

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1957

ENROLLED

SENATE BILL NO. 21A

(By Mr. Benn & Brizman)

PASSED March 5 1957

In Effect June Passage



ENROLLED

Senate Bill No. 214

(By MR. BEAN, MR. PRESIDENT, AND MR. CARRIGAN)

[Passed March 8, 1957; in effect from passage.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto four new sections designated sections thirty-eight, thirty-nine, forty and forty-one, authorizing county boards of education to impose a tax upon certain instruments transferring title to real and personal property which are recorded, providing for the imposition and collection of such tax, disposition of the proceeds thereof, and penalties for violation.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto four new sections designated sections thirty-eight, thirty-nine, forty and forty-one, to read as follows:

Article 5. District Board of Education

Section 38. *Tax on Instruments Transferring Title to Real and Personal Property Authorized; Transfers Not Affected.*—Except as hereinafter provided, the board of education of any county school district shall have the authority to impose by ordinance a tax upon all instruments in the form of deeds, trust deeds and mortgages transferring title to real and personal property, or interests therein, offered for recordation or filing and recorded or filed in the office of the clerk of the county court of the county in which the school district is located. The tax shall not exceed the rate of two dollars and twenty cents for each five hundred dollars, or fractional part thereof, of the actual consideration paid or to be paid for, or of the principal amount of the debt secured by, the transfer, except that no more than five thousand dollars tax shall be due on any one transfer.

In the case of transfers of real property lying partly

18 within and partly without the county in which the tax
19 is imposed, the tax shall apply only to such proportion of
20 the consideration, or to such proportion of the debt se-
21 cured, as the value of the property within the county
22 bears to the value of the whole property transferred.

23 In the case of a trust deed or mortgage which secures a
24 debt already secured by a duly recorded trust deed or
25 mortgage, the tax shall not apply to the amount owed on
26 the debt secured by the previously recorded instrument,
27 but only to any additional debt secured by the instrument
28 offered for recordation.

29 In the case of a transfer of property where there is
30 owing on the property transferred a sum of money se-
31 cured by a duly recorded trust deed or mortgage, the
32 obligation of which is transferred to and assumed by the
33 transferee under the instrument offered for recordation,
34 the tax shall not apply to the amount of the obligation as-
35 sumed by the transferee.

36 In the case of a trust deed or mortgage which transfers
37 the same property which is transferred by a deed offered
38 for recordation and recorded simultaneously with such

39 trust deed or mortgage, the tax shall not apply to any
40 property transferred by such trust deed or mortgage
41 which is also transferred by such simultaneously record-
42 ed deed.

43 The provisions of this section shall not apply to any in-
44 strument conveying or transferring property where the
45 consideration or the debt secured is two hundred dollars
46 or less; to any conveyance or transfer effected by will,
47 testamentary trust, intestacy, deed of partition, eminent
48 domain, lease, conditional sales contract, change of name
49 or merger of corporations or otherwise by operation of
50 law; to any instrument conveying or transferring prop-
51 erty to a religious, educational, or charitable organization
52 incorporated or unincorporated; to any instrument con-
53 veying property to the state or any political subdivision
54 thereof or to the United States or any office or agency
55 thereof; to any instrument the effect of which is to con-
56 vey or transfer the title to property from one spouse to
57 the other; or to any confirmation, curative deed, correc-
58 tive deed, or other like instrument, except to the extent
59 of property of additional value thereby conveyed or

60 transferred or of any additional consideration paid there-
61 for, whichever is the greater.

Sec. 39. *Procedure for Imposing Tax; Filing for Rec-*
2 *ord.*—Before enacting such ordinance the county board of
3 education shall publish one time a copy of the same in two
4 newspapers of opposite politics published in the county,
5 if such there be, and otherwise in one newspaper so pub-
6 lished. If no newspaper is published in that county, pub-
7 lication shall be in a newspaper of general circulation in
8 the county. An ordinance shall not be finally passed un-
9 til one week has elapsed after the last date of publication
10 and persons interested have been given an opportunity to
11 attend a meeting of the board and be heard with respect
12 to the ordinance.

13 After passage of such ordinance, a certified copy there-
14 of shall be filed in the office of the clerk of the county
15 court as a public record.

Sec. 40. *Duties of the Clerk of the County Court; Clerk*
2 *and Surety Liable; Disposition of Proceeds.*—When any
3 instrument upon which the tax authorized in section
4 thirty-eight of this article is legally applicable is offered

5 for recordation in the office of the clerk of the county
6 court, it shall be the duty of the clerk to ascertain and
7 compute the tax due thereon and collect such tax as a
8 prerequisite to the acceptance of the instrument for re-
9 cordation.

10 The clerk shall append or show by stamp or otherwise
11 on the face or at the end of an instrument upon which he
12 has collected such tax a statement that he has collected
13 the tax and stating the amount of the tax collected. The
14 clerk shall keep a separate record of all such taxes col-
15 lected, and the clerk and the surety on his bond shall be
16 liable for the proceeds of such tax. The clerk shall at the
17 end of each month pay all proceeds of the tax to the sher-
18 iff and they shall be credited to the general current ex-
19 pense fund of the board of education, except a commission
20 of one per cent of such proceeds which shall be retained
21 for collecting such tax and credited to the general county
22 fund.

Sec. 41. Offenses; Penalties; Validity of Instruments.—

2 It shall be unlawful for any person to cause to be record-
3 ed any instrument upon which the tax authorized by sec-

4 tion thirty-eight of this article is legally applicable with-
5 out paying such tax. It shall also be unlawful for any
6 person to misrepresent the amount of the actual consid-
7 eration paid or to be paid, the principal amount of the
8 debt secured or any other pertinent fact when offering an
9 instrument for recordation upon which such tax is legally
10 applicable.

11 Failure to collect or pay such tax shall not affect the
12 validity of any instrument for any purpose, and shall not
13 constitute a lien upon the property transferred.

14 Any person who shall knowingly and intentionally vio-
15 late any of the provisions of this section or of the three
16 preceding sections shall be guilty of a misdemeanor and,
17 upon conviction thereof, shall be punished by a fine of not
18 less than twenty-five nor more than one hundred dollars.

19 The authority to levy the school tax authorized by this
20 act shall terminate five years after the effective date
21 thereof.

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

E. T. McCourt
Chairman Senate Committee

Whittaker
Chairman House Committee

Originated in the Senate.

Takes effect from passage.

John H. Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

W. E. K.
Speaker House of Delegates

The within approved this the 15th
day of March, 1957.

Leif A. Hudner
Governor



Filed In the Office of the Secretary of State
of West Virginia MAR 15 1957
D. PITT O'BRIEN
SECRETARY OF STATE