WEST VIRGINIA CODE CHAPTER 8 ARTICLE 2

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PART I. GENERAL.

§8-2-1. Requirements for incorporation; size and character of territory; population.

(a) Any part of a county or counties may be incorporated as a city, depending upon the population, either as a Class I, Class II or Class III city, or as a Class IV town or village, as classified in section three, article one of this chapter if the area proposed for incorporation meets the following conditions:

(1) The area is not currently within any municipality urban in character;

(2) For areas that are more than one square mile there must be an average of not less than five hundred inhabitants or freeholders per square mile;

(3) For areas less than one square mile there must be at least one hundred inhabitants or freeholders;

(4) The total area to be incorporated must not include an amount of territory disproportionate to its number of inhabitants; and

(5) The proponents of incorporation shall provide to the county commission a proposal which shall include:

(A) A map or maps of the area to be incorporated showing the following information:

(i) The present boundaries of nearby municipalities and the proposed boundaries of the area to be incorporated; and

(ii) The proposed extensions of water mains and sewer outfalls to serve the incorporated area, if such utilities are to be operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(B) A statement that the area to be incorporated meets the applicable requirements of this article.

(C) A statement setting forth the plans of the proposed municipality for providing to the area to be incorporated each major municipal service and whether the service will be provided by the municipality or by contract with a public or private entity. The plan shall:

(i) Provide for police protection, fire protection, solid waste collection, public water and sewer services and street maintenance services to the area to be incorporated on the date of incorporation;

(ii) A statement of the impact of the incorporation on any rural fire department providing service in the area to be incorporated and a statement of the impact of the incorporation on fire protection and fire insurance rates in the area to be incorporated; and

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(iii) A statement showing how the proposed incorporation will affect the proposed municipalities finances and services.

(b) The creation of any new municipality is prohibited if:

(1) The area to be incorporated is within close proximity to an existing municipality and the existing municipality is capable of more effectively and efficiently providing services to the area; or

(2) The creation of a new municipality is not in the best interest of the county as a whole.

(c) It is within the reasonable discretion of the county commission to determine the exact area or portions thereof to be included or excluded in the new municipality, considering the following:

(1) The topography of the area;

(2) The benefits of incorporation;

(3) The amount of uninhabited land required for parks and recreational use; and

(4) Normal growth and development and the present and possible future uses so as to prevent hardships and inequities.

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§8-2-2. Petition; survey and map.

A proceeding to incorporate any such city, town or village shall be initiated upon petition addressed to and filed with the county court of the county in which the territory is located, or if in more than one county in which the major portion of the territory is located, indicating whether the territory sought to be incorporated will be upon incorporation, depending upon population, a Class I, Class II or Class III city or a Class IV town or village. Such petition shall be signed by at least thirty percent of the freeholders of the territory to be incorporated.

Such petition shall be verified by at least one of the petitioners and shall be accompanied by a map made by a professional engineer registered under the laws of this state, which map shall be based upon an actual and accurate survey of the territory to be incorporated showing the courses, distances and the area of the territory to be incorporated.

Such map shall be verified and shall be left at the residence or place of business within the territory to be incorporated of some individual residing or some person doing business therein, and shall be subject to examination at all reasonable hours by every person interested in such application for a period of at least ten days prior to the hearing on such petition as provided for in section three of this article.

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§8-2-3. Hearing on petition; notice; dismissal.

Upon the filing of such petition, the county court shall set the same for hearing not sooner than ten days and not later than thirty days thereafter, and the petitioners shall cause notice of the filing of said petition and of the date, time and place of hearing thereon 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 territory sought to be incorporated.

Upon the date set for hearing, the county court shall hear evidence for and against the proposed incorporation, and if it shall determine that the requirements of sections one and two of this article have not been met, it shall forthwith enter an order dismissing said petition.

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§8-2-4. Census; bond; appointment and duties of enumerators.

If the court shall determine after hearing that the requirements of sections one and two of this article have been met, the petitioners shall provide bond in penalty prescribed by the court, with good and sufficient surety thereon, conditioned to pay all costs of taking a census, determining the qualification of electors, holding an election and ascertaining the results thereof, in the event a majority of the qualified electors vote against incorporation; and thereupon the court shall fix a day or days for taking a census of the inhabitants and for determining those who are qualified electors of said territory. For the purpose of taking said census, and determining the qualifications of the electors, said court shall appoint four enumerators for each five hundred inhabitants of said territory based upon the most reliable estimate obtainable: Provided, That if the territory contains less than one square mile and the county court believes the territory contains fewer than five hundred inhabitants, two enumerators shall be appointed. It shall be the duty of the enumerators so appointed to enumerate all of the inhabitants of said territory and to visit each house or dwelling therein, and to obtain the name of each known resident thereof. It shall also be the duty of the enumerators to examine the permanent registration records of the county or counties in which the territory is situate to determine which of such inhabitants are qualified electors therein and to compile and file with the county court a list of such qualified electors. Each enumerator shall receive for his services a sum per day, to be fixed by the county court, but not to exceed $10 per day, together with all reasonable and necessary expenses actually incurred in the discharge of such duties, which sum and expenses shall be paid by the county court and reimbursed to it by the city, town or village if and when the city, town or village shall become incorporated, as hereinafter provided; otherwise by the petitioners. The county court shall provide an opportunity for all qualified individuals residing in such territory, who have not been previously registered to vote, to become registered prior to the election hereinafter provided for. Upon the completion of said census and the listing of qualified electors, said enumerators shall make a report under oath to the county court that said enumeration and listing are correct, true and accurate, and do not contain the name of any individual who is not a resident of the territory, and that the list of qualified electors is true and correct, which report shall be filed with the county court within the following number of days after the appointment of said enumerators: Forty days if it is to be a Class I city, twenty days if it is to be a Class II city, ten days if it is to be a Class III city and ten days if it is to be a Class IV town or village.

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Part II. Election.

§8-2-5. Special incorporation election — Voting precincts; time for election; supplies; commissioners and clerks; notice.

Upon receiving such a report from said enumerators, the county commission shall forthwith fix a date for a special incorporation election, to be held concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at which election all qualified electors of the territory shall vote upon the question of incorporation between such hours as may be fixed by order of said commission. For the purpose of holding and conducting said election, the county commission shall divide the territory into one or more precincts, consisting of not more than 500 qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges, and other election supplies as provided for by law in general elections; shall appoint three commissioners of election and two clerks from the qualified electors of said territory for each precinct so established, dividing the election officials as nearly as possible equally between those favoring incorporation and those opposed to incorporation; and shall give notice of the date and place or places of election and hours for voting by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for such publication shall be the territory sought to be incorporated.

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§8-2-6. Same -- Qualified electors; form of ballot or ballot label; election officials; certification; canvass; declaration of results; recount.

Class I, II, or III city

(a) On the date named in the notice for the taking of the vote, each qualified elector of the territory sought to be incorporated as a Class I, II, or III city, may cast his or her vote for or against such incorporation at the precinct in which he or she resides, by depositing a ballot in a ballot box, or by use of a voting machine, to be provided by the county commission for that purpose. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

G For Incorporation

G Against Incorporation

The ballot or ballot label shall be a separate, special ballot or ballot label.

(b)The election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of the election shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. If any commissioner or clerk designated to serve in the election shall fail or refuse to serve, the vacancy may be filled in like manner as vacancies in the positions are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring a recount providing adequate assurance to the county commission that the party or parties will pay all costs of the recount.

Class IV town or village

(c) Each qualified elector of the territory sought to be incorporated as a Class IV town or village may cast his or her vote for or against the incorporation at the precinct in which he or she resides, by depositing a ballot in a ballot box or by use of a voting machine to be provided by the county commission for that purpose, on the date named in the notice for the taking of the vote. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

G For Incorporation

G Against Incorporation

The form of governance:

G Plan I -- "Mayor-Council Plan"

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G Plan II -- "Strong-Mayor Plan"

G Plan III -- "Manager Plan"

G Plan IV -- "Manager-Mayor Plan"

The ballot or ballot label shall be a separate, special ballot or ballot label.

(d) The election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of the election shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. If any commissioner or clerk designated to serve in the election fails or refuses to serve, the vacancy may be filled in like manner as vacancies in such positions are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring the recount providing adequate assurance to the county commission that the party or parties will pay all costs of the recount.

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§8-2-7. County commission order declaring boundaries of city; certificate of incorporation of town or village; dismissal of proceeding.

(a) Class I, II, or III city. -- If the proceeding be for the incorporation of a city, and it appears to the county commission, upon the returns being canvassed, that a majority of the legal votes cast on the question of incorporation were in favor of the incorporation and the commission is satisfied that all of the applicable provisions of this article have been complied with, the commission shall by order duly made and entered of record declare that the territory in question (reciting the boundaries) shall thereby become a body corporate, and shall thenceforth be known as the city of ....., but that until a charter is framed and adopted as provided in article three of this chapter, the city shall have and exercise no powers of a municipality except the power to frame and adopt a charter as therein provided.

(b) Class IV town or village. -- If the proceeding be for the incorporation of a town or village, and it appears to the county commission, upon the returns being canvassed, that a majority of the legal votes cast on the question of incorporation were in favor of the incorporation and the commission is satisfied that all of the applicable provisions of this article have been complied with, the commission shall by order duly made and entered of record, direct the clerk of the commission to issue a certificate of incorporation in form or in substance as follows:

"It appearing to the commission that under the provisions of article two, chapter eight of the Code of West Virginia, 1931, as amended, at an election duly held on the ..... day of ....., 20....., a majority of the legal votes cast on the question of incorporation by the qualified voters of the following territory, to wit: Beginning, etc. (here recite the boundaries), were cast in favor of the incorporation of the town or village of ....., in the County of ....., bounded as herein set forth; adopting the ..... form of government, and it appearing to the satisfaction of the commission that all of the provisions of article two, chapter eight of the Code of West Virginia, as amended, have been complied with by the petitioners for incorporation, the town or village is declared to be a body corporate, duly authorized to exercise all of the corporate powers conferred upon towns or villages by chapter eight of the Code of West Virginia, 1931, as amended, from and after the date of this certificate. (Signed) ....., Clerk County Commission."

(c) Thereupon, the first election of officers shall be held as provided in sections two, three and four, article five of this chapter.

(d) If, on the returns being canvassed on the question of incorporation, a majority of the legal votes cast be against incorporation, the proceeding shall be dismissed, and no subsequent proceeding for incorporation of the same or any portion of the territory shall be considered or election had within a period of three years.

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PART III. JUDICIAL REVIEW.

§8-2-8. Judicial review.

A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court determining that the requirements of sections one and two of this article have been met and ordering a census or enumeration to be taken. Upon the filing of a petition for a writ of error, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

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