

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1935



ENROLLED

HOUSE BILL No. 408

(By Mr. LaFou)



PASSED March 6 1935

In Effect from Passage

408

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AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, relating to the appointment of deputy sheriffs, local conservators of the peace, and to provide for their compensation and the appointment of deputy clerks of courts, deputy surveyors of lands, deputy assessors and other deputies to certain officers.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 1. (a) (1) The clerk of the supreme court of appeals, or of any circuit, criminal, common pleas, intermediate

3 or county court, or of any tribunal established by law in lieu
4 thereof, may, with the consent of the court, or such tribunal,
5 duly entered of record, appoint any person or persons his
6 deputy or deputies.

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

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

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

21 (5) No sheriff in any county in which there are more than
21-a two deputies or deputy sheriff shall perform any service
22 or duties, either private or public, except the duties required

23 by law of such sheriff or deputy, for or receive any compensa-
24 tion or remuneration, directly or indirectly, from any person,
25 firm or corporation, for the performance of any private or pub-
26 lic services or duties. The sheriff and his deputies shall receive
27 for the performance of their public services and duties no
28 compensation or remuneration except such as may be regu-
29 larly provided and paid out of public funds to the amount
30 and in the manner provided by law. Gifts and donations by
31 any person, firm or corporation to any governmental unit or
32 officer thereof shall not constitute public funds within the
33 meaning of this paragraph.

34 (6) Except as hereinafter expressly provided by paragraph
35 (b) of this section no sheriff shall appoint or continue the
36 appointment of any deputy contrary to the provisions hereof.
37 Any sheriff or deputy sheriff who shall violate any of the
38 provisions of this section shall be guilty of a misdemeanor
39 and upon conviction thereof shall be fined not less than five
40 hundred dollars nor more than five thousand dollars, or con-
41 fined in jail not to exceed one year, or both, in the discretion
42 of the court.

43 (7) Circuit courts shall have jurisdiction in equity and

44 mandamus, and the supreme court of appeals shall have juris-
45 diction in mandamus, upon the filing of a petition by the
45-a prosecuting attorney, the attorney general, or any three or
46 more citizens of the county, to require any sheriff and the
47 county court to vacate the appointment of any deputy, the
48 appointment of which is made or continued in violation of
49 the provisions hereof. Any such proceeding may be instituted
50 and prosecuted by the attorney general either in the circuit
51 court of Kanawha county or in the county for which such
52 appointment was made.

53 (b) (1) Any resident or group of residents of any unin-
54 corporated community, as hereinafter defined, may petition
55 the sheriff for the appointment of a local conservator of the
56 peace and such sheriff, when in his opinion the public interests
57 require it, may with the assent of said county court and the
58 judge of the circuit court duly entered of record, either in term
59 or vacation of any such court, appoint any person or persons a
60 local conservator or conservators of the peace to perform the
61 duties of a conservator of the peace outside of any incorpo-
62 rated city, town or village. No person shall be appointed such
63 local conservator of the peace who has not been a *bona fide*

64 resident and taxpayer of the county for at least one year prior
65 to his appointment. Such local conservator of the peace during
66 his continuance in office, may perform and discharge any of
67 the official duties of the sheriff, subject nevertheless to the
68 provisions of this section. No local conservator so appointed
69 shall be subject to the direction or control of any person other
70 than his principal, and he shall not perform any services or
71 duties, either private or public, except the duties required by
72 law of conservators of the peace pursuant to the provisions
73 hereof, for any person, firm, or corporation. No such local
74 conservator shall be entitled to collect or receive any fees
75 provided by law to be paid to the sheriff or to a deputy sheriff,
76 but all fees provided by law for the sheriff, when such duties
77 and services are rendered by such local conservator, shall be
78 paid to the sheriff as regular collections of the sheriff's office.
79 The local conservator shall be paid for the public services per-
80 formed by him a salary of not less than seventy-five dollars
81 per month out of the county treasury from a fund to be paid
82 into such treasury by a resident or the residents of the com-
83 munity for which he is appointed, for the sole purpose of
84 compensating such local conservator or conservators, and no

85 such local conservator shall receive any other compensation,
86 directly or indirectly, from any person, firm, or corporation,
87 for any private or public service, except the salary payable to
88 him for his public services and duties and from such fund,
89 except that he shall be entitled to witness and mileage fees
90 when a witness in a court of record. Each local conservator so
91 appointed shall take the same oath of office required of his
92 principal and any default or misfeasance in the office of such
93 local conservator shall constitute a breach of the conditions
94 of the official bond of his principal.

95 (2) When the sheriff shall have been petitioned for the
96 appointment of a local conservator and has determined that
97 the appointment is proper, he shall select the person whom he
98 proposes to have appointed such conservator and shall notify
99 the county court of the community for which such conservator
100 is to be appointed and the name of the person proposed for
101 such appointment. The county court shall thereupon cause
102 notice that the sheriff has recommended the appointment of
103 the person named as conservator for the community named to
104 be published one time each week for two successive weeks in
105 a newspaper of general circulation published in the county,

106 and if there be no newspaper published in the county, then in
107 any other newspaper published in the state having a general
108 circulation in the county, and designating a day not less than
109 five days after the last publication when the county court will
110 act upon the petition and recommendation. Neither the
111 county court nor the judge of the circuit court shall assent
112 and approve the appointment of such local conservator until
113 such publication has been made. The costs of the publication
114 shall be paid by the person or persons petitioning for the ap-
115 pointment of the conservator.

116 No local conservator shall be appointed except it be made
117 to appear to the satisfaction of the county court and the judge
118 of the circuit court that because of the lack of sufficient funds,
119 geographical location of the unincorporated community for
120 which such conservator is to be appointed, or other good
121 reason, the sheriff and his regular deputies and the constables
122 of the county are not sufficient to afford proper local policing
123 of such community and that the person or persons moving for
124 the appointment of such local conservator have made satisfac-
125 tory arrangements to compensate him for his services as such
126 local conservator of the peace.

127 (3) Such local conservator of the peace shall have all the
128 powers and duties of a regularly appointed deputy sheriff ex-
129 cept that he shall not execute any civil process except such
130 process as may be necessary to bring parties before the court
131 in any action at law or suit in equity and subpoenas for wit-
132 nesses within the unincorporated community for which he is
133 appointed and within a distance of one mile outside the boun-
134 daries thereof, except as hereinafter expressly provided, but
135 he shall not participate in any strike, unemployment boycott,
136 or other industrial or labor dispute, nor serve any court process
137 of any character relating thereto. He shall act as such local
138 conservator only in the unincorporated community for which
139 he is appointed, and within a distance of one mile from the
140 boundaries thereof as fixed by the county court: *Provided,*
141 *however,* That the authority of one local conservator shall not
142 extend into any other unincorporated community for which
143 another local conservator is appointed and acting, except as
144 otherwise expressly provided by clause (6) of this paragraph,
145 except that in fresh pursuit he may effect arrests anywhere
146 in the county. He may also exercise the powers of a regularly
147 appointed deputy anywhere in the county when required to

148 guard or assist in guarding a payroll, or any other property
149 of value in transit to or from the unincorporated community
150 for which he is appointed. Any person arrested by such local
151 conservator shall, with all convenient speed, be turned over
152 to the sheriff, or one of his regular deputies, or to a regular
153 constable of the county to be dealt with according to law, and
154 his authority for that purpose shall be co-extensive with the
155 county.

156 (4) Any local conservator appointed to perform the duties
157 of conservator of the peace shall be a public officer and the
158 payment, or contribution to the payment or compensation of
159 such local conservator shall not constitute the person, firm or
160 corporation making such payment or contribution the em-
161 ployer of such local conservator and no person, firm or corpo-
162 ration paying, or contributing to the payment of compensation
163 to such local conservator shall be answerable in law or in
164 equity for any damages to person or property resulting from
165 any official act of such local conservator.

166 (5) No person appointed such local conservator shall there-
167 by be entitled to carry weapons, but such local conservator may
168 carry weapons when he shall be duly licensed and shall have

169 given bond as provided by section two, article seven, chapter
170 sixty-one of the official code of West Virginia, one thousand
171 nine hundred thirty-one.

172 (6) Not more than one local conservator of the peace shall
173 be appointed, to perform the duties of conservator of the peace,
174 for each two thousand five hundred inhabitants of the county
175 as ascertained by the last regular decennial census after de-
176 ducting the number of inhabitants of the county residing in
177 the incorporated cities, towns and villages in such county. Not
178 more than one local conservator shall be appointed for any
179 unincorporated community unless the population thereof ex-
180 ceed fifteen hundred people and in such case not more than
181 two conservators shall be appointed for such community.

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

186 (8) The county court and the judge of the circuit court
187 in approving the appointment of a local conservator shall
188 enter of record an order making such appointment and shall
189 show therein the necessity for the appointment, the person

190 or persons on whose motion the appointment is made, the ar-
191 rangement for the payment of compensation to such local con-
192 servator, the unincorporated community, or communities, for
193 which the appointment is made, including the general boun-
194 dary of each unincorporated community for which he is
195 appointed.

196 (9) No local conservator shall act as an election official or
197 or remain in, about or near any voting place or place of po-
198 litical convention, further than is necessary for him to prompt-
199 ly cast his vote and retire from the voting place.

200 (10) Any local conservator violating any of the provisions
201 of clauses (3) and (9) of this paragraph shall be guilty of a
202 misdemeanor and, upon conviction thereof, shall be fined not
203 less than fifty dollars nor more than three hundred dollars, or
204 be confined in the county jail not more than six months, or
205 both, in the discretion of the court; and it shall be the duty of
206 the sheriff and the county court to forthwith revoke his ap-
207 pointment irrespective of any criminal prosecution. A pro-
208 ceeding in mandamus or injunction shall lie in the circuit court
209 and a proceeding in mandamus shall lie in the supreme court
210 of appeals at the instance of the prosecuting attorney, the at-

211 torney general, or of any three or more citizens of the
212 community for which such conservator is appointed, to require
213 the performance of such duty by the sheriff and the county
214 court.

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

220 A local conservator may be removed by the judge of the
221 circuit court, either in term or vacation, for drunkenness, gross
222 immorality, incompetence, neglect of duty, or other good
223 cause, upon the petition of three or more residents of the com-
224 munity for which he has been appointed. The petition shall
225 set forth the cause or causes for which such removal is asked
226 and shall show that demand for removal has been made of the
227 sheriff and the county court and that the sheriff and the
228 county court have failed to remove the local conservator. At
229 least three copies of the petition shall be filed, and upon the
230 filing of the petition the judge shall fix a time and place for a
231 hearing thereon, which time shall not be less than ten days

232 after the filing of the petition, and shall cause a copy thereof
233 to be served upon the sheriff and such local conservator at least
234 ten days before the hearing thereon.

235 If any part, subsection, clause, sentence, phrase or appli-
236 cation of this act is, for any reason, declared unconstitutional
237 by a court of competent jurisdiction, such decision shall not
238 affect the remaining portions of this act which shall remain
239 in force as if such act had been passed without the unconsti-
240 tutional part, subsection, clause, sentence, phrase or applica-
241 tion having been incorporated herein, it being the legislative
242 intent that this act would have been passed in the language
243 remaining after the elimination of so much thereof as may
244 be declared unconstitutional.

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

Christopher M. Neward
.....
Chairman Senate Committee

Arnold M. Fisher
.....
Chairman House Committee

Originated in the *House of Delegates*.....

Takes effect *from*..... passage.

Abner M. ...
.....
Clerk of the Senate

Geo. S. Wall
.....
Clerk of the House of Delegates

Chas. E. Hoops
.....
President of the Senate

John L. Pitters
.....
Speaker House of Delegates.

The within *is approved* this the *13th*.....

day of *March*....., 1935.

H. G. Kemp
.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 15 1935**
Wm. S. O'BRIEN,
Secretary of State