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The Honorable Mitch Carmichael
Senate President
State Capitol Building 1, Room 227-M
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear President Carmichael:

You have asked for an Opinion of the Attorney General concerning whether Senate Bill 451 satisfies the “single-object” requirement set forth in Article VI, § 30 of the West Virginia Constitution. This Opinion is issued pursuant to W. Va. Code § 5-3-1, which provides that “[i]t is . . . the duty of the attorney general to render to the president of the Senate . . . a written opinion or advice upon any questions . . . whenever he or she is requested in writing so to do.” To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

As you know, Senate Bill 451, which has been called the “Comprehensive Education Reform Bill,” is currently pending in the Senate. The analysis in this opinion addresses the text of the bill as it existed when it was referred to the Committee of the Whole on January 28, 2019. This opinion addresses only the specific legal question you have raised, and neither considers nor takes a position on the merits of Senate Bill 451 as a matter of policy.

Your letter raises the following legal question:

Does Senate Bill 451 violate the “single-object” requirement contained in Article VI, § 30 of the West Virginia Constitution?

We conclude that Senate Bill 451 likely satisfies this constitutional requirement. The Supreme Court of Appeals has considered two types of challenges to legislation under this provision: whether the title provides fair and accurate notice of the changes a bill proposes, and

whether the bill's sub-parts all have a common basis. These considerations safeguard the purposes of the broader "single-object" requirement to increase transparency and avoid deceptive legislative tactics. With respect to the title requirement, we conclude that a reviewing court would very likely find that Senate Bill 451's detailed title provides fair notice of the specific topics and statutory sections the bill addresses. Similarly, Senate Bill 451 would likely satisfy the common subject-matter requirement. The topics contained in Senate Bill 451 all relate to the general subject of education reform, and although we are not aware of cases where the Supreme Court of Appeals has expressly upheld acts similar to Senate Bill 451, the bill is different from laws that the Court has struck down in several material respects.

Discussion

As relevant here, Article VI, § 30 of the West Virginia Constitution provides that no legislation "shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed, and no law shall be revived, or amended, by reference to its title only; but the law revived, or the section amended, shall be inserted at large, in the new act." W. Va. Const. art. VI, § 30.

In one of the early cases analyzing this constitutional provision, the Supreme Court of Appeals explained that "[t]he 'object' of an act, as that word is used in section 30, art. 6, of the Constitution, means the matter or thing forming the groundwork of the act, which may contain many parts germane to the title, and which, when traced back, will lead the mind to the object as expressed in the title as the generic head." Syl. pt. 2, *State v. Haskins*, 92 W. Va. 632, 115 S.E. 720 (1923). This description—referring to the "groundwork" of a bill and a "generic head"—indicates that "object" should be understood in fairly broad terms. This language from *Haskins* also expressly contemplates that a law may have "many parts" under the larger umbrella of the statute's "object." *Id.* Further, *Haskins* instructs that the single-object requirement is linked closely with a statute's title, and that courts should apply a presumption of validity to a law, aiming to construe an act's title "most liberally and comprehensively in order to give validity to all parts of the act." *Id.* at Syl. pt. 3.

Since *Haskins*, the Court has most often applied these general principles to assess the validity of a statute in terms of its title, although it has also indicated that an otherwise valid title cannot salvage a statute that contains provisions too unrelated or disconnected to be fairly considered the same "object." This letter will address the title and subject-matter requirements of the "single-object" requirement in turn.

First, Senate Bill 451 very likely satisfies the test for a constitutionally sufficient title. With respect to a statute's title, the Article VI, § 30 requirement is satisfied where the title "furnish[es] a 'pointer' to the challenged provision of the act." Syl. pt. 2, *State ex rel. Walton v. Casey*, 179 W. Va. 485, 370 S.E.2d 141 (1988). More specifically, the "test to be applied is whether the title imparts enough information to one interested in the subject matter to provoke a reading of the act." *Id.*; see also Syl. pt. 1, *State ex rel. Graney v. Sims*, 144 W. Va. 72, 105 S.E.2d 886 (1958) ("If the title of an act states its general theme or purpose and the substance is germane to the object

expressed in the title, the title will be held sufficient.”). This test advances Article VI, § 30’s twin goals of “giv[ing] notice by way of the title of the contents of the act so that legislators and other interested parties may be informed of its purpose,” and “prevent[ing] any attempt to surreptitiously insert in the body of the act matters foreign to its purpose which, if known, might fail to gain the consent of the majority.” *Id.* at Syl. pt. 2.; *see also* Syl. pts. 5 & 6, *State ex rel. Marockie v. Wagoner*, 191 W. Va. 458, 446 S.E.2d 680 (1994).

Either a general or a specific title may satisfy this test. On the one hand, the Supreme Court of Appeals has held that a title passes constitutional muster where the title is general, yet fairly encompasses the particular legislative change at issue. As an example of this sort of title, the Court concluded that an act that announced in its title that it addressed numerous statutory sections “all relating generally to the collection of solid waste and litter” gave sufficient notice of its subject matter to include a provision affecting the regulation of the rates and fees of commercial solid waste facilities. *Nw. Disposal Co. v. W. Va. Pub. Serv. Comm’n*, 182 W. Va. 423, 425-26, 388 S.E.2d 297, 299-300 (1989). On the other hand, where the Legislature takes a more granular approach by specifically listing the matters contained in the bill, it must list *all* material issues in order to avoid misleading the reader. *See C.C. Spike Copley Garage v. W. Va. Pub. Serv. Comm’n*, 171 W. Va. 489, 491-92, 300 S.E.2d 485, 487-88 (1983). The Court applied this rule to invalidate a statute that sought to overhaul the Public Service Commission’s authority and operating procedures because it included—but failed to place in the title—a provision deregulating the business of towing, hauling or carrying wrecked or disabled vehicles. *Id.* Although noting this was a “close case,” *id.* at 490, 300 S.E.2d at 487, the Court ultimately concluded that omitting one or more provisions from a title “that is otherwise exhaustively informative is positively misleading.” *Id.* at Syl. pt. 1.

Senate Bill 451 uses the second type of title, as its title is highly specific and spans multiple pages. Although it first sets forth a general description of the bill’s purpose—“comprehensive education reform”—it goes on to describe the code sections it creates, amends, re-enacts, and repeals, as well as provides a brief narrative description of those changes. It appears that Senate Bill 451’s current title is sufficiently comprehensive to describe fairly each of the changes within the bill. Further, it appears that the title satisfied the *Walton* test by conveying “enough information to one interested in the subject matter to provoke a reading of the act.” Syl. pt. 1, 179 W. Va. 485, S.E.2d 141. Indeed, the best evidence the title complies with the “single-object” mandate may be the high degree of public attention the bill has garnered even at this relatively early stage in the legislative process. Nevertheless, the Legislature should use care as the bill is revised and amended to ensure that in its final form the title encompasses all substantive changes, to avoid the concern in *Copley Garage* of becoming misleading through omission.

Second, Senate Bill 451 would likely satisfy the constitutional requirement that its various sub-parts and provisions all relate to the same subject matter. As an initial matter, there is no *per se* bar against legislation through omnibus bills, like Senate Bill 451. *Haskins* involved a “comprehensive statute” designed to create a “complete system of laws governing the construction, reconstruction, maintenance, and repair of all public roads, ways, and bridges, and the regulation of traffic thereon.” 92 W. Va. at 640, 115 S.E. at 723. The Court’s concern was not the breadth of the legislation, but that including a new *criminal* provision strayed too far from the act’s core

subject matter, even though the challenged provision involved larceny of an automobile. *Id.* Similarly, in *Copley* the Court took no issue with the Legislature's decision to enact "an omnibus act," but with the fact that the act's title omitted any reference to the challenged provision. Syl. pt. 1, 171 W. Va. 489, 300 S.E.2d 485; see also *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993) (striking down an omnibus bill that authorized legislative rules from multiple state agencies that encompassed a variety of subject areas).

The test is thus not the length of a particular bill or how many provisions it includes. Rather, the standard under Article VI, § 30 is whether "there is a reasonable basis for the grouping of various matters in a legislative bill," and whether that grouping will "lead to logrolling or other deceiving tactics." *Kincaid*, 189 W. Va. at 412, 432 S.E.2d at 82. This determination is context- and fact-specific, and there is "no accurate mechanical rule" for courts reviewing Article VI, § 30 challenges. *Id.* at 411, S.E.2d at 81 (citation omitted). Two years after *Kincaid* was decided, however, the Court expanded its discussion in this area. In *Appalachian Power Co. v. State Tax Department of West Virginia*, Justice Cleckley wrote for the Court to explain that the *Kincaid* test should be interpreted as protecting at least three goals: (1) avoiding "combining into one bill several diverse measures which have no common basis" out of fear that each "could not receive a favorable vote on its merits"; (2) preventing "unintentional and unknowing passage of provisions" not included in the bill's title; and (3) "fairly appris[ing] the public of matters" in the bill and "prevent[ing] fraud and deception as to matters passed by the Legislature." 195 W. Va. 573, 584, 466 S.E.2d 424, 435 (1995). That decision also noted a potential "fourth justification" of avoiding "dilution of a governor's veto power" where "legislation is saddled with irrelevant riders." *Id.*

Taken together, *Kincaid* and *Appalachian Power* indicate that the requirement that bills address a common subject area is intended to avoid certain types of potential legislative gamesmanship—hiding provisions that could not stand on their own if all members of the Legislature were aware they are present in a bill, or combining a politically unpopular provision with a more popular measure relating to a different area of law. As discussed above, the first concern is very likely not present here, where Senate Bill 451 has garnered significant attention, and there is likely no plausible argument that "deceiving tactics" have kept material issues hidden from legislators and the public. *Kincaid*, 189 W. Va. at 412, 432 S.E.2d at 82. The second concern also likely has little weight. All of the provisions in Senate Bill 451 relate, in one way or another, to one general object: education reform. While it is true that the bill encompasses a variety of policy changes—creation of charter schools, changes to the terms and conditions of employment for teachers and other school personnel, new funding mechanisms for public education, and standards for attendance and class size, to name some prominent examples—they all relate to the structure and administration of public education in the State. The type of "logrolling" Art. VI, § 30 prohibits is thus not present here, where there is a "common basis" tying the elements together, *Appalachian Power*, 195 W. Va. 573, 584, 466 S.E.2d 424, 435 (1995), and a "reasonable basis for the grouping" of the admittedly large number of provisions the bill contains, *Kincaid*, 189 W. Va. at 412, 432 S.E.2d at 82. Further, Senate Bill 451 bears little similarity to the omnibus acts the Supreme Court of Appeals has invalidated in the past. It does not hide the creation of new crimes within a civil regulatory bill as in *Haskins*. Nor does it authorize legislative rules in a blanket bill as in *Kincaid*, with no concern for the agency from which the rules originated or the subject matter they addressed.

Particularly when combined with the “liberal[]” construction courts give statutes when confronted with Article VI, § 30 challenges in an effort to “give validity to all parts of the act,” Syl. pt. 3, *Haskins*, 92 W. Va. 632, 115 S.E. 720, these principles indicate that Senate Bill 451—at least in its current form—would likely pass constitutional scrutiny over the single-object test. The bill relates to the general subject area of education reform, and although its provisions may have attracted considerable public attention and are currently the subject of significant legislative debate, a reviewing court would likely conclude that Senate Bill 451’s provisions are fairly classified as relating to a single object, and that its title provides fair notice of the important issues at stake.

Sincerely,



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