WEST VIRGINIA CODE CHAPTER 8 ARTICLE 35

WV Legislature

§8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

(a) Any municipality heretofore incorporated or which shall hereafter be incorporated which shall fail for one year to exercise its corporate powers and privileges, or which has not 20 qualified voters, or in which there were not 20 legal votes cast at its last election, or the population of which shall be reduced below 100 persons and so remain for six consecutive months, shall in either event have its charter or certificate of incorporation and all rights, powers and privileges so conferred upon such municipality forfeited and declared dissolved.

(b) The county commission of the county wherein any such municipality or the major portion of the territory thereof is located shall have jurisdiction to hear and determine all matters relating to the forfeiture and dissolution of such charter or certificate of incorporation, upon the petition of one or more of its qualified voters, or the State Auditor, and to dissolve such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the county commission of such county, served upon the mayor and recorder, or on the last mayor or recorder thereof, shall be sufficient notice upon which such county commission shall so act, and upon the proper proof of the allegations of such petition, any such charter or certificate of incorporation shall be declared forfeited and the municipal corporation dissolved and all debts of such municipality shall be ordered paid and the forfeiture and dissolution shall become effective when such debts have been paid or when the State Auditor has fully exercised the actions authorized by §8-35-4 of said code.

(c) A petition for forfeiture shall be filed with the clerk of the county commission. The petition shall be in writing and set forth the reasons for the request to forfeit and dissolve the municipality. The petition for dissolution shall be served upon the mayor and recorder, or on the last mayor or recorder thereof.

(d) The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq*. of this code, to determine the financial condition of the municipality.

Part II. Voluntary Dissolution of

Municipalities.

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§8-35-2. Voluntary dissolution of municipal corporation.

(a) A petition for dissolution shall be filed with the governing body of the municipality. The petition shall be in writing, set forth the reasons for the request to dissolve the municipality, and be signed by not less than 25 percent of the qualified voters of the municipality as shown by the last preceding statewide general election. The petition for dissolution shall be served upon the mayor and recorder, or on the last mayor or recorder thereof.

(b) Upon the filing of a qualified petition for dissolution of any municipal corporation, the governing body thereof shall submit to the qualified voters of such municipal corporation at the next regular municipal election, or at a special municipal election called for that purpose, the question of continuing or dissolving such municipal corporation. It shall be the responsibility of the governing body to verify the total number of eligible petitioners and to determine whether the required percentage of petitioners has been obtained. The governing body shall provide written notice of the election to the State Auditor within five days of determining an election date. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

Shall the municipality of _____ (name of municipality subject to dissolution) be dissolved?

( ) Yes.

( ) No.

(c) The dissolution election shall be conducted in accordance with applicable election laws.

(d) If a majority of the legal votes cast be for dissolution, then such municipal corporation shall by operation of law be dissolved at the expiration of six (6) months from the date of the election on the question. The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq*. of this code, to determine the financial condition of the municipality. If a majority of the legal votes cast be for continuance, then such municipal corporation shall continue in existence unless and until dissolved at some later date under the provisions of this section or §8-35-1 of this code.

Part III. Involuntary Dissolution of Municipal Corporation.

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§8-35-3. Involuntary dissolution of municipal corporation.

(a) The Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, or the State Auditor, may petition for involuntary dissolution of a municipality when the government of a municipality ceases to function by reason of the following:

(1) General municipal elections have not been called in the municipality for two successive general municipal elections; and

(2) A majority of all the members of the governing body fail to qualify for two successive general municipal elections.

(b) The petition requesting involuntary dissolution shall be filed in the circuit court in the county in which such municipality or the majority portion of the territory thereof is located. The petition shall state the facts which justify the request and shall set forth a detailed statement of the assets and liabilities of the municipality insofar as they can be ascertained. The petition shall state the facts which justify the request insofar as they can be ascertained.

(c) Upon the filing of a petition for the involuntary dissolution of a municipality, the circuit court shall fix a date for a hearing on the request and written notice shall be provided to the State Auditor, and the Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, within five days. The date of the hearing shall be not less than 30 days after the date of filing. The petitioner shall give at least 20 days' notice of the hearing by publication as a Class II legal advertisement in compliance with the provision of §59-3-1 *et seq*. of this code, and the publication area for such publication shall be in a newspaper of general circulation in the municipality, and by posting copies of the notice in a manner consistent with court proceedings. The notice shall state the purpose of the petition and the date and place of the hearing.

(d) The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq*. of this code, to determine the financial condition of the municipality.

(e) Any person owning property in or registered to vote in the municipality may appear at the hearing and give testimony for or against dissolution of the municipality. If the court finds that the government of the municipality has ceased to function because of the reasons listed in subsection (a), it shall enter an order for dissolution of the municipality. The order of the circuit court shall state when the dissolution shall take effect and appoint the State Auditor to act as special receiver to wind up the affairs of the municipality and dispose of its property.

(f) The order of dissolution shall be filed with the clerk of the county commission and the office of the Secretary of State.

Part IV. Disposition of Property, Debts And Liabilities.

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§8-35-4. State Auditor as special receiver.

(a) Upon declaration of the forfeiture of the charter or certificate of incorporation, or the certification of the election for voluntary dissolution, or upon an order by the circuit court for involuntary dissolution, as set forth in this article, the State Auditor shall by operation of law, act as special receiver for the dissolved municipality.

(b) The State Auditor, acting as special receiver of the dissolved municipality, shall have the power and authority to:

(1) Take legal control of assets, including municipal corporate property, moneys, claims, demands and taxes collected or uncollected;

(2) Protect assets;

(3) File claims on behalf of the dissolved municipality in receivership;

(4) Initiate necessary and proper bankruptcy proceedings, including, but not limited to filing a petition in the name of the municipal corporation under Chapter 9 of Title 11 of the United States Code, and to act on the municipality's behalf in such proceeding, to distribute assets to claimants or creditors;

(5) Any such actions as the State Auditor may deem necessary and appropriate to wind up the affairs of the municipality;

(6) Any excess of amounts required to pay corporate debts shall be maintained in a special fund titled "municipal dissolution account" to be controlled by the State Auditor to offset the costs associated with conducting examinations and legal expenses pursuant to the provisions of this article;

(7) Further powers and duties of the State Auditor acting as a special receiver shall be set out in rules authorized pursuant to the provisions of this article. These shall include, but are not limited to:

(A) The manner in which the State Auditor acting as a special receiver may gain access to and control over bank account and public funds;

(B) The manner in which the State Auditor acting as a special commissioner signs or records deeds, releases, or contracts;

(C) The manner in which the State Auditor acting as a special commissioner transfers or receives title to real or personal property;

(D) The manner in which the State Auditor acting as a special commissioner executes legally binding documents on behalf of a dissolved local government.

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§8-35-5. Disposition of property belonging to dissolved municipal corporation.

(a) No dissolution of an incorporated municipality shall impair the rights of any person in any contract or agreement to which the municipality is a party.

(b) The deposits and investments belonging to the dissolved municipality shall be used first to pay the municipality's debts and liabilities.

(c) In the event that deposits and investments belonging to the municipality are not sufficient to satisfy its debts and liabilities, then the State Auditor may initiate the liquidation of the dissolved municipality's property pursuant to §8-35-3 of this code.

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§8-35-6. Sale and liquidation of dissolved municipal assets.

(a) If the State Auditor, as special receiver, makes a determination that a dissolved municipality's real and/or personal property must be liquidated to satisfy its debts and liabilities then a public auction may be conducted. The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, or at a suitable location within the county wherein the dissolved municipality was principally located and such shall be conducted by the State Auditor. Before making such sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provision of §59-3-1 *et seq*. of this code, and the publication area for such publication shall be the county.

(b) The provisions of subsection (a) of this section concerning sale at public auction shall not apply to the State Auditor selling or disposing of the property for public use to:

(1) The United States of America its instrumentalities, agencies or political subdivisions;

(2) The State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments, and volunteer ambulance services; or

(3) Any authority, commission, instrumentality, or agency established by act of the State of West Virginia.

(c) For all sales made pursuant to this section, the State Auditor is not required to exclusively consider the present commercial or market value of the property.

(d) No officer or employee of the State Auditor or the Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, or his or her immediate family, may purchase or acquire any property municipal assets disposed of pursuant to this section.

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