



Local flexibility, healthy schools and retirement on the plate

Manchin team discusses legislative agenda

Stewart discusses legislative issues on page 4

Gov. Manchin, in a joint House-Senate meeting at the state Capitol on Thursday, called for greater flexibility for county boards as part of series of “governmental waivers” he proposes for county and municipal governments.

As explained by Brian Kastick, the Manchin Administration’s director of policy, county governments – one per Workforce Development Region – could try various local revenue enhancement options, such as imposing wage taxes, with funds distributed to county and municipal governments based on population. If the county doesn’t want to impose the tax, it may elect for municipalities within the county to do so.

The proposal gives the most populated county in each Workforce Development Region the “right of first refusal,” then moving down to other counties, apparently based on population.

A second option allows up to a 3 percent increase in the local hotel-motel tax, with funds used for “any activity that local governments currently fund.”

County ‘relief’ from state regulation

The “local government waivers” provisions, however, may

prove equally just as attractive to county government and school boards, according to Howard M. O’Cull, Ed.D., West Virginia School Boards Association executive director.

Both local governments and county boards could apply with proposals for “regulatory relief from the state for a period up to 24 months.” The relief could be granted by Executive Order or by seeking legislative approval.

According to Kastick and as referenced in a handout provided by the Manchin Administration, the application process would be established by “procedural rule.”

Although the administration clarified few aspects of the waiver process in the two-hour joint session – only legislators could pose questions – education officials surmise that “the state” may apply to rules and regulations of the West Virginia Board of Education or West Virginia Department of Education.

Attempts to clarify the bill’s intent with Manchin’s legal staff as of late yesterday were unsuccessful, but this part of the governor’s legislative package will be introduced today (Feb. 25). If bills are ready by then, they will be reviewed in the Feb. 28 issue of this publication.

See MANCHIN’S AGENDA on page 3

Overview

STATS

Day of Session:	17
Days Remaining:	43
Bills Introduced (not including pre-filed bills):	945
Education Bills (WVSBA count):	246

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QUOTE

“I’m very proud of the work that was done. There’s a lot more work to be done....” – Gov. Joe Manchin III in opening remarks made to a joint House-Senate gathering Thursday where he and his staff discussed the administration’s 2005 legislative agenda. The remarks were prefaced by the reference to the January special session.

RSVPs due March 2

According to West Virginia School Boards Association Administrative Assistant Shirley Davidson, about 240 people have registered for the 18th Annual Winter Conference, slated for March 11-12 in Charleston.

The WVSBA-West Virginia Association of School Administrators’ legislative reception precedes the conference. It will be held from 6 p.m. to 8 p.m. on Thursday, March 10. The WVSBA Executive Board meeting follows at 8:15 p.m.

Conference attendees staying at the Charleston Marriott or who are driving in and want to attend the Friday morning breakfast at the Embassy Suites Hotel, need to contact Davidson at 304-346-0571 or sdavidson@wvsba.org. WVSBA will provide breakfast coupons only to those who contact the association by March 2. Only those not staying at the Embassy Suites need to contact Davidson about breakfast arrangements.

WVSBA and WVASA officials urge all county board members and county superintendents and administrators who plan to attend the reception to RSVP by March 2 so they can give an accurate reception meal count. Please RSVP by contacting Davidson.

West Virginia Board of Education members also will be invited to the reception.

Manchin officials look at busing, distance learning

See **Administrative Perspective** on page 8

First Lady Gayle Manchin and Manchin Chief of Staff Larry Puccio on Thursday met with several people to discuss the “No-cost Busing Bill” and related items.

Challenge West Virginia Executive Director Linda Martin, Lincoln County Board of Education President Carol Smith, and Thomas Ramey, a Challenge Fellow from Lincoln County, were among those at the meeting.

According to those who attended, the meeting was arranged by CWV and other groups to explain financial and other implications of the busing bill to Manchin officials.

The WVDE cost estimate, as finally calculated, is expected to determine whether Manchin supports the measure. As contemplated by CWV, the proposal would “freeze” creation of “new” bus routes — largely routes created through school closure and consolidation — while enforcing informal WVDE bus travel timelines.

Earlier in the week, Manchin said he was looking at the Challenge proposal and may support it. “We’re looking at both sides,” he said in a Charleston Daily Mail article. “If there’s no fiscal note or if someone over-inflated it because they didn’t like it, that’s wrong.”

A \$75 million price tag?

When the measure was introduced last year, the WVDE first estimated its costs at about \$75 million then revised it to \$56.3 million. (Refer to *The Legislature*, Feb. 20, 2004.)

At the time, bill supporters alleged then House Education Committee Chairman Jerry L. Mezzatesta (D-Hampshire) opposed the

measure, pressuring WVDE personnel to produce an inflated fiscal note. State department officials denied that, saying several factors influence the cost of such a proposal, including changes in bus routes due to declining enrollment, board attendance boundary reconfigurations, housing development additions and the like.

Martin and others said they requested the meeting to ensure Manchin officials that its busing bill can be crafted to be “no-cost,” as CWV and other small school supporters contend.

Manchin affirms support for small schools, distance learning

In a related development, Manchin on Tuesday reiterated his support to “protect and support every one of our state’s small, rural, community-based schools,” language he used in his State of the State address.

Elaborating on his remarks, Manchin cited distance learning as one alternative to some school consolidations. Daily Mail reporter Jim Wallace said Manchin’s distance-learning proposal was getting the “support of lawmakers from counties facing controversial consolidation plans” and that the proposal has CWV’s support — a fact Martin verified in the Wallace article.

In discussing the matter with Wallace, Manchin said his wife, Gayle, and Nancy Strum, an education technology specialist in the governor’s office, are working on a plan to promote distance-learning initiatives, and he expects them to develop recommendations soon.

Several lawmakers voiced support for the Manchin approach, See **BUSING, LEARNING** on page 6

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 WVSBA, unless specifically stated.

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Pendleton official dies near Capitol

Pendleton County Schools Superintendent Ralph K. “Ken” Price died from a massive heart attack on Tuesday, just as he drove away from the state Capitol, striking a parked car on a Charleston street.

Witnesses to the accident said he was unconscious when they reached the car and efforts by paramedics to revive him were unsuccessful, according to news accounts.

Price was at the Capitol conducting routine school system business and meeting with members of the county’s delegation to the Legislature.

He was superintendent of Pendleton County for the past 3½ years and is credited with a number of improvements to the county’s school system. According to PCBOE President Jack Vogel, Price was leading efforts to bring the county’s schools into compliance with federal No Child Left Behind guidelines and to create a five-year plan for the schools. He also was securing plans for a distance-learning program that involved neighboring counties in Virginia.

Prior to becoming superintendent, Price was principal of North Fork Elementary School and he spent 14-years heading up Special Education for Pendleton County.

He is survived by his wife and two sons.

MANCHIN'S AGENDA

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Healthy Schools Council

In addition to the waiver proposal, Manchin wants to establish a "Healthy Lifestyle Council" whose purpose is to "coordinate efforts and develop a cross-agency plan for promoting healthy lifestyles." Kastick said the council, which the governor would appoint, would not be paid but it would need some money to operate.

The WVDE has a Healthy Schools Division headed by Melanie Purkey but details about how her division would function with the proposed council were not available.

Another facet of the governor's health-related proposals, the "Healthy Beverage Choices in Schools Act," may cause some controversy, if past legislative sessions are any indication. Under its provisions, no soft drinks would be allowed in elementary, middle and junior high schools during the school day in areas "accessible to students."

An additional part of that proposal would require that 50 percent of school beverage choices must be "healthy," defined as fruit juice and water.

Kastick said soft drinks could be sold during non-school hours, including sales during athletic or other after-school events.

PE requirements

A third tier of this proposal requires increased emphasis on physical education. According to the handout provided by the governor's office, the proposal establishes various guidelines, including a 30-minute physical education period for grades K-5. For Grades 6-8, it calls for "not less than one full period, for one semester (for PE instruction," and for Grades 9-12, "one full credit of (PE for would be) required for graduation."

There is an exception for high school students that participate in varsity athletics or cheerleading.

In terms of "government reorganization," Manchin would abolish the Center for Professional Development, moving its funds to a budget line-item for professional development – presumably within the WVDE. (Refer to article on page 4.)

Kastick said Advanced Placement course oversight would remain under the Office of Education and the Arts, although he didn't enumerate additional duties for that office.

Manchin officials still are negotiating higher education changes with the House and Senate Education chairmen, but their plans concentrate on giving Marshall and West Virginia universities greater flexibility to "self-administer their operations and to study additional areas for future higher education reforms," according to briefing papers distributed at the meeting.

These reforms apparently could include establishing tuition and fees, Kastick said in response to a question by Del. Sharon Spencer (D-Kanawha).

Retirement – eliminating 'double' pensions

One item that raised questions relates to the Manchin Administration's proposals for pension reform.

The central proposal would "close loopholes" so that "no employee can earn two pensions," meaning that a retiree of the Teachers Retirement System couldn't also receive retirement benefits from the Public Employees Retirement System. This would affect some legislators and county board members.

Based on a question by Del. Walter Duke (R-Berkeley), Kastick said the provision wouldn't be retroactive, applying after July 1, 2005.

Another retirement matter that garnered considerable discussion is the conversion of unused sick leave for "additional" retirement. At first Kastick said this provision would apply to existing TRS and PERS members (and members of other retirement systems), including – in answer to Duke – those who are currently contemplating retirement. He then said he thought the provision would be

effective only after July 1, although some legislators appear to believe the proposal is effective for those now contemplating retirement.

In terms of other proposed reorganization efforts, the Governor would abolish the Cabinet on Children and Families, placing its duties under the Department of Health and Human Resources,

but he would retain Family Resource Networks (FRNs) and programs such as "Starting Points," according to Manchin's legislative coordinator Jim Pitrolo. Pitrolo said the cabinet was a "noble idea but ineffective" in terms of service delivery, a charge made by the past two gubernatorial administrations.

Manchin as CEO

Manchin officials said these moves were consistent with the Governor's philosophy of making "autonomous" agencies subject to elected officials. As "CEO" of the state, Manchin staffers said these moves are necessary to bring accountability to the various entities, including the state Turnpike Authority and the Educational Broadcasting Authority. Some legislators, including Del. Bonnie Brown (D-Kanawha), say the move to take away EBA's "autonomy" could be seen as an effort to "control the media." Her comments were echoed by Del. John Doyle (D-Jefferson), who said the proposed oversight "(provided) under the aegis of a 'partisan-elected official' could make us a target of bias."

In his answer to a question from Del. Bob Tabb (D-Jefferson), Kastick said innovative ideas could be considered for statewide implementation prior to the 24-month pilot period, although the administration prefers the 24 months.

The civil justice – tort reform – proposals brought the most heated exchanges between legislators and Manchin officials, including cheering and clapping from some attorneys seated in the House galleries.

Some Republican lawmakers, including Sen. Dan Caruth (R-Mercer), said the proposals didn't go far enough, and other legislators, including House Majority Leader Rick Staton (D-Wyoming), wondered why the administration was able to get an agreement from insurance companies on some aspects of tort reform when legislators couldn't.

Other parts of that plan would limit liability for people involved in lawsuits consisting of multiple defendants.

"We need to give our local communities more flexibility. That is why one of the things I am proposing is to allow local school boards to apply for regulatory relief from the state for a period of up to 24 months. If this legislation passes, the relief shall be granted by Executive Order or by seeking legislative approval and allows the state and the communities the opportunity to see what ideas will work and what ideas won't before we move to make any permanent changes."

- Gov Joe Manchin III in remarks provided for this publication

WVDE may lack staff to handle county takeovers

Stewart discusses top issues at Legislature

The West Virginia Department of Education may lack the staff to undertake additional county board takeovers, according to state superintendent David Stewart, who told a House-Senate Joint Committee on Education Tuesday (Feb. 22), "I'd cringe to think we'd be in more (counties due to state takeovers)."

Stewart's comments came a week after the West Virginia Board of Education voted unanimously – on his recommendation – to re-intervene in Mingo County Schools. His comments are believed to be the first state board and department comments on the matter since the WVBE vote.

The state superintendent's observation is based on several factors, including current WVDE staffing patterns, personnel obligation to existing programs and service delivery and the constraints and demands of the federal No Child Left Behind Act, according to department employees.

Mike McKown, WVDE director of internal operations, who was contacted after the Tuesday briefing, said the department has 536 employees, counting personnel funded through state General Revenue, federal funds, and lottery or other special funds. Of those employees, McKown said 368 are professional personnel, 237 of whom are funded from General Revenue; 48 from lottery or special funds, and 83 from federal funds. The WVDE figures also include Cedar Lakes Conference Center employees, Institutional Education Program employees, and the Office of Educational Performance Audits staff.

Stewart also said, as he has the last three years, that the time may have come to examine more cross-county school configurations. He offered no incentives for such, but cited current Code provisions allowing such arrangements. He also talked about a study of the School Aid Formula, which is believed to be the first time the WVDE has officially mentioned the need for such in the last few years. In regard to the formula question, Stewart based his comments on school districts, namely Gilmer, Calhoun and Wirt, whose student enrollments soon may fall below 1,000 students.

County boards with 1,000 or fewer pupils may not be 'getting enough money'

At this level, Stewart said those county boards may not be "getting enough money to operate a school system." He also said the fact that some sparsely populated counties receive money outside the formula is an example of the need to review school funding.

Following Stewart's formula comments, Senate Education Committee Chairman Bob Plymale (D-Wayne) said he intends to appoint some senators to a formula study committee, and that the Legislature should create such a panel to meet during legislative interim meetings.

Plymale said Marshall and West Virginia University researchers could advise any formula study committee created, with the advantage of using "people we have in-house." He said the current formula often resembles the "somewhat haves and the somewhat have-nots."

In other topics, Stewart said the WVDE is providing technical assistance to counties that experience deficits and can't find a way out. The department's efforts include meetings with county board and county administrative staff to review steps the county can take

to get out of the deficit. Stewart said most deficits are caused by counties having more personnel than allowed by the formula, a situation he said is often exacerbated by lack of a county excess levy.

According to the WVDE, two counties are in deficit, with additional county boards projected to be in the red at the end of this year.

RESA funds not in proposed budget

In terms of funding for the state's eight Regional Educational Service Agencies (RESAs), Stewart said the governor's budget has no funds for these groups. "We don't know [why funds weren't included]," he said. "It was just taken out. It'll be revealed to us in due time."

Those funds amount to \$4.4 million dollars, according to McKown and mostly are used for RESA administrative services, Stewart said.

Late Tuesday afternoon, the Manchin Administration's director of public policy, Brian Kastick, said RESAs have other sources of funding, including federal dollars. He told the Associated Press, "The belief is, if the RESAs are supposed to be service providers, they ought to be able to find a way to generate revenue from providing those services."

Money for the Center for Professional Development also has been stripped from the governor's budget, with CPD dollars apparently placed in the WVDE's budget, although Stewart and legislators questioned whether that, as well as the cut in RESA funds, was the governor's intent.

Stewart said it could appear that the governor wants the CPD under the state department of education.

According to McKown, the line-item contains \$395,616 in principals' academy dollars in addition to \$1.4 million in CPD dollars.

The state superintendent also said increased enrollment funds are being distributed, as required by Code. Last year, at the insistence of former House Education Committee chairman Jerry L. Mezzatesta (D-Hampshire), an alternate method was used to distribute these dollars.

Stewart highlights test scores; quality counts report

In terms of the presentation, Stewart outlined what he called state board and state department accomplishments during the past year. He said the Quality Counts Report, a national report card on public education in the 50 states, ranks West Virginia third in the nation in "cumulative averages" for standards and accountability, teacher quality, school climate, equity and spending.

In regard to standards, he said West Virginia received high marks for the state's adoption of clear and specific English, mathematics and science standards. Regarding teacher quality, the report cited the state's efforts in new-teacher mentoring, alternative certification, required basic skills tests and subject matter examinations for traditional teacher candidates. The state's "grade" in the school climate category was due to what Stewart said was limited open enrollment data and the state's lack of charter schools.

See STEWART'S WVDE ISSUES on page 5

STEWART'S WVDE ISSUES

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The state was fifth in the nation in financial equity, with the report noting that West Virginia has few differences in education spending across the districts. According to the report, West Virginia spends \$8,756 per pupil, about \$1,000 above the national average.

According to Stewart, the state also received accolades for ACT composite scores as it continues to narrow the gap between West Virginia's scores and national averages. He said the average state ACT composite score for 2004 high school graduates increased 0.2 percent to 20.5.

Stewart said in 2003, the difference between the state composite average and the national average was 0.5 percent while in 2004, the gap narrowed to 0.4 percent. He said these increases were "statistically significant," and that there were similar increases in composite SAT scores. He cited increases in SAT verbal and mathematics scores, with the most gains in mathematics for both male and female students.

More than 70 percent of the state's 775 schools met Adequate Yearly Progress (AYP) during the 2003-2004 school year. County School System Improvement Teams have been formed in all counties as part of the WVDE's Framework for School System Improvement.

Stewart, in highlighting the framework model, said it was designed to provide counties direction for building school and school district reform and improvement capacity to "close the achievement gaps that exist between student sub-groups" in terms of state standards from West Virginia's implementation of federal No Child Left Behind legislation.

He praised the model and said the WVBE does not support a "one-size-fits-all" approach to raising student achievement. He said student achievement is best achieved when teachers, principals, Local School Improvement Councils and county boards are involved in the planning process.

Other items Stewart mentioned include:

- No schools in West Virginia are classified as "persistently dangerous," which means all of the state's schools are at or below the five percent mark for classification as "persistently dangerous." (This classification is required as part of NCLB.)
- The WVDE has developed a five-year math plan, based on math taskforce goals for all K-16 students. The plan emphasizes the ability of students at all grades to take higher-level mathematics and is aimed at increasing teacher quality and improving student achievement in mathematics.
- The WVBE seeks "innovative ways" to certify teachers in critical areas of need, such as mathematics and science. He said recent revisions to the WVBE's teacher licensure policy permits addressed "alternative routes to certification" as well as language regarding a 2004 statute about certification of out-of-state applicants. Additionally Stewart said WVBE Policy §5202 was updated in terms of certification of para-professionals, gifted education teachers, clinical/field experience, reading, speech assistants, and athletic and limited football trainers.

Stewart briefly discussed a few of the WVDE's budget requests for FY06.

Technology 'transforms' education

In other legislative action this week, the House Education Com-

mittee received a presentation from WVDE technology official Brenda Williams.

Among other things, Williams said, "What we've [the WVDE] already done for distance learning is a foundation for wherever the First Lady wants to take us [in terms of the governor's distance-learning efforts]. We welcome that opportunity."

The governor has mentioned distance learning as a way to address enhanced small school curricula without school closure and consolidation.

Williams spoke about a number of other topics, including existing WVBE technology programming, prefacing her remarks with comments about today's youth and their technology proficiency.

"Students today are online, multitasking, highly productive," she said. "Students learn quickly, manage and are responsible for their own learning. They are online and ultra communicators. They learn new communication skills, learn just-in-time, and are digital. They are flexible, critical and creative."

She termed today's generation of students, "the millennials," pointing out that they have grown up with technology.

For that reason, Williams said educators should use technology effectively because it involves transforming education versus automating old instructional systems.

"There's more to technology than just looking at a Microsoft Word document."

Williams, said technology budget cuts two years ago have resulted in less programming for students (in terms of having to pay more matching dollars for Advanced Placement courses) and it affected mandatory state writing assessment scoring.

Her WVDE division is requesting \$20.75 million in funding, which would restore the technology budget to the 2003 level.

In other legislative committee action this week, the Senate Education Committee approved three bills. They are:

- Senate Bill 94. This measure would allow county boards flexibility in scheduling required activities for school calendar Instructional Support and Enhancement (ISE) days. According to committee discussion, several county boards already had modified the required schedule of activities.
- Senate Bill 248. Voids the requirement that education technology expenditures be made in accordance with the West Virginia Education Technology Strategic Plan (ETSP). In that strategic plan members weren't appointed by former Gov. Bob Wise. The legislation allows various entities, including the West Virginia Department of Education, to expend technology money, including dollars for the Basic Skills and SUCCESS programs. Approved by Senate Education Committee Feb. 22.
- Senate Bill 212. Provides higher education employees the annual experience increment pay that state employees receive. Approved by Senate Education Committee Feb. 22. Referred to Senate Finance Committee.

Plymale said Stewart will appear before the SEC again to discuss the department's mathematics initiative. HEC Chairman Tom Campbell (D-Greenbrier) also said he wanted Stewart and department officials to visit the HEC. Campbell also said his committee would begin to take up the governor's education legislation next week.

Stewart has been state superintendent since 2000.

**West Virginia Department of Education Statistics
As Presented to Joint
House and Senate Education Committees
Feb. 21, 2005**

	<u>1987-'88</u>	<u>2004-'05</u>	<u>% Decline</u>
Student Enrollment	333,962	278,166	16.7%
Professional Educators (As allowed in Formula):	24,593	20,553	16.4%
Service Personnel (As allowed in Formula):	14,803	12,221	17.4%
School Administrators (Formula-eligible):	1,860	1,332	28.4%
	<u>1993</u>	<u>2005</u>	<u>% Decline</u>
Public Education as Percentage of General Revenue	57.47%	52.81%	4.66%

Source: Budget Request: West Virginia Department of Education FY06, pp. 9-13.

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BUSING, LEARNING

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including Sen. Tracy Dempsey, D-Lincoln, who said he's concerned about long bus rides. Dempsey further said that costs caused by consolidation would eat up too much education funding and that he preferred for teachers to go to the students either through technology or their own transportation.

"Teachers can travel. They don't have to be at one designated school," Dempsey said. "If you have an advanced chemistry class teacher who could teach at one school, he could actually travel to all four high schools in a day and offer a class."

Other legislators quoted in the Wallace article, while supportive of distance learning, said it had its limitations, including Sen. Truman Chafin (D-Mingo) who doubted it would be enough to save a facility like Williamson High School, which is expected to graduate 40 students this year.

"You have to have enough students to pay for either distance learning or to have the faculty to offer the courses," Chafin said in the article. "A new school is the nicest place some students go."

Wallace concluded his article by quoting Manchin, who said, "It's a win-win-win-win and continue to win if you can preserve a community in a rural setting, you've got a child with an identity."

Reforming the fiscal note process

Martin said the busing legislation price tag points to the need for reforming how the WVDE calculates the fiscal impact of legislation — a point made during a Manchin education transition team meeting.

In the past, there have been proposals for a separate educational fiscal note agency, although that suggestion hasn't been formally proposed in terms of legislation or as an educational reform. At

the transition meeting, some representatives faulted the WVDE for its "staffing structure" in regard to determining the cost of legislation.

For their part, WVDE officials said they work to calculate fiscal notes as accurately as possible, basing their cost estimates on legislative proposals as written. They said some bill proponents may object to estimates of fiscal impact but that the fiscal notes usually are accurate.

As reported in the April 5, 1993, edition of *The Legislature*, there was considerable criticism of the WVDE fiscal note-making process, especially in regard to legislation about all-day, every-day kindergarten.

At the time, lawmakers charged that the department inflated the bill's costs. Eventually, department officials gave two lowered fiscal notes, but said these were based on changes in what legislators wanted as a result of subsequent committee discussions about the legislation.

Coming Soon

WVSBA Leadership

Meeting

Lakeview Resort

Morgantown

May 20-21, 2005

RESAs seek return to original governance structure

By Rick Powell

In the waning hours of the 2002 Regular Session, House Bill 4319 was passed and signed into law by the governor on March 17. Among the many issues in this bill, a significant change occurred to West Virginia Code §18-2-26, which relates to the establishment of multi-county Regional Educational Service Agencies (RESAs).

The “how” and “why” still remains a mystery to most RESA directors and many county board of education members.

During implementation of the new legislation, which occurred through revisions of West Virginia Board of Education Policy §3233, it became apparent to county school board members and superintendents serving on RESA boards of directors, now referred to as RESA Advisory Councils, that their authority was considerably diminished.

Since HB4319’s passage, sentiment and support for local control once bestowed to the former RESA board of directors has grown.

That format proved to be the least disruptive and most effective method to deliver services to member counties. Hence, most RESA Advisory Councils have submitted requests to return the governance to local county members to Senate Education Committee Chairman Bob Plymale (D-Wayne). County board members and superintendents who want more information on the RESA Advisory Board requests should contact their RESA director or county board RESA representative.

You also may contact Charles “Chuck” Nichols, RESA III executive director, who is a spokesman for the various RESAs. His e-mail address is cnichols@access.k12.wv.us and phone number is 304-766-7655.

- Powell is RESA II Executive Director. RESA II comprises Cabell, Lincoln, Logan, Mason, Mingo and Wayne counties.

Editor’s Note: The West Virginia School Boards Association has called for a legislative interim committee to study matters regarding the 2002 RESA legislation.

West Virginia Board of Education sets legislative goals, with math achievement

The West Virginia Board of Education finalized its 2005 legislative agenda. Key points include support for school system improvement and math achievement improvement.

“The areas that most concern the Board are part of the West Virginia Department of Education’s (WVDE) Improvement Package,” said Board President Barbara Fish. “West Virginia is setting the national stage for many school improvement initiatives but our goals can only be accomplished if we work side-by-side with the Legislature.”

The state’s primary education goals are to bring all children in the public school system to mastery and beyond, to close the achievement gap among the subgroups of students, and to assure that all students are prepared for success with some type of post-secondary education. These challenging goals will require long-term planning and significant improvements in West Virginia’s public schools. The WVDE’s Improvement Package focuses on five areas: school improvement, instructional services, adult education, technology and institutional education.

“We are grateful to the Legislature for supporting our priorities in the past,” Fish said. “In order to assure further success, we want to see additional financial support for the implementation of the Framework for High Performing School Systems, Professional Development Schools and the Five-Year Math Plan in order to continue to raise student achievement for all students,” she said.

Framework for high performing school systems

The Framework for High Performing School Systems is building the capacity of county school systems to, in turn, build the

capacity of their own schools. The Framework will ultimately raise student achievement levels for all student subgroups and close the achievement gaps that exist between student subgroups.

Professional development schools

House Bill 4669 established Professional Development Schools throughout the state. Thirty schools, all of which serve large numbers of economically disadvantaged students and many minority students, have been identified and will receive intensive technical assistance to improve the academic performance of the students in these schools. Ultimately, West Virginia is expected to develop a model for school improvement that will, no doubt, be the envy of the nation.

Five-year math plan

In addition to the new, rigorous graduation requirements and math credit requirements, the Department has developed the Five-Year Math Plan. The Department first created a Math Task Force, which studied the national research and the needs of West Virginia students. The Task Force then developed a five-year plan to improve mathematics for all students, K-16, in our state. The goals are (1) to provide every student at every level the opportunity to take higher-level mathematics, and (2) to increase teacher quality, improve student achievement and impact school improvement in every county of West Virginia.

The WVDE Improvement Package also includes provisions to expand Adult Basic Education classes, to further develop the Virtual School program and early childhood education programs and expand Institutional Education programs.

Source: WVDE Office of Communications.

Difficult week: Death of Ken Price

By Martha Dean, Ed.D.

It is very difficult for me to write this column this week. I keep thinking about the tragic death of Ken Price, superintendent of Pendleton County. Ken was a personal friend I knew since he represented special education students in this state. He also was a valuable and productive member of WVASA, serving on the executive committee representing RESA VIII, as well as working tirelessly to benefit his school district in many ways.

We will miss his quiet leadership and his wisdom. I had just conferred with Ken Tuesday afternoon after Dr. Stewart's presentation made at the joint meeting of the House and Senate Education committees. We laughed and joked and planned our activities during this legislative session.

Dr. Stewart's report to the Joint Committees on Education (actually entitled Budget Request 2006) highlighted recent accomplishments and the focus for upcoming years. All county school systems have improvement teams that enable them to focus on local needs and improvement priorities.

West Virginia public schools are among the safest in the country. A state task force has developed a five-year plan to improve mathematics for all students, K-16, in every school system in the state. The West Virginia Board of Education is taking bold steps to improve education in high schools. A new healthy child initiative, called Recipe for Success, emphasizes healthy eating and healthy living.

We can be proud West Virginia was one of only two states to receive the Five Star Policy Award in 2004 because it demonstrated that we guarantee quality education through implementation of reading policies and programs. West Virginia schools have received top honors for two years in a row in the Quality Counts Report.

Schools in Brooke, Cabell, Harrison, Jefferson, Kanawha, Marion, Monongalia, Ohio, Putnam and Wood counties were recognized for meeting the needs of families relocating in West Virginia. These examples raised the audience's awareness of top achievements that indicate how good West Virginia schools are and, we hope, helped to convince them we need every dollar available to continue getting better.

Another trend is increasing test scores on the ACT. Also, it was noteworthy that more than 70 percent of West Virginia schools make the grade as part of "West Virginia Achieves" and 516 schools met Adequate Yearly Progress (AYP) during the 2003-2004 school year, as mandated by No Child Left Behind.

This update on the state of schools in West Virginia was followed by a synopsis of the budget request. The State Department of Education manages several funds, including child nutrition, Cedar Lakes, State Department of Education Programs and Operations, Aid for Exceptional Children and Institutional Education Programs, State Aid to Schools, Schools for the Deaf and the Blind, Technical and Adult Education, Office of Educational Performance Audits, and Lottery Funds, which include technology infrastructure network support.

Dr. Stewart shared the FY 2005 level of funding, the FY 2006

request and the Governor's FY 2006 recommendation. Looking at the figures provided, the Governor's recommendation is \$22- to \$23-million dollars less than the request submitted by the Department. Several line items are at zero in the Governor's budget, including Collaborative Resource Allocation, Educational Achievement Incentive, RESAs funding, and Sparse Population Allocation.

Thursday was a very busy day for me. It started with a meeting of the House Education Committee during which Brenda Williams presented the state's technology programs. It was informative and interesting to learn that about 25 percent of all K-12 public schools now offer some form of e-learning or virtual school instruction. More than 1200 students are enrolled in online courses, and these students represent 97 schools in 41 counties. There are 90 different courses, 16 of which are Advanced Placement courses.

All of this, and the Legislature only created the West Virginia Virtual School in 2000. Williams showed the committee what we have done, are doing now, and hope to do to keep our students on the cutting edge of using technology in their learning. Of course, this costs money and we need more money to make sure we have adequate bandwidth, computers, networks, teachers and courses.

The Governor called a joint meeting of the House and Senate for 1 pm in the House Chambers, at which time he reviewed his legislative program for 2005. Six components will be addressed by legislation initiated by the Governor. They include local government waivers, particularly for border counties, a healthy start, pension reform, higher education reform to allow the two universities more flexibility, government reorganization, and civil justice reforms.

The local government waivers issue will include the option for educational systems to apply for a two-year waiver of state regulations. The healthy start initiative will propose eliminating soft drinks in schools during the school day and mandatory physical education classes, which would vary in elementary, middle and high schools.

Pension reform would affect public school retirement plans, but I need to more closely look at the bills to find out exactly how. Part of the government reorganization plan is to do away with the Center for Professional Development as a separate entity and place its responsibilities with the Secretary of Education and the Arts. Legislators had many questions about the civil justice reforms part of the governor's proposals. I believe there will be much debate on this issue.

After the floor session, WVASA representatives met with Vice Chairman Larry Edgell about our first priority: funding increased enrollment fully and making an opportunity for funding for low enrollment counties.

We have drafted legislation and hope to have it introduced soon. Then, we met to finalize our proposal to fund treasurers and school nurses in a separate part of the formula. We are making progress with this issue and, again, hope to have legislation before both houses soon.

—Dean is Executive Director of the West Virginia Association of School Administrators.

Arguments against Mingo re-intervention flawed

By Howard M. O’Cull, Ed.D.

Conventional wisdom says one — especially the director of the State School Boards Association — should remain mum about the Mingo County Schools situation. That’s partly because of a divided Mingo Board and partly because the association, as an entity, hasn’t voiced a reaction to the state Board of Education’s Feb. 15 decision to re-intervene in the system. (Refer to Issue 4 of *The Legislature*.)

It is precisely because of those and a few other reasons that I am using this space to discuss the re-intervention. I’ll begin by bluntly saying that all parties involved can grow from this experience, especially in terms of the evident policy aspects. Secondly, the state superintendent told a joint House and Senate Education Committee, which met Tuesday, that the West Virginia Department of Education would find it difficult to staff another county intervention.

Moreover, the success or failure of this intervention, as discussed in this publication last week by Marsha Carr-Lambert, DM, is prospective (*The Legislature*, issue 4). And, no matter what WVBE spin, including any inherent culture of the proud statistics approach, the results of re-intervention (academic, fiscal and facilities wisdom) won’t be evident tomorrow.

Reasonable minds that discuss this issue with a commitment to its various truths may differ as to whether the WVBE’s actions were justified. They may debate whether the state and county boards could have had more dialogue on this matter — dialogue which might have resulted differently; and whether there are larger issues that have become or will become lost in general discussion of the WVBE action. Finally, there are those who see all sorts of motives at play, such as those that involve coal operators and federal coal mining land reclamation laws; elites versus common folk and the like. Others can discuss these matters.

In all the debate that has arisen from the Mingo re-intervention, four seminal issues have emerged:

1. The Mingo County matter is a blatant violation of the rights of Mingo County citizens and the institution of the local board, especially state constitutional rights.
2. The matter may illustrate a largess of constitutional and statutory power held by appointed state officials — power that can be wielded at will upon lesser county boards.
3. The re-intervention illustrates flaws in the WVBE’s school facilities approach.
4. The state board’s decision was wrong.

I’m also proposing the framework for a new model for state takeovers.

1. Constitutional violations argument flawed

The belief that the WVBE’s decision is tantamount to a usurpation of local citizens’ constitutional rights, or even rights of a duly-elected school board, isn’t a promising legal argument.

First, county boards aren’t constitutional bodies. They earn only brief citation in the state Constitution due to a 1986 constitutional amendment whose actual intent was to preserve the magisterial district limitation outlined in Code — but not the constitution.

Hence passage of that amendment.

Moreover, the WVBE is given authority in the Constitution for “general supervision of the free schools,” and even more specific statutory direction — direction that gives the board outright sanction to implement rules relating to “standards of performance and measures of accountability” as well as “...such other matters pertaining to the public schools of the state as may seem to the state board to be necessary and expedient.”

Given this backdrop, the Legislature, which faced a massive court case involving school financing equity, saw a way to shift the legal underpinnings of the Reicht decision and its overt demands to pump more inputs (dollars) into the school system to an accountability model. This model, developed over the last two or three decades, is well-situated to the WVBE’s constitutional and statutory powers and authority.

This standards accountability approach, not unlike other approaches across the nation in the 1980s and 1990s, literally shifted the emphasis from increasing funding of public education per se to emphasizing test scores and the like. The scores would be measured against a series of escalating state standards bolstered with a call, when necessary, of capacity for county boards to meet those standards. This capacity often meant WVBE-prescribed staff development, technical assistance, and guidance but also included county takeovers. The first takeover occurred in 1992 in Logan County, based on a 1988 statute. (Refer to *The Legislature*, Issue 4.)

It wasn’t until 1998, however, that the structure of the accountability-standards process was finalized through the creation of the Office of Education Performance Audits (OEPA).

Given the state constitution dictate that the WVBE has “general supervision of the free schools,” any decisions related to standards of performance and accountability fall to the board, as well as pupil welfare and, as stated, matters as may seem “to the state board to be necessary and expedient.”

Faced with the absence of constitutional status, county boards have a tough time playing the constitutional question card. In fact, a 15-year-old lawsuit even says the Legislature can’t tamper *much* with WVBE rule-making because the state Supreme Court determined in 1990 that the WVBE was a separate, distinct constitutional body.

Regarding more general constitutional questions, the use of WVBE power, even if seen as strong-handed, doesn’t translate into loss of constitutional rights at the local level. Indeed, WVBE members are appointed for overlapping nine-year terms, based on constitutional stipulation. (Thus, reduction in terms would have to be fomented through a constitutional amendment.)

Additionally, to argue that communities lose or have lost constitutional rights due to WVBE policies that they may find adverse to their wants and desires is a flawed approach. It doesn’t take into account the constitutional nature of the WVBE vis-à-vis county boards.

Indeed, citizens (organized or otherwise) may decry loss of their schools to closure and consolidation; long bus rides for their kids; and seeming contempt from a body of appointed citizens who

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meet once monthly to make decisions that may irritate or aggregate some local people (mostly organized groups of people) — or, at times, even organized statewide interest groups, such as teachers.

Yet, if the state board makes decisions within the constitutional veil surrounding its policymaking, and if it follows other statutory conventions, as well as process or procedure (such as adherence to the Open Meetings Law), local citizens lost what constitutional rights they have through the board's actions.

I'm not saying that the board's decision-making, in some instances, won't cause grief within communities — grief to which the WVBE actually can plead immunity because its members rarely live in the communities affected by their decisions. This is especially true of school closure and consolidation decisions. Moreover, a governing body's ability to be sheltered from any grief or inconvenience its decisions may cause others isn't a violation of the Constitution. (Just consider county board personnel layoffs.)

Thus, community members and others upset with WVBE decision-making must focus on process issues and violations. This approach admittedly centers on technicalities, but it also provides those who are opposed in theory and practice a way to legally protest WVBE decisions. While the state board might be less than enamored to think about this circumstance, many county board decisions have been overturned or tied up in court for years due to process violations, including Open Meetings Law violations.

While county boards curse and bemoan these actions as hindering and intruding on rational decision-making or for "slowing progress," affected parties, adverse to the decision, can at least slow the train and, if nothing else, take comfort that their arguments may be heard in court, although some community schools groups receive tepid welcomes from circuit judges.

This often occurs because these groups haven't narrowed the focus of their arguments. Government lawyers, including the state Deputy Attorneys General, have been adroit to this tactic in court appearances on behalf of the state board and state superintendent. Indeed, if you're going to fund your legal defense through the limited dollars bake sales can garner, community schools groups need to realize that court cases often are won, as pointed out above, on narrow arguments and not the broad expanse of school consolidation philosophy per se.

Circuit judges — a mostly conservative lot — are more inclined to focus on narrower issues rather than risk setting a precedent of more sweeping judicial declarations, which can be overturned by the state Supreme Court, and which are best made by the high court. (This has been the norm throughout the history of American jurisprudence. We don't have a *Brown v. Board of Education* decision weekly.)

The long and short of it is that disgruntled citizens and groups need to park the constitutional question approach. If local citizens want to take legal recourse, they may have to focus on possible WVBE statutory and process violations.

Part B of this argument — the WVBE's decision to intervene in Mingo County supplanted the people's will as illustrated through a "new" board majority — is fraught with additional peril. Mingo Board members could have held office for generations but their system still could have been taken over by constitutional and legal sanction.

There's a certain medieval glamour to cast the Mingo County

situation as a rout of the locals by an overpowering house of lords, but it doesn't hold constitutional and statutory muster. As Senate Majority Leader Truman Chafin (D-Mingo) observed, the local board didn't provide an alternate solution, which is one rationale for WVBE intervention.

2. Appointed Officials

The second argument, which says local people and local decision-making have been supplanted by non-elected officials who take cursory interest in the "real" issues or problems facing Mingo County Schools, also is weak.

At first glance, there appears to be more substance to the argument that takeover decisions give too much power to agency administrators down the line — the appointed of the appointed. But, we must tread carefully here. The state superintendent's power in regard to takeover was granted — you guessed it — by the Legislature, based on constitutional sanctions.

I won't fall into the trap of the argument, now in vogue, to strip the state superintendent of takeover power abilities. On its surface, this argument seems to strike at the cord of loose accountability. Much of the takeover power given to the state superintendent will be filtered to his appointees, meaning the accountability chain is getting further from the WVBE. The governor appoints the WVBE, which in turn appoints a state superintendent who appoints his deputies without board sanction and approval. It is these very West Virginia Department of Education administrative personnel who will have much of the day-to-day oversight of Mingo County Schools.

Yet, that whole arrangement is sanctioned by law not drawn out of the air. In fact, the statute regarding takeovers was last amended to permit the state superintendent, in takeover situations, to name a designee for the "limited purpose of conducting hearings while reserving to the state superintendent the authority to render a final decision."

If local citizens want to play this card, they would have to prove that the designees actually are making decisions in lieu of the state superintendent, a tough argument to prove.

A spin-off argument is based on the Mezzatesta situation and the G. A. McClung matter, which is about to go to trial. Proponents of this argument say the current state superintendent, because of these events, lacks a certain moral mantle in exercising his actions and decisions, including any recommendations about county takeovers. Again, these purported actions have nothing to do with statutory or constitutionally sanctioned recommendations within state superintendent's purview.

Thus, this question can't easily be framed within the denial of one's or a class of people's constitutional rights, or that an official's power can be curtailed because of alleged moral lapses. The moral issue lacks substance.

What one can argue is that the delegation to "designees" may be loosey-goosey in terms of accountability, but it's still constitutional and legal. Reforms can be made by amending these statutes, particularly a statute that also gives the state superintendent "general supervision of the free schools." It's a "whose-on-first" question, and may be the basis for reform of that office. (That's another issue, however.)

3. The WVBE facilities approach

The third area of discussion, school facilities, is an issue central to the WVBE's Feb. 15 intervention decision. Again, the WVBE

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appears to be on solid ground. Its self-described role isn't to question whether a particular school should be closed or consolidated. Rather, the role is to determine, based on WVDE staff input, if local board officials have followed proper process.

Indeed, the state Supreme Court, in a Kanawha County case, issued an opinion that discusses the state board's innate constitutional powers and ends with the observation that the state board has, by its own regulations, limited its role in school consolidations to ensuring that the consolidation meets published educational and facility standards and that proper procedures were followed (See *Board of Educ. of Kanawha County v. West Virginia Board of Educ.*, 184 W.Va. 1, 399 S.E.2d 31 [1990]).¹

Obviously, the state board has a commanding upper hand and can easily argue that it does not close any schools – it simply ensures that process was followed. It's easy to fault the WVBE for taking what appears to be a parsing, hands-off role, but would county boards want the opposite — a state board that second-guesses the wisdom of its closure decisions? The WVBE did just that in the early 1990s when it rejected the closure of Marsha Fork High School (Raleigh), which wasn't closed until many years later. Most county boards, after going through the agonizing process of school closure, are thankful for the state board's approach.

Bad form? Evading the issue? Not taking a stand? See it as you will, but the WVBE decision to view county closures in terms of process isn't stretching the Code; isn't illegal; and, may be the best approach because its emphasis on process, as discussed above, has ensured local input, such as public hearings about closures and consolidations.

4. Was Mingo decision right?

The last argument, which is one many make about the Mingo situation, is whether the WVBE decision, even if constitutional or legal, is right. Unfortunately, this is misguided and rooted in the subjective. It's an argument that ignores both the largess of constitutional premise and legal sanction under which the WVBE operates.

There is great peril in decision-making based on "what's right." The simple way to explain such is that "what's right" in my opinion may not be "what's right" in your opinion. We have laws that have, to great degree, settled the issue largely in terms of process, procedure and outcomes.

Those who are upset with the Mingo decision have, at this time, little recourse except legal challenge. Any legal challenge, as I have pointed out, may be grounded in flaws of process (if any). Indeed, the overturned election, the loss of citizens' constitutional rights and local boards' loss of power won't cut legal muster.

While the Mingo matter may be subject to legal challenge if citizens can afford a lawyer, there is no better time than now to discuss the entire issue of educational governance in West Virginia, leading off with several points: Is the WVBE, like many county boards, captive to administrative sway? How can the WVBE be held more accountable?

Or, are those who pose this question simply upset with state board decisions? Yes, the accountability argument can cover a multitude of personal agendas and the like. Should the WVBE have greater authority over the state superintendent or is this case-specific?

These types of questions, while perhaps laudable, evade the real issues.

A collaborative model

Lastly, a formidable area of discussion asks whether efforts can be undertaken to thwart takeovers through a more collaborative WVBE-county board approach.

A certain tragedy of the Mingo situation was a sort-of cat-and-mouse game between the local board and state board, which revolved around "Whose move is it?" One state board member even referred to it as a "contest of wills."

Be that as it may, the state board postured and maneuvered itself to undertake the takeover, enlisting OEPA to validate its decision as one based on more than the local board's lapse in not following through with the Comprehensive Education Facilities Plan.

Given this context, why not structure takeovers so the goal becomes one where the WVBE works with a county for a significant amount of time once potential takeover is considered to avoid intervention as a matter of policy. Thus, county boards that refuse to cooperate with the state board risk takeover as the result of their own recalcitrance.

While the process would take longer – and while the WVBE doesn't have the current staff to provide large-scale technical assistance – it can work if other agencies, including Regional Educational Service Agencies (RESAs), colleges and universities, associations, foundations and the like are involved.

Under this scenario, the county board, through lethargy, bad leadership, screwed-up priorities and the like, invites its own takeover and loss of power by eschewing state capacity-building steps. In fact, what about throwing out board members who don't try to shape up the system? It can be done because they're not constitutional officers and they could be considered subject to dereliction of duty and malfeasance, which are current reasons for removal from office.

Admittedly, this approach is based more on a "soft power" model and certainly doesn't have the "changing of the guard" notion of the state's takeover law. It does, however, put a system to work to *avoid* a takeover by providing a proper amount of time to get the local house in order and to receive WVDE technical assistance.

I am a strong proponent of consensus-building, collaboration and the high standard that locals can pull themselves up by their own bootstraps. I have outlined a collaborative approach to *avoid* takeovers. Yet, we operate under current law that contemplates takeover as an avoidable, if not default, approach.

Small schools groups, citizens and other supporters of "local control" are deeply distressed about what happened in Mingo County. They're grasping for a way to challenge these events. While I, along with many board members, have mixed feelings about the WVBE's Mingo County decision, it was a legally (constitutional and statutory) sound decision.

To these groups and individuals, you must direct your efforts at the Legislature as many delegates and senators aren't aware of the takeover law provisions. Awareness and education – devoid of hype and emotion – must be presented to cause legislative review of these decisions. Sadly, it won't happen this year because legislators don't want to be seen as "reacting" to the WVBE's Mingo County decision.

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Bill Abstract

Editor's Note: *The following is a listing of education and selected education-related bills, with action current through Thursday, Feb. 24, 2005 for most bills. For information relating to any of the measures listed, contact West Virginia School Boards Association Executive Director Howard M. O'Cull, Ed.D., or visit the West Virginia Legislature's Web site at www.legis.state.wv.us.*

Senate

- SB94.** Provides county boards flexibility in the statutory order of required activities to occur on school calendar Instructional Support and Enhancement (ISE) days. Approved by Senate Education Committee Feb. 22. Senate Second Reading 2/25/05.
- SB153.** Revises state Ethics Act legislation enacted during 2005 Special Session in part due to revising language relating to a "gag order" against those filing Ethics Commission complaints that was included in the January legislation; other provisions. Passed Senate 2/17/05. Referred to House Judiciary Committee.
- SB248.** Voids the requirement that education technology expenditures be made in accordance with the West Virginia Education Technology Strategic Plan (ETSP). In that Strategic Plan members weren't appointed by former Gov. Bob Wise, the legislation allows various entities, including the West Virginia Department of Education, to expend technology moneys, including dollars for the Basic Skills and SUCCESS programs. Approved by Senate Education Committee Feb. 22. Senate Second Reading 2/25/05.
- SB212.** Provides higher education employees the annual experience increment that is paid to state employees. Approved by

Senate Education Committee 2/22/05. Referred to Senate Finance Committee 2/23/05.

House

- HB2015.** Provides employers immunity from civil liability for job-related information disclosed regarding their former employees. Passed House 2/16/05. Referred to Senate Judiciary Committee.
- HB2286.** Relates to the sounding of "Taps" at veterans' honors funerals. Passed House 2/18/05. Passed Senate 2/21/05 (constitutional rule requiring three-day reading for bills dispensed). Referred to governor.
- HB2328.** Provides precedential application to the Ethics Commission's written Opinions regarding open governmental meetings. Passed House 2/21/05.

In Memoriam

*Donald L. "Don" McPeck
(Ritchie)*

June 29, 1938 – February 16, 2005

"That man lives twice who lives the first life well."

- Anonymous

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Nor is the new governor likely to strongly fight the board's decision — at least for now. He probably will do so via appointment of members skeptical of the takeover approach but even then, there's a certain peril because appointed officials don't always follow the party line. This is illustrated by presidential appointment of U.S. Supreme Court justices who develop their own judicial polity which, at times, conflicts with those of the president-appointer.

The best that Mingo County takeover critics can hope for is litigation based on WVBE failure of process. That's only if citizens can afford an attorney.

The rest of us should approach the governor's office about appointing a commission to study the entirety of school governance in West Virginia. That includes the role of the WVBE, the Department of Education, and county boards on relevant issues such as citizen accountability, collaboration and, of course, the long-term validity of state takeovers.

Rest assured, the tipping point will come in regard to (forced) school consolidation and the current takeover approach, which is sanctioned by statute. For those who look to the horizon, we live in

a day and time when the sheer decency of collaboration is the norm; when power is shared; and when the emphasis is on system growth and development — and avoidance of takeovers.

While I have said there is no right and wrong about the Mingo County decision — and that it can be shrouded in all sorts of rhetoric about what's best for kids — there is a certain morality to ensuring that people work together toward common goals, especially as promoted by higher bodies of public authority. No matter if constitutional or statutory, we are our brother's keeper.

1 The State Board's discretion is not unlimited, however. Pursuant to W. Va. Code, 18-5-13a, it has promulgated rules and regulations relating to school closings and consolidations. Handbook on Planning School Facilities (Policy No. 6200), 126 W. Va. C.S.R. § 126-172-1, et seq. Section 105.07 of these regulations contains the following provision:

"The West Virginia Board of Education will not overrule a county board of education on a school closing or consolidation matter, unless the proposal does not comply with the educational and facility standards established by the State Board or the county board has not complied with procedural requirements of 18-5-13, 18-5-13a, and State Board Policy." (Emphasis in original).

—O'Cull is WVSBA Executive Director

Looking Back

The Jan. 27, 1995, issue of *The Legislature* was devoted mostly to stories about Gov. Gaston Caperton's proposed safe schools legislation. In addition to questions about zero-tolerance provisions, participants at a joint House-Senate Education public hearing were concerned about program "duplications," funding, increased fines for gun possession within 300 feet of a school, "inattention" to the role of parents and sentiment that county boards of education were largely doing "much of what is required [by the legislation]," as stated by WVSBA Vice President Arnold W. Harless (Wyoming).

Several lawmakers (mostly educator-legislators) were critical of the measure and said it would lead to more paperwork. Sen. Rebecca I. White (D-Harrison) predicted the Caperton measure would require "too much paperwork and too many people" to implement.

In another development, House Education Committee Vice Chairman Bill Proudfoot (D-Randolph) spoke to West Virginia

School Boards Association Winter Conference attendees. His remarks covered safe schools, failed excess levies, and textbook costs. In terms of unfunded mandates, Proudfoot told WVSBA members: "In the past, we have passed legislation that's really causing some trouble out there [in the counties]."

He said the HEC wanted to thwart unfunded mandates and observed the same about county boards. "[The] common [public] perception is that ineffective personnel often find a place at the central office."

Finally, state school superintendent Henry R. Marockie, Ed.D., told conference attendees that "anti-tax groups pose the most significant potential crisis facing school boards in our state," a reference to anti-tax groups' successful work to defeat several county board excess levies, which failed in 1993, 1994 and 1995.

Proudfoot was first elected to the Legislature in 1990.
– *The Legislature* Jan. 27, 1995

Mon. County seeks superintendent

Superintendent. The Monongalia County, W.Va., Board of Education is accepting applications for County Schools Superintendent. Must meet W.Va. Qualifications for County Superintendent; earned doctorate preferred. Salary and term negotiable, based on qualifications and experience. 31 schools/physical plants; \$86.5 million budget; \$12 million excess levy (75 percent levy rate – expires in 2007/renewal election likely set for Fall 2006); \$65.5 million bond issue approved in Oct. 2003 (29-year term); 10,163 students; 1,413 employees. For a "Notice of Position Vacancy," Application Form and related materials, contact: Monongalia County Superintendent Search, c/o W.Va. School Board Association, P.O. Box 1008, Charleston, WV 25324. WVSBA telephone number: 304-346-0571 or visit www.wvsba.org. Deadline to apply: 4 p.m. March 7, 2005.

Scholarship to honor Braxton County Marine boot camp victim

A scholarship fund has been established to honor Jason Robert Atharp, the 19-year-old Marine and 2004 graduate of Braxton County High School who died Feb. 8 during water survival maneuvers at boot camp in Parris Island, S.C.

"We wanted to keep Jason's memory alive and to provide funding for students like Jason who want to go on to college," a spokesperson for the scholarship fund said.

While a student at BCHS, Jason was active in FFA and enjoyed art. He joined the Marines to earn money for college to study art.

"Jason would be happy to know this scholarship might prevent others like him from having to jeopardize their safety to earn money for college," said Linda Tharp, Jason's mother.

Send contributions to the fund to:
Jason Tharp Memorial Scholarship Fund
Braxton County Board of Education
411 North Hill Road
Sutton, WV 26601
Attn: Treasurer

Wisdom

"Any organization begins to die the day it begins to be run for the benefit of the insiders and not for the benefit of the outsiders."

– Management guru Peter Drucker



on the web:
wvsba.org

Sound Bites

“We’ve got that sinner’s bench filled up back there.”

– Del. Brady Paxton (D-Putnam) observing that the back row of a crowded briefing room was filled mostly with lobbyists and WV DOE personnel as a joint House and Senate Education Committee meeting was about to start Tuesday — with one back-row sitter’s retort: “There’s still room for you.”

“First off, to allay any fears, this isn’t ‘new math.’”

– State Superintendent of Schools David Stewart, Ed.D., discussing a WVDE Mathematics initiative.

“The belief is, if the (RESAs) are supposed to be service providers, they ought to be able to find a way to generate revenue from providing those services.”

– Brian Kastick, Gov. Manchin’s director of public policy.

“It’s consistent with [Gov. Manchin’s] management philosophy and plan...”

– Kastick, discussing initiatives that would make several autonomous boards, including the Educational Broadcasting Authority, report to the governor.

“It’s a win-win-win-win and continue-to-win. If you can preserve a community in a rural setting, you’ve got a child with an identity.”

– Gov. Manchin discussing his support for community schools.

Meanwhile in New York...

The New York Times recently reported that a 12-year-old school finance case has not been resolved. A January 2001 justice’s order said the state of New York had shortchanged Big Apple Schools and that the governor and Legislature must devise a remedy.

The *Times* concluded the Legislature “dawdled” because spending more tax money on education presumably would raise taxes, reduce other services- or both.

On Feb. 14, a Manhattan justice ordered that an additional \$5.6 billion be spent annually to ensure that students in the city receive the education they are guaranteed under the state constitution. New York Gov. George Pataki is appealing the ruling but has been unable to muster a school financing solution.

The *Times* notes that judges often prohibit other branches of government from doing one thing or another but rarely command them to do something. State officials have said the judge’s order to find \$5.6 billion more a year for the city’s schools - and additional billions to apply the ruling statewide - is unprecedented.

“Here the court is saying, ‘I am ordering that the governor and the two houses of the Legislature come to an agreement for the expenditure of an amount of money that I am directing,’” said Richard Rifkin, the deputy attorney general who argued the case for the state. “I don’t know of any court that has ever done that. And the problem with the mandatory injunction is there’s no state official that can comply with it....”

Source: New York Times.

The Legislature

West Virginia School Boards Association
PO Box 1008
Charleston, WV 25324