

**JAMES GORE, JAMES McCUTCHEON,
and LARRY MUSTAIN**

v. Docket No. 93-31-532

**MONROE COUNTY BOARD OF EDUCATION
and GILES JONES**

DECISION

The grievants, James Gore, James McCutcheon and Larry Mustain are employed as principals [\(See footnote 1\)](#) by the Monroe County Board of Education (Board) and were unsuccessful applicants for the position of Principal of James Monroe High School (JMHS). They filed a grievance at Level I October 4, 1993, protesting the manner in which the selection process for the position was conducted. The matter was waived to Level II where, following a hearing held November 10, 1993, Evaluator Connie Bowles rejected the grievants' claims. The Board, at Level III, declined to address the grievance and an appeal to Level IV was filed December 23, 1993. A January 11, 1994 motion to intervene, filed by Giles Jones, the successful applicant for the position, was granted. [\(See footnote 2\)](#) A hearing was held January 14, 1994 and the parties submitted extensive briefs in support of their positions by January 28, 1994. [\(See footnote 3\)](#)

I.

There is essentially no dispute over the facts of the case. In the spring of 1990, the Board decided to close Peterstown High School (PHS) and Union High School (UHS), the school system's only high schools, and construct James Monroe High School (JMHS) in Coulter's Chapel to serve the merged student population. This decision became the subject of a heated public debate and protracted litigation. The litigation ended when the West Virginia Supreme Court of Appeals, in December 1992, ordered the Board to begin construction on JMHS. [\(See footnote 4\)](#)

In the summer of 1993, the Board decided to post the position of Principal at JMHS prior to the school's completion. [\(See footnote 5\)](#) On or about July 19, 1993, Board members discussed at length

the importance of the post to the school system and the need to appoint an individual who could facilitate a "healing" process for the communities to be served. Members indicated to Superintendent of Schools Lyn Guy that she should develop a list of criteria for their approval to be used in the selection process and that the subjective analysis of the candidates' performance during interviews should play a major role in the process. At one point in the meeting, a Board member proposed that the applicants for the position be evaluated by an interview committee comprised of the five Board members. The superintendent advised that W.Va. Code §18A-4-7a [\(See footnote 6\)](#) mandated that they consider certain criteria but that there was no requirement therein that any one factor be afforded any particular weight. The superintendent noted but did not comment on the suggestion concerning the selection committee.

In a July 28, 1993 memorandum to Board members, [\(See footnote 7\)](#) Superintendent Guy provided the following advice:

After the [July 19] planning session, I compiled your list of suggestions for interviewing the principal and drafted a proposal for procedures in hiring this individual. The chart for evaluating candidates, the proposal for procedures and the interview questions are attached.

When Howard Seuffer [\(See footnote 8\)](#) addressed the board in our work session several weeks ago, someone asked him if the board could interview candidates and he said that he recommended against it. From my notes of that evening, I found that he cited three cases about hiring and with each one made a particular point; he commented that the courts historically held that a Board of Education had a presumed ignorance on the issue of evaluating candidates and for that reason did not feel a board should do actual interviews. The board could appoint a committee, ask the superintendent to appoint a committee, or reject the name recommended by the superintendent for hiring and ask for another recommendation. Also, I believe he said if one or two board members were on the committee, this would not jeopardize the process, but the entire board interviewing would mean that a decision to hire was made before the superintendent's recommendation, a requirement of the statute.

I talked at length with Vic Barone, legal services for the State Department because my notes from the training weren't conclusive and I wanted to see what he advised. He agreed with Mr. Seuffer and used the same phrase "presumed ignorance".

I tell you this so that you can understand the ramifications of actually doing the interviews yourselves. I do think our discussion omitted a very important part of the candidate evaluation process by neglecting to bring in individuals who will work with that principal. It seems to me we ought to include representatives from both Union and Peterstown High School's faculty senates as part of the committee.

This item is on the agenda. If you have questions or would like me to seek further legal advice, perhaps a written opinion from Howard Seufer, please let me know.

If we want to seek further information, we could delay adopting that portion of the process until the second meeting in August.

At an August 2, 1993 meeting, a motion that Board President Harold Mohler and member Kyle Baker serve on the committee carried. The Board also decided that Ms. Guy and the most senior teachers at UHS and PHS who were planning to apply for positions at JMHS upon its completion would also serve on the committee.

At the same meeting, the Board reviewed, made additions to and adopted the "Procedures for Hiring Principal for New High School" submitted by Superintendent Guy. Under the heading "Evaluation of Candidates," the final version of the procedures provided,

Interviews will be conducted by a committee comprised of most senior individuals at Union High School and Peters High School the Superintendent, Mr. Mohler, and Mr. Baker.

Material used for evaluation will include:

a.

evaluation chart with percentages established for determining the criteria for determining best qualified

b.

specific interview questions

Attached to the procedures and also approved was the following list of criteria to be considered and

the relative weight to be afforded each:

CERTIFICATION &

LICENSURE 5%

TOTAL AMOUNT OF

EXPERIENCE RELEVANT

TO POSITION 10%

AMOUNT OF COURSE

WORK AND/OR DEGREE

LEVEL IN RELEVANT

FIELD AND GENERALLY 5%

ACADEMIC

ACHIEVEMENT 5%

RELEVANT

SPECIALIZED

TRAINING 5%

PAST PERFORMANCE

EVALUATIONS 5%

INTERVIEW 65%

Also attached to the procedures was a list of open-ended questions to be asked of each candidate.

The position was posted August 3, 1993. "Must have at least three years of successful teaching experience and hold a valid secondary principal's certificate" were the only required qualifications listed in the posting. The grievants and PHS guidance counselor Giles Jones ([See footnote 9](#)) made timely applications. ([See footnote 10](#)) Each candidate was advised in writing that the interview committee would consider the above criteria and would ask questions pertaining to "public relations, discipline, leadership, parent involvement, and at-risk student population." Ms. Guy reviewed their applications and assigned them scores on the first six criteria. Despite that "Relevant Specialized Training" was afforded 5% in the approved procedures, Ms. Guy did not assign any points to any candidate in that area. ([See footnote 11](#))

At its September 7, 1993 meeting, the Board decided that the most senior teachers at Greenville Junior High School, Gap Mills School, and the Monroe County Vocational-Technical Center would also sit on the committee. Ms. Guy contacted the most senior teachers at all the schools and advised them of their appointments. After several persons declined to sit on the committee, the next most senior teachers were selected. Ultimately, the committee was comprised of the superintendent, Mr. Baker, Mr. Mohler, Gap Mills Junior High School teacher Billy Wickline, PHS teacher Jim Helvey, Greenville Junior High School teacher Fred Parker, Vo-Tech Center teacher Mary Bennett, and UHS teacher Roberta Reed.

Prior to his appointment to the committee, Mr. Wickline submitted a letter of recommendation for Mr. Jones in his bid for the position. Committee member Fred Parker's daughter is the wife of Grievant Mustain's son. Grievant Gore had served as Mr. Helvey's principal at PHS for a number of years and applicant Jones was one of Mr. Helvey's co-workers at the school. These ties between the committee and the candidates were known to Ms. Guy prior to the commencement of the interview process.

The committee met briefly on September 20, 1993 and each member was furnished the above-referenced procedures, the questions to be asked during the interviews, the applicants' resumes, their reference letters and copies of their two most recent performance evaluations. The members were asked to submit one additional question they wished to ask.

The committee convened its second and final meeting on September 27, 1993, to conduct the interviews. Prior to the commencement of the interviews, each member was furnished an "Interviewer Score Sheet" on which they were to place each candidate's overall score on the questions. [\(See footnote 12\)](#) During the interviews, each candidate was asked the same six questions and their responses generally determined the length of their interview. [\(See footnote 13\)](#) Subsequently, the members, without discussing the relative strengths and weaknesses of the applicants, submitted their score sheets. The sheets contained only the overall percentile scores of each candidate and did not identify the committee member assigning the scores. Giles Jones was by far the highest ranking candidate on the interviews. [\(See footnote 14\)](#) His 55 interview score plus the 15 points he achieved in Ms. Guy's calculations on the other criteria placed him overall, six points above the next highest scorer.

On October 4, 1993, Superintendent Guy's recommendation to the Board that Mr. Jones be awarded the position was accepted by a 3 to 2 vote, with members Baker, Mohler, and Robert Weikle voting yes and members Sharon Harris and Steve Miller abstaining. Mr. Jones entered into his duties October 11, 1993.

II.

The grievants advance three arguments for reversal of the Board's decision to appoint Mr. Jones to the position. First, they contend that the Board usurped the superintendent's duty under W.Va. Code §18A-2-1 to nominate candidates by placing two of its members on the interview committee, deciding on the amount of weight afforded the criteria, and determining what questions would be asked during the interviews. The grievants note that the West Virginia Supreme Court of Appeals has not directly addressed the relative duties of county boards and superintendents in the hiring process, but cite Trimboli v. Bd. of Educ. of Wayne County, 280 S.E.2d 686 (W.Va. 1981) as involving holdings analogous to the issue.

Second, the grievants assert that the weight assigned to the interviews was so disproportionate

as to render the selection process arbitrary and capricious. They cite Grievance Board holdings in Milam v. Kanawha County Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988) in support of this proposition. Finally, the grievants maintain that the Board acted arbitrarily and capriciously in not excluding committee member Wickline because of his letter of recommendation for Mr. Jones ([See footnote 15](#)) and by failing to assign weight to any specialized training the candidates may have possessed. They request, as relief, that the position be vacated and a new evaluation of the applicants be conducted.

The Board maintains that it was not violative of any statute for Board members to sit on the evaluation committee and that their participation was in keeping with its duty under W.Va. Code §18A-4-7a to hire the most qualified applicant for the position. The Board cites Milam, supra, in support of this contention. The Board also avers that Code §18A-4-7a allows it wide latitude to assign weight to the various criteria contained therein, and that the weight afforded the interviews was not an abuse of that discretion. Further, the Board asserts that it would have been improper to assign value to any specialized training the candidates may have possessed since the posting required none. The Board does not specifically address the grievants' concerns over the participation of Mr. Wickline on the selection committee but does generally maintain that the selection process was not arbitrary or capricious. For the reasons hereinafter discussed, the undersigned concludes that the grievants must prevail on their Code §18A-2-1 based claim.

III.

W.Va. Code §18A-2-1, in pertinent part, provides,

The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. ([See footnote 16](#))

The parties are in agreement that the West Virginia Supreme Court of Appeals has not addressed whether or to what extent this language permits a county board or its members to participate in the assessment of applicants prior to a superintendent's recommendation of employment. ([See footnote 17](#)) The Court has, however, addressed generally the role of a county superintendent of schools and

held that persons holding the position are not merely employees but "officers" of the county board with "a multitude of powers and duties independent of the board." State ex rel. Rogers v. Bd. of Educ. of Lewis County et al., 25 S.E.2d 537, 540 (W.Va. 1943). Clearly, the nomination of persons qualified to fill vacancies is a statutory duty of the superintendent and not a responsibility which arises by virtue of his or her employment with the county board. In the case of professional personnel, the superintendent's duty to nominate necessarily entails the duty to adhere to the provisions of W.Va. Code §18A-4-7a, which set forth the criteria to be used in assessing the qualifications of the applicants for such positions. [\(See footnote 18\)](#) It appears well-settled that the chief executive officer of a county school system may not delegate the duties of the post to others. See, 78 C.J.S. Schools and School Districts §171 (1952). It follows that others may not take actions which have the effect of impeding or usurping the exercise of those duties.

County school boards in West Virginia also draw their powers from statute and can only exercise such authority as is expressly given them or arises by necessary implication. Evans v. Hutchinson, 214 S.E.2d 453 (W.Va. 1975). Code §18A-2-1 explicitly confers upon a board the ultimate authority to make appointments to professional positions. Its authority under that statute, however, is also tempered by Code §18A-4-7a. A board must base its acceptance or rejection of a nominee on the criteria enumerated therein. Milam, supra; Smith v. Beverly, 236 S.W.2d 914 (Ky. 1951). Thus, any interpretation of the statutory language at issue must take into account the duty shared by the board and the superintendent under Code §18A-4-7a. The parties' respective duties under the two statutes, however, are not incompatible.

Code §18A-2-1 prohibits a county board from participating in the evaluation process by which the superintendent reaches a decision to nominate a particular candidate not through the use of specific language but by explicitly establishing a bifurcated appointment procedure. In order to give that procedure and the mandates of Code §18A-4-7a full effect, it must be concluded that, except where it is necessary to explore the credentials of a particular person nominated or examine the process by which the candidates were assessed, each party in the process must exercise its authority independent of the other. Neither party should delegate its statutory responsibilities to the point that it relinquishes those responsibilities. Likewise, a superintendent or board should not take actions calculated to interfere with or usurp the other's duty. Since the superintendent is subordinate to the board in a great many respects, see W.Va. Code §§18-4-3, 18-4-4, it is the board with whom the

greater responsibility for the integrity of the process rests.

Because the prohibition against undue interference by either party is an implied and not explicit part of the statute, it is not possible to promulgate a rule applicable to all situations in which a violation of that prohibition is alleged. Each case must be decided on its own merits. The present case, however, is an example of clearly excessive intrusion on the part of a county board into the superintendent's statutory duty.

While it was not per se violative of Code §18A-2-1 for the Board to involve itself in the development of the process by which candidates for the position would be assessed, the extent of that involvement was so substantial as to constitute an encroachment on the superintendent's authority. Specifically, the Board's control over the weight to be afforded the various criteria and the questions to be asked during the interviews effectively deprived Superintendent Guy of any meaningful say in the assessment. Her role in the development of the procedure was essentially reduced to that of an assistant to the Board, a role which is incompatible with the legislative intent of the statute.

The participation of the two board members on the interview committee was, in and of itself, violative of Code §18A-2-1. Such participation was wholly unnecessary for the Board to ensure that the selection process conformed to the requirements of Code §18A-4-7a. At the very least, such participation afforded the Board substantial influence over which candidate would ultimately be nominated. The involvement was particularly intrusive in that the Board had already mandated that the results of the interviews would be a major if not determinative factor in that nomination. Clearly, Code §18A-2-1 does not contemplate such extensive participation in the nomination process on the part of a board.

Further, Superintendent Guy's testimony at Levels II and IV conclusively establishes that she would have conducted the assessment of candidates much differently had she not been felt obligated to follow the Board's directions on how the assessment was to be accomplished. Tellingly, at Level IV, she characterized her recommendation that Mr. Jones be hired as "passing on the consensus of the committee" and not as a formal nomination on her part. Ms. Guy's further testimony and the above-quoted July 28, 1993 memorandum demonstrate that she was yielding to the Board's wishes to have its members on the interview committee despite her strong concerns over the legality of such participation because she felt it "unwise" to go against those wishes. In short, the record supports

that the Board, in its zeal to see that the most qualified applicant was appointed, usurped the superintendent's statutory authority. The grievants would be entitled to the relief they seek on this finding alone.

The grievants' assertions concerning the participation of Mr. Wickline on the interview committee are also meritorious. His support of candidate Jones for the position, via a recommendation letter, obviously rendered him a poor choice to sit on the committee. While the record does not reflect that he slanted his assessment of all of the candidates in Mr. Jones' favor, his participation, at the very least, created an appearance of impropriety. Similarly, committee member Parker's familial ties with applicant Mustain should have precluded his participation. [\(See footnote 19\)](#)

The grievants' remaining contentions must be rejected. The weight afforded the interview portion of the selection process was not, in and of itself, violative of Code §18A-4-7a. The Grievance Board has consistently held that, in assessing candidates for administrative positions, a board, under the statute, is free to determine what weight is to be given to each of the factors listed therein. See, e.g., Lauter v. Wood County Bd. of Educ., Docket No. 92-54-338 (Oct. 8, 1993). The record reflects that the Board and Ms. Guy were genuinely interested in going beyond a simple review of the applicants resumes and conducting an intensive examination of their responses to difficult questions. No abuse of discretion is found in this course of action.

The grievants' claim regarding the criteria "relevant specialized training" is without support in the statute or evidence. The record reflects that each candidate, during the interviews, had the opportunity to expound on his qualifications, including any previous relevant education or experience and that such training and experience, to the extent that it was made known, was assessed via the committee's rankings. It was, therefore, not improper that Ms. Guy did not assign a numerical value to the applicants in that category prior to the interviews. Moreover, it appears that Code §18A-4-7a, ¶10 [\(See footnote 20\)](#) discourages consideration of "any special criteria or skills" unless they are listed as requirements of the position in the job posting. As previously noted, no such requirements were contained in the posting for the job at issue.

The grievance procedure, Code §18-29-1 et seq., allows school employees to contest the legal sufficiency of a hiring process and if it is demonstrated by a preponderance of the evidence that the process was flawed to the point that the outcome might reasonably have been different, the grievant is entitled to a reconsideration of the applicants. Stover v. Kanawha County Bd. of Educ., Docket No.

89-20-75 (June 26, 1989). For the foregoing reasons, it is concluded that the grievants have proven that the process by which Mr. Jones was appointed to the position in issue was seriously flawed. They are, therefore, entitled to a reassessment.

In addition to the foregoing, the following findings and conclusions are made.

FINDINGS OF FACT

1) In the summer of 1993 the Board decided to post the position of Principal of yet to be constructed James Monroe High School. In that the school was to be the county's only high school and since its construction and location had been the subject of a heated public controversy, the position was of considerable importance to the school system.

2) The grievants, Giles Jones, and others were applicants for the position.

3) The Board, during meetings prior and subsequent to the posting of the position, decided on the method by which the candidates would be assessed, the questions to be asked during interviews and the makeup of a committee which would conduct the interviews. On August 2, 1993, the Board decided to place two of its members on that committee.

4) The daughter of interview committee member Fred Parker is the wife of applicant Mustain's son. Committee member Billy Wickline had submitted a letter of recommendation for applicant Jones in his bid for the position in issue.

5) It was the consensus of the interview committee that applicant Jones was the most qualified candidate. Superintendent Lyn Guy, who was a participant on the interview committee, assigned rankings to the candidates in other areas listed in W.Va. Code §18A-4-7a and determined that Mr. Jones was overall the highest ranking applicant. The Board ultimately accepted her recommendation that he be awarded the position.

CONCLUSIONS OF LAW

1) "The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct." W.Va. Code §18A-2-1. Implicit in the establishment of this bifurcated hiring process is that county boards and superintendents must exercise their

respective statutory duties independently of the other and not delegate those duties to the extent that they are relinquished. Actions calculated to interfere with or impede the exercise of those duties are violative of the statute.

2) The extensive control exercised by the Board over the selection process for the position in question and the participation of two of its members on the interview committee was violative of Code §18A-2-1.

3) When filling administrative positions, county boards of education must consider the "first set" of factors contained in Code §18A-4-7a but have broad discretion in assigning weight thereto. That discretion, however, must be exercised in a manner which is neither arbitrary or capricious. Lauter, supra; Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991).

4) Since committee members Wickline and Parker had personal ties with applicants for the position, it was an abuse of the Board's discretion to include them on the interview committee.

5) There was no abuse of discretion in the assignment of weight to the various criteria used for filling the position in issue. It also was not an abuse of discretion not to assign a numerical value to any specialized training the applicants may have possessed at the time the position was filled.

Accordingly, the grievance is **GRANTED** and the Monroe County Board of Education is hereby **ORDERED** to vacate the position of Principal of James Monroe High School and conduct a reassessment of the original applicants therefor consistent with the holdings herein.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Monroe County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 26, 1994

Footnote: 1 Grievant Mustain is assigned to Gap Mills Junior High School, Grievant McCutcheon is assigned to Union High

School and Grievant Gore is assigned to Peterstown High School.

[Footnote: 2](#) Such intervention is permitted by W.Va. Code §18-29-3(u) which provides,

Upon a timely request, any employee shall be allowed to intervene and become a party to a grievance at any level when that employee claims that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

[Footnote: 3](#) The grievants were represented by Jesse Guills, Jr., Esq. and the Board was represented by Debra Dalton, Esq. of the Monroe County Prosecuting Attorney's Office. Respondent Jones appeared by West Virginia Education Association Representative Steve Benson. There was no brief submitted in behalf of Mr. Jones.

[Footnote: 4](#) See Pell v. Board of Educ. of Monroe County, 426 S.E.2d 510 (W.Va. 1992).

[Footnote: 5](#) Completion of work on the new school is slated for Fall 1994.

[Footnote: 6](#) The statute, in pertinent part, provides:

A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. Further, the county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

[Footnote: 7](#) The memo was part of a package of information the superintendent provided the members in preparation for a regularly scheduled meeting to be held August 2, 1993.

[Footnote: 8](#) Mr. Seuffer was identified as an attorney associated with a Parkersburg, West Virginia law firm who conducts seminars on education law for the West Virginia Department of Education.

[Footnote: 9](#) Mr. Jones had previously served the Board in a number of administrative positions.

[Footnote: 10](#) It appears that several other persons, not then employed by the Board made applications but were initially excluded from consideration.

[Footnote: 11](#) All candidates were awarded five points in the "Certification and Licensure category; the only candidate to receive points in the "Total Amount of Experience Relevant to Position" section was Grievant Gore who was given ten points; Mr. Jones and Grievant McCutcheon received five points each in the "Amount of Course Work and/or Degree Level in Relevant Field" category; and all but Grievant Mustain received five points in the "Past Performance Evaluations" section. The grievants object to Ms. Guy's failure to award points in the "Relevant Specialized Training" section, but they do not otherwise take exception to Ms. Guy's calculations.

[Footnote: 12](#) Each interviewer was to add the total points awarded on the questions and multiply that figure by 2.16 to achieve a percentile. For example, a candidate receiving a 5 grade on each of the six questions posed would be given a final ranking of 65%, the maximum allowable score.

[Footnote: 13](#) It appears that the grievants' interviews lasted approximately thirty minutes while Mr. Jones' interview was nearly ninety minutes long. While the grievants take exception to the weight afforded the interviews, they do not allege any impropriety in their lengths.

[Footnote: 14](#) Of the eight interviewers, four ranked Mr. Jones substantially higher than all other candidates; two rated him and another candidate as the two highest scorers; and two rated him only slightly higher than another applicant.

[Footnote: 15](#)The grievants do not make any assertions regarding the other aforementioned ties between committee members and the applicants.

[Footnote: 16](#)Code §§18-4-10(2) and 18A-2-9 also address the manner in which persons are employed by a county board of education. The language used therein, however, essentially mirrors that of [Code §18A-2-1](#), the more general statute. For the purposes of this decision, reference is made only to the latter.

[Footnote: 17](#)At the conclusion of the Level IV hearing, the parties were advised to review the holdings in [Trimboli, supra](#), and address whether the case was relevant. There, the Court held that county board of education members generally are not qualified to perform personnel evaluations on professional employees. The grievants urge that the reasoning behind this holding be "extended" to the issues raised in the present case and the Board asserts that the Court was addressing a distinctly different issue. After a careful review of the Court's analysis, the undersigned also concludes that reliance on the case would be unwarranted.

Also, it is noted that the grievants, to some extent, rely on [Cochran v. Trussler](#), 89 S.E.2d 306 (W.Va. 1955). There, the Court held that the statute in question "plainly contemplates an agreement between the county superintendent of schools and the board of education upon all persons employed." The Court, however, was not confronted with and did not address the issue of whether board members could participate in the review of the qualifications of applicants for a position prior to the superintendent's nomination of a particular candidate. Thus, the case provides little if any guidance. It is further noted that the undersigned's research has produced case law from other jurisdictions which is only marginally relevant.

Finally, it is also concluded that the holdings in [Milam, supra](#), are, to a large extent, inapplicable. That case primarily stands for the proposition that [Code §18A-2-1](#) must be read *in pari materia* with other statutes governing the selection of professional employees and that if a county board exercises its authority to reject a superintendent's nomination, it must base its decision on the relative qualifications of the applicants for a particular position.

[Footnote: 18](#)The pertinent part of the statute provides,

A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and past performance evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

[Footnote: 19](#)No error is found in Mr. Helvey's membership on the committee. Notice is taken that the Monroe County school system is relatively small and that it was most likely difficult to recruit persons who had no ties, personal or professional, to the candidates. It is noted, however, that Mr. Helvey testified at Level IV that he was quite hesitant to serve on the committee for a number of reasons, including his prior professional relationships with Mr. Jones and grievant Gore. For these reasons he was probably not a suitable committee member.

[Footnote: 20](#)"Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job."