WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
SENATE BILL NO. 422

(By Mr. Cleveland)

PASSED April 9, 1981
In Effect ninety days from Passage
ENROLLED

Senate Bill No. 422
(By MR. MORELAND)

[Passed April 9, 1981; effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article twelve of said chapter, all relating to general powers of municipalities; compensation of officers and employees; and authorizing municipalities to expend municipal revenues for purposes of general employee benefits.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article twelve of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

PART VI. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-12. Compensation of officers and employees.
1 Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: Provided, That the salary of any officer shall not be increased or diminished during his term.
The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BOARDS.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by (i) the constitution of this state, (ii) other provisions of this chapter, (iii) other general law, and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except a special legislative charter, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, crosswalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision (1); and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and
purpose of such public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality: Provided, however, That any such permit so granted, shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to such municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter, or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality;

(5) To regulate the width of sidewalks on the streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the
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71 utilization of the waterfront and waterways and adjacent
72 property;
73 (10) To prohibit the accumulation and require the disposal
74 of garbage, refuse, wastes, ashes, trash and other similar
75 matters;
76 (11) To construct, establish, acquire, equip, maintain and
77 operate incinerator plants and equipment and all other
78 facilities for the efficient removal and destruction of garbage,
79 refuse, wastes, ashes, trash and other similar matters;
80 (12) To regulate or prohibit the purchase or sale of articles
81 intended for human use or consumption which are unfit for
82 such use or consumption, or which may be contaminated or
83 otherwise unsanitary;
84 (13) To prevent injury or annoyance to the public or
85 individuals from anything dangerous, offensive or
86 unwholesome;
87 (14) To regulate the keeping of gunpowder and other
88 combustibles;
89 (15) To make regulations guarding against danger or
90 damage by fire;
91 (16) To arrest, convict and punish any individual for
92 carrying about his person any revolver or other pistol, dirk,
93 bowie knife, razor, slungshot, billy, metallic or other false
94 knuckles, or any other dangerous or other deadly weapon of
95 like kind or character;
96 (17) To arrest, convict and punish any person for
97 importing, printing, publishing, selling or distributing any
98 pornographic publications;
99 (18) To arrest, convict and punish any person for keeping a
100 house of ill fame, or for letting to another person any house or
101 other building for the purpose of being used or kept as a
102 house of ill fame, or for knowingly permitting any house
103 owned by him or under his control to be kept or used as a
104 house of ill fame, or for loafing, boarding or loitering in a
105 house of ill fame, or frequenting same;
106 (19) To prevent and suppress conduct and practices which
107 are immoral, disorderly, lewd, obscene and indecent;
108 (20) To prevent the illegal sale of intoxicating liquors,
109 drinks, mixtures and preparations;
110 (21) To arrest, convict and punish any individual for
111 driving or operating a motor vehicle while intoxicated or
112 under the influence of liquor, drugs or narcotics;
(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to grant such license unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have plenary power and authority, and it shall be the duty of its governing body, to make and enforce reasonable ordinances regulating the licensing and operation of such businesses;

(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading or overdriving, or willfully depriving of necessary sustenance, any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of
adjacent premises and for the drainage of lots by proper
drains and ditches;
(29) To provide for the protection and conservation of
shade or ornamental trees, whether on public or private
property, and for the removal of trees or limbs of trees in a
dangerous condition;
(30) To prohibit with or without zoning the location of
occupied house trailers or mobile homes in certain residential
areas;
(31) To regulate the location and placing of signs,
billboards, posters, and similar advertising;
(32) To erect, establish, construct, acquire, improve,
maintain and operate a gas system, an electric system, a
waterworks system, or sewer system and sewage treatment
and disposal system, or any combination of the foregoing
(subject to all of the pertinent provisions of articles nineteen
and twenty of this chapter and particularly to the limitations
or qualifications on the right of eminent domain set forth in
said articles nineteen and twenty), within or without the
corporate limits of the municipality, or partly within and
partly without the corporate limits of the municipality,
except that the municipality shall not erect any such system
partly without the corporate limits of the municipality to
serve persons already obtaining service from an existing
system of the character proposed, and where such system is
by the municipality erected, or has heretofore been so
erected, partly within and partly without the corporate limits
of the municipality, the municipality shall have the right to
lay and collect charges for service rendered to those served
within and those served without the corporate limits of the
municipality, and to prevent injury to such system or the
pollution of the water thereof and its maintenance in a
healthful condition for public use within the corporate limits
of the municipality;
(33) To acquire watersheds, water and riparian rights,
plant sites, rights-of-way and any and all other property and
appurtenances necessary, appropriate, useful, convenient or
incidental to any such system, waterworks or sewage
treatment and disposal works, as aforesaid, subject to all of
the pertinent provisions of articles nineteen and twenty of
this chapter;
(34) To establish, construct, acquire, maintain and operate and regulate markets, and prescribe the time of holding the same;
(35) To regulate and provide for the weighing of articles sold or for sale;
(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots, or any other public works;
(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use, and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;
(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;
(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;
(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia board of health and state department of health;
(41) To establish, construct, acquire, maintain and operate hospitals, sanitaria and dispensaries;
(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon such terms and conditions as to price and otherwise as may be determined by the governing body, and, in order to carry into effect such authority the governing body may acquire any cemetery or cemeteries already established;
(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;
(44) To protect and promote the public morals, safety, health, welfare and good order;
(45) To adopt rules for the transaction of business and the
government and regulation of its governing body; ·
(46) Except as otherwise provided, to require and take
such bonds from such officers, when deemed necessary,
payable to the municipality, in its corporate name, with such
sureties and in such penalty as the governing body may see
fit, conditioned upon the faithful discharge of their duties;
(47) To require and take from such employees and
contractors such bonds in such penalty, with such sureties
and with such conditions, as the governing body may see fit;
(48) To investigate and inquire into all matters of concern
to the municipality or its inhabitants;
(49) To establish, construct, require, maintain and operate
such instrumentalities, other than free public schools, for the
instruction, enlightenment, improvement, entertainment,
recreation and welfare of the municipality's inhabitants as the
governing body may deem necessary or appropriate for the
public interest;
(50) To create, maintain and operate a system for the
enumeration, identification and registration, or either, of the
inhabitants of the municipality and visitors thereto, or such
classes thereof as may be deemed advisable;
(51) To appropriate and expend not exceeding twenty-five
cents per capita per annum for advertising the municipality
and the entertainment of visitors;
(52) To conduct programs to improve community
relations and public relations generally and to expend
municipal revenue for such purposes;
(53) To reimburse applicants for employment by the
municipality for travel and other reasonable and necessary
expenses actually incurred by such applicants in traveling to
and from such municipality to be interviewed;
(54) To provide revenue for the municipality and
appropriate the same to its expenses;
(55) To create and maintain an employee benefits fund
which shall not exceed one tenth of one percent of the annual
payroll budget for general employee benefits and which shall
be set up for the purpose of stimulating and encouraging
employees to develop and implement cost-saving ideas and
programs and to expend moneys from such fund for such
purposes; and
(56) To provide penalties for the offenses and violations of
law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties shall not exceed any penalties provided in this chapter, and chapter sixty-one of this code for like offenses and violations.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

[Signatures]
Clerk of the Senate

[Signatures]
Clerk of the House of Delegates

[Signatures]
President of the Senate

Speaker House of Delegates

The within is approved this the 28th day of April, 1981.

[Signature]
Governor