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If this case stands for the proposition that section 8(b)(1)(A) cannot be used to regulate activities of unions against members, as it appears to do, then it is a unique interpretation which may have far-reaching effects.

By this decision, the union has gained a new source of strength and the employee has lost a great measure of his freedom to refrain from engaging in concerted union activities. The decision has the effect of placing in the hands of the union a powerful weapon which may be used to enforce their will upon the employee. Henceforth, the court enforced fine will no doubt deter a great deal of rebellion within the inner ranks of the union. It will certainly strengthen the union in its struggle against management. It may even have the long range effect of winning more benefits for the worker. But the worker may find that these new benefits are a poor substitute for the loss of individual freedom which he will suffer because of this decision.

Thomas M. Chattin

Legislation—Validity of Special Acts When A General Law Already Exists

The West Virginia Legislature passed a special act authorizing the Greenbrier County Court to create an airport authority to construct, maintain, and operate an airport. An airport authority was created and construction of an airport begun. To finance the construction of the airport, the airport authority authorized the sale of revenue bonds. The Secretary of the airport authority was the only officer empowered to sign the certificate authorizing the sale of the bonds; he refused to do so. The airport authority brought an original proceeding in mandamus to compel its Secretary to sign the certificate. Prior to this a citizen of Greenbrier County had instituted a civil action to have the act declared unconstitutional as contrary to article VI section 39 of the West Virginia Constitution. The trial court declared the special act valid. Held, reversed, writ denied. The existence of a general law relating to airports indicates that the Legislature recognizes that a general law is applicable to the subject. Therefore, since there is no doubt that a general law is applicable, the necessity for a special act is precluded, and the special act is void. The Legislature could
have accomplished its objective by amending the general law which relates to airports. *State ex rel. Greenbrier County Airport Authority v. Hanna*, 153 S.E.2d 284 (W. Va. 1967).

The principal case is the most recent decision of the West Virginia court where a special act of the Legislature has been declared unconstitutional under the prohibition against special acts when general laws could be made applicable. The question arises: what criteria does the court consider when determining the constitutionality of a special act?

First, it must be decided whether a given statute is general or special. A statute is general when it applies to all persons, places, relations, or things within a specified class that is not arbitrary or unreasonable.1 But, the classification must reasonably and substantially resemble the objective which the Legislature seeks to accomplish;2 and be open to receive potential members.3 Further, it must operate on all of the members of the class in a substantially like manner.4 On the other hand, special statutes apply only to individuals or to less than all of the members of a particular class.5 Special acts are an arbitrary separation of the members of a class. One device the court uses to recognize this arbitrary separation is ascertaining whether certain members of a particular class are arbitrarily excluded or discriminated against.6 Local laws are laws which are special with respect to place or geographical area.7 That is, all local acts are special, but special acts are local only when they affect one particular geographic area.

The West Virginia Constitution of 1863 prohibited special legislation only when general laws were applicable. The purpose of the prohibition was to prevent the abuse of the power vested in the Legislature and require the Legislature to act by general laws

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3 *Groves v. County Court of Grant County*, 42 W. Va. 587, 596, 26 S.E. 460, 463 (1896).
5 *Groves v. County Court of Grant County*, 42 W. Va. 587, 596, 26 S.E. 460, 463 (1896).
7 *Groves v. County Court of Grant County*, 42 W. Va. 587, 596, 26 S.E. 460, 463 (1896).
whenever practical to do so. Another purpose was to preserve uniformity of legislation. In the constitution of 1872 eighteen specific prohibitions were added to the section prohibiting special acts when general laws could be made applicable. The Journal of the Constitutional Convention of 1872 does not state why the eighteen specific prohibitions were added. The prohibition against a special act when a general law is practicable appears in the West Virginia Constitution following an enumeration of the eighteen specific prohibitions of article VI section 39 and states, "[A]nd in no case shall a special act be passed, where a general law would be proper and can be made applicable to the case. . .".

The early decisions of the West Virginia court on the scope of the general constitutional prohibition in section 39 held that the applicability of a general law was a preliminary matter exclusively within the jurisdiction of the Legislature and not reviewable by the courts. This position of the court nullified article VI section 39 of the constitution as a restriction upon the power of the Legislature because it left the power to determine the constitutionality of special legislation solely with the Legislature—the very body which the provision was designed to restrict. Later, in Brozka v. County Court of Brooke County, the West Virginia court took the position that while the Legislature was generally the sole judge of the applicability of a general law to a specific situation, the court can void the act when it clearly appears that a general law would accomplish the purpose as well. Thus by asserting

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6 III DEBATES AND PROCEEDINGS OF FIRST CONSTITUTIONAL CONVENTION OF W. VA. (1861-1863) 831. For a discussion of special legislation, see Cloe and Marcus, SPECIAL AND LOCAL LEGISLATION, 24 KY. L.J. 351 (1936); Horack and Welsh, Special Legislation: Another Twilight Zone, 12 IND. L.J. 183 (1937); Note, Special Legislation in Virginia, 42 Va. L. Rev. 860 (1956); Note, Special Legislation in West Virginia, 39 W. VA. L. Rev. 255 (1933).

9 State ex rel. Rickey v. Sims & Talbott, 122 W. Va. 29, 32, 7 S.E.2d 54, 55 (1940).

10 Kanawha County Public Library v. County Court of Kanawha County, 143 W. Va. 385, 400, 102 S.E.2d 712, 721 (1958).

11 W. VA. CONSTR. art. VI § 39 states: The legislature shall provide, by general laws, for the foregoing and all other cases for which provision can be so made; and in no case shall a special act be passed, where a general law would be proper, and can be made applicable to the case, nor in any other case in which the courts have jurisdiction, and are competent to give the relief asked for.

12 Herold v. McQueen, 71 W. Va. 43, 47, 75 S.E. 313, 315 (1912); Casto v. Upshur County High School Board, 94 W. Va. 513, 517, 119 S.E. 470, 472, (1923).


14 Id. at 195, 160 S.E. at 916.
a right to determine whether the Legislature had exceeded its powers, the court established a right of judicial review in the area of special legislation. This decision made article VI section 39 of the constitution an effectual restriction on the power of the Legislature.

As stated, the principal case is the most recent of a number of cases in which the court has ruled on the constitutionality of a special act. However, the principal case seems to be a departure from the court's position in two leading West Virginia cases concerning the validity of special acts—Meisel v. Tri-State Airport Authority and Kanawha County Public Library v. County Court of Kanawha County. Each of the three cases had a similar factual basis, but in both Meisel and Kanawha County Public Library the special acts were upheld, while in the principal case the special act was declared void.

In Meisel a citizen brought an action to have the special act creating the Tri-State Airport Authority declared unconstitutional and enjoin the same authority from performing any acts under the auspices of the special law. This special law created the Tri-State Airport Authority; provided for its membership, acquisition of property and tax exemption, construction, operation and maintenance; and granted powers of eminent domain and issuance of revenue bonds. The general statute already operating allowed joint operation of an airport by two or more counties, cities, or towns. However, the general statute did not suggest a way for an airport to be jointly operated. The only factual difference between Meisel and the principal case was that in the former, five separate and distinct units of government—two counties, two cities, and one town—and a private civic organization were involved in the creation of the authority. While in the principal case only the Greenbrier County Court was involved in the creation of the airport authority. The distinction between Meisel and the principal case was said by the majority to turn on the question of whether a special act was necessary to adequately protect the rights of all

16 135 W. Va. 528, 64 S.E.2d 32 (1951).
17 W. Va. Code ch. 8, art. 11, § 5 (Michie 1943) provides: "One or more counties, towns or villages may join with another or other counties, cities, towns and/or villages for the purpose of acquiring, leasing, equipping, constructing, maintaining and operating an airport or landing field. . . ."
18 Id.
the parties involved in the creation of the airport authority.\textsuperscript{20} Federal funds were given to both airport authorities. The Civil Aeronautics Administration requires a local sponsor as recipient of a grant to insure that one entering into contractual relations with the CAA can be forced to comply with the provisions of the grant, e.g., non-discriminatory hiring. The special act in \textit{Meisel} created a local sponsor—the Tri-State Airport Authority. None of the six parties involved in the creation of the Tri-State Airport Authority was in any way subject to the control of any other party.\textsuperscript{21} Therefore, the CAA could not be sure that the requirements of the grant would be met unless the party with whom it contracted had the exclusive authority to control the operation of the airport. If only one of the six parties had signed the agreement with the CAA, the signatory party could only obligate itself and not any of the other parties. In such an event the CAA would probably not grant the necessary funds. By contrast, the Greenbrier County Court had a high degree of control over the Greenbrier Airport Authority because the county court selected and approved the members of the airport authority.\textsuperscript{22} Therefore, in the principal case there was no need for a special act to protect the rights of the parties involved because the CAA could be assured of compliance no matter which party signed the agreement. After looking at all of the relations between the parties involved, the majority in the principal case felt that a special act was necessary to protect the rights of all of the parties concerned in \textit{Meisel}, but not in the principal case.\textsuperscript{23}

Judge Berry, dissenting in the principal case, argued that \textit{Meisel} is not distinguishable. He insisted that the court's position on the two cases should be consistent. The Regional Airport Authority Act was passed on March 8, 1967, the day after the case was decided.\textsuperscript{24} It is a general law under which the Tri-State Airport Authority could have been organized. The general act specifically states the manner in which an airport authority can be formed;

\begin{footnotesize}
\textsuperscript{20} Meisel v. Tri-State Airport Authority, 135 W. Va. 528, 542, 64 S.E.2d 32, 40 (1951).
\textsuperscript{21} Id.
\textsuperscript{22} State ex rel. Greenbrier County Airport Authority v. Hanna 153 S.E.2d 284, 292 (W. Va. 1967).
\textsuperscript{23} Id.
\textsuperscript{24} W. Va. Acrs, 1967, c. 15, 57. This act was declared constitutional as this article goes to press. State ex rel. Farley & Leadman, Comm'rs v. Brown, 35 The Syllabus Service 30 (W. Va. 1967).
\end{footnotesize}
defines its powers and obligations; regulates relations between the parties involved; and expressly provides for entering into agreements with federal agencies. 25 Both the Tri-State and Greenbrier Airport Authorities could have been organized under the Regional Airport Authority Act. Therefore, it seems that Judge Berry was correct in arguing that the two cases were not distinguishable, as the majority held in the principal case. The dissenting opinion further questions the decision of the majority because it purports to follow the canon that a reasonable doubt as to unconstitutionality of a statute must be resolved in favor of the validity of the law. Judge Berry argues that a reasonable doubt would seem to exist when two of a five-member court cannot agree with the majority. Judge Berry points out that airports created by special acts in other counties will probably be unconstitutional. This can create difficult situations. However, these airports can reorganize under the Regional Airport Authority Act. But if a special act on some other subject is declared unconstitutional in the future, what remedy will be available to persons operating under similar special acts? 9

In the Kanawha County Public Library case the special act established a public library; created a board to operate it; and provided a stable method for financing the library. 26 The act specified that the financial support of the public library would be provided for by a special tax. This tax was to be levied by the city, county court, and school board upon the written request of the library board. 27 The general statute already in force was essentially the same as the special act except that the general law did not make it mandatory that public libraries be established in every county. 28 The library brought an original proceeding in

25 W. VA. Acts, 1967, c. 15, 57. 26 W. VA. Acts, 1957, c. 178, 785. 27 Id. at 787. 28 W. VA. CODE ch. 10, art. 1, § 1 (Michie 1955) provides: "The term 'governing authority' shall be construed to mean county court, county board of education or the governing body of the municipality." W. VA. CODE ch. 10, art. 1, § 2 (Michie 1955) provides: A governing authority, either by itself or in cooperation with one or more other such governing authorities, shall have the power to establish, equip and maintain a public library, or to take over, maintain or support any public library already established. Any library established, maintained or supported by a governing authority may be financed either (1) by the appropriation from the general funds of the governing authority of a sum sufficient for the purpose, or (2) by the imposition of an excess levy for library purposes, in accordance with the provisions of section sixteen, article eight, chapter eleven of this Code.
mandamus to force the Kanawha County Court to appropriate funds and pay to the library in accordance with the special act. The difference between Kanawha County Public Library and the principal case is that they were decided on different portions of the pertinent constitutional provision. Kanawha County Public Library was argued and decided on the specific prohibition of article VI section 39 against the passing of a special act which interferes with county affairs. The principal case was decided on the general portion of section 39 which prohibits special acts only when a general law is applicable. It is a distinction between total and partial prohibition. In Kanawha County Public Library, the court said the special act was not in interference with county affairs because it did not change an existing situation within the county. Rather, the special act created a new situation with a new set of relations. The court in the Kanawha County Public Library decision hints that even had the case been decided on the general portion of section 39, the result would have been the same.

The objective of the Legislature in the Kanawha County Public Library case—the mandatory creation of a public library in Kanawha County—dealt with a unique situation. The Legislature obviously did not feel that it was necessary to establish a public library in every county. Because the existing act concerning public libraries does not make the creation of public libraries mandatory, there is no presumptive evidence of the applicability of a general law on the subject, that is, that every county should be required to maintain a public library. This means that consideration of the necessity for a special act is not precluded.

It appears that a special act will and should be declared void in most situations if there is an existing general law dealing with the subject. However, there may be an exception when the circumstances of a particular situation are unique, and there remains no other way to accomplish a proper exercise of legislative power. In the cases discussed the facts are so similar, the distinctions so slight, and the reasoning so close that there may exist substantial

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29 See Kanawha County Public Library v. County Court of Kanawha County, 143 W. Va. 385, 393, 102 S.E.2d 712, 717 (1958).
31 Herold v. McQueen, 71 W. Va. 43, 47, 75 S.E. 313, 315 (1912).
32 Kanawha County Public Library v. County Court of Kanawha County, 143 W. Va. 385, 391, 102 S.E.2d 712, 716 (1958).
doubt among the members of the bench and bar of West Virginia as to the state of the law with respect to the validity of special acts, when a general law, dealing at least partially with the subject of the special law, already exists.

James Edward Seibert

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Sentence and Punishment—
Harsher Penalties Following Habeas Corpus Relief

D was indicted and pleaded guilty to two separate counts of attempted armed robbery and received two concurrent ten year prison terms. After exhausting his state remedies, D received habeas corpus relief from a federal district court, and his case was remanded for a new trial. In the second trial before a different judge, D's case was submitted to two different juries on the separate felony charges. D was found guilty on both charges, and the sentencing judge gave two fifteen year terms which were to run consecutively. D petitioned the West Virginia Supreme Court of Appeals for a writ of habeas corpus. The petition was denied without hearing. D then petitioned the United States District Court for federal habeas corpus. Held, petition denied. The authority of the sentencing judge must not be curtailed so long as the harsher sentence imposed is not the product of retributive intent on the part of the second sentencing judge. Shear v. Boles, 263 F. Supp. 855 (N.D. W. Va. 1967).

The recent expansion of constitutional limits on state criminal proceedings has created difficult problems for the federal habeas corpus court. A major task confronting the court is to reconcile the broadly principled demands of the United States Constitution with the practical aspects of post-conviction relief. That is, in addition to protecting the individual's constitutional rights, a federal court must extend such protection within the existing judicial system. In the principal case, fearing a usurpation of the trial court's function, the Shear court upheld the imposition of a harsher sentence on the successful habeas corpus applicant.