

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964



ENROLLED

HOUSE BILL No. 51

(By Mr. Madden)



PASSED February 4 1964

In Effect From Passage



FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 2-10-64

51

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House Bill No. 51
(By MR. MADDEN)

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AN ACT to create and establish in the county of Marshall a court of limited jurisdiction to be known and designated as "The Common Pleas Court of Marshall County", and defining its jurisdiction.

Be it enacted by the Legislature of West Virginia:

Section 1. Court Created and Established.—There is
2 hereby created and established in and for the county of
3 Marshall, with authority and jurisdiction coextensive
4 with the county, a court of limited jurisdiction to be
5 known and designated as "The Common Pleas Court of
6 Marshall County," to be held and presided over by a

7 judge to be appointed or elected as provided by this act.
8 Wherever and whenever the word "Court" is hereinafter
9 in this act used, it shall be taken to mean and refer to
10 the Common Pleas Court of Marshall County, unless the
11 context clearly indicates otherwise.

Sec. 2. Jurisdiction.—The court shall have jurisdic-
2 tion within Marshall county, concurrent with the circuit
3 court of said county of causes, matters, proceedings and
4 suits relating to (a) affirmation of marriages, annulment
5 of marriages, separate maintenance, divorce, alimony,
6 the care, custody, maintenance and education of children
7 of litigants and the adjudication of property rights arising
8 out of same, and all other causes and matters arising
9 within the provisions of chapter forty-eight, article two
10 of the official code of West Virginia, commonly known
11 as "the divorce law," and of all amendments and re-
12 enactments thereof; (b) adoption proceedings arising out
13 of article four of the chapter last aforesaid, and of all
14 amendments and reenactments thereof; (c) proceedings
15 for a change of name arising out of article five of the
16 chapter last aforesaid, and of all amendments and re-

17 enactments thereof; (d) the enforcement of support of
18 dependents arising out of article nine of the chapter last
19 aforesaid, and of all amendments and reenactments
20 thereof; (e) of all civil actions or proceedings at law,
21 except where it shall appear from the pleadings that the
22 matter in controversy exceeds the value of one hundred
23 thousand dollars; (f) of all proceedings of eminent do-
24 main arising out of chapter fifty-four of the official code
25 of West Virginia and all amendments and reenactments
26 thereof; (g) of all cases arising under chapter forty-nine,
27 articles five, six and seven of the official code of West
28 Virginia and all amendments and reenactments thereof;
29 (h) appellate jurisdiction in all cases, civil and criminal,
30 from judgments of justices of the peace in said county,
31 police judges or mayors of any incorporated city, town
32 or village, or of any inferior tribunal therein, wherein an
33 appeal, writ of error, supersedeas or writ of certiorari
34 may be allowed; (i) all proceedings under article one,
35 chapter thirty-seven of the official code of West Virginia
36 and all amendments and reenactments thereof; (j) any
37 and all other matters arising under the present and future

38 laws of the state of West Virginia, common or statutory,
39 incidental to the foregoing, including, but not limited to,
40 the disposition of property and property interests in-
41 volved in any such matters, and, as well, the adjudica-
42 tion of any and all rights, titles and interests necessary
43 or incidental to a full determination of all such matters
44 pending in said court.

45 Said court shall have general equity jurisdiction in
46 causes, matters, proceedings and suits before it within
47 its jurisdiction with power to grant injunctions and to
48 require and take recognizances.

49 The proceedings, modes of procedures, power and jur-
50 isdiction conferred by law upon the circuit court of Mar-
51 shall county in any and all said causes, matters, pro-
52 ceedings and suits, are hereby conferred upon and shall
53 be exercised by said court.

54 The judge of said court shall have the same powers in
55 vacation as to any and all of said causes, matters, pro-
56 ceedings and suits that are conferred upon the judge of
57 the circuit court of said county.

58 It shall not be necessary in any such causes or proceed-

59 ings to set forth upon the record the facts authorizing
60 said court to take jurisdiction thereof, but jurisdiction
61 shall be presumed unless the contrary plainly appears
62 from the record.

Sec. 3. Contempt.—Said court shall have the same
2 powers to punish for contempt as are conferred upon said
3 circuit court by law.

Sec. 4. Judge, Qualifications, Term, Appointment and
2 **Election.**—The principal presiding officer of said court
3 shall be a judge whose qualifications, term, appointment
4 and election shall be as follows: The person appointed
5 or elected to the office of judge shall be a member of the
6 West Virginia state bar and a resident of Marshall county.
7 Vacancies in nomination for said office in the year one
8 thousand nine hundred sixty-four shall be filled in the
9 manner provided in section nineteen, article five, chapter
10 three of the official code of West Virginia, as amended.
11 At the general election regularly held on the Tuesday
12 after the first Monday in November, one thousand nine
13 hundred sixty-four, some person qualified as aforesaid
14 shall be elected in the manner provided by law for the

15 election of the circuit judges, to be the judge of said court
16 for the next ensuing term of four years, beginning on
17 January first, next following such election. At the gen-
18 eral election regularly held on the Tuesday after the first
19 Monday in November, one thousand nine hundred sixty-
20 eight, and thereafter at intervals of eight years, some
21 person qualified as aforesaid shall be elected in the man-
22 ner provided by law for the election of the circuit judges,
23 to be the judge of said court for the next ensuing term of
24 eight years, beginning on January first, next following
25 such election. The judge of said court may be removed
26 from office for the same reasons and in the same manner
27 as judges of the circuit court and shall be, except as to
28 his term of office and jurisdiction, subject to the laws in
29 force governing circuit judges. If from any cause the
30 office shall become vacant, the vacancy shall be filled in
31 the same manner as in the case of a vacancy in the office
32 of the judge of the circuit court. Any judge so appointed
33 or elected shall continue in such office until his successor
34 is elected and qualified. Such judge, during his tenure
35 in office, shall not engage in the practice of law.

Sec. 5. Salary.—The judge of said court shall, for his
2 services receive the sum of eleven thousand five hundred
3 dollars per annum, to be paid in monthly installments
4 out of the treasury of Marshall County. The county court
5 shall annually make provision by appropriate levy and
6 appropriation for the payment of said salary.

Sec. 6 Clerk; Powers, Duties, and Compensation.—
2 The clerk of the circuit court of Marshall county shall,
3 ex officio, be, act as and perform the duties of the Clerk
4 of the said court and shall exercise the same power and
5 duties arising within the jurisdiction of said court as are
6 performed by him as clerk of the circuit court. All pro-
7 cesses, rules and orders of the court, in the exercise of
8 its jurisdiction, shall be signed by the clerk thereof to
9 be directed to the sheriffs of the proper counties wherein
10 the same are to be executed in like manner and with the
11 same effect as processes issuing from the circuit court of
12 Marshall county. For his services under and pursuant
13 to this act, the clerk shall receive no compensation in
14 addition to his annual salary as provided by general
15 statute.

Sec. 7. Sheriff; Powers and Duties.—The sheriff of
2 Marshall county and the sheriffs of the several counties
3 in the state shall, by themselves or their deputies, exe-
4 cute all processes of said court, issued by the clerk
5 thereof, directed to them respectively, and all processes
6 emanating from said court shall be directed to and be
7 executed by them in the same manner as is provided by
8 law as to processes issuing from the circuit court of said
9 county. The sheriff of Marshall county shall perform the
10 same duties and services for said court as he is now by
11 law required to perform for the circuit court of Marshall
12 county. In the execution of processes, rules and orders
13 of the court, the sheriff shall have the same powers and
14 rights, be subject to the same liabilities, govern himself
15 by the same rules and principles of law and the statutes
16 of the state, as though said processes issued from the
17 circuit court of Marshall county.

Sec. 8. Prosecuting Attorney; Powers and Duties.—
2 The prosecuting attorney of Marshall county shall attend
3 the terms of said court, either by himself or his assistant,
4 and shall perform the duties of his office as required by
5 law.

Sec. 9. Transfer of Pending Cases; Certification of

2 **Matters to Other Court.**—The judge of the circuit court
3 of said county may, in his discretion, certify to said court
4 on and after the first day of January, one thousand nine
5 hundred sixty-five, any portion or all of the causes, mat-
6 ters, proceedings and suits within the herein defined
7 jurisdiction of said court pending in said circuit court on
8 the first day of January, one thousand nine hundred
9 sixty-five, or thereafter instituted therein, and all causes,
10 matters, proceedings and suits so certified to said court
11 shall be docketed and thereafter proceeded with therein
12 according to law. The judge of said circuit court, in his
13 discretion, may also direct the clerk of said circuit court
14 to certify to and docket in said court all such causes,
15 matters, proceedings and suits properly within the juris-
16 diction of said court as may be instituted on and after
17 the first day of January, one thousand nine hundred
18 sixty-five, in said circuit court. In the event of the ab-
19 sence or disqualification of the judge of said circuit court
20 or said common pleas court, any matter coming within the
21 purview of this act pending in either court may be certi-
22 fied to the other court, docketed therein and proceeded
23 with according to law.

Sec. 10. Terms of Court; Maturity of Causes; Procedure.—For the purpose of maturing, docketing, hearing and determining all causes, matters, proceedings and suits properly determinable in said court there shall be regularly continued and held three terms of court each year, beginning on the second Monday in March, July and November. Special and adjourned terms of said court may be called and held whenever, in the discretion of the judge of said court, public interest requires such special or adjourned terms. The judge of said court shall have like jurisdiction and authority in vacation of said court to make and enter such proper orders in any cause, matter, proceeding or suit pending in said court as the judge of the circuit court has under the laws of the state.

The mode of procedure in causes instituted in said court shall be the same as that prescribed for the circuit court in similar causes. The court is authorized and empowered to appoint such additional officers, divorce commissioners, commissioners, special commissioners, jury commissioners and such clerical and secretarial assistants as shall enable said court to discharge all the duties required of it under the provision of this act and

24 the general laws of the state. Such appointments shall
25 be made by the judge and the appointees shall serve dur-
26 ing the pleasure of the judge.

27 The judge of said court shall have power to make and
28 promulgate such rules for the transaction of the business
29 of the court as may be necessary: *Provided*, That all such
30 rules shall be in conformity with the laws of the state of
31 West Virginia and with any rules promulgated by the
32 supreme court of appeals of this state, and such rules
33 shall be filed in the office of the clerk of said supreme
34 court of appeals.

Sec. 11. Supplies; Finances; Seal; Court Rooms and
2 **Offices.**—It shall be the duty of the county court of
3 Marshall county to provide all record and other books
4 and stationery, postage, and supplies that may be neces-
5 sary for said court. Likewise a seal for said court shall
6 be provided and full faith and credit shall be given to the
7 records of the court and certificates of its judge or clerk
8 in like manner and with the same effect as if the same
9 were records of the circuit court similarly authenticated.
10 The county court of Marshall county shall likewise fur-
11 nish such rooms, furniture and equipment for the proper
12 conduct and administration of said court and shall,

13 through annual levy and appropriations, make provision
14 for the payment for all such rooms, supplies and equip-
15 ment. It shall be the duty of the county court of Marshall
16 county to pay the salary of a full time secretary in the
17 office of the judge of said court, to be appointed by him,
18 whose compensation shall be not less than one thousand
19 eight hundred dollars nor more than two thousand seven
20 hundred dollars annually, to be determined by the judge.

Sec. 12. Appeals.—Appeals from, or writs of error or
2 supersedeas to, any judgment, decree or order of said
3 court shall be governed by and subject to the provisions
4 of article four, chapter fifty-eight of the official code of
5 West Virginia, and of all enactments and reenactments
6 thereof pertaining to the subject of “Appeals from Courts
7 of Record of Limited Jurisdiction.”

Sec. 13. Separability; Repeal.—The provisions of this
2 act shall be construed as separable and severable and
3 should any provision or part hereof be held unconstitu-
4 tional or for any reason invalid the remaining provisions
5 or parts shall not be thereby affected.

6 All acts or parts of acts in conflict herewith are hereby
7 repealed.

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

O. Roy Parker
 Chairman Senate Committee

Ethel L. Crandall
 Chairman House Committee

Originated in the House.

Takes effect From passage.

Norman Thyer
 Clerk of the Senate

C. A. Blankenship
 Clerk of the House of Delegates

Howard W. Carson
 President of the Senate

James W. Singletary
 Speaker House of Delegates

The within approved this the 9th
 day of February, 1964.

W. W. Baum
 Governor