WEST VIRGINIA CODE: §7-1-3A

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers, improved streets and maintenance of roads not in the state road system.

In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: *Provided*, That the county commission of Webster County is authorized to expend county funds in the opening of, and upkeep of a sulphur well now situate on county property: *Provided, however*, That such authority and power herein conferred upon county commissions shall not extend into the territory within any municipal corporation: *Provided further*, That any county commission is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such commissions by this section.

Considering the importance of public fire protection, any county commission, public service district, public or private utility which installs, constructs, maintains, or upgrades water mains shall ensure that all new mains specifically intended to provide fire protection are supplied by mains which are not less than six inches in diameter. A permit or other written approval shall be obtained from the Department of Health for each hydrant or group of hydrants installed in compliance with §16-1-9 of the West Virginia code as amended: *Provided*, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are desired or required by the public or private utility: *Provided, however*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health.

In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and alleys and lay sewers and enter into contracts for maintenance of county roads and subdivision roads used by the public but not in the state road system as follows: Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, between any two cross-streets, or between a cross-street and an alley in any unincorporated community, requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, or the total cost of maintenance of county roads or subdivision roads used by the public but not in the state road system, the county commission may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans

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and specifications as hereinafter provided: *Provided*, That the county commission is further authorized, if the said county commission so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that event, the said county commission may order such improvements as one single unit and project, upon petition in writing duly verified of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of all streets or alleys, or portions thereof included by said county commission in said unit and project.

The total cost including labor and materials, engineering, and legal service of grading and paving, curbing, improving any such road, street or alley (including the cost of the intersections) and assessing the cost thereof shall be borne by the owners of the land abutting upon such road, street or alley when the work is completed and accepted according to the following plan, that is to say, payment is to be made by all landowners on either side of such road, street or alley so paved or improved in such proportion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all the land so abutting on such road, street or alley, so paved or improved as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him or her to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on one side of any county or subdivision road or roads between any two cross-roads, all used by the public but not in the state road system or street between any two cross-streets or between a cross-street and an alley in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the total cost thereof, the county commission may cause any sidewalk to be improved, or paved, or repaved, substantially with such materials according to such plans and specifications and the total cost including labor and materials, engineering and legal service of improving, grading, paving or repaving such sidewalk and assessing the cost thereof shall, when the work is completed and accepted, be assessed against the owners of the lots or fractional part of lots abutting on such sidewalk, in such portion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all lots so abutting on such sidewalk so paved or improved, as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him or her to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the cost, as hereinafter provided, the county commission may lay and construct sanitary sewers in any street or alley with such materials and substantially according to such plans and specifications and when such sewer is completed and accepted,

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the county engineer or surveyor shall report to the county commission, in writing, the total cost of such sewer and a description of the lots and lands, as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost of constructing and laying the sewer including labor, materials, legal and engineering services shall be borne by the owners of the land abutting upon the streets and alleys, in which the sewer is laid according to the following plan: Payment is to be made by each landowner on either side of such portion of a street or alley in which such sewer is laid, in such proportions as the frontage of his or her land upon said street or alley bears to the total frontage of all lots so abutting on such street or alley. In case of a corner lot, frontage is to be measured along the longest dimensions thereof abutting on such street or alley in which such sewer is laid. Any lot having a depth of two hundred feet or more, and fronting on two streets or alleys, one in the front and one in the rear of said lot, shall be assessed on both of said streets or alleys if a sewer is laid in both such streets and alleys. Where a corner lot has been assessed on the end it shall not be assessed on the side for the same sewer and where it has been assessed on the side it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such county road or subdivision road, street, alley or sidewalk in a manner which does not require the permanent paving or repaving thereof, the county commission shall likewise have authority to improve such county road or subdivision road, street, alley or sidewalk, substantially as requested in such petition, and the total cost thereof including labor, materials, engineering and legal services shall be assessed against the abutting owners in the proportion which the frontage of their lots abutting upon such county road or subdivision road, street, alley or sidewalk bears to the total frontage of all lots abutting upon such street, alley or sidewalk so improved.

Upon the filing of such petition and before work is begun, or let to contract, the county commission shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the county road or subdivision road, street, alley or sidewalk affected, and to give notice thereof by publication of such notice as a Class I 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 in which the improvement is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county commission may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving or sewering will result in special benefits to all owners of property abutting on said county road or subdivision road, street, alley or sidewalk in an amount at least equal in value to the cost thereof. The commission shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

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Any owner of property abutting upon said county road or subdivision road, street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county commission by filing within ten days after the entry of such order a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county commission be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county commission.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at a rate not to exceed twelve percent per annum, as follows: The first installment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county commission may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot or fractional part thereof, fronting on such county road or subdivision road, street, alley or sidewalk which has been improved, paved, or repaved or in which a sewer has been laid, as aforesaid, and the holder of said certificate shall have a lien having priority over all other liens except those for taxes upon the lot or part of lot fronting on such county road or subdivision road, street, alley or sidewalk, and such certificate shall likewise draw interest from the date of assessment at a rate not to exceed twelve percent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his or her assignee, or to any person, firm or corporation: *Provided*, That the county commission in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county commission shall let the work of grading, paving, curbing or sewering to contract to the lowest responsible bidder. In each such case the county commission shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to

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repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

The owner of any lot or fractional part of a lot abutting upon such county road or subdivision road, street, alley or sidewalk so improved, paved, repaved, or sewered shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest at any time, within thirty days following the date of the assessment.

Nothing in this section contained shall be construed to authorize the county commissions of the various counties to acquire any road construction, ditching or paving equipment. The county commissions are hereby authorized to rent from the state road commissioner or any other person, firm or corporation such equipment as may be necessary from time to time, to improve any county road or subdivision road used by the public but not in the state road system, street or sidewalk which petitioners do not desire to have paved in a permanent manner, and for such purpose to employ such labor as may be necessary but no expense connected therewith shall be charged to any county funds.

No county commission shall be under any duty after the paving, repaving or improvement of any county road or subdivision road used by the public but not in the state road system, street, alley or sidewalk or the laying of any sanitary sewer under the provisions of this section, to maintain or repair the same, but any such commission shall have authority upon petition duly verified, signed by at least sixty percent of the owners of property abutting upon any improvement made under this section, to maintain or repair such improvement or sewer and to assess the cost thereof against the owners of such abutting property in the same manner as the cost of the original improvement.

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