



## Ethics reforms supported

# 2005 Regular Session Issues Discussed

The W. Va. School Boards Association's Committee on Legislation, meeting October 15 in Davis (Canaan Valley Resort and Conference Center), discussed several matters which either may be issues considered during the West Virginia Legislature's 2005 Regular Session or issues of importance to the organization.

Association Executive Director Howard M. O'Cull, Ed.D., who serves as chairman of the COL, lead the discussions, with O'Cull – and committee members – identifying the following issues as matters warranting WVSBA's attention. The issues are:

**Ethics Law Revisions.** The COL resolved to work from "official" proposals introduced by the governor – all three gubernatorial candidates support ethics reforms – or the state Ethics Commission itself in order to avoid "partisan" aspects of the issue. One WVSBA consideration regards "reconciling" differences in the state's "Pecuniary Interest Statute" (§61-10-15) and corresponding Ethics Act laws regarding conflicts of interest. The organization will support stronger EC enforcement laws and will support legislation that will allow the Ethics Commission to have independent investigatory powers. O'Cull also proposed the imposition of strict guidelines regarding legislative/agency official contacts, especially given recent events involving the former House Education Committee Chairman and W. Va. Department of Education personnel. He also proposed broadening the scope of the commission membership so that a former county board member would serve on the

EC, noting that many of the decisions made by the Commission relate to county boards. O'Cull also suggests that the commission include more citizen members. Another proposal supported by O'Cull is the "placement" of the EC under the judicial branch of government as suggested by Democratic gubernatorial candidate Joe Manchin.

### 'Capacity'

**School Funding.** Several issues were discussed, including tax capacity disparities between and among county boards, as well as the need to examine school aid formula 'reform.' O'Cull acknowledged the latter would be difficult given the notion that the state's SAF is equitable in terms of 'distribution' of funds but not necessarily in terms of equalizing taxing and inherent revenue generation per se—a point also made by the Vermont-based Rural School and Community Trust in a review of state school aid formulas. (According to the RSCT, there are several pending challenges to school funding across the nation many of which are based on funding capacity—a situation the W. Va. Legislature has 'remedied' through promotion of 'outcomes-based' education which diminishes emphasis on inherent differences in school district revenue generation. Thus, funding equalization via the state school aid formula is considered to create a de facto 'equity' with subsequent concentration on education achievement based on this 'equity' of funds distribution, not inher-

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## Overview

### STATS

2004 Regular Session: *Adjourned Sine Die*  
Days Until 2005 Regular Session: 77  
Interim Meetings Remaining: November - January 2004

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### QUOTE

"[Another takeover] would be entirely up to them. They'll do what's best for the students." — *Mingo County Schools Superintendent Brenda Skibo, discussing the W.Va. Board of Education's delay in voting on Mingo Schools plan, as reported Oct. 15 in The Charleston Gazette.*

## Mezzatesta Ethics Inquiries Continue

According to various sources and news media accounts, the state Ethics Commission as well as the Kanawha County Prosecuting Attorney's Office hope to wrap up most of the inquiries into what the *Charleston Gazette* refers to as the "Mezzatesta mess" by early November. The EC meets Nov. 4 in Charleston.

In a related development, Phil Kabler, a *Charleston Gazette* reporter, surmises that the governor's call for a special session relating to a 2004 prescription drug cost management law was squelched due to the possibility that Republican House of Delegates members and some Democratic House members would use the occasion to press for former House Education Chairman Jerry L. Mezzatesta's removal from office—the mechanics of which 'begin' with a resolution which, if adopted by a two-thirds vote of Delegates (67 votes), could have resulted in the Hampshire lawmaker's removal from office. House leaders – and Senate officials – deny that, saying that legislators are

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## SESSION ISSUES

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ent district funding capacity.) The committee resolved to ask the Legislature to commit to a study of the formula, but acknowledged that the legislative leadership and WVDOE officials are “entrenched” in support of the current system. O’Cull recommended that any study be conducted by independent consultants.

**Inter-District Efficiencies.** O’Cull was directed to provide proposed revisions to W. Va. Code §18A-4-8d which relates to the ‘sharing’ of central office administrative services. Several members voiced support for this concept, saying it would provide a greater number of specialists, coordinators and directors – positions usually stricken due to system down-sizing and administrative ratios in many counties. Several committee members discussed ways in which they could enter into “voluntary” agreements to share administrative services—with or without regard to Regional Education Service Agency boundaries. Members discussed ways in which to ‘phase-in’ the approach, based on retirements or system attrition, especially in regard to ‘duplicate’ positions such as school treasures and federal office coordinators. O’Cull is to provide ‘model’ legislation at the November 14 committee meeting.

**School Building Authority of West Virginia.** The association’s School Facilities Committee was urged to continue its work and efforts, and the COL endorsed, for the first time, serious consideration of constructing school facilities ‘irregardless of county lines and boundaries.’ The COL will urge the SBA to ‘seriously promote’ the concept and will work with legal scholars at W. Va. University to determine ‘legalities’ regarding the concept, especially in regard to tax and excess levy issues. Several members argue that the SBA has no real interest in this approach, although SBA executive director

**The Legislature** provides county board of education members, state policymakers, school administrators, and others information, opinion and commentary regarding West Virginia legislative issues. This publication does not necessarily reflect the official views, opinions or policies of the WWSBA, unless specifically stated.

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Clacy Williams, Ed.D., in three association meetings, has identified a dozen or so instances where cross-county school facilities proposals would work.

### ‘Intra-District Equity’

**Budget Digest.** O’Cull informed the committee that the association’s Budget Digest Study will be completed and presented at the Nov. 14 meeting. Preliminary study results show a strong correlation between school size and subsequent receipt of Budget Digest dollars – which may lead to greater intra-district inequities – as well as considerable outlays of Budget Digest moneys for purposes of athletics. (Again, with an emphasis on larger secondary schools.) Several COL members said Budget Digest funding often doesn’t meet identified county board needs and that, in some cases, there is some question as to what Budget Digest dollars are to be used for. A few members said Budget Digest dollars have even been appropriated for schools slated to close and, in one instance, to a parochial school in the Northern Panhandle. Based on these discussions, the COL recommends that county boards approach the matter on their own terms, possibly suggesting areas for Budget Digest funding, or leaving such to the discretion of county citizens, principals and other school officials. The committee, however, did direct O’Cull to complete the study, which will be internal to WWSBA unless the organization’s governing board directs that it be generally released. Several members suggested support for Budget Digest projects and want the funding to continue no matter the sources of the requests.

**Instructional Time.** There is no COL sentiment to push for instructional time changes, including school calendar changes, except to support provision of greater staff development ‘opportunities’ for teachers—perhaps by eliminating the Instructional Support and Enhancement Days, although there was no consensus in regard to that issue.

**Mathematics Study.** The Committee directed O’Cull to pursue a grant from a national mathematics association to study issues relating to mathematics curricula in West Virginia. He also was directed to form a task force on this issue if the funding is received. Several members say that block scheduling, ‘ill-prepared teachers,’ ‘unrealistic,’ or ‘shifting’ state mathematics curricular standards (based on lack of grounding in mathematics basics in elementary school) and lack of enthusiasm for mathematics instruction by elementary teachers contribute to West Virginia’s performance on the ACT tests, as well as a possible lack of teachers who are prepared to provide mathematics instruction ‘through Algebra I, as required in high schools. As part of this discussion, several members asked O’Cull to determine ‘where’ West Virginia ‘fits’ in terms of student achievement vis-à-vis educational dollars spent. COL members have asked for a determination of the validity of WVDOE statistics. In terms of block scheduling, several members said it was an ‘educational fad’ whose time is ‘up,’ especially in terms of reduced emphasis in regard to band and extracurricular activities. A few boards are toying with eliminating the practice, based on COL members’ statements.

The Nov. 14 COL meeting will be held at the Embassy Suites Hotel, commencing at 6:30 p.m. and slated to adjourn by 8:30 p.m.

The Association’s School Facilities Committee will meet at 4:30 p.m. at the Embassy Suites.

All meetings are open to WWSBA members, county superintendents, WVBOE members and the public.



## *Constitutional, statutory questions*

# Is Re-Intervention in Store for Mingo?

By Howard M. O’Cull, Ed.D.

The W. Va. Board of Education at their October monthly meeting (St. Marys) voted not to take action regarding the Mingo County Board of Education’s rescinded school facilities plan. Instead, the board will wait until December to take action, if any, concerning the matter.

Earlier in the month, the MCBOE – by a 3-2 vote – agreed to forfeit nearly \$23 million in state funds after choosing not to accept a school consolidation plan approved by a previous board. By rescinding its Comprehensive Education Facilities Plan for 2000-2010, the county effectively said no to the millions in state School Building Authority funds.

Conventional wisdom is that the WVBOE will re-intervene in the county, although the intervention may not be based on the MCBOE refusal to accept SBA dollars. Most legal experts who have commented on the issue say such an intervention would be easily challenged legally. Other possible means for intervention may include district finances or personnel, although, again, some legal sources contacted by WWSBA say such a move would be legally problematic. Moreover, in terms of curricular achievements, the district fares well, according to most West Virginia Achieves data as well as reports from the state Office of Educational Performance Audits. (Under a recent law which relates to this situation – re-intervention within five years of turning control back to the county board – OEPA involvement isn’t necessary or a prelude to intervention as it is for ‘initial’ interventions.)

If the WVBOE intervenes, Mingo Superintendent Brenda Skibo would be removed from office – a situation which has generated considerable speculation among county superintendents as to her possible replacement. Also, depending on the intervention scenario – and favorable disposal to legal challenges, if any – the Mingo board could lose considerable discretion and power over matters such as finances, school personnel and curricular matters. And, any such intervention, centered on the ‘re-intervention’ law cited above, is contingent on similar conditions existing as when the original intervention occurred (in this case in 1998).

### **Manchin**

Several ‘public interest groups’ reportedly are gearing up to challenge any re-intervention. It’s likely they will argue the WVBOE is effectively trying to ‘overturn an election’ and that the WVBOE lacks clear reason for re-intervention, except for reasons it may ‘assemble’ for that purpose.

Among these groups, there is a prevalent rumor that the matter may be placed on the governor’s call for a special legislative session to deal with prescription drugs—or dealt with during the 2005 regular session. (A variation of that rumor is

that the WVBOE won’t wait until December for re-intervention but may take action at its upcoming November meeting.) As an additional layer of speculation, Gayle Manchin, wife of Democrat gubernatorial candidate Joe Manchin, attended the Challenge West Virginia fall conference, fueling the notion that, if elected, Manchin will show support to smaller schools—a point he has made to CWV and in other remarks, including sentiments provided at the W. Va. Association of School Administrators conference in July. If this scenario plays out, WVBOE intervention likely would ‘occur’ prior to his inauguration in January, according to CWV officials. The ‘alternate’ outcome of such a move would spare Manchin from actually having to deal with the matter. The organization also contends that Gov. Bob Wise has offered support for ‘small schools,’ although he signed legislation effectively consolidating McDowell County Schools. They also contend ‘small schools’ WVBOE members appointed by Wise haven’t followed through for community schools.

Additionally, CWV and other groups cling to the legislative intervention scenario, in part, due to the Legislature’s approach in regard to McDowell County Schools—what CWV executive director Linda Martin has referred to as a ‘rape of process.’ She notes that WVDOE members ‘wrote’ the legislation with House Education Committee staffers prior to its adoption in January.

### **The Legal Route**

In terms of legal options open to the WVBOE, one possibility is to base intervention on the state board’s constitutional role of providing “general supervision of the free (public) schools.” (Statutory language refers to such a role by the state superintendent of schools who would, on behalf of the state board, administer any re-intervention.) A similar tactic was used in the early 1980s to reinforce the WVBOE’s ability to regulate student athletic participation by requiring a “C-average” of student athlete/participants. Courts upheld that move by the board which, in part, provided further justification for the intervention legislation later adopted in the 1980s. If the WVBOE takes this route, however, litigation is certain by opponents. While any challenge to the board’s action may not stand, prolonged litigation could stifle additional MCBOE facilities’ progress and might result in the project running up against timelines requiring return of SBA dollars. (That is if the WVBOE, as part of any re-intervention, becomes involved in a protracted legal challenge regarding earlier MCBOE action to forfeit SBA dollars.) Again, CWV officials might not prevail unless, of course, venue is removed from Mingo County to another

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## ANALYSIS

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circuit court in the state. (Based on past litigation, CWV's success may be more problematic in Kanawha County Circuit Court or with the state Supreme Court. And, of course, the WVBOE could ask for a speedier resolution of the issue.)

While WVDOE officials have not commented on the issue, except as it has come before the state Board of Education, CWV notes that Skibo was appointed shortly before the state board turned control of the district back to Mingo County Schools and that the spurned school facilities plan was in process at that time. The organization also contends that plan is more of a concern to 'appease' prominent economic interests in the county than it is about educating students.

### '127 Student-High School'

For their part, Mingo School officials point to declining enrollment—one high school has 127 students, according to press accounts—and the need to provide better curricular offerings to students. They also say that while Mingo County facilities may be in generally good repair that consolidated facilities will be more efficient and, in the long run, of greater advantage to students, espe-

cially junior high or middle school students. Mingo officials also say a consolidated school would merge several small high schools and would open the region to greater economic development. In addition, MCBOE officials point out that the CEFP, as approved several years ago, was the 'guide' for school facility needs in the county. Some legal scholars say that a early 1990s case from Monroe County could be 'applied' to the Mingo situation and that this case, referred to as the 'Pell case,' would mean that the board can't abandon a facilities project 'this far along' in process—a possible reason for WVBOE intervention.

WVSBA counsel Howard E. Seufer Jr., Esq., Bowles Rice McDavid Graff & Love, represents the Mingo Board.

Once the new board majority was elected in May, there was some speculation that the district, based on actions involving the Mason County school board several years ago, would make a more united effort to return SBA dollars, although the vote was split 3-2.

Seufer helped 'guide' the Mason Board in these efforts.

WVSBA has been asked to take a position on any MCBOE intervention—a move the association's governing board refused to consider in a September meeting, although the board left the issue open to 'future discussion.'

— *O'Cull is W. Va. School Boards Association executive director. The views expressed in this article are strictly his own.*

## INQUIRIES CONTINUE

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into heavy campaigning in late October, the time during which Gov. Bob Wise had proposed the session.

### Developments

These are among other developments in the matter which involves Mezzatesta's alleged procurement of funds from W. Va. Department of Education officials as well as the role, if any, he may have played in the construction of a falsified letter which purported to show that he wasn't seeking to elicit funds from the State Superintendent of Schools, an activity that would have been in violation of a 1999 agreement he made with the state Ethics Commission in order to retain a "community specialist" job with the Hampshire County Board of Education:

- Republican lawmakers, at the October legislative interim meetings in Shepherdstown (Jefferson) proposed several revisions to the state EC Act, some of which GOP gubernatorial candidate Monty Warner has openly supported. For his part, Warner has called for "zero-tolerance" for public officials and employees who violate the Ethics Act. He also questions whether Democratic gubernatorial candidate Joe Manchin, if elected governor, will have a strict enough policy regarding EC violations. He bases this allegation, in part, on a state Senate vote Manchin took in 1990 to take away the Commission's independent investigatory powers.

- The EC itself is proposing several revisions to statutes governing its operations, including more investigatory powers, stricter reporting requirements and an increased budget as well as stricter fines for violators, extension of the statute of limitations for violations from one year to three years, and beefed up disclosure requirements for public officials.

### Manchin: 'Proposed Reforms'

- Manchin has proposed the most sweeping EC reforms, in-

cluding a requirement that public officials reveal their real estate holdings. (This presumably would include rental properties, with many legislators owning rental property, according to recent press accounts by Kabler.) Manchin also proposes that non-profit agencies which receive public funding (such as WVSBA) would be subject to the state's Open Meetings Law. (WVSBA honors this practice.) He also would establish a "Blue Ribbon Panel" to review the EC Act and the EC Commission. (It would be comprised of lawyers, judges and 'professors.' The Commission would have a year in which to make their report.) West Virginia Wants to Know's Wanda Carney, however, urges Manchin, if elected governor, to convene the panel in November (or prior to the 2005 Regular Session. As a co-founder of the Charleston-based watchdog group, she'd like to serve on Manchin's panel, according to *Charleston Gazette* reporter Eric Eyre, who broke most of the Mezzatesta stories.)

### Investigation 'Complex'

- EC Executive Director Lew Brewer has told MetroNews reporters that the Mezzatesta investigation is "complex" in that it involves multiple parties, several documents, an internal House investigation report and consideration of several different statutes, some of which may not be within the EC's purview. In a matter relating to the internal House report, House Minority Leader Charles Trump (R-Morgan) has called for the release of 'all witnesses' statements' included in the report issued last month. Trump argues that the 93-page House document has the full statement of some witnesses, but only summaries of what others told investigators. According to press accounts, House Speaker Bob Kiss (D-Raleigh) had announced that 'all material statements and documents (relating to the report)' would be released, although he isn't quoted as commenting on Trump's request which others, including WVWTK officials, have made.

- Two more names have surfaced as possible contenders for the HEC position next year. They are Del. Tom Campbell (D-Greenbrier) who is a member of the House leadership, and Del. Brady

Paxton (D-Putnam). Both individuals have been named in Charleston newspaper accounts.

• Mezzatesta is back to his job with Hampshire County Schools. He is going to have surgery for prostate cancer early in November, according to statements he has made to the press. Running for his 10<sup>th</sup> term as a Delegate, most observers say Mezzatesta will be re-elected, with some HCBOE members predicting his election by a 'wide majority.' He is opposed by teacher Ruth Rowan. She has the backing of the W. Va. Education Association. According to several HCBOE members, Mezzatesta's campaign emphasizes his standing up to the 'Charleston establishment'—as well as stressing the lawmaker's success at bringing in dollars to the district. As one HCBOE put it, "'running against Charleston is popular in the Eastern Panhandle.'"

### **'Low-Hanging Fruit'**

House Judiciary Chairman Jon Amores (D-Kanawha) has made press statements to the effect that EC reforms will be made but that legislators likely will pick "low-hanging fruit"—ethics changes that would shore-up loopholes but not necessarily make significant overhaul. Nonetheless, some legislators from both parties say a strong push by the newly-elected governor likely would mean a concentra-

tion on more significant EC changes and would engender more public interest groups to become involved in the matter.

### **'Blow to Kiss?'**

Kabler, in discussing possible House disciplinary action against Mezzatesta, writes that the Hampshire lawmaker's removal from office would be a "blow to [Kiss] whom the state GOP is targeting in the November election by stressing his too-strong allegiance to Mezzatesta, and by raising questions about whether Kiss, who now works in Charleston, actually resides in Raleigh County. Political observers say that Kiss, who usually finishes in the middle of the pack of the winners in the five-member 27<sup>th</sup> District, could face a tough re-election bid."

One of the members of that district must come from Summers County.

In a related development, Carney reiterates that WVWTK has filed ethics complaints against several officials. The EC, due to the statute governing the Commission, will not comment on whether or not these complaints have been filed. The watchdog group's Web site, [www.wvwantstoknow.com](http://www.wvwantstoknow.com), indicates that the AG's office hasn't responded to a Freedom of Information Act request filed by WVWTK.

## **LOCAL ELECTED OFFICIALS 4TH ANNUAL TRAINING SESSION**

### ***"Decision Making: Common Choices for Local Officials"***

Monday, November 15th  
Embassy Suites Hotel, Charleston

- |          |   |
|----------|---|
| 9:15 am  | REGISTRATION  |
| 9:30 am  | "Public Values and Decision Making: Common Choices for Locally Elected Officials"<br><i>Phil Boyle, Ph.D., Leading and Governing (Cary, NC)</i> |
| 11:30 am | Luncheon  |
| 12:15 pm | "Informational Leadership: Asking the Right Questions"<br><i>Chuck Stump, The Performance Group</i>   |
| 1:45 pm  | Refreshment Break   |
| 2:00 pm  | Governing in the 21st Century -<br><i>The Honorable Robert Plymale, West Virginia Senate</i>  |
| 3:00 pm  | Wrap-Up and Adjourn   |

\* *Deadline for Embassy Suites Reservations is October 28th, room block under WVSBA*

\* *Deadline for Marriott Hotel Reservations is November 8th, room block under WVSBA*

# - Briefly -

- W. Va. Department of Education official Jack McClanahan presented the WVDOE's proposed Policy §5202 at a legislative interim meeting in Shepherdstown (Jefferson). The policy implements a 2004 statute dealing with issuance of teaching certificates to out-of-state teachers as well as an alternative certification program which would parallel state law. The policy also deals with National Board of Professional Teacher Standards certification, tuition reimbursement, and various certification specializations. The proposed policy has several other provisions. Refer to the WVDOE Web site for more information. The address is <http://wvde.state.wv.us/policies/p5202.html>.

- GOP House of Delegates members want the House to rescind its consent calendar, a mechanism which allows delegates to pass a number of bills with a single vote. The lawmakers say that action allows delegates from being held accountable for a vote on a particular bill. GOP delegates note that some Democrat Delegates also aren't enamored by the consent calendar. The Republican lawmakers also call for a "significant" reduction in legislative staff members and want all legislative meetings to be open to the public. These sentiments were expressed by the legislators during the October interim legislative meetings in Jefferson County.

- Representatives of various county and municipal organizations find it 'rather interesting,' as one executive director puts it, that county boards of education were "omitted" from Gov. Bob

Wise's Commission on Governing in the 21<sup>st</sup> Century, a group that is recommending some city-county mergers. According to county and municipal officials, Commission members were told, early in their deliberations, that county board/education merger discussions were 'off limits.' Sen. Bob Plymale, Senate Education Committee Chairman, serves on the Commission. In a presentation made to the W. Va. School Boards Association a number of years ago, a W. Va. University professor illustrated that county boards are to remain as currently 'configured' unless the Legislature alters the configuration that school boards are 'contiguous' with counties in the state. He also pointed out that, no matter how county board boundaries – including consolidated districts – would be altered, there could be no more than two board members from any one magisterial district (new or otherwise), based on a 1986 constitutional amendment overwhelmingly approved by voters. There was a move the mid-1980s and early 1990s to consider county board consolidation, which can be accomplished statutorily (with the above restrictions), but it wasn't successful. Legislation adopted in 1989 required boards in contiguous counties to meet and discuss possible mergers, but this move was considered largely form over substance. The issue will be discussed at a November 15 meeting in Charleston sponsored by WVSBA, the W. Va. Association of Counties, the County Commissioners Association of West Virginia and the state Municipal League. The late Sen. Buffy Warner (D-Monongalia) was a strong proponent of county board consolidation, an issue he revisited during several SEC meetings in the early 1990s, asking in many committee meetings how or when bonds would consolidate.

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## The Legislature

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