Volume 89 | Issue 2 Article 15

January 1987

Constitutional Law

Kurt L. Krieger
West Virginia University College of Law

CONSTITUTIONAL LAW

BARRON v. BOARD OF TRUSTEES POLICEMEN'S PENSION & RELIEF FUND, 345 S.E.2d 779 (W. Va. 1985).

Constitutional Law—Employment—Property

A West Virginia policeman had made the required contributions to the Policemen's Pension and Relief Fund for twelve years when he applied to its Board of Trustees for disability benefits. He submitted a physician's report to the board which indicated he was physically unfit for police service. As procedurally required in West Virginia Code section 8-22-23a(a), the plaintiff was examined by two physicians who concurred in a joint report that his eye condition was not disabling. Based on this report, the Board of Trustees denied his request for disability benefits. Upon reapplication, the plaintiff requested an examination and report by other authorized physicians. He was denied benefits since the Board of Trustees was unable to find additional physicians at the statutorily designated examining locations. The Board did not grant the plaintiff's request for a hearing. Plaintiff then filed an action in circuit court, which denied relief.

On appeal, the West Virginia Supreme Court of Appeals addressed the following issues: (1) Whether entitlements in the Policemen's Pension and Relief Fund qualify as a property interest so as to guarantee procedural safeguards, and (2) whether a claimant for disability benefits under the Policemen's Pension and Relief Fund was unconstitutionally deprived of the benefits without due process of law required by Article III, section 10 of the West Virginia Constitution and if so, what process is due.

The court held that a member of the Policemen's Pension and Relief Fund has a property interest created under West Virginia Code section 8-22-16 to 28, and therefore, procedural safeguards are in order. The member is entitled to retained counsel, to take the depositions of physicians appointed by the Board, to appear before the Board to present his reasons for qualification, and to have the Board give a written statement outlining its reasons for denying benefits.

KENNEDY v. BOARD OF EDUC., 337 S.E.2d 905 (W. Va. 1985).

Constitutional Law

Petitoners, parents of two school-age children, sought through a writ of mandamus to compel the McDowell County Board of Education to transport their children to and from the county's public schools. Petitioners live on a privately owned dirt road which they allege had been used as a public road for over twenty years. An original complaint brought an oral agreement by the Board to provide transportation for the children, but the Board failed to do so. The children's physical limitations prevent them from being able to walk to the nearest bus stop,

and "homebound" instruction was found to be unsatisfactory. Despite improvements to the dirt road and repeated requests by the parents, the Board continued to refuse to provide transportation.

In a mandamus proceeding, the West Virginia Supreme Court of Appeals addressed: (1) Whether the poor condition of a road is sufficient reason for a school board's denying transportation to school children living on the road, and (2) whether a school board can deny transportation to and from school to children living on a private road.

The court held that West Virginia Code section 18-5-13(6)(a) requires county boards of education to provide adequate means of transportation to school children living more than two miles from school. A board's refusal to do so because the road on which the children live is not safe for large school buses is unacceptable and the board must purchase a vehicle to transport such children. To allow otherwise would deny those children equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. Furthermore, the above statute does not distinguish between those children who live on public roads and those who live on private roads, and the board's responsibility to transport children is the same in both cases.

WHITE BY WHITE v. LINKINOGGOR, 344 S.E.2d 633 (W. Va. 1986).

Constitutional Law

The petitioner, a sixteen year-old, sought through a writ of mandamus to be granted admission to a county high school, located in the county where he attended elementary and junior high school. His family had moved to another county prior to his entering high school, and he began attending that county's high school. However, he alleges his parents mistreated him, and that he left home and returned to a relative's home in the county where he formerly resided. He then sought to enter high school, but was refused admission by the principal, on the grounds petitioner had not furnished health or academic records or a document evidencing the legal guardianship of the relative with whom he was staying. After a second request for admission and refusal, the relative and petitioner went to the Department of Human Services and met with an employee of the Child Protective Services Division, but parental abuse and neglect proceedings were never instituted. The petitioner went before the circuit court with a mandamus and injunction proceeding to gain admittance to high school but was refused relief until petitioner's relative obtained legal custody. The petitioner then sought relief in the West Virginia Supreme Court of Appeals which awarded a temporary injunction pending final determination in the mandamus proceeding. Before final determination petitioner returned to his parent's home and attended school there.

Because of the likelihood the issue will arise again, the West Virginia Supreme Court of Appeals considered whether one who lives in one county may attend high school in another county.

The court held the right of access to public schools is a fundamental right under the West Virginia Constitution Article XII, section 1. It is mandated that they shall be open to all who have attained the required age of entry for the full instructional term. (See West Virginia Code section 18-5-15). A student shall be provisionally admitted to school and shall not be refused admittance merely because he does not present inoculation records when the principal could have relied upon the presumption that the immunization law had been followed, nor can such student be refused when he does not have his academic records which are not statutorily required for such admittance. Furthermore, a child's right to education cannot be denied due to a sudden change of circumstances that causes that child's custody to be in a state of confusion.

Kurt L. Krieger

See also,

ADMINISTRATIVE LAW:
American Fed'n State, County and Mun. Employees v. CSC of W. Va., 341 S.E.2d 693 (W. Va. 1985).
Blessing v. Mason County Bd. of Educ., 341 S.E.2d 407 (W. Va. 1985).
Rogers v. Hechler, 348 S.E.2d 299 (W. Va. 1986).
Shell v. Bechtold, 338 S.E.2d 393 (W. Va. 1986).
State ex rel *Board of Educ. v. Casey*, 349 S.E.2d 436 (W.Va. 1986).

DOMESTIC RELATIONS:
Jones v. Jones, 345 S.E.2d 313 (W. Va. 1986).
Riddle v. MacQueen, No. 17068, slip op. (W. Va. Apr. 3, 1986).

LABOR AND EMPLOYMENT:
Freeman v. Poling, 338 S.E.2d 415 (W. Va. 1985).

PUBLIC OFFICIALS:
Miller v. Palmer, 336 S.E.2d 213 (W. Va. 1985).
Sturm v. Henderson, 342 S.E.2d 287 (W. Va. 1986).

WORKERS COMPENSATION:
Deller v. Naymick, 342 S.E.2d 73 (W. Va. 1985).