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The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
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Charleston, West Virginia 25305-0770

Dear Mr. Hechler:

You have requested the opinion of this office regarding the following question:

As you may be aware, in the November general election, the voters will have an opportunity to ratify or reject a constitutional amendment that would reduce from sixty percent to a simple majority the vote required to increase the property tax levy rate and to reduce from three fifths to a simple majority, the vote required for passage of bond issues by counties, cities, school districts or municipal corporations. At the same election, several local governments will have levy or bond issues on their ballot. The question that has surfaced and that I would appreciate your opinion on is; if the local government levy and bond issue amendment does pass, does it apply to issues that are placed on the November 3rd general election ballot.

Put another way, will fifty percent plus one or sixty percent plus one vote be required to pass bond issues placed on the November general election.

In order to properly answer your question, we must determine the effective date of the proposed amendment, if ratified by the voters, and its effect on issues on the same ballot. Enrolled Senate Joint Resolution No. 4, adopted by the Legislature on March 7, 1991, proposed the above amendment as follows:

Proposing an amendment to the Constitution of the State of West Virginia, amending sections one and eight, article ten thereof, relating to taxation and finance and

increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, and the percentage of votes necessary for such increase to become effective; and bonded indebtedness of counties, cities, school districts and municipal corporations and the percentage of votes necessary for the passage of a bond issue; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-two, which proposed amendment is that sections one and eight, article ten thereof be amended to read as follows:

[Text of amendment omitted]

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" designated as the "Local Government Levy and Bond Issue Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the state Constitution to reduce from sixty percent to a simple majority the vote required to increase the property tax levy rate and to reduce from three fifths to a simple majority the vote required for passage of the bond issue by counties, cities, school districts or municipal corporations."

The Resolution did not specify an effective date for the proposed amendment.

The term "ratification" is generally defined as the "[a]pproval by the electorate of a proposed State constitutional amendment." Black's Law Dictionary 1262 (6th Ed. 1990).

[W]here an existing state constitution provides that proposed amendments, if ratified by the requisite majority, shall become part of the constitution, it is usually held that amendments take effect from the time of their actual ratification, unless a postponement of

the effective date of a proposed constitutional amendment is submitted to the voters and adopted by them. Some state constitutions make express provision for the effective date of an amendment, such as the day after the election or some other later date.

16 Am.Jur.2d Constitutional Law § 62 (1979) (emphasis added).

Regarding amendments to the West Virginia Constitution, the Constitution itself provides: "If a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State." W. Va. Const. art. XIV, § 2 (emphasis added). Similarly, the West Virginia Code states: "If a majority of the votes cast at said election upon said question be for ratification of an amendment, the amendment so ratified shall be in force and effect from the date of such ratification, as part of the constitution of the state." W. Va. Code § 3-11-6 (1990) (emphasis added).

On a similar question, the West Virginia Supreme Court of Appeals held: "The effective date of a constitutional amendment is the date the amendment is voted on by the people unless the effective date is otherwise specified in the amendment." Syl. pt. 2, State ex rel. Casey v. Pauley, 158 W. Va. 298, 210 S.E.2d 649 (1974) (emphasis added). In syllabus point 5 of Casey, the Court also held that "[t]erms of office can be extended by the vote of the people ratifying a constitutional amendment," and extended the term of an incumbent judge who would have been defeated but for a constitutional amendment ratified at the same election. See also State ex rel. Dunbar v. Stone, 159 W. Va. 331, 221 S.E.2d 791 (1976) (term of incumbent judge extended to 1984 due to constitutional amendment).

The facts of the above-cited case are illuminating. In Casey, West Virginia voters were asked at the November 5, 1974 general election to vote on ratification of a proposed Judicial Reorganization Amendment to the West Virginia Constitution, which provided in relevant part as follows:

Upon the effective date of this article, each statutory court of record of limited jurisdiction existing in the State immediately prior to such effective date shall become part of the circuit court for the circuit in which it presently exists, and each such judge of such statutory court of record of limited jurisdiction shall thereupon become a judge of such circuit court.

W. Va. Const. art. VIII, § 5.

[A]ny judge of any circuit court, including any statutory court of record of limited jurisdiction which becomes a part of a circuit court by virtue of section five of this article, in office on the effective date of this article shall continue in office until his term shall expire, . . . Provided, that as to the term of any judge of a statutory court of record of limited jurisdiction which does not expire on [December 31, 1976], the following provisions shall govern and control . . . (1) If the term would otherwise expire before [December 31, 1976], such term shall continue through and expire on said [December 31, 1976]

W. Va. Const. art. VIII, § 7.

At the same election, Kanawha County voters were asked to vote on candidates for judge of the Intermediate Court of Kanawha County -- a court which would cease to exist if the proposed Amendment were ratified. The Amendment was ratified by a large majority throughout the State, and upon its ratification the Intermediate Court of Kanawha County became a Circuit Court. The Supreme Court held that its incumbent (Judge George W. Wood) became a circuit judge by virtue of Section 5 of the amendment, and that his term, which was to expire on December 31, 1974, was also extended by Section 7 of the amendment, despite the fact that he had received fewer votes than his challenger in the election. In addition, the Court held that the challenger for the position of judge of the Intermediate Court (Patrick Casey) was also elected to the newly-created position of judge of the Circuit Court of Kanawha County by operation of the same constitutional amendment, although the position did not even exist at the time he filed for election.

The Supreme Court's reasoning in reaching this unusual result was based on two principles. First, the Court noted:

It is agreed by the parties in this proceeding that the date of ratification of the Judicial Reorganization Amendment was November 5, 1974, the date of the election. Under the law, this is the date a constitutional amendment becomes effective unless another date is otherwise specified in the amendment. The provisions of the Judicial Reorganization Amendment pertinent to the questions raised in this proceeding are self-executing since no legislation is necessary to give effect to the provisions.

Casey, 158 W. Va. at 303, 210 S.E.2d at 652 (citations omitted).

Second, in applying the provisions of the amendment to the factual circumstances of the election, the Court said:

Courts are not concerned with the wisdom or expediencies of constitutional provisions, and the duty of the judiciary is merely to carry out the provisions of the plain language stated in the constitution. If a constitutional provision is clear in its terms and unambiguous in its meaning this Court must apply, and not interpret, the provision.

Casey, 158 W. Va. at 304, 210 S.E.2d at 653 (citations omitted).

In thus deciding that the clear language of the Judicial Reorganization Amendment required both certifying the challenger as elected to the office of judge of the Circuit Court, and also extending the term of the incumbent judge for two years, thereby adding an additional circuit judge for Kanawha County, the Supreme Court concluded: "To hold otherwise would charge the legislature for being responsible for thwarting the will of the people and disenfranchising them." 158 W. Va. at 306, 210 S.E.2d at 654.

We find the reasoning of the Court in Casey to be persuasive, and its decision to be controlling in this instance. As previously noted, the text of the proposed constitutional amendment to be voted on at the November 3, 1992 election does not specify its effective date. (See Senate Joint Resolution No. 4.) Therefore, its effective date, if ratified, would be November 3, 1992, the date that it is voted on by the people of West Virginia. The provisions of the proposed amendment are self-executing, as no additional legislation is required to give them effect. Finally, the amendment is clear and unambiguous, so that there is no need for additional interpretation.

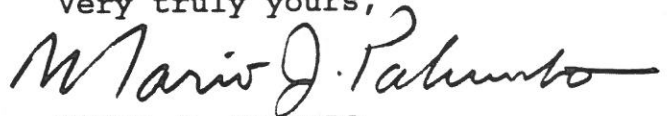
Accordingly, it is our opinion that if Amendment No. 1, the "Local Government Levy and Bond Issue Amendment" to the West Virginia Constitution, is ratified by the voters of this State at the November 3, 1992 general election, the percentages established by that amendment must be applied to local government levy and bond issues that are placed on the same ballot. In other words, if the Constitutional amendment passes, a simple majority ("fifty percent plus one," as you put it) of those voting will be sufficient to approve a levy or bond issue at the November 3rd general election.

October 27, 1992
Page 6

SUMMARY

If the Local Government Levy and Bond Issue Amendment to the West Virginia Constitution is ratified by the voters at the November 3, 1992, general election, it will apply to local government levy and bond issues that are placed on the same general election ballot.

Very truly yours,



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