

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

SENATE BILL No. 39

(By Mr. Canterbury)



PASSED Feb 1<sup>st</sup> 1935

In Effect 90 Days from Passage

Filed in the office of the Secretary of State  
of West Virginia. FEB 11 1935

Wm. S. O'BRIEN,  
Secretary of State

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**ENROLLED**  
**Senate Bill No. 39**

(BY MR. CANTERBURY)

[Passed February 1, 1935; in effect 90 days from passage.]

AN ACT to amend and reenact sections four, six, seven, eight, nine (a), twelve, thirteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, and to repeal section twenty-six, chapter one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven (municipal charters), relating to the charter of the city of Hinton, and to repeal all acts and parts of acts inconsistent with the provisions of this act.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-six, chapter one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven (municipal charters) is hereby repealed and sections four, six, seven, eight, nine-(a), twelve, thirteen, sixteen, eighteen,

nineteen, twenty, twenty-one, twenty-two and twenty-three of said chapter are amended and reenacted to read as follows:

Section 4. The municipal authority of the city of Hinton shall consist of and be vested in a mayor and four members of the council, who shall be elected by the voters of the whole city; and the mayor and the four members of the council elected by the voters of the whole city as herein provided, shall constitute and be "the council of the city of Hinton."

Sec. 6. The subordinate officers of said city may consist of such officers as the council from time to time by ordinance may provide, including, at the discretion of the council, a city manager, recorder, chief of police, city attorney and city health officer. The salaries, powers and duties of any such subordinate officers appointed by the council shall be set out and designated in the ordinance providing for their appointment, which appointments shall be made in the manner herein after provided, but in no event shall the council appoint any of its members as a clerical assistant, recorder, or for the performance of any other duties than those of councilmen.

Sec. 7. The mayor and members of the council of the said city shall enter upon the duties of their respective offices on

3 the first day of July next after their election, and continue for  
4 a period of two years, unless they shall sooner be removed from  
5 office for cause, by an affirmative vote of a majority of all the  
6 members elected to the council, after five days due notice, or  
7 shall resign. All subordinate and appointive officers shall  
8 enter upon the duties of their respective offices, as soon as they  
9 shall have been appointed and qualified, and give bond as  
10 required by this act or by ordinance of the city and shall hold  
11 and continue in their respective offices during the will and  
12 pleasure of the council.

13 All election officers of the said city, shall continue in their re-  
14 spective offices until the end of their present terms of office,  
15 and their successors have been duly elected or appointed,  
16 qualified, and shall have given bond, as required by this act,  
17 for the faithful performance of the duties of their respective  
18 offices.

Sec. 8. No person shall be eligible to the office of mayor,  
2 recorder, city manager or councilman, unless at the time of  
3 his election, he is legally entitled to vote in the city election for  
4 member of the common council, and was for the preceding  
5 year assessed with taxes upon real or personal property within

6 said city, of the assessed aggregate value of five hundred dollars,  
7 and shall have actually paid the taxes regularly assessed  
8 against it. He shall be an actual bona fide citizen of the  
9 United States of America, and a resident of the city for one  
10 year last preceding his election. The mayor or any member  
11 of the common council, ceasing to possess any of the qualifica-  
12 tions specified in this section, or if convicted of any crime while  
13 in office, or found guilty of malfeasance, misfeasance or non-  
14 feasance by an affirmative vote of all the members elected  
15 to the council, shall immediately forfeit his office, after being  
16 first given five days notice in writing of the charges filed  
17 against him by the mayor, any member of the council, or any  
18 citizen of the city.

Sec. 9 (a). Any person who is eligible to hold the office  
2 of mayor or member of the council of the said city, may file  
3 with the city manager or recorder of said city, a certificate  
4 declaring himself a candidate for the nomination for such  
5 office, which certificate shall be in form or effect as follows:  
6 I, ....., do hereby certify that I am a  
7 candidate for the nomination for the office of mayor of the  
8 city of Hinton, (or for the office of member of the council

9 of the city of Hinton,) to represent the.....  
10 political party, and desire my name printed on the official  
11 ballot of said party, to be voted at the city primary election to  
12 be held in said city on the.....day of....., 19.....  
13 I further certify that I am a legally qualified voter of the  
14 said city of Hinton, and state of West Virginia; that my  
15 residence is No....., .....Street, in the said  
16 city of Hinton; that I am eligible to hold said office and I am a  
17 member of and affiliated with said political party, and that  
18 I am a candidate for the said office in good faith.

19

.....  
(Signature of Candidate).

20

21 Subscribed, sworn to and acknowledged before me this.....  
22 day of....., 19.....

23

24

Notary Public.

25 Such announcement shall be signed and acknowledged by  
26 the candidate before some officer qualified to administer oaths,  
27 and such certificate shall be filed with the city manager at  
28 least ten days before the date of such primary election.

29 (b) All candidates of any political party to be voted for at

30 any municipal election for the office of mayor and member of  
31 the council of said city, shall be nominated by a primary  
32 election, to be held and conducted in said city. All such  
33 primary elections shall be held in said city on the second  
34 Tuesday in May, next before the general city election in the  
35 year in which the mayor and members of the council of said  
36 city are to be elected. Such primary election shall be held in  
37 the manner provided for in the nomination of state, county  
38 and district officers by the general election laws of this state  
39 in force at the time of such primary election, with the excep-  
40 tion that the duties provided in the general election law to be  
41 performed by the county court, shall be performed by the  
42 council of said city, and the duties to be performed under  
43 the general election laws by the clerks of the circuit court  
44 and county court shall be performed by the city manager or  
45 recorder of said city. The general election laws governing  
46 primary elections in force at the time of such primary election  
47 relating to the nomination of party candidates and officers of  
48 elections, shall govern such city primary election, the same as  
49 if such primary election laws were reenacted in ex tenso by  
50 this act, with the exception that no political party shall nomi-

51 nate more than one candidate for mayor of said city, and four  
52 candidates for members of the council of said city, at any  
53 primary election.

54 The candidate of each political party for mayor receiving  
55 the highest number of votes in the whole city, and the four  
56 candidates of each political party for members of the council  
57 in said city receiving the highest number of votes in the whole  
58 city, shall be declared nominated as such political party's can-  
59 didate for mayor and members of the council of said city, and  
60 their names shall be placed on the ballot for the general city  
61 election, as the candidates of their respective political party  
62 for mayor and such members of the council to be voted for at  
63 such general city election.

64 (c) The general city election for the election of a mayor and  
65 the four members of the council of said city shall be held on  
66 the second Tuesday in June in the year one thousand nine  
67 hundred thirty-five, and each two years thereafter; said gen-  
68 eral city election shall be held and conducted under the pro-  
69 visions of the general election laws of this state in force at  
70 the date of such election and governed by the said general  
71 election laws of this state in every respect, insofar as the



72 same are applicable to city elections, with the exception that  
73 the duties to be performed by the county court shall be per-  
74 formed by the council of the said city, and the duties to be  
75 performed by the clerks of the county court and circuit court  
76 shall be performed by the city manager or recorder of the  
77 said city, respectively.

78 The returns of the election shall be made by the city officers  
79 to the city manager or recorder, and by him submitted to the  
80 council on the fifth day after such election, and the same shall  
81 be canvassed, and the result thereof declared by the said coun-  
82 cil on said day, or as soon as the council can finish and canvass  
83 the returns of such election, whereupon the council shall cause  
84 certificates of election to be issued and delivered to the per-  
85 sons elected as mayor and members of the council of said  
86 city.

87 (d) The mayor of the city of Hinton and the four members  
88 of the council of said city so nominated and elected by the  
89 voters of said city at the primary and city election held in  
90 said city, as hereinbefore provided, shall hold and continue  
91 in their respective offices as mayor and members of the council  
92 of said city until the end of the thirtieth day of June, one

93 thousand nine hundred thirty-seven, when their respective  
94 terms of office shall expire: *Provided*, That their successors  
95 have been duly nominated and elected as hereinbefore pro-  
96 vided: *Provided, however*, That the primary election held  
97 under the act as amended for the nomination for mayor and  
98 the four members of the council of said city, on the second  
99 Tuesday in May, one thousand nine hundred thirty-five and  
100 the general election for the election of mayor and the four  
101 members of the council of said city, held on the second Tues-  
102 day in June, one thousand nine hundred thirty-five, shall be  
103 called, conducted and held in each of the eight voting pre-  
104 cincts in said city of Hinton, as are now established and by  
105 the boundaries of said eight voting precincts in said city of  
106 Hinton as are now laid off and established, by the council of  
107 the city of Hinton, in office on and before the first day of July,  
108 one thousand nine hundred thirty-five.

109 The council of the city of Hinton in office before the first  
110 day of July, one thousand nine hundred thirty-five, shall ap-  
111 point all election officers necessary to hold and conduct  
112 such primary and said general city election, held on the  
113 second Tuesday in May and the second Tuesday in June,

114 one thousand nine hundred thirty-five, respectively; they  
115 shall furnish all necessary ballots and supplies for such  
116 primary and general city election and shall canvass and  
117 declare the result thereof, hear and decide all contests over  
118 the nomination or election of any officer at such primary  
119 or general city election and cause to be executed and  
120 delivered certificates of election to the mayor and the four  
121 members of the council of said city so elected, and shall do  
122 any and all things necessary to hold and ascertain the result  
123 of said primary and said city election.

124 (f) The council of the city of Hinton, now in office or in  
125 office as soon as this act is amended, and goes into effect, shall  
126 provide for the registration of voters in each of the eight  
127 voting precincts of said city, as provided by this act as  
128 amended, shall furnish all necessary registration books and  
129 blanks to make such registration, appoint the registrars, which  
130 registration shall be made immediately after the appointment  
131 of such registrars, and the said council of the city of Hinton  
132 shall hold a regular or special session on the fifth day before  
133 the first primary and city election to pass upon such registra-

tion and correct the same in the manner provided by this act.

(g) Each of the eight voting precincts of the city of Hinton, as now established and the boundaries thereof, as now established shall constitute, remain and be the eight voting precincts of said city, by the boundaries as now laid off and established until the council of the said city of Hinton, shall by ordinance, entered of record, change or designate, increase or diminish said voting precincts and re-arrange the boundaries of the same: *Provided, however,* That any new voting precinct established or any change made in the voting precincts of the city shall be made by ordinance, regularly passed by the council of the city of Hinton and notice thereof given by publication in one Democratic and one Republican newspaper of general circulation, published in Summers county, at least thirty days before said change takes effect.

Sec. 12. All qualified voters within the city of Hinton entitled to vote in the municipal elections held therein, shall be registered in like manner, as are qualified voters of West Virginia registered under general laws in reference to the election of state and county officers, in effect at the time of such regis-

6 tration, and such general laws shall in all things apply thereto,  
7 except the fee for such registration shall be five cents for each  
8 qualified voter so registered, and the powers conferred upon  
9 the county court and the clerk of the county court by the  
10 general laws in reference to the registration of voters for gen-  
11 eral elections of state and county officers are hereby conferred  
12 upon the council of the city of Hinton, city manager, or re-  
13 corder, respectively: *Provided further*, That the registrars for  
14 each of the respective wards of said city shall be appointed by  
15 the present council at a regular or special meeting of said  
16 council held on the third Monday in April next preceding any  
17 general election in said city, and that the said registrars shall  
18 complete such registration of voters on or before the first  
19 Tuesday in May following, and shall on the first Tuesday in  
20 May sit for one day in their respective voting precincts for  
21 the purpose of correcting such registration, and shall thereupon  
22 immediately return the registration books of the respective  
23 voting precincts to the city manager or recorder of said city.  
24 And the council of said city shall hold a regular or special  
25 meeting on the fifth day, Sunday excluded, prior to the date  
26 for holding of the primary election in said city, for the purpose

27 of correcting such registration, and registering any voters of  
28 said city who are qualified, and who shall have been omitted or  
29 failed to have been registered by the registrars: *Provided*  
30 *further*, That the council of said city shall meet again five days  
31 prior to the general city election for the purpose of correcting  
32 further the registration of the voters of said city, and shall add  
33 to such registration lists the names of any qualified voters of  
34 said city who shall appear in person for the purpose of being  
35 registered for said city election, and in all other respects the  
36 general laws of the state, pertaining to the registration of  
37 voters, shall govern the registration of voters for said city  
38 primary and general election, insofar as the same may be  
39 applicable thereto, unless otherwise provided by ordinance:  
40 *Provided*, That in event the county court of Summers county  
41 shall change the regular voting precincts embraced in what is  
42 included in the territorial limits of the city by this act, for  
43 the election of county and district officers, the council may by  
44 ordinance provide for the adoption of the last registration of  
45 voters made in each of the precincts for the nomination and  
46 election of county and district officers, in lieu of the registra-  
47 tion herein required to be made for city primaries and general

48 elections. The council shall sit on the fifth day, Sunday ex-  
49 cluded, prior to any city primary or election for the purpose  
50 of correcting the registration list, and shall correct the same  
51 by striking from the registration books so adopted the names  
52 of all persons who are not then qualified voters in each of the  
53 respective voting precincts, and shall add to such registration  
54 the names of all qualified voters who have been omitted from  
55 such list or who have become qualified to vote in such voting pre-  
56 cinct by reason of their age, residence therein, or any other  
57 grounds that would legally qualify them to a vote in such voting  
58 precinct; and such registration list when so corrected, may  
59 be adopted as the registration for any city primary or city  
60 election, under this act.

Sec. 13. The mayor and members of the council of said  
2 city, and all other officers provided for in this act, or that may  
3 be provided for by ordinances, shall, each, before entering  
4 upon the duties of their office, and within fifteen days after  
5 receiving their certificate of election, or appointment, take the  
6 oath or affirmation prescribed by law for all officers in this  
7 state, and make oath or affirmation that they will truly, faith-  
8 fully and impartially, to the best of their ability, discharge the

9 duties of their respective offices, so long as they may continue  
10 therein; said oath or affirmation may be taken before any person  
11 authorized to administer oaths in this state at the time the same  
12 is taken, or before the mayor of the said city, but in any event  
13 a copy of said oath of said office shall be filed with the city  
14 manager or recorder, with the exception that the oath of office  
15 of the city manager, as provided herein, shall be filed with  
16 the mayor.

Sec. 16. The salary of the mayor shall not exceed three  
2 hundred dollars per year, payable monthly out of the city  
3 treasury. The salaries of the members of the city council shall  
4 not exceed twenty-five dollars per year each, payable semi-  
5 annually out of the city treasury. The salary of the city man-  
6 ager, if one is appointed by the council, and of clerical assist-  
7 ants used in the performance of duties in and for the city of  
8 Hinton shall be fixed by the council by ordinance or by reso-  
9 lution of the council appointing such city manager or clerks,  
10 payable monthly out of the city treasury: *Provided, however,*  
11 That the salary of any such clerical assistants and the salary  
12 of the recorder shall not exceed the sum of thirty-five  
12-a dollars per month for any such appointee. The salary of the



12-b chief of police and all regular police officers, the city attorney,  
12-c commissioner of health, and all other regular city officers and  
13 employees provided for by ordinance, or by order of the coun-  
14 cil, shall be fixed by the council at the time of, and in the order  
15 or resolution appointing such officers or employees, and shall be  
16 paid monthly out of the city treasury: *Provided*, That there  
17 shall be deducted from the salary of each of the councilmen  
18 five per cent of the annual salary so designated by the council,  
19 for each regular meeting of the council that such member of  
20 the council fails to attend. The salary, fees and compensation  
21 of all police officers, and any other special officer of the city,  
22 appointed by the mayor and the council shall be fixed and de-  
23 termined by the council, and any such special officer so ap-  
24 pointed, who is not paid a regular salary, shall not be entitled  
25 to receive for his services any fees derived under the fee sys-  
26 tem, which is provided by statute to be paid to constables for  
27 like services, but that any special officer so appointed must be  
28 placed on a regular salary so determined by the three-fifths vote  
29 of the mayor and council.

Sec. 18. Whenever a vacancy for any cause shall occur in  
2 the office of mayor or member of the council of said city,

3 the mayor and remaining members of the council, or in a case  
4 of a vacancy in the office of mayor, the members of the council  
5 of the said city, shall fill said vacancy by electing a mayor or  
6 such member of the council to fill the office or offices for and  
7 during the term of such officer.

8 In case of a vacancy in the office of the city manager, re-  
9 corder or any other appointive officer of said city, the council  
10 shall at its next regular meeting, or at a special meeting called  
11 for the purpose, fill such vacancy in the same manner as such  
12 officer was originally appointed or elected by the council.

Sec. 19. The mayor or any member of the council may be  
2 removed from office by the council for intemperance, gross  
3 immorality, gambling, malfeasance, misfeasance or non-feasance  
4 in office, inability to act, refusal or neglect to perform the duties  
5 of their respective offices imposed by this act, upon being served  
6 with a notice in writing of the charges preferred against such  
7 officer at a regular meeting of said council, or a special meeting  
8 called for the purpose, followed by a hearing to be had on said  
9 charges not earlier than five days after the service of said notice  
10 in writing on such officer so sought to be removed, and it shall  
11 require an affirmative vote of a majority of all the members

12 elected to the council to remove such officer from the office to  
13 which he shall have been elected. Any appointed officer who  
14 holds his office at the pleasure of the council may be removed  
15 from the office with or without cause, at any time by a like  
16 vote of the council.

Sec. 20. The regular meetings of the council shall be publicly  
2 held at such times and at such places in the city as it shall  
3 from time to time ordain and appoint: *Provided*, That at the  
4 first meeting of the council under this act, it shall provide by  
5 ordinance or resolution entered of record, the time and place  
6 of regular meetings of the council during the term of office,  
7 and after each city election the new council elected shall, at  
8 its first meeting, by like order or resolution, fix the time and  
9 place for the regular meetings of the council during its term:  
10 *Provided further*, That at no time shall a place be so designated  
11 for a meeting of the council, either regular or special, to be  
12 held at a place other than in the property which is owned by  
13 the city. It shall be lawful for the council, by ordinance or  
14 resolution entered of record, to vest in the mayor, or any  
15 member or members of the city council, the authority to  
16 call special meetings and to prescribe the mode and manner of

17 the giving of notice to the members of the council of the times  
18 and places of such special meetings. If a quorum of the mem-  
19 bers of the council fail to attend any regular or special meet-  
20 ing, those in attendance shall have authority to compel the  
21 attendance of the absent members under such reasonable pen-  
22 alty as may be provided by ordinance. The council shall pro-  
23 vide for at least one regular meeting of the council in each  
24 month, and such other regular meetings as it deems necessary.  
25 In no event shall any meeting, either regular, special or execu-  
26 tive be closed to the public.

Sec. 21. The presence of the mayor or the president of the  
2 council, and three other members of the council shall be neces-  
3 sary to constitute a quorum for the transaction of business at  
4 all meetings of the council of said city.

Sec. 22. The mayor, or in his absence, the president of the  
2 council, shall preside at the meetings of said council, and shall  
3 have a vote on all matters before the council for consideration,  
4 the same as any member of the council, but in no event shall  
5 the said mayor or presiding officer have power and authority to  
6 cast the deciding vote on any matter where he has voted as a  
7 member of the council: *Provided*, That it shall require the

8 affirmative vote of a majority of all the members elected to the  
9 council to appoint or remove any officer and to pass any ordi-  
10 nance, franchise, resolution for bond issues or other matters  
11 required by this act.

Sec. 23. At the first meeting of the city council provided  
2 for by this act, the council shall elect one of its members as  
3 president of the council, who shall hold such office during the  
4 term of said council, and who shall be ex-officio vice-mayor of  
5 the said city. In case of temporary absence of the mayor from  
6 the city or his inability to act from any cause, or during any  
7 vacancy in the office of mayor, the said president of the council  
8 shall preside over the council and perform the duties of the  
9 mayor; and, in addition to presiding over said council, he is  
10 hereby vested with all the powers necessary for the performance  
11 of the duties of the mayor of said city while acting as such  
12 mayor, including the authority of the mayor pertaining to  
13 civil and criminal jurisdiction, and shall perform such other  
14 duties as may be required of him by the council.

15 All acts and parts of acts inconsistent with the provisions of  
16 this act are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton L. Howard  
Chairman Senate Committee

Arnold M. Pickers  
Chairman House Committee

Originated in the Senate

Takes effect 90 Days from passage.

Arthur M. ...  
Clerk of the Senate

Joe ...  
Clerk of the House of Delegates

Chas. E. Hoyle  
President of the Senate

John J. ...  
Speaker House of Delegates

The within approved this the 8<sup>th</sup>  
day of February, 1935.

W. B. Kemp  
Governor