

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

DOROTHEA "JEANNIE" FORD,
FRIEDA ICKES and KENT
"BROOKS" MCCUMBEE,

Plaintiffs

v.

Civil Action No. 13-C-_____

MORGAN COUNTY BOARD
OF EDUCATION,

Defendant.

**COMPLAINT FOR DECLARATORY RELIEF THAT THE SCHOOL
LEVY ELECTION SCHEDULED TO BE HELD IN MAY, 2014,
IS ILLEGAL, IMPROPER AND VOID**

NOW COMES Plaintiffs, Dorothea "Jeannie" Ford, Frieda Ickes and Kent "Brooks" McCumbee, by counsel, Michael L. Scales, Esquire and the law firm of Michael L. Scales, PLLC, pursuant to §55-13-1, *et seq.* of the West Virginia Code ("Uniform Declaratory Judgments Act"), who respectfully allege and complain as follows:

1. That Plaintiffs, Dorothea "Jeannie" Ford, Frieda Ickes and Kent "Brooks" McCumbee, are all residents of Berkeley Springs, Morgan County, West Virginia, and are all registered voters in Morgan County, West Virginia for all times and matters relevant herein.

2. That Plaintiffs believe upon information that Defendant, Morgan County Board of Education (hereafter simply "the Board"), is a political body and a subdivision of the State of West Virginia, who is charged with providing primary and secondary public education in Morgan County, West Virginia, and has the statutory authority to seek certain tax levies upon landowners in Morgan County, West Virginia, to fund public education within Morgan County, West Virginia pursuant to §18-9-1, *et seq.* of the West Virginia Code of 1931, as amended.

3. That at a general election held on or about November 4, 2008, the registered voters of Morgan County, West Virginia passed and voted for a certain levy sought by the Board, by its order dated August 19, 2008, a copy of which is attached hereto as Exhibit 1.

4. That the registered voters of Morgan County, West Virginia passed the special levy for the tax years July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012 and July 1, 2013 on November 4, 2008.

5. That the Board entered an order which called for a special election to be held on May 11, 2013, to continue the special levy which had been adopted by the majority of Morgan County registered voters on November 4, 2008.

6. That the registered voters of Morgan County, West Virginia voted against the levy by a vote of 1,674 to 1,329 at a special election held on May 11, 2013.

7. That pursuant to the salient portion of §18-9-1 of the West Virginia *Code*, it is provided as follows:

§18-9-1. School levy; when levy election necessary; special election

...If a majority of the votes cast at any such special election be against the school levy the board of education of any such district or independent district shall again submit the question of a school levy to the voters of its district or independent district at the next general election: Provided, however, That upon petition of not less than forty percent of the qualified voters of the district, as determined from the last registration of voters, such board of education may again submit the question of school levy at a special election to be held for that purpose, in the manner hereinbefore provided, prior to the next succeeding general election. [Emphasis added here].

8. That Plaintiffs believe upon information that the Board has not obtained a petition containing the signatures of at least forty percent (40%) of the qualified voters of Morgan County to place the proposed levy on the May, 2014 primary election ballot.

9. That Plaintiffs are informed upon information that the Board intends upon placing the resubmission of the special levy election that was rejected at the May, 2013 special election

on the ballot at the primary election to be held in May of 2014, in violation of §18-9-1 of the *Code*, which requires such matters to be submitted to the next general election after the matter has been last rejected by the registered voters in Morgan County, West Virginia, after the special election in May of 2013, in the absence of a petition containing at least forty percent (40%) of the registered voters requesting such a special election before the next general election.

10. That the salient portion of §18-9-2 of the *Code* is as follows:

§18-9-2. Elections under this chapter; procedure.

Any and all elections authorized by this chapter for school purposes may, unless otherwise provided, be held separately or in conjunction with any general or special election... [Emphasis added].

11. That the aforementioned provision of §18-9-1 of the *Code* requires the resubmission of the vote on the rejected levy to be held at the next general election, not a primary election.

12. That §3-1-31 of the *Code*, states that general elections are held “the Tuesday next after the first Monday in November of each even year”.

13. That because §18-9-1 of the *Code* specifically requires the resubmission of a rejected school levy rejected at a special election, be next held at the next general election, it is improper and illegal for the Board to resubmit the school levy election at the primary election in May, 2014.

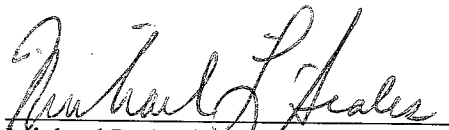
14. That Plaintiffs, and certain of them, met with the Board to express their objections to the May, 2014 election on September 17, 2013; on November 19, 2013; and to a private meeting with Board members, David Ambrose (President) and Arron Close, on December 2, 2013. The Board rejected Plaintiffs’ objections to the May, 2014 election.

15. That Plaintiffs reject and object to the Board holding a needless, costly, illegal and void election in violation of the said state statute.

16. That a justiciable controversy exists between these parties which requires declaratory relief by this Honorable Court.

WHEREFORE, Plaintiffs, Dorothea "Jeannie" Ford, Frieda Ickes and Kent "Brooks" McCumbee, demand a declaratory judgment that specifies the rights, status and legal relations between these parties, and for this Honorable Court to enter judgment against Defendant, Morgan County Board of Education, that it may not hold a levy election in May, 2014, after the school levy was rejected in May, 2013, in the absence of a petition containing forty percent (40%) of the registered voters seeking a special election of that school levy; and that the Board must hold the school levy election, if at all, next at the November, 2014 general election to comply with the statutory requirements of §18-9-1 of the *Code*; or, for such other relief as the Court deems necessary and proper in the circumstances. Plaintiffs move this Honorable Court for an expedited hearing on this matter sufficiently in advance of the May, 2014 general election so that ballots may be timely printed by the Clerk of the County Commission of Morgan County, West Virginia.

Dorothea "Jeannie" Ford, Frieda Ickes and
Kent "Brooks" McCumbee, Plaintiffs
By Counsel



Michael L. Scales, Attorney at Law
Counsel for Plaintiffs
Michael L. Scales, PLLC
314 W. John Street; P.O. Box 6097
Martinsburg, WV 25402-6097
(304) 263-0000
WV Bar No. 3277

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF Morgan, to-wit:

Personally appeared before the undersigned authority, DOROTHEA "JEANNIE" FORD, Plaintiff named in the foregoing Complaint, after having been duly sworn upon her oath, deposes and states that the facts and allegations contained in the foregoing Complaint are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, she believes them to be true.

Dorothea Jeannie Ford
DOROTHEA "JEANNIE" FORD

Taken, subscribed and sworn to, before me, the undersigned authority, this 26th day of December, 2013, by DOROTHEA "JEANNIE" FORD.

[NOTARIAL SEAL]

Cynthia L. Hovermale
Notary Public

My commission expires: April 12, 2016



VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF Morgan, to-wit:

Personally appeared before the undersigned authority, FRIEDA ICKES, Plaintiff named in the foregoing Complaint, after having been duly sworn upon her oath, deposes and states that the facts and allegations contained in the foregoing Complaint are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, she believes them to be true.

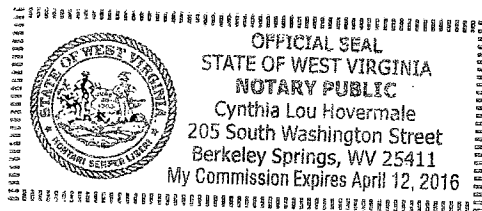
Frieda Ickes
FRIEDA ICKES

Taken, subscribed and sworn to, before me, the undersigned authority, this 26th day of December, 2013, by FRIEDA ICKES.

[NOTARIAL SEAL]

Cynthia L Hovermale
Notary Public

My commission expires: April 12, 2016



VERIFICATION

STATE OF WEST VIRGINIA
COUNTY OF Morgan to-wit:

Personally appeared before the undersigned authority, KENT "BROOKS" MCCUMBEE, Plaintiff named in the foregoing Complaint, after having been duly sworn upon his oath, deposes and states that the facts and allegations contained in the foregoing Complaint are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, he believes them to be true.

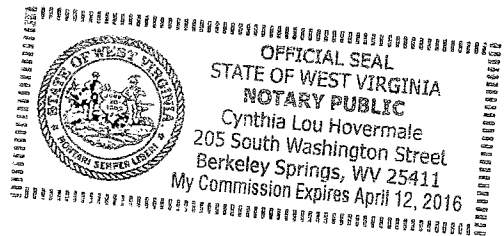
Kent Brooks McCumbee
KENT "BROOKS" MCCUMBEE

Taken, subscribed and sworn to, before me, the undersigned authority, this 26th day of December, 2013, by KENT "BROOKS" MCCUMBEE.

[NOTARIAL SEAL]

Cynthia J. Hovermale
Notary Public

My commission expires: April 12, 2016



Levy Election Order

**An Order of the
Board of Education of the County of Morgan
Directing an Election to be held November 4, 2008
For the Purpose of Submitting to the Voters of
Morgan County School District a Proposition for
Continuation of Additional School Levy
For the General Expenses of Operating the
Public Schools of Morgan County, West Virginia**

The Board of Education of the County of Morgan being of the opinion that Maximum Levies for current expenses authorized by Article 8, Chapter 11 of the Code of West Virginia, as amended, will not provide sufficient funds for the payment of current expenses of the Board of Education, including expenditures for the purposes herein set forth, and that an election should be held to renew the levies under the provisions of Section 16, Article 8, Chapter 11 of the Code, as amended, it is hereby ordered:

- I. That the purpose for which said funds are needed during the ensuing five fiscal years, together with the approximate amounts considered necessary are as follows:
 - A. To continue to provide instructional materials, free textbooks, instructional equipment, 21st century technology and expenses for curricular and extra-curricular activities, programs, and field trips, including partial transportation costs at an approximately total annual cost of \$1,127,500.00.
 - B. To continue to provide financial support of designated community organizations and agencies, including but not limited to: Morgan County Health Department at approximately \$10,000.00; West Virginia University 4-H Extension Office at approximately \$20,000.00, the Energy Express Program, at approximately \$40,000.00; Morgan County Public Libraries at approximately \$65,000.00; Morgan Arts Council at approximately \$15,000.00; Morgan County Parks and Recreation at approximately \$25,000.00; for an approximate total annual cost of all programs at \$175,000.00.

EXHIBIT #

- C. To continue to provide for the upkeep and maintenance of existing facilities by providing the necessary supplies, services or equipment at an approximately annual cost of \$858,331.00.
- D. The continuation of the local salary schedule with required social security, unemployment compensation, workers compensation and other employee benefits for school personnel at an approximate total annual cost of \$2,717,500.00. Such funding will allow Morgan County to employ and retain highly qualified personnel to continue to provide the highest quality education for the children of Morgan County.
- E. To provide funds to meet the costs associated with increased enrollment and other associated needs in Morgan County by providing staff where necessary and by providing equipment, supplies, and property at an approximate annual cost of \$682,350.00.
2. The Board of Education of the County of Morgan is hereby authorized and empowered to expend in a manner and upon such terms as the Board shall subsequently decide, during the term of this levy, the surplus, if any, accruing in excess of the amounts needed for any of the above stated purposes. Additional assessments due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be included in determining whether to reduce excess levy rates or in calculating the new levy rates for any such fiscal year.
3. In the event additional funds are obtained by grant or otherwise from the state or federal government or any other source, such additional money may be used either in substitution for or in addition to the amount obtained from this levy.
4. If for any reason all of the funds hereinabove allocated for any one of the above enumerated purposes is not used for such purpose in any of such five fiscal years, the unused portion of such funds may be allocated by the Board of Education of the County of Morgan, in its discretion, and expended for any one or more of the remaining purposes.

5. The total approximate net amount of taxes (gross taxes less delinquent taxes, discounts and exemptions) necessary to carry out the above purposes is \$5,560,681.00 annually, or a total approximately amount for the next five-year period of \$27,803,405.00.
6. That the separate and aggregate assessed valuation of each class of taxable property within the County of Morgan is as follows:

Class I	\$	-0-
Class II	\$	657,840,859.00
Class III	\$	280,234,904.00
Class IV	\$	41,476,762.00
Aggregate	\$	979,552,525.00

7. That the proposed additional rate of levy in cents per 100 dollars of assessed valuation of each class of property is as follows:

Class I	22.95 cents
Class II	45.90 cents
Class III	91.80 cents
Class IV	91.80 cents

8. That the proposed years to which the additional levy shall apply are the fiscal years beginning July 1, 2009; July 1, 2010; July 1, 2011; July 1, 2012; and July 1, 2013.
9. The Board of Education of the County of Morgan will not issue bonds in conjunction with approval of this levy. Nothing herein shall affect any special levy or levies for the retirement of bonded indebtedness.

10. The Board of Education of the County of Morgan will reduce the said levy rates accordingly in any given year or years during the term of this levy if the cumulative countywide assessed valuations exceed 10% growth over the preceding year and after determining the sufficiency of funds for school purposes for the next school year.
11. That the questions of such reviewed additional levy shall be submitted to a vote at a general election to be held in Morgan County on the 4th day of November, 2008.
12. Notice of said election to authorize additional levies shall be given by publication of notice thereof at least once each week for two successive weeks within fourteen (14) days preceding the election in the Morgan Messenger, a newspaper of general circulation in Morgan County School District. Printed copies of this order shall also be posted at each place of voting at least ten (10) days prior to the election.
13. That the ballot to be used at the election shall be in the following form:

Official Levy Ballot

**Board of Education of the County of Morgan County
General Election to be held on November 4, 2008 to authorize
the continuation of the special levy for the year(s) July 1, 2009,
July 1, 2010, July 1, 2011, July 1, 2012 and July 1, 2013 and
for the purpose of maintaining and improving the instructional program
and the operation of school services for the Morgan County Public Schools
according to the order of the Morgan County Board of Education
entered on the 19th day of August 2008**

The purposes for which funds are needed are to maintain and improve the instructional program and the operation of school services for the Morgan County Public Schools as follows:

- a. To continue to provide instructional materials, free textbooks, instructional equipment, 21st century technology and expenses for curricular and extra-curricular activities, programs, and field trips, including partial transportation costs at an approximately total annual cost of \$1,127,500.00.
- b. To continue to provide financial support of designated community organizations and agencies, including but not limited to: Morgan County Health Department at approximately \$10,000.00; West Virginia University 4-H Extension Office at approximately \$20,000.00, the Energy Express Program, at approximately \$40,000.00; Morgan County Public Libraries at approximately \$65,000.00; Morgan Arts Council at approximately \$15,000.00; Morgan County Parks and Recreation at approximately \$25,000.00; for an approximate total annual cost of all programs at \$175,000.00.
- c. To continue to provide for the upkeep and maintenance of existing facilities by providing the necessary supplies, services or equipment at an approximately annual cost of \$258,331.00.
- d. The continuation of the local salary schedule with required social security, unemployment compensation, workers compensation and other employee benefits for school personnel at an approximate total annual cost of \$2,717,500.00. Such funding will allow Morgan County to employ and retain highly qualified personnel to continue to provide the highest quality education for the children of Morgan County.

e. To provide funds to meet the costs associated with increased enrollment and other associated needs in Morgan County by providing staff where necessary and by providing equipment, supplies, and property at an approximate annual cost of \$682,350.00.

That the separate and aggregate assessed valuation of each class of taxable property within the County of Morgan is as follows:

Class I	\$.00
Class II	\$	657,840,859.00
Class III	\$	280,234,904.00
Class IV	\$	41,476,762.00
Aggregate	\$	979,552,525.00

That the proposed additional rate of levy in cents per 100 dollars of assessed valuation of each class of property is as follows:

Class I	22.95 cents
Class II	45.90 cents
Class III	91.80 cents
Class IV	91.80 cents

The Board of Education of the County of Morgan is hereby authorized and empowered to expend in a manner and upon such terms as the Board shall subsequently decide, during the term of this levy, the surplus, if any, accruing in excess of the amounts needed for any of the above stated purposes. Additional assessments due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be included in determining whether to reduce excess levy rates or in calculating the new levy rates for any such fiscal year.

The Board of Education of the County of Morgan will not issue bonds in conjunction with approval of this levy. Nothing herein shall affect any special levy or levies for the retirement of bonded indebtedness.

If for any reason all of the funds hereinabove allocated for any one of the above enumerated purposes is not used for such purpose in any of such five fiscal years, the unused portion of such funds may be allocated by the Board of Education of the County of Morgan, in its discretion, and expended for any one or more of the remaining purposes.

The Board of Education of the County of Morgan will reduce the said levy rates accordingly in any given year or years during the term of this levy if the cumulative countywide assessed valuations exceed 10% growth over the preceding year and after determining the sufficiency of funds for school purposes for the next school year.

All according to the order of the Board of Education of the County of Morgan, entered on the 19th day of August, 2008.

() FOR THE LEVIES

() AGAINST THE LEVIES

INSTRUCTIONS: To vote in favor of renewal of the levies, place an "X" in the space before "For the Levies."

To vote against renewal of the levies, place an "X" in the space before "Against the Levies."

The Board of Education of the
County of Morgan

By: *Lawrence Smith*
Its President

ATTEST:
David Smith
Its Secretary