# WEST VIRGINIA CODE: §6-3-1

**§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; vacating appointment of deputy sheriff; removal of conservators.**

(a) (1) The clerk of the Supreme Court of Appeals, or of any circuit, criminal, common pleas, intermediate or county court, or of any tribunal established by law in lieu thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly entered of record, appoint any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires it, may, with the assent of said court, duly entered of record, appoint any person or persons his deputy or deputies to perform any temporary service or duty.

(4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

(5) A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of the services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public services or duties: Provided, That any such sheriff may retain or make any investment and receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office. A sheriff in any county in which there are four or fewer deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote his full time to the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be; but any such sheriff or deputy sheriff shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be. A sheriff and his deputies in any county, irrespective of the number of deputies, shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount and in the manner provided by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies, may receive, directly or indirectly, any gift or donation from any person, firm or corporation.

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(6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, or confined in jail not to exceed one year, or both, in the discretion of the court.

(7) Circuit courts shall have jurisdiction in equity and mandamus, and the Supreme Court of Appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting attorney, the Attorney General, or any three or more citizens of the county, to require any sheriff and the county court to vacate the appointment of any deputy, the appointment of which is made or continued in violation of the provisions hereof. Any such proceeding may be instituted and prosecuted by the Attorney General either in the circuit court of Kanawha county or in the county for which such appointment was made.

(b) (1) Any resident or group of residents of any unincorporated community, as hereinafter defined, may petition the sheriff for the appointment of a local conservator of the peace and such sheriff, when in his opinion the public interests require it, may with the assent of said county court and the judge of the circuit court duly entered of record, either in term or vacation of any such court, appoint any person or persons a local conservator or conservators of the peace to perform the duties of a conservator of the peace outside of any incorporated city, town or village. No person shall be appointed such local conservator of the peace who has not been a bona fide resident and taxpayer of the county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other than his principal and he shall not perform any services or duties, either private or public, except the duties required by law of conservators of the peace pursuant to the provisions hereof, for any person, firm, or corporation. No such local conservator shall be entitled to collect or receive any fees provided by law to be paid to the sheriff or to a deputy sheriff, but all fees provided by law for the sheriff, when such duties and services are rendered by such local conservator, shall be paid to the sheriff as regular collections of the sheriff's office. The local conservator shall be paid for the public services performed by him a salary of not less than $75 per month out of the county treasury from a fund to be paid into such treasury by a resident or the residents of the community for which he is appointed, for the sole purpose of compensating such local conservator or conservators and no such local conservator shall receive any other compensation, directly or indirectly, from any person, firm, or corporation, for any private or public service, except the salary payable to him for his public services and duties and from such fund, except that he shall be entitled to witness and mileage fees when a witness in a court of record. Each local conservator so appointed shall take the same oath of office required of his principal and any default or misfeasance in the office of such local conservator shall constitute a breach of the conditions of the official bond of his principal.

(2) When the sheriff shall have been petitioned for the appointment of a local conservator and has determined that the appointment is proper, he shall select the person whom he



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proposes to have appointed such conservator and shall notify the county court of the community for which such conservator is to be appointed and the name of the person proposed for such appointment. The county court shall thereupon cause notice that the sheriff has recommended the appointment of the person named as conservator for the community named to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The notice shall designate a day not less than five days after the date of the last publication when the county court will act upon the petition and recommendation. Neither the county court nor the judge of the circuit court shall assent and approve the appointment of such local conservator until such publication has been made. The costs of the publication shall be paid by the person or persons petitioning for the appointment of the conservator.

No local conservator shall be appointed except it be made to appear to the satisfaction of the county court and the judge of the circuit court that because of the lack of sufficient funds, geographical location of the unincorporated community for which such conservator is to be appointed, or other good reason, the sheriff and his regular deputies and the constables of the county are not sufficient to afford proper local policing of such community and that the person or persons moving for the appointment of such local conservator have made satisfactory arrangements to compensate him for his services as such local conservator of the peace.

(3) Such local conservator of the peace shall have all the powers and duties of a regularly appointed deputy sheriff except that he shall not execute any civil process except such process as may be necessary to bring parties before the court in any action at law or suit in equity and subpoenas for witnesses within the unincorporated community for which he is appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter expressly provided, but shall not participate in any strike, unemployment boycott, or other industrial or labor dispute, nor serve any court process of any character relating thereto. He shall act as such local conservator only in the unincorporated community for which he is appointed, and within a distance of one mile from the boundaries thereof as fixed by the county court: Provided, however, That the authority of one local conservator shall not extend into any other unincorporated community for which another local conservator is appointed and acting, except as otherwise expressly provided by subdivision (6) of this subsection, except that in fresh pursuit he may effect arrests anywhere in the county. He may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he is appointed. Any person arrested by such local conservator shall, with all convenient speed, be turned over to the sheriff, or one of his regular deputies, or to a regular constable of the county to be dealt with according to law, and his authority for that purpose shall be coextensive with the county.

(4) Any local conservator appointed to perform the duties of conservator of the peace shall be a public officer and the payment, or contribution to the payment of compensation of such

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local conservator shall not constitute the person, firm or corporation making such payment or contribution the employer of such local conservator and no person, firm or corporation paying, or contributing to the payment of compensation to such local conservator shall be answerable in law or in equity for any damages to person or property resulting from any official act of such local conservator.

(5) No person appointed such local conservator shall thereby be entitled to carry weapons, but such local conservator may carry weapons when he shall be duly licensed and shall have given bond as provided by section two, article seven, chapter sixty-one of the Code of West Virginia, 1931.

(6) Not more than one local conservator of the peace shall be appointed, to perform the duties of conservator of the peace, for each two thousand five hundred inhabitants of the county as ascertained by the last regular decennial census after deducting the number of inhabitants of the county residing in the incorporated cities, towns and villages in such county. Not more than one local conservator shall be appointed for any unincorporated community unless the population thereof exceed fifteen hundred people and in such case not more than two conservators shall be appointed for such community.

(7) The phrase "unincorporated community" within the meaning of this section shall mean any center of population wherein fifty or more persons reside within an area of not more than one square mile.

(8) The county court and the judge of the circuit court in approving the appointment of a local conservator shall enter of record an order making such appointment and shall show therein the necessity for the appointment, the person or persons on whose motion the appointment is made, the arrangement for the payment of compensation to such local conservator, the unincorporated community or communities, for which the appointment is made, including the general boundary of each unincorporated community for which he is appointed.

(9) No local conservator shall act as an election official or remain in, about or near any voting place or place of political convention, further than is necessary for him to promptly cast his vote and retire from the voting place.

(10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $300, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the Supreme Court of Appeals at the instance of the prosecuting attorney, the Attorney General, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

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(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.

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