

# IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

**DOROTHEA "JEANNIE" FORD, FRIEDA ICKES, and  
KENT "BROOKS" McCUMBEE,**  
Plaintiffs,

v.

**MORGAN COUNTY BOARD OF EDUCATION,**  
Defendant.

**CASE NO. 14-C-1**  
(consolidated with 14-C-2 & 14-C-3)

## ORDER DENYING DECLARATORY RELIEF

This matter came before the Court upon the petition of the Plaintiff seeking declaratory relief and upon the appearance of the parties by agreement, out of venue in the Circuit Court of Jefferson County on February 4, 2014. The Plaintiffs are represented by the attorney Michael L. Scales and the Defendants by the attorney Charles S. Trump IV. The Plaintiff seeks to prohibit the Defendant from placing upon the primary election ballot a proposed levy to fund the public schools of Morgan County. The Plaintiff's arguments arise from their reading of W.Va. Code § 18-9-1 and what they deem to be improper conduct by the Defendant in proceeding to place the proposed levy on the May 2014 ballot. The Plaintiff requested that the Court construe the controlling statutes. After considering the pleadings and arguments of the parties, the Court makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. The levy proposed by the Defendant for the May 2014 election ballot is an excess levy.  
Memorandum of the Defendant, 27.

2. The levy proposed by the Defendant for the May 2014 election ballot differs from the excess levy defeated at the May 2013 election. These differences include the 30% difference in the rates for all four (I – IV) Property classifications. *Id.*

### **CONCLUSIONS OF LAW**

What is a levy? A levy is, simply put, a tax. Before the Great Depression, the levy which entirely funded the school system was a levy (a tax) assessed by the local (magisterial, as opposed to county) school board, which was subject to the shaping forces of a popular vote. However, since the abolition of the old system in 1933 (through the adoption of the “county unit” bill, as described in the Memorandum of the Defendant, 12-15) the word “levy” has taken on a second meaning in the context of public school funding in West Virginia. This second meaning is different from the original meaning that underscores the text of W.Va. Code § 18-9-1. Thus “levy” now not only describes a tax subject to the approval of the electorate, but it also describes a tax which is mandated by the Legislature in a formulation between the property tax base of the county, and the ongoing expenses of running the school system as established by the board of education and reported to, and approved by, the State Auditor. The dissonance between these two meanings attached to the word “levy” is what has contributed to a debate regarding the legality of placing a proposed levy on the May 2014 primary election ballot in Morgan County.

Before delving into the specifics of statutes cited by the Plaintiffs and Defendant, it is critical to understand the financial underpinnings of the current public school system in West Virginia. The Supreme Court of Appeals gave an elegant description of this system in Pauley v. Kelly, 162 W. Va. 672, 708-09, 255 S.E.2d 859, 878-79 (1979):

#### **The Financing System**

Our State school aid formula is composed of four basic components: (1) an amount raised from local levy on real and personal property;<sup>31</sup> (2) the State foundation aid, which is money the State pays out of general revenue funds to the counties based on a

formula composed of seven components;<sup>32</sup> (3) State supplemental benefits; and (4) amounts raised locally by special levies by vote of the people in the county.<sup>33</sup>

The levy proposed for the May 2014 primary election is an excess levy, and thus falls into the fourth category described above. The Defendant is technically correct to state that "W.Va. Code § 18-9-1 ... and W.Va. Code § 11-8-16 ... are in mortal conflict with each other." Memorandum of the Defendant, 18. However, the two Code sections speak to different kinds of levies, so that a comparison between them is akin to a comparison of apples and oranges. This is because the system described by W.Va. Code § 18-9-1 has not only been replaced, but it has been replaced with a "levy" system which speaks to the first category described in Pauley per above: a baseline and continuing levy which is not directly voted upon. This baseline levy is not voted upon as it once was (as detailed in the statutory vestige that is § W.Va. Code 18-9-1), but instead determined in the following manner pursuant to legislative mandate:

Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of the code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

- (1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;
- (2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment;
- (3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment, owing by such district;
- (4) The amount to be levied for the permanent improvement fund;
- (5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;
- (6) The amount of such total to be raised by the levy of taxes for the current fiscal year;
- (7) The proposed rate of levy in cents on each \$100 assessed valuation of each class of property;
- (8) The separate and aggregate amounts of the assessed valuation of real, personal and public utility property within each class.

The secretary of the board shall forward immediately a certified copy of the statement to the Auditor and shall publish the statement immediately.

W. Va. Code Ann. § 11-8-12.

16: In contrast, the levy at bar is an excess levy. This is described in W. Va. Code § 11-8-

A local levying body may provide for an election to increase the levies by entering on its record of proceedings an order setting forth:

- (1) The purpose for which additional funds are needed;
- (2) The amount for each purpose;
- (3) The total amount needed;
- (4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
- (5) The proposed additional rate of levy in cents on each class of property;
- (6) The proposed number of years, not to exceed five, to which the additional levy applies;
- (7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.


The local levying body shall submit to the voters within their political subdivision the question of the *additional levy* [emphasis added] at either a primary, general or special election.

Because the levy at bar is an excess levy proposed for the primary election of May 2014 in Morgan County, it falls within the statutory confines of W. Va. Code § 11-8-16 and is thus permissible. For this reason, declaratory relief must be **DENIED**.

**THIS IS A FINAL ORDER APPEALABLE TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA. NOTICE OF INTENT TO FILE AN APPEAL MUST FILED WITHIN 30 DAYS AND THE APPEAL MUST BE PERFECTED WITHIN FOUR MONTHS.**

The Clerk shall enter this Order and forward an attested copy thereof to all parties and counsel of record.

DATE: 2/7/14



David H. Sanders, Judge  
23<sup>rd</sup> Judicial Circuit, West Virginia