

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 809

(By Mr. Anderson)



PASSED February 25, 1967

In Effect per Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-9-67

608 #

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House Bill No. 809

(By MR. ANDERSON)

[Passed February 25, 1967; in effect from passage.]

AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment and the appointment of deputies and local conservators of the peace and the compensation of sheriffs and deputies.

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, as amended, be amended and reenacted to read as follows:

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; removal of conservators.

1 (a) (1) The clerk of the supreme court of appeals, or
2 of any circuit, criminal, common pleas, intermediate or
3 county court, or of any tribunal established by law in lieu
4 thereof, may, with the consent of the court, or such tri-
5 bunal, duly entered of record, appoint any person or per-
6 sons his deputy or deputies.

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

15 (4) Each deputy so appointed shall take the same oath
16 of office required of his principal, and may, during his
17 continuance in office, perform and discharge any of the
18 official duties of his principal, and any default or mis-

19 feasance in office of the deputy shall constitute a breach
20 of the conditions of the official bond of his principal.

21 (5) A sheriff in any county in which there are more
22 than four deputies shall devote his full time to the per-
23 formance of the services or duties required by law of
24 such sheriff, and he shall not receive any compensation
25 or reimbursement, directly or indirectly, from any per-
26 son, firm or corporation for the performance of any
27 private or public services or duties: *Provided*, That any
28 such sheriff may retain or make any investment and
29 receive income therefrom, unless such investment is
30 otherwise prohibited by law or will impair his indepen-
31 dence of judgment in the exercise of, or might reason-
32 ably tend to conflict with the proper discharge of, the
33 services or duties of his office. A sheriff in any county
34 in which there are four or fewer deputies, or a deputy
35 sheriff in any county irrespective of the number of
36 deputies, need not devote his full time to the services
37 or duties of his office as sheriff or his employment as
38 deputy sheriff, as the case may be; but any such sheriff
39 or deputy sheriff shall not engage in any business or

40 transaction, accept other employment or make any invest-
41 ment which is otherwise prohibited by law or which
42 will impair his independence of judgment in the exer-
43 cise of, or might reasonably tend to conflict with the
44 proper discharge of, the services or duties of his office
45 as sheriff or his employment as deputy sheriff, as the
46 case may be. A sheriff and his deputies in any county,
47 irrespective of the number of deputies, shall receive for
48 the performance of their public services and duties no
49 compensation or remuneration except such as may be
50 regularly provided and paid out of public funds to the
51 amount and in the manner provided by law. No sheriff
52 or deputy sheriff in any county, irrespective of the num-
53 ber of deputies, may receive, directly or indirectly, any
54 gift or donation from any person, firm or corporation.

55 (6) Except as hereinafter expressly provided by para-
56 graph (subsection) (b) of this section no sheriff shall
57 appoint or continue the appointment of any deputy con-
58 trary to the provisions hereof. Any sheriff or deputy
59 sheriff who shall violate any of the provisions of this
60 section shall be guilty of a misdemeanor and upon con-

61 viction thereof shall be fined not less than five hundred
62 dollars nor more than five thousand dollars, or confined
63 in jail not to exceed one year, or both, in the discretion
64 of the court.

65 (7) Circuit courts shall have jurisdiction in equity and
66 mandamus, and the supreme court of appeals shall have
67 jurisdiction in mandamus, upon the filing of a petition
68 by the prosecuting attorney, the attorney general, or any
69 three or more citizens of the county, to require any
70 sheriff and the county court to vacate the appointment
71 of any deputy, the appointment of which is made or
72 continued in violation of the provisions hereof. Any such
73 proceeding may be instituted and prosecuted by the
74 attorney general either in the circuit court of Kanawha
75 county or in the county for which such appointment was
76 made.

77 (b) (1) Any resident or group of residents of any
78 unincorporated community, as hereinafter defined, may
79 petition the sheriff for the appointment of a local con-
80 servator of the peace and such sheriff, when in his opinion
81 the public interests require it, may with the assent of

82 said county court and the judge of the circuit court
83 duly entered of record, either in term or vacation of any
84 such court, appoint any person or persons a local con-
85 servator or conservators of the peace to perform the
86 duties of a conservator of the peace outside of any in-
87 corporated city, town or village. No person shall be ap-
88 pointed such local conservator of the peace who has not
89 been a bona fide resident and taxpayer of the county
90 for at least one year prior to his appointment. Such local
91 conservator of the peace during his continuance in
92 office, may perform and discharge any of the official
93 duties of the sheriff, subject nevertheless to the provi-
94 sions of this section. No local conservator so appointed
95 shall be subject to the direction or control of any per-
96 son other than his principal, and he shall not perform
97 any services or duties, either private or public, except
98 the duties required by law of conservators of the peace
99 pursuant to the provisions hereof, for any person, firm,
100 or corporation. No such local conservator shall be en-
101 titled to collect or receive any fees provided by law to
102 be paid to the sheriff or to a deputy sheriff, but all fees

103 provided by law for the sheriff when such duties and
104 services are rendered by such local conservator, shall
105 be paid to the sheriff as regular collections of the sheriff's
106 office. The local conservator shall be paid for the public
107 services performed by him a salary of not less than
108 seventy-five dollars per month out of the county treasury
109 from a fund to be paid into such treasury by a resident
110 or the residents of the community for which he is ap-
111 pointed, for the sole purpose of compensating such local
112 conservator or conservators, and no such local conser-
113 vator shall receive any other compensation, directly or
114 indirectly, from any person, firm, or corporation, for any
115 private or public service, except the salary payable to
116 him for his public services and duties and from such
117 fund, except that he shall be entitled to witness and
118 mileage fees when a witness in a court of record. Each
119 local conservator so appointed shall take the same oath
120 of office required of his principal and any default or
121 misfeasance in the office of such local conservator shall
122 constitute a breach of the conditions of the official bond
123 of his principal.

124 (2) When the sheriff shall have been petitioned for
125 the appointment of a local conservator and has deter-
126 mined that the appointment is proper, he shall select
127 the person whom he proposes to have appointed such
128 conservator and shall notify the county court of the com-
129 munity for which such conservator is to be appointed
130 and the name of the person proposed for such appoint-
131 ment. The county court shall thereupon cause notice
132 that the sheriff has recommended the appointment of
133 the person named as conservator for the community
134 named to be published one time each week for two
135 successive weeks in a newspaper of general circulation
136 published in the county, and if there be no newspaper
137 published in the county, then in any other newspaper
138 published in the state having a general circulation in
139 the county, and designating a day not less than five days
140 after the last publication when the county court will
141 act upon the petition and recommendation. Neither the
142 county court nor the judge of the circuit court shall
143 assent and approve the appointment of such local con-
144 servator until such publication has been made. The costs

145 of the publication shall be paid by the person or persons
146 petitioning for the appointment of the conservator.

147 No local conservator shall be appointed except it be
148 made to appear to the satisfaction of the county court
149 and the judge of the circuit court that because of the
150 lack of sufficient funds, geographical location of the
151 unincorporated community for which such conservator
152 is to be appointed, or other good reason, the sheriff and
153 his regular deputies and the constables of the county
154 are not sufficient to afford proper local policing of such
155 community and that the person or persons moving for
156 the appointment of such local conservator have made
157 satisfactory arrangements to compensate him for his
158 services as such local conservator of the peace.

159 (3) Such local conservator of the peace shall have all
160 the powers and duties of a regularly appointed deputy
161 sheriff except that he shall not execute any civil proc-
162 ess except such process as may be necessary to bring
163 parties before the court in any action at law or suit in
164 equity and subpoenas for witnesses within the unincor-
165 porated community for which he is appointed and within

166 a distance of one mile outside the boundaries thereof,
167 except as hereinafter expressly provided, but he shall
168 not participate in any strike, unemployment boycott, or
169 other industrial or labor dispute, nor serve any court
170 process of any character relating thereto. He shall act
171 as such local conservator only in the unincorporated
172 community for which he is appointed, and within a dis-
173 tance of one mile from the boundaries thereof as fixed
174 by the county court: *Provided, however,* That the au-
175 thority of one local conservator shall not extend into
176 any other unincorporated community for which another
177 local conservator is appointed and acting, except as other-
178 wise expressly provided by clause (6) of this paragraph
179 (subsection), except that in fresh pursuit he may effect
180 arrests anywhere in the county. He may also exercise
181 the powers of a regularly appointed deputy anywhere
182 in the county when required to guard or assist in guard-
183 ing a payroll, or any other property of value in transit.
184 to or from the unincorporated community for which he
185 is appointed. Any person arrested by such local con-
186 servator shall, with all convenient speed, be turned over

187 to the sheriff, or one of his regular deputies, or to a
188 regular constable of the county to be dealt with accord-
189 ing to law, and his authority for that purpose shall be
190 coextensive with the county.

191 (4) Any local conservator appointed to perform the
192 duties of conservator of the peace shall be a public
193 officer and the payment, or contribution to the payment
194 of compensation of such local conservator shall not
195 constitute the person, firm or corporation making such
196 payment or contribution the employer of such local
197 conservator and no person, firm or corporation paying, or
198 contributing to the payment of compensation to such
199 local conservator shall be answerable in law or in equity
200 for any damages to person or property resulting from
201 any official act of such local conservator.

202 (5) No person appointed such local conservator shall
203 thereby be entitled to carry weapons, but such local con-
204 servator may carry weapons when he shall be duly li-
205 censed and shall have given bond as provided by section
206 two, article seven, chapter sixty-one of the code of West
207 Virginia, one thousand nine hundred thirty-one.

208 (6) Not more than one local conservator of the peace
209 shall be appointed, to perform the duties of conservator
210 of the peace, for each two thousand five hundred in-
211 habitants of the county as ascertained by the last regular
212 decennial census after deducting the number of inhabi-
213 tants of the county residing in the incorporated cities,
214 towns and villages in such county. Not more than one
215 local conservator shall be appointed for any unincor-
216 porated community unless the population thereof exceed
217 fifteen hundred people and in such case not more than
218 two conservators shall be appointed for such community.

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

223 (8) The county court and the judge of the circuit court
224 in approving the appointment of a local conservator shall
225 enter of record an order making such appointment and
226 shall show therein the necessity for the appointment, the
227 person or persons on whose motion the appointment is
228 made, the arrangement for the payment of compensa-

229 tion to such local conservator, the unincorporated com-
230 munity, or communities, for which the appointment is
231 made, including the general boundary of each unincor-
232 porated community for which he is appointed.

233 (9) No local conservator shall act as an election offi-
234 cial or remain in, about or near any voting place or place
235 of political convention, further than is necessary for him
236 to promptly cast his vote and retire from the voting place.

237 (10) Any local conservator violating any of the pro-
238 visions of clauses (3) and (9) of this paragraph (sub-
239 section) shall be guilty of a misdemeanor and, upon con-
240 viction thereof, shall be fined not less than fifty dollars
241 nor more than three hundred dollars, or be confined in
242 the county jail not more than six months, or both, in
243 the discretion of the court; and it shall be the duty of
244 the sheriff and the county court to forthwith revoke his
245 appointment irrespective of any criminal prosecution. A
246 proceeding in mandamus or injunction shall lie in the
247 circuit court and a proceeding in mandamus shall lie in
248 the supreme court of appeals at the instance of the prose-
249 cuting attorney, the attorney general, or of any three

250 or more citizens of the community for which such con-
251 servator is appointed, to require the performance of such
252 duty by the sheriff and the county court.

253 (11) Such local conservator shall serve during the joint
254 will and pleasure of the sheriff and the county court and
255 his appointment may be revoked by order entered of
256 record by the county court either with or without the
257 assignment of cause therefor.

258 A local conservator may be removed by the judge of
259 the circuit court, either in term or vacation, for drunk-
260 enness, gross immorality, incompetency, neglect of duty,
261 or other good cause, upon the petition of three or more
262 residents of the community for which he has been ap-
263 pointed. The petition shall set forth the cause or causes
264 for which such removal is asked and shall show that
265 demand for removal has been made of the sheriff and the
266 county court and that the sheriff and the county court
267 have failed to remove the local conservator. At least
268 three copies of the petition shall be filed, and upon the
269 filing of the petition the judge shall fix a time and place
270 for a hearing thereon, which time shall not be less than

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

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

William T. Taylor
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. L. Lankford
Speaker House of Delegates

The within approved this the 8
day of March, 1968.

Stewart C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 3/7/67

Time 1:40pm