E.2d 165 (1970).

The appellant was fired from his assistant coaching position at a state university by the West Virginia Board of Education, predecessor to the West Virginia Board of Regents. After being notified by the university of the reasons for his discharge, the appellant was informed of his right to a hearing before a faculty committee to appeal his termination. If he desired, he could appeal the action of the faculty committee to the Board of Regents. The appellant waived the hearing before the faculty committee and instead appealed his discharge directly to the Board of Regents. After the Board of Regents refused to grant the appellant a hearing, the appellant, citing West Virginia Code section 18A-2-8, brought suit claiming that he was denied his statutory right to a hearing before the Board of Regents.

The court held that the statute, which entitles school personnel dismissed by a board to a hearing before that Board, relates to school personnel who are employed and subsequently dismissed by a *county* board of education. Therefore, because the Board of Regents is not a county board but is instead a state board, the appellant did not have a statutory right to a hearing before the Board of Regents.

Additionally, the court noted that the legislation which created the Board of Regents does not contain any provisions relating to the manner in which college personnel are to be discharged. Therefore, any claim that the appellant would have to a hearing before the Board of Regents would have to be based upon a constitutional right to procedural due process. However, both the appellant and the court failed to address this issue. Thus, the question as to whether the appellant has a due process right to a hearing before the Board of Regents is left unanswered. The court merely held that the appellant has no *statutory* right to such a hearing.

Paul L. Weber

State ex rel. West Virginia Board of Education v. Miller, 153 W. Va. 414, 168 S.E.2d 820 (1969).

The State Commissioner of Finance and Administration is given the power to approve or disapprove expenditure schedules submitted by the West Virginia Board of Regents. The Commissioner's decision is to be made based on whether the expenditure schedules are, *inter alia*, in accordance with sound fiscal policy. This power is discretionary and cannot be abused.

The Commissioner disapproved of an amended expenditure schedule submitted by the Board of Regents which attempted to establish a new administrative position at a state university. The disapproval was based upon an exhibit consisting of a comparison of salaries at various state colleges. The court held that the Commissioner's decision was not justified because the exhibit used did not include a position in the same category as that proposed.

The court also held that the Commissioner acted arbitrarily and capriciously in denying the creation of an administrative position on the theory that the proposed yearly salary of $18,504 was unsound fiscal policy when the commissioner considered a $15,000 yearly salary to be sound fiscal policy.

Paul L. Weber

City of Morgantown v. Ducker, 153 W. Va. 121, 168 S.E.2d 298 (1969).

Because the Board of Governors of West Virginia University must pay all fees collected by it into the state treasury and can only make withdrawals under the direction of the Legislature, the court considers the Board to be an agency of the state. As another ground for this holding, the court noted that because the Board of Governors was set up to replace the Board of Control, which was held to be an agency of the state, it was logical to conclude that the Board of Governors, which performs the same functions as the Board of Control, was an agency of the state as well. Also, the court has held in numerous cases that proceedings against boards and commissions created by the Legislature are suits against the state.

Therefore, since the Board is a state agency, the state constitution grants it immunity from suits to force payment of monetary claims

made against it. The court noted that the Legislature exceeded its constitutional power when it permitted suits to be brought against the commission.

The court held that suits brought against the state which should in equity and good conscience be satisfied fall under the jurisdiction of the state court of claims.

Paul L. Weber

State ex rel. West Virginia Board of Education v. Sims, 143 W. Va. 269, 101 S.E.2d 190 (1957).

A gift was devised to a specific state college. The State Treasurer placed the proceeds of this gift into a special account for the college. When the college attempted to withdraw a portion of the funds, the State Auditor refused to issue the requisite warrant to the state treasury. The auditor claimed that the special account was illegal. He reasoned that because the Legislature failed to specify the amount and purpose for which the gift proceeds could be used, there was no valid appropriation as required by the state constitution.

The court held that the constitution section relating to budgets should be given a liberal construction so as to allow the Legislature to enact statutes which benefit public institutions. Thus, the court held constitutional a legislative act providing that if the terms or conditions of a grant or devise reflect an intent to limit or restrict a gift to the use of a specific educational institution, then the gift shall be placed in a special account for that institution's exclusive use.

The court also noted that any income or profits arising from a gift placed in a special account shall be paid into the state treasury for the use and benefit of that institution. It is not clear from the decision, however, whether this interest is to be deposited in the existing special account, a separate special account, or a general account.

Paul L. Weber

State ex rel. Board of Governors of West Virginia University v. O'Brien, 142 W. Va. 88, 94 S.E.2d 446 (1956).

A West Virginia statute granted the Board of Governors at West Virginia University the power to issue bonds to cover the costs of capital improvements at the University. These bonds were to be financed by a special fund supported by student fees. The Secretary of State, however, refused to place the requisite Great Seal of the State on any of the bonds, claiming that they would create a debt against the State of West Virginia in contravention of the state constitution. The Secretary reasoned that, because the new fund would be supported by fees which formerly paid for the maintenance and operation of the university, these expenses would now have to be met by raising additional revenues through taxation.

In its decision, the court, noting that the question posed was not easily answered, held that the promise created by the bonds was to pay the principle and interest of the bonds solely out of the special fund and not out of general or property tax revenues. No taxes or properties of the state were to be pledged or in any way made liable for the payment of the bonds. The court therefore held that the act allowing the issuance of the bonds was not violative of the state constitution. The court pointed out that numerous court decisions of many other jurisdictions with similar constitutional provisions reached the same conclusion.

Paul L. Weber